

The Consumer Voice in Europe

## CONSUMER CREDIT DIRECTIVE

BEUC recommendations for trilogues



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## Why it matters to consumers

When shopping online, buying a new phone, or leasing a car, consumer credit is today only a click away. When affordable, credit can allow for investments in higher education, an electric car or a more energy efficient household appliance. Conversely, where credit becomes unaffordable or provided without appropriate checks, it causes over-indebtedness and will further tighten the consumer's budget for essential expenses.

## Summary

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In order to develop consumer-proof credit markets, we are asking the European co-legislators to ensure during the trilogue negotiations that the Consumer Credit Directive (CCD):

- **Protects consumers no matter the credit product chosen:** co-legislators should maintain a wide scope as foreseen in the Commission proposal.
- **Shields consumers from inadequate high-cost credit products** including all ancillary services sold in conjunction with the credit product: strengthen the tying rules as foreseen in the Parliament position and support Commission and Parliament text on cost caps.
- **Prevents irresponsible lending with a sound creditworthiness assessment** for all credit no matter the size as foreseen by the Commission proposal and ensures that no credit is granted in case of a negative assessment as foreseen by the Council general approach.
- **Supports consumers in financial difficulties and ensures fair treatment:** take up Parliament's suggestions on forbearance measures, debt collection, assignment of rights and debt advisory services.
- **Allows for effective enforcement of consumer rights:** support strengthened rules on sanctions, remedies and alternative dispute resolution as foreseen by European Parliament and support Commission proposal on the right of withdrawal.
- **Protects personal and sensitive consumer data and sets clear rules for automated processing of data** as foreseen by the Parliament.
- **Foresees information on credit which is fair and easy to understand:** support Parliament and Council proposals on pre-contractual information and Parliament's proposal to prohibit certain forms of advertising.
- **Prevents consumers to take out credit by mistake:** support Council text on inferred credit agreements and the Commission proposal on unsolicited credit sales.
- **Ensures effective market supervision and enforcement by competent authorities:** support Parliament's addition on data collection and product intervention powers and maintain the Commission proposal on admission, supervision and registration.
- **Promotes loans enabling consumers to take part in the green transition:** support Parliament's additional article on green loans.

## 1. Summary table – article by article

Article	BEUC recommendation
2 (scope)	Support Commission proposal, reject exemptions created by Parliament and Council. In addition, BEUC supports all additions by Council and Parliament to the list of articles applying to overrunning (Art. 2 §4) and Parliament additions for crowdfunding (Art. 2§1).
3 (definitions)	(5) Total cost of credit: whenever an ancillary service is sold simultaneously with the credit, the cost should be included in the total cost of credit. (11) Durable medium: BEUC recommends adding “chosen by the consumer” to the definition of “durable medium” to ensure consistency throughout the Directive.
5 (Information free of charge)	Support Parliament text.
6 (non-discrimination)	Support Commission proposal.
6a (green loans)	Supports new article added by Parliament.
7 (advertising)	Support Parliament text.
8 (advertising)	§1, §2, §3, §3b, §3c and §3d: support Parliament text. §3a: reject Parliament text.
9 (general information)	Support Parliament text.
10 (pre-contractual information) <i>(same rules should apply for article 11)</i>	Support Parliament and Council proposal to integrate SECCO into the SECCI document as a first page. Art. 10§3 point (n), (na) and (fc): support Parliament addition on late payment and a comprehensive repayment schedule. Art. 10 §8: support Parliament addition on right to reflection. Art. 10 §6 and §7: delete derogations for voice telephony and distance means of communication as suggested by Parliament.
12 (adequate explanation)	Support Parliament text.
13 (personalised offers)	Support Parliament text.
14 (tying and bundling)	Support Parliament text.
15 (inferred agreements)	Support Council addition of credit products to the scope of Art. 15. §2a: support Parliament addition.
16 (advisory services)	Support Council and Parliament additions to the definition of “acting in the best interest of the consumer”. §3 and §4: Support Parliament’s proposal to strengthen the conditions on the use of the term “advice”.
17 (unsolicited credit sales)	Support Commission proposal.
18 (creditworthiness assessment)	§1: Commission proposal with a possible addition “proportionate to the risk of the credit for the consumer”. §2: As introduced by the Parliament in Article 18.2, the use of personal sensitive data <sup>1</sup> should be prohibited. §2a-d: support Parliament additions. §3a-3c: support Parliament additions. §4: support Council to prevent granting of credit in case of a negative assessment.

<sup>1</sup> This refers to data referred to in Article 9 of the General Data Protection Regulation.

	§6, §7, §8, §9, §9a: support Parliament additions.
19 (databases)	Support Parliament text.
20, 21 and 22 (credit agreement)	Support Parliament text.
23 (borrowing rate)	Support Parliament text.
24 and 25 (overdrafts and overrunning)	Support Parliament text.
26 (right of withdrawal)	Support Commission proposal and Parliament addition in §1a for linked credit agreements.
28 (open-end credit agreements)	Support Parliament text.
29 (right to early repayment)	§1: Support Commission proposal, reject Parliament version and Council addition on " <u>full or partial</u> early repayment". §2a: support Parliament addition. §4: support Parliament addition.
31 (cost caps)	BEUC supports the introduction of cost caps as foreseen by the Commission and Parliament and recommends deleting the option to put caps solely on the interest rate.
32 (business conduct)	Support Parliament text.
33 (competence requirements)	Support Parliament text.
34 (financial education)	Support Parliament text.
35 (forbearance measures)	Support Parliament text.
36 (debt advisory services)	§1: BEUC supports that debt advisory services are independent and offered free of charge as suggested by the Parliament. However, as foreseen by Commission and Council, those services should also be accessible for those "likely to experience financial difficulties". §1a, 1b, 1c: support Parliament additions.
36a (debt collection)	Support new article on debt collection as suggested by Parliament.
37 (admission, registration, supervision)	BEUC recommends rejecting Council text.
39 (assignment of rights)	Support Parliament text.
40 (ADR)	Support Parliament text.
41 (competent authorities)	Support Parliament text.
41a (data collection)	Support new article on data collection as suggested by Parliament.
44 (penalties and structural remedies)	Support Parliament text.
44a (remedies)	Support new article on remedies as suggested by Parliament.
48 (transposition)	Support Council text.

## 2. Introduction

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In times of higher energy bills, increased rents, and elevated expenses for groceries, consumers' budgets are coming under pressure. Credit is offered almost everywhere and presented as an easy way to get out of these budgetary constraints: 'Pay your new kitchen appliance in four instalments, free of interest,' or 'choose pay later' in your favourite shopping app. Whether credit is the right solution very much depends on the consumer's ability to pay back the money. Unaffordable credit is not beneficial for the consumer as it will most likely increase the gap in their budget rather than diminish it.

Consumer credit can come with egregious costs, even if not always apparent at first sight. The interest rate is the most visible cost but rarely the only one. On top, many costs are added such as the premium for payment protection insurance. According to BEUC's German member Stiftung Warentest, the most expensive insurance policy tested amounts to €2,280 for €10,000 in credit, and the cheapest one still costs €764.<sup>2</sup> The insurance premium is often paid via the credit, meaning that interest must also be paid on the cost of the insurance.

Costs are exploding when consumers get into financial trouble: BEUC's Austrian member Arbeiterkammer found out that it can cost consumers up to €300 to change the amortisation plan of their credit, deferring a payment came with one-off costs of €250.<sup>3</sup> Rolling over a credit to a new one often comes with higher interest rates, with interest on top of the interest rate of the old credit, and additional ancillary services. Buy-Now-Pay-Later often come with elevated late payment fees too.<sup>4</sup>

A revised Consumer Credit Directive covering all credit products, foreseeing a sound creditworthiness assessment and foreseeing effective limits to the cost of credit and to tying practices will be an important contribution to prevent consumer over-indebtedness.

The upcoming trilogue negotiations will be the last opportunity to achieve a high level of consumer protection with the Consumer Credit Directive. The most discussed topics, namely scope, creditworthiness assessment and costs caps are analysed in detail in the following three chapters. The remaining topics are discussed article by article in the final chapter of this position paper.

## 3. A Consumer Credit Directive covering all credit products (Article 2)

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Consumers should be protected by the CCD for all types of credit, offline and online. The risk associated with the credit depends on the financial situation of the individual consumer. There is no low-risk credit as such. The risk for consumers is not lower if the credit is granted by another consumer (peer-to-peer lending) or by a professional in an ancillary capacity (suppliers of goods and services). The CCD should therefore apply to all creditors.

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<sup>2</sup> <https://www.test.de/Vergleich-Restschuldversicherungen-fuer-Ratenkredite-Teurer-Schutz-fuer-Kreditkunden-5673224-0/>. The examples mentioned cover insurance in case of death, incapacity to work and unemployment.

<sup>3</sup>

[https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Kreditnebenspesen\\_im\\_Vergleich\\_2021.pdf](https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Kreditnebenspesen_im_Vergleich_2021.pdf)

<sup>4</sup> [https://www.beuc.eu/publications/beuc-x-2022-017\\_buy\\_now\\_pay\\_later\\_products.pdf](https://www.beuc.eu/publications/beuc-x-2022-017_buy_now_pay_later_products.pdf)

**BEUC supports the scope of the Commission proposal.** This section analyses the impact of the exemptions created either by Parliament or Council.

### Leasing agreements (Art. 2.2)

Leasing agreements are a widespread form of consumer credit: leasing is available for cars, phones, and all sorts of household appliances. For a consumer, leasing works like a consumer credit with monthly instalments and a mandatory minimum contract term of several months. The only difference is that leasing contracts rarely foresee the obligation to purchase an object but rather the option for doing so.

Exempting leasing from the CCD will create an additional risk by leaving a loophole which can be easily used to replace traditional consumer credit. For example, in France, leasing agreements have been used to bypass the cost cap for consumer credit. A study of BEUC's French member UFC Que Choisir shows that leasing agreements offered to purchase electric appliances such as microwaves, fridges, phones, computers and smartphones are often twice as expensive as purchasing the same goods with consumer credit.<sup>5</sup> **The CCD should thus apply to all leasing agreements.**

### Deferred debit cards (Art. 2.2)

Deferred debit cards are popular in Spain and France and increasingly offered to consumers as a default option or at lower cost than direct debit cards.<sup>6</sup> Deferred debit cards can work in two ways: either the payment is settled after a certain number of days, or all payments are settled at the end of each month similarly to credit cards. The concept of deferred debit cards is also taken up by Buy-Now-Pay Later providers: for instance, Klarna offers a Klarna Card allowing consumers to delay payments by 30 days.<sup>7</sup>

Similarly to credit cards, consumers can spend more than their available budget. **Therefore, the CCD must apply to deferred debit cards as foreseen by the Commission's proposal.**

### Deferred payments of an invoice (Art. 2.2)

Deferred payment of an invoice is offered by smaller suppliers such as installers or repairers to allow for some flexibility for the consumer. At the same time, when defined too broadly, deferred payment of an invoice can easily become a business model for larger suppliers, including large online shops. They take a similar form as Buy-Now-Pay-Later products as the launch of "pay later" by Apple without a third-party creditor has recently shown.<sup>8</sup> This raises also concerns from a competition perspective as it will allow Big Tech companies and large shops to offer credit without being covered by the CCD and therefore gain an advantage over other retailers that do not have the scope and scale to offer BNPL and creditors offering credit as their main activity.

**Several safeguards are needed to ensure that this exemption does not allow for new, unregulated credit products (similarly to BNPL) offered by large shops and Big Tech companies.** A scope exemption for deferred payment of an invoice should only be possible when the consumer is paying back the amount free of interest, without any other charges, including charges of non-compliance. In addition, this option should only be

<sup>5</sup> <https://www.quechoisir.org/action-ufc-que-choisir-location-de-longue-duree-d-electromenager-pire-que-le-credit-revolving-n74871/>

<sup>6</sup> <https://www.asufin.com/denunciamos-que-las-tarjetas-de-credito-diferido-similares-a-las-revolving-alcizan-el-20-de-interes/>

<sup>7</sup> <https://www.klarna.com/de/card/>

<sup>8</sup> [https://www.finextra.com/newsarticle/40425/apple-cuts-out-banks-to-offer-bnpl-loans-directly?utm\\_medium=dailynewsletter&utm\\_source=2022-6-10&member=88644](https://www.finextra.com/newsarticle/40425/apple-cuts-out-banks-to-offer-bnpl-loans-directly?utm_medium=dailynewsletter&utm_source=2022-6-10&member=88644)

available for small and medium enterprises. The exemption for admission and registration in Article 37 as foreseen in the Council text should follow the same logic.

For consumers, deferred payments of an invoice can in all cases bring a challenge for budget management. Therefore, a reasonable time limit of 45 days should be introduced as foreseen in the proposal of the Parliament.

### Interest-free credit from suppliers of goods (Art. 2.2)

The Parliament suggests an exemption for interest-free credit without any time limit fulfilling all of the following conditions:

- Granted free of interest and free of other fees including penalty charges;
- For the purpose of acquiring a terminal equipment as defined in point 1(a) of Article 1 of Directive 2008/63/EC where necessary for the use of electronic communication services and;
- Granted by an operator whose principal activity is not the provision of financial services.

A terminal equipment according to Directive 2008/63/EC is an equipment directly or indirectly connected to the interface of a public telecommunications network to send, process or receive information. This covers all connected goods, be it smart household appliances such as a connected fridge, vacuum cleaner, kitchen machine or a connected car. It covers of course also all electronic appliances such as computers and smartphones. The addition "where necessary for the use of electronic communication" aims at narrowing down this list but raises some legal uncertainty about which kind of equipment is included.

Independently of the number of goods covered by this exemption, it is not clear from a consumer protection perspective how this exemption is justified: Is there a lower financial risk for consumers buying a connected car rather than a bike? Or to buy a connected vacuum cleaner rather than a normal one? The answer to this question is clearly 'no' which should result in a deletion of this exemption.

There is also a competition angle to this exemption as it applies only to operators whose principal activity is not the provision of financial services. This operator could be either the producer of the good directly, the trader or any other third-party entity who is active in financial services but does not have financial services as their main activity (e.g. Amazon could offer the credit for goods sold on its online market place). Similarly to the exemption for deferred payments of an invoice, this creates a distortion in competition as it will allow Big Tech companies and large shops to offer credit without being covered by the CCD and therefore gain an advantage over other retailers that do not have the scope and scale to offer BNPL and creditors offering credit as their main activity.

Finally, is there inherently a lower risk when suppliers of goods and services grant credit? On the contrary, BEUC's German member's mystery shopping on credit granted at the point of sale reveals a long list of problems: poor creditworthiness assessments (see next chapter), legally questionable content in contracts such as incorrect data protection declarations, inconsistencies between the advertising, pre-contractual information and the contract itself.<sup>9</sup>

**Both from a consumer protection and competition perspective, this exemption is not justified and should thus be deleted.**

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<sup>9</sup> [https://www.vzby.de/sites/default/files/downloads/2020/03/02/20-03-02\\_marktwaechteruntersuchung\\_kreditvermittlung\\_im\\_einzelhandel.pdf](https://www.vzby.de/sites/default/files/downloads/2020/03/02/20-03-02_marktwaechteruntersuchung_kreditvermittlung_im_einzelhandel.pdf), p. 5-7.

### Peer-to-peer lending (Art. 2.1)

Peer-to-peer lending is a direct form of lending between two consumers, where the peer-to-peer lending platform operates as an intermediary. This form of lending brings risks for both the consumer borrower and the consumer lender.

The consumer borrowing the money has similar risk as for any other credit product. Without a thorough creditworthiness assessment, credit can become unaffordable and cause over-indebtedness. The Commission's impact assessment indicates that peer-to-peer lending targets mainly consumers without access to traditional forms of lending due to a negative creditworthiness assessment.<sup>10</sup>

For the consumer lending the money, there is a risk of non-repayment which is higher when there is no sound creditworthiness assessment. BEUC's French member UFC Que Choisir found out that default rates of crowdfunding are very high and return on investment is comparable to the interest received on a savings account.<sup>11</sup> A sound creditworthiness assessment would protect both consumer borrowers and lenders.

Experience from some Member States shows that peer-to-peer lending can be regulated similarly to other consumer credit. In Finland, the platform offering peer-to-peer lending is considered a credit intermediary with responsibility for compliance with the provisions pertaining to consumer credit. **Therefore, peer-to-peer lending should be included in the scope of the CCD as foreseen by the Commission and the Parliament.**

### Lighter regime for certain credit products (Art. 2.6a new)

Both Council and Parliament foresee the possibility for Member States not to apply certain provisions of the Directive to a list of credit products newly added to the scope of the CCD. From a consumer perspective, this adds complexity as it might not be clear which protection scheme would apply. Moreover, this means that particularly less affluent consumers (using for instance credits below €200) will be granted fewer rights.

**The following two provisions should apply for all credit products:**

- **Right to early repayment (Art. 29):** Payday loans come with very high costs which could be partly mitigated by an early repayment of these loans. For interest-free credits, an early repayment may not bring any savings but facilitates budget management and should be therefore possible. BNPL providers usually offer the possibility for early repayment free of charge. That is why applying Article 29 for credits free of interest should not cause any problem. For overdraft facilities, not applying Article 29 as foreseen by the Council text does not make sense as early repayment happens automatically when the consumer has some income on their bank account. Article 29 also refers explicitly to overdrafts in its third paragraph (point b) making sure that no compensation can be claimed for early repayment in the case of overdrafts.
- **Right to receive a draft credit agreement (Art. 10.8):** In all cases, consumers should be able to receive upon request a draft credit agreement. It is not clear why consumers should not be able to compare different credit products for example for smaller loans and free of interest loans. Legislators should also make sure that the right of reflection added by Parliament in Art. 10.8 applies to all credit products.

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<sup>10</sup> Commission impact assessment, p. 9.

<sup>11</sup> <https://www.quechoisir.org/action-ufc-que-choisir-financement-participatif-face-aux-derives-persistantes-une-regulation-s-impose-n60105/>



## 4. A sound creditworthiness assessment for all credit agreements (Article 18)

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The key mechanism to prevent over-indebtedness is a creditworthiness assessment which analyses the affordability of a credit agreement for the consumer based on sound economic and financial data. €90 may look low-risk for a creditor, but for 18-year-olds without any income except their pocket money, a €90 Buy-Now Pay Later purchase on credit can be already a step into over-indebtedness.

### Proportionality in the creditworthiness assessment (Art. 18.1)

There is only one factor which can determine how extensive the creditworthiness assessment needs to be: the risk of the credit for the consumer.

All the other factors mentioned in Parliament and Council text (nature, duration, value and complexity) do not justify a lighter creditworthiness assessment.

Both the “nature” and the “complexity” of the credit are very vague characteristics which leave a lot of room for interpretation and can create the wrong incentives on the creditor’s side when promoting and advertising credits.

The “value” of the credit has to be seen in proportion to the budget of the consumer and take into account that consumers often take out several low-value credits. In Sweden, around 70% of those taking out credit of less than €195 already had debt issued by the same creditor.<sup>12</sup>

The “duration” of the credit is not relevant for the same reason: small credit taken out - mostly by vulnerable consumers - is often rolled over, meaning that the first credit is paid back by the second credit and so on which extends the duration of the credit. 80% of low-income payday loan consumers in the Czech Republic, for example, tend to roll over or take out multiple payday loans as a result of financial difficulties.<sup>13</sup>

**BEUC recommends keeping the Commission proposal on Article 18.1 with a possible addition “proportionate to the risk of the credit for the consumer”.**

### Data used for the creditworthiness assessment

Discrimination based on personal data (e.g. health data, gender, age) is likely to increase with Big Data and the repeated call from industry to use ‘alternative’ data in the creditworthiness assessment. With the increased availability of data and the use of automated processing of data, additional safeguards are needed to prevent discrimination.

**As introduced by the Parliament in Article 18.2, the use of personal sensitive data<sup>14</sup> should be prohibited.** This is also in line with the opinion of the European Data Protection Supervisor (EDPS) on the Directive proposal.<sup>15</sup>

In many Member States, a consumer’s medical history can prevent access to credit or bundled insurance (payment protection insurance). **A right to be forgotten for the consumer’s medical history exists for instance in Portugal, Belgium and France and should be extended EU-wide under the CCD as suggested by Parliament in Article 18.3b.**

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<sup>12</sup> <https://www.fi.se/contentassets/43a41c2a3077468b875858c3e7d300e0/svenska-konsumtionslan-2020-eng.pdf> p.21.

<sup>13</sup> Finance Watch Study, <https://www.finance-watch.org/wp-content/uploads/2022/03/CDD-consumer-credit-directive-rootcause-overindebtedness.pdf>

<sup>14</sup> This refers to data referred to in Article 9 of the General Data Protection Regulation.

<sup>15</sup> [https://edps.europa.eu/system/files/2021-08/opinion\\_consumercredit-final\\_en.pdf](https://edps.europa.eu/system/files/2021-08/opinion_consumercredit-final_en.pdf)

### Credit granted in case of a negative assessment (Art. 18.4)

Credit is not a solution for all financial problems and cannot replace public support systems for consumers experiencing social hardship. Whether credit is the right solution very much depends on the consumer's ability to pay back the money.

The Council thus rightly deletes the derogation in Article 18, paragraph 4 which allowed creditors to make credit available in "specific and well justified circumstances" despite a negative assessment. Instead, Council foresees that relevant factors (e.g. evidence that credit will lead to increased future incomes) and specific circumstances (exceptional healthcare expenses, access to higher education) are taken into account during the creditworthiness assessment. This approach seems sensible as it allows for some flexibility without allowing the granting of credit in case of a negative creditworthiness assessment.

In both Commission and Parliament text version, it would be at the discretion of the creditor to decide whether the granting of credit is well justified in case of a negative creditworthiness assessment. This is highly problematic as creditors are subject to conflicts of interest: for some credit products such as Buy-Now-Pay-Later, default is part of the business model with high fees in case of late payment. For suppliers of goods and services granting the credit is intrinsically linked to the sale of their goods and services.

### **BEUC recommends supporting the Council general approach on Article 18.4.**

### Liabilities for poorly conducted creditworthiness assessments (Art. 18.2)

Creditworthiness assessments are often poorly conducted. A study of BEUC's German member vzbv on credit agreements granted by suppliers of goods and services shows that creditworthiness assessments are based on little hard evidence. While 89 out of 91 mystery shoppers had to show an ID card to get credit, only 17 out of 91 had to bring evidence on their salary, 18 out of 91 had to bring evidence on the employment status and 12 out of 91 on their apartment rent, 3 out of 91 had to bring some other type of evidence.<sup>16</sup>

To ensure better enforcement of the creditworthiness assessment, the creditor should be liable for failing to properly assess the creditworthiness of consumers. In addition, consumers should receive fair compensation for the damage caused. The Commission listed effective penalties and remedies in its study on national approaches in relation to creditworthiness assessments under Directive 2008/48/EC on credit agreements for consumers<sup>17</sup>. National measures include administrative sanctions (e.g. fines, limitation of licence or authorisation), civil consequences (e.) and penal consequences. For instance, in Greece and in Slovakia, consumers are exempted from the total cost of credit (including interest), with only the obligation to pay the capital to the lender in case a lender failed to comply with the creditworthiness obligations. The CCD should foresee both penalties and effective remedies for consumers. **BEUC thus supports the addition from Parliament (Art. 18.2d) on sanctions and remedies. To ensure that sanctions and remedies can be effectively implemented, it should be added that the burden of proof is on the creditor.**

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<sup>16</sup> [https://www.vzbv.de/sites/default/files/downloads/2020/03/02/20-03-02\\_marktwaechteruntersuchung\\_kreditvermittlung\\_im\\_einzelhandel.pdf](https://www.vzbv.de/sites/default/files/downloads/2020/03/02/20-03-02_marktwaechteruntersuchung_kreditvermittlung_im_einzelhandel.pdf) , p. 38-39.

<sup>17</sup> [https://ec.europa.eu/info/sites/default/files/mapping\\_national\\_approaches\\_creditworthiness\\_assessment.pdf](https://ec.europa.eu/info/sites/default/files/mapping_national_approaches_creditworthiness_assessment.pdf), p. 4.

## Affordability of the credit at the centre of creditworthiness assessments (Art. 18.2)

The creditworthiness assessment should be borrower-focused, and include, not only an assessment of the risk that the consumer does not repay the credit, but also an assessment of the affordability of the credit from the consumer's perspective. The assessment should ensure that the consumer maintains a minimum standard of living after the repayment of their loan instalments (i.e. their basic living needs should be covered), and that the repayment plan does not push the consumer into financial difficulties (the consumer should be able to meet recurring expenses). Prudent allowances should also be made by creditors in order to cater for possible negative scenarios which may materialise throughout the duration of the loan, such as unemployment or a rise in variable interest rates.

**The Parliament proposal requiring that “the creditworthiness assessment and corresponding re-payment plans are realistic and tailored to the borrower’s specific needs and repayment capacity” should therefore be included into Article 18.**

## 5. Cost caps protecting consumers against excessive costs (Article 3, 30 and 31)

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High-cost credit often leads to issues of affordability and spiraling debt for consumers. **BEUC calls for a more ambitious approach than currently taken by EU legislators.** The EU should introduce measures to prevent excessive costs associated with credit, by establishing an obligation on Member States to set a cap for the annual percentage rate of charge. The calculation of the cap should include all costs related to the credit and ancillary services (e.g. payment protection insurance) sold at the same time as the credit agreement.

### Definition of total cost of the credit (Article 3)

The definition of total cost of the credit so far only factors in mandatory ancillary services. As studies of BEUC's Austrian member Arbeiterkammer and BEUC's German member vzbv have shown that payment protection insurance is offered in most of the cases in conjunction with the credit, but it is rarely explained whether these insurance policies are voluntary or not.<sup>18</sup> Another example is very expensive, voluntary options for payday loans to access credit immediately. For a one-month €300 credit at Cashper, consumers have to pay an interest rate of 7.95% and to access the credit immediately (instead of after seven days), there is a one-off payment of €69 increasing the annual percentage rate to 1,220%.<sup>19</sup> BEUC's French member UFC Que Choisir shows that similar practices exist for other payday loans.<sup>20</sup> **Therefore, whenever an ancillary service is sold simultaneously with the credit, the cost should be included in the total cost of credit.**

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<sup>18</sup> [https://www.arbeiterkammer.at/service/presse/Praxistest\\_Beratung\\_von\\_Konsumkredit\\_in\\_Wien\\_01.pdf](https://www.arbeiterkammer.at/service/presse/Praxistest_Beratung_von_Konsumkredit_in_Wien_01.pdf), [https://www.vzbv.de/sites/default/files/downloads/2020/03/02/20-03-02\\_marktwaechteruntersuchung\\_kreditvermittlung\\_im\\_einzelhandel.pdf](https://www.vzbv.de/sites/default/files/downloads/2020/03/02/20-03-02_marktwaechteruntersuchung_kreditvermittlung_im_einzelhandel.pdf)

<sup>19</sup> <https://www.cashper.at/minikredit-beantragen/schritt-1>, <https://www.quechoisir.org/action-ufc-que-choisir-mini-credits-l-ufc-que-choisir-s-attaque-aux-nouveaux-usuriers-n90766/>

<sup>20</sup> <https://www.quechoisir.org/action-ufc-que-choisir-mini-credits-l-ufc-que-choisir-s-attaque-aux-nouveaux-usuriers-n90766/>

### Caps on the cost of credit (Article 31)

The Commission and the Parliament foresee the possibility to choose between a cap on interest rates, the annual percentage rate of charge or the total cost of credit. It should be noted that an interest rate cap is ineffective as costs will be moved to expensive insurance premiums and other costs linked to the credit.

Instead of a cost cap, the Council text foresees that “Member States shall introduce measures to ensure that consumers cannot be charged with excessively high interest rates, annual percentage rates of charge on loans or total costs of credit.” This allows for other systems such as a prohibition of usury instead of a cap. A prohibition of usury is less straightforward than a cap as it intervenes only as an ex-post mechanism: if consumers are exposed to high credit costs, they can go to court claiming that costs are excessively high and thus should be considered as usury.

There is however still a lot of leeway what is considered “excessively high”. In Portugal, no annual percentage rate may be higher than 50% the average annual percentage rate of charge of all consumer credit offers of the same category in the previous quarter.<sup>21</sup> In France the value is set at one third higher than the average APRC of all consumer credit offers of the same category in the previous quarter.<sup>22</sup> In Germany only credit which costs 100% more than the average actual market value is considered usury.<sup>23</sup> It is also not clear which costs are included in the calculation e.g. is the payment protection insurance included in the credit costs or not based on the definition of the total cost of credit (see section above). Conversely to the usury principle, a cost cap intervenes as an ex-ante mechanism where the cap is determined based on a harmonised calculation method. For example, in Portugal, a cost cap is determined for each quartal by the Portuguese central bank for different forms of credit.<sup>24</sup>

It should be noted, that both Council and Parliament reduced the possibilities for consumers to get out of costly credit which was so far possible with the current design of the right of withdrawal (Article 26, see further explanation in Chapter 5). The right of withdrawal indirectly allows consumers to re-negotiate the credit conditions and appropriate forbearance measures.<sup>25</sup> If withdrawal is no longer possible as a last resort option, measures against egregious credit costs need to become more effective than currently foreseen (e.g. as regards the current definition of total cost of the credit). Otherwise, the new CCD will lower consumer protection when it comes to the cost of credit.

**BEUC supports the introduction of cost caps as foreseen by the Commission and Parliament and recommends deleting the option to put caps solely on the interest rate.**

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<sup>21</sup> <https://clientebancario.bportugal.pt/en/interest-rates-consumer-credit>

<sup>22</sup> <https://www.banque-france.fr/statistiques/taux-et-cours/taux-dusure>

<sup>23</sup> <http://stopwucher.de/das-wucherverbot-im-recht/>

<sup>24</sup> <https://clientebancario.bportugal.pt/en/interest-rates-consumer-credit>

<sup>25</sup> <https://www.test.de/Ratenkredite-So-wehren-sich-Kunden-gegen-Kreditwucher-5302916-0/>

## 6. Other topics by chapters of the Commission's proposal

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All significant changes proposed by Council or Parliament on the remaining articles are commented in this section with a recommendation whether to support or reject these changes. The structure of the chapter follows the order of articles.

### Chapter 1: General provisions

- Definitions (Article 3)

In the Parliament text, the form of the "durable medium" can be "chosen by the consumer" in most cases, but not all. Allowing consumers to choose whether to receive for example pre-contractual information on paper or electronically is a good idea. **BEUC recommends adding "chosen by the consumer" to the definition of "durable medium" to ensure consistency throughout the Directive.**

- Non-discrimination (Article 6)

Significant administrative barriers exist for consumers living in one country and working in another. Often, they are refused credit when they do not legally reside in the country. For example, a consumer residing in France and working in Germany would not be able to access credit in Germany.<sup>26</sup> This goes against the principles of the single market which is why **Article 6 should be maintained as foreseen in the Commission proposal.**

- Loans supporting the green transition (Article 6a new)

Green loans enable consumers to finance a renewable heating appliance or an electric car, and act as a complementary measure to public funding and subsidies.<sup>27</sup> In practice, however, "green" loans are not widely offered to consumers across the EU or are not competitive compared to traditional credits as shown in a study of BEUC's Spanish member Asufin.<sup>28</sup> The CCD is therefore a unique opportunity to foster the development of green loans to enable consumers to play their part in the green transition and the attainment of the Paris Agreement targets.

The Parliament suggests an article which shall encourage creditors to offer consumer credits that support the green transition. In addition, the Commission shall submit a report assessing the types of measures, tools and initiatives taken by Member States. This article will support a wider availability of green loans and will allow sharing of best practices based on the Commission report. **BEUC thus supports Article 6a on green loans.**

### Chapter 2: Information to be provided prior to the conclusion of the credit agreement or of the agreement for the provision of crowdfunding credit services

- Advertising (Article 7 and 8)

The rules on advertising suggested by the Commission only capture part of the credit advertising (i.e. advertising containing figures). Advertising on the internet and social media is increasingly relying on influencers and music stars suggesting that credit can lead

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<sup>26</sup> [https://www.cec-zev.eu/fileadmin/Media/PDF/publications/Etudes-Rapports\\_FR/Etude\\_credit-consommation-europe.pdf](https://www.cec-zev.eu/fileadmin/Media/PDF/publications/Etudes-Rapports_FR/Etude_credit-consommation-europe.pdf)

<sup>27</sup> For more information about green loans, please consult BEUC position paper:

[https://www.beuc.eu/publications/beuc-x-2021-076\\_affordable\\_green\\_loans.pdf](https://www.beuc.eu/publications/beuc-x-2021-076_affordable_green_loans.pdf)

<sup>28</sup> [https://www.asufin.com/wp-content/uploads/2020/12/ESTUDIO-FINANZAS-VERDES\\_maq\\_ingles.pdf](https://www.asufin.com/wp-content/uploads/2020/12/ESTUDIO-FINANZAS-VERDES_maq_ingles.pdf)

to social achievement.<sup>29</sup> BEUC's French member UFC Que Choisir recently denounced advertising practices for payday loans suggesting that "credit is a good habit to take for your financial health".<sup>30</sup> Another common misleading practice on the internet is to emphasise that negative data in credit registers has little influence on the granting of credit and that credit is available in a few seconds.<sup>31</sup> The Parliament inspired by Belgian law<sup>32</sup> rightly proposes to prohibit such advertising practices (Article 8, paragraph 3c and 3d) and the introduction of a warning that "borrowing money costs money" in all advertising (Article 8, paragraph 2, point fa). **BEUC supports these additions from Parliament.**

Conversely, the Parliament text allows creditors not to display key information about the credit directly in the advertising but to hide information in a link giving access to a webpage. In practice, consumers will not click on a link hidden in a video or in small font on a smartphone screen. **BEUC thus recommends rejecting Parliament text on Article 8, paragraph 3a.**

- Pre-contractual information (Article 10 and 11)

Pre-contractual information must be easy to understand with key information presented in a prominent manner. **The proposal by both Parliament and Council to give an overview of the key elements on the first page, i.e. an integration of the SECCO into the SECCI document should be supported.** Both Council and Parliament also fine-tuned the content of pre-contractual information. In particular, information about late payment fees (often applying for Buy-Now-Pay-Later products) should take a more prominent place. **BEUC supports thus the Parliament text on Article 10, paragraph 4 point f.**

There has been a long discussion on the one-day rule suggested by the Commission which should oblige creditors to provide pre-contractual information one day before signing the credit agreement or where not feasible, remind consumers one day after the signature about their right of withdrawal. The problem is that in practice, all creditors would have made use of this derogation. The Parliament suggested a good addition to this rule: **in Article 10, paragraph 8, Parliament adds a right to reflection of 14 days during which the terms of conditions of the credit offer shall not change which should be supported.** Like this, consumers have time to compare different credit offers where needed. In case, Article 10, paragraph 8 is included in the lighter regime, this provision should be moved to another paragraph ensuring that the right of reflection applies to all credit agreements.

**In addition, as suggested by the Parliament, the derogations for voice telephony and distance means of communication should be deleted** (Article 10, paragraph 6 and 7, Article 11 paragraph 5). There is no reason why consumers using a telephone or the internet to conclude a credit agreement should not receive pre-contractual information before the conclusion of the agreement (e.g. integrated in the online form). In France, for insurance contracts sold via phone, pre-contractual information must be sent after the phone call and the approval of the contract then takes place in a second phone call or in writing. This rule could be replicated in the CCD for consumer credit.<sup>33</sup>

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<sup>29</sup> <https://www.youtube.com/watch?v=7ddukahLR3g>

<sup>30</sup> <https://www.boursorama.com/patrimoine/actualites/ufc-que-choisir-porte-plainte-contre-3-organismes-de-mini-credits-fa4df4d8a810da8b750e8cab51e1b61c>

<sup>31</sup> For example, advertising from one of Germany's largest comparison tools:  
<https://www.check24.de/kredit/kredit-ohne-schufa/>

<sup>32</sup> <https://credit2consumer.be/fr/article/vii65-pratiques-publicitaires-interdites-cc#larticle-vii65>

<sup>33</sup> <https://www.quechoisir.org/billet-du-president-demarchage-en-assurance-victoire-contre-les-pratiques-toxiques-n99172/>

- Personalised offers on the basis of automated processing (Article 13)

The use of personal data to create personalised offers creates a high risk for discrimination. All three texts fall short on prohibiting the use of personal data other than financial data for the personalisation of credit offers. As proposed by the Parliament, consumers should at least receive information about the data sources used for the personalisation of the offer. Furthermore, it is essential to ensure that the CCD is without prejudice to the application and enforcement of the General Data Protection Regulation as suggested by both Council and Parliament. **BEUC thus support Parliament text on Article 13.**

### Chapter III: Tying and bundling practices, inferred agreement for ancillary services, advisory services and unsolicited granting of credit sale

- Tying and bundling practices (Article 14)

Tying practices that require consumers to take out a specific insurance policy or payment account when taking out a consumer credit limit consumer choice and harm competition. A strict prohibition of tying practices is needed to adequately protect consumers. For example, the cross-selling of loans with payment protection insurance (PPI) has been identified by several of BEUC members as a practice which is still highly problematic. A study from the German Federal Financial Supervisory Authority (BaFin) shows that the commission received by creditors is often a significant part of the insurance premium. Out of 31 credit institutions, the commission was over 50% in 7 cases, 50% in 12 cases and below 50% in the remaining 12 cases.<sup>34</sup> According to UFC Que Choisir, creditors get on average a margin of 68% on the insurance sold in France.<sup>3536</sup>

The persistence of tying practices after the implementation of the Mortgage Credit Directive which includes the same wording on tying than the CCD, shows that the derogations (Art. 12, paragraph 2 and 3) are too wide and are used in practice to circumvent the ban on tying practices. **BEUC supports the Parliament's deletion of paragraph 3 and the right of reflection during three days for insurance offers. In this regard, BEUC also supports the addition in Article 32 (2) on business conduct prohibiting remuneration policies contingent upon the subscription of ancillary products.**

- Inferred agreements for the purchase of ancillary services (Article 15)

Pre-ticked boxes and other types of inferred agreements are not only used for ancillary services but also for credit products itself. For instance, Buy-Now-Pay-Later is often presented as the default option among other payment options. **The Council position therefore rightly adds credits products to the scope of Article 15.** In Sweden, a similar rule already exists which states that credit cannot be presented to consumers as the 'first choice' ahead of the lowest cost direct payment option.<sup>37</sup>

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[https://www.bafin.de/SharedDocs/Downloads/DE/Anlage/dl\\_170620\\_marktuntersuchung\\_retschuldversicherungen.pdf?\\_\\_blob=publicationFile&v=8](https://www.bafin.de/SharedDocs/Downloads/DE/Anlage/dl_170620_marktuntersuchung_retschuldversicherungen.pdf?__blob=publicationFile&v=8) p. 19.

<sup>35</sup> <https://www.quechoisir.org/action-ufc-que-choisir-assurance-emprunteur-une-franche-occasion-de-liberer-550-millions-d-euros-de-pouvoir-d-achat-n96500/>

<sup>36</sup> For more information, see also BEUC's campaign on miss-selling of financial products <https://www.thepriceofbadadvice.eu/> and BEUC's factsheet on payment protection insurances: [https://www.beuc.eu/publications/beuc-x-2019-035\\_factsheet-payment\\_protection\\_insurance.pdf](https://www.beuc.eu/publications/beuc-x-2019-035_factsheet-payment_protection_insurance.pdf)

<sup>37</sup> <https://www.regeringen.se/4a49f9/contentassets/c2bd6b562fe242fe91cad0bd669bd96a/presentation-av-betalningsatt-vid-marknadsforing-av-betaltjanster-online-prop.-20192079.pdf>

- Advisory services (Article 16)

**Both Council and Parliament bring some good additions to define more precisely what is meant by “acting in the best interest of the consumer”.**

In addition, Parliament strengthens the conditions to use the term “advice” and “advisor” and the remuneration of credit intermediaries when they provide their services as “independent advice”. To avoid conflicts of interest, Parliament suggests forbidding without exceptions the remuneration of credit intermediaries by creditors when providing advisory services labelled as ‘independent’. In addition, the terms “advice” or “advisor” should not be used by employees of credit institutions and should therefore be prohibited. **Parliament’s proposals on Article 16.3 and 16.4 should be thus supported.**

- Ban on unsolicited credit sales (Article 17)

The unsolicited sale of credit includes three typical cases: practices of doorstep selling (e.g. cold calls by creditors to sell their credit products), off-premise sales (e.g. by retailers in a shopping centre, large surface stores) and the unsolicited granting of credit (e.g. unsolicited raise of the limit of an overdraft facility, sending the consumer personalised credit cards which are ready to use).

The Council text reduces the ban on unsolicited credit sales to the granting of credit which does not include practices of doorstep and off-premises sales. The Parliament maintains the wider scope of the Article but explicitly states that this ban does not apply to the sale of credits at the point of sale by suppliers of goods and services. **Both scope reductions suggested by Parliament and Council should be discarded.**

#### Chapter IV Assessment of creditworthiness and database access

- Databases (Article 19)

Several of BEUC members have reported issues with the quality of the information provided by private databases, in addition to a lack of transparency as to the kind of information being taken into account. For example, BEUC’s UK member Which? found that one in five consumers had an error in their credit report.<sup>38</sup> Frequent errors in credit files were also reported by BEUC member OCU in Spain.<sup>39</sup> The Parliament thus rightly adds that databases are up-to-date and accurate (paragraph 1), that processes and complaint procedures are in place to ensure that databases are accurate and consumers can access and rectify data contained in the database (paragraph 4a and 4c), and that regular audits are conducted (4b).

In line with the prohibition to use personally sensitive data for the creditworthiness assessment introduced in Article 18, Parliament rightly suggests that databases should also be prohibited to collect such data (addition in EP text for paragraph 3). **BEUC therefore supports all Parliament additions on Article 19.**

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<sup>38</sup> <https://www.which.co.uk/news/article/one-in-five-people-have-an-error-on-their-credit-report-aNtZT8y8tmQt>

<sup>39</sup> <https://www.ocu.org/dinero/prestamos/noticias/salir-registro-morosos>



## Chapter VI Modifications of the credit agreement and changes in the borrowing rate

- Changes in the borrowing rate (Article 23)

Parliament text brings two improvements for consumers: consumers must be informed at least two working days before the change enters into force (paragraph 1) and information on new reference rates should also be available on the website and on the mobile app (where such an application exists) and not only at the premises of the creditor. **BEUC thus supports Parliament's additions on Article 23.**

## Chapter VII Overdraft facilities and overrunning

- Overdraft facilities (Article 24) and overrunning (Article 2, Article 25)

**BEUC supports Parliament text on Article 24 and 25.** The Parliament clarifies the timing where information is given to consumers on their overdraft facility: the consumer should receive information about their account at least once per month and is informed 15 days in advance on changes in the borrowing rate. In addition, the Parliament foresees that information is available not only at the premises but also on the website and where available via the mobile application of the creditor.

The Parliament foresees rules in case an overdraft facility or overrunning is reduced or cancelled by the creditor: Consumers should receive the information at least 30 days ahead of the reduction or cancellation and should have 12 months to pay back their debt in instalments at the interest rate applicable to the overdraft facility. This rule should be supported as it brings consumers the necessary foresight on their budget and prevent over-indebtedness by introducing some flexibility in the repayment of debt on the overdraft facility.

Both the Parliament and the Council changed the articles applying to overrunning (Article 2, paragraph 4). Importantly, the Council added Article 31 (cost caps) to the list of articles applying to overrunning. This is key, as otherwise no limitations of costs would apply. The Parliament added among others Article 18 (creditworthiness assessment). This is an important addition: when banks offer consumers the possibility to overrun their bank account, then a creditworthiness assessment should take place before the overrunning occurs based on the financial situation of the consumer at this point in time. **BEUC supports all additions to the list of articles applying to overrunning.**

## Chapter VIII Withdrawal, termination and early repayment

- Right of withdrawal (Article 26)

The right of withdrawal usually lapses after 14 days. If the contractual terms and conditions have not been provided, the 14 days withdrawal period does not start until the complete contractual information has been provided to the consumer. **The Commission proposal maintained this *status quo* which BEUC strongly supports.**

Both the Parliament and Council foresee a time limit of one year and 14 days in case contractual information has been incomplete. This time limit significantly weakens the level of consumer protection compared to the 2008 Directive. Consumer credit often lasts for much longer than a year with contractual consequences not necessarily apparent during the first year. Sometimes, interest rates only apply after six or twelve months – a model used for instance by credits offered free of interest, as BEUC German member vzbv found

out.<sup>40</sup> This justifies a different treatment than normal consumer contracts regulated under the Consumer Rights Directive which are mostly completed within the period of one year.

For example, if there is no or unclear information in the contract about e.g. right to early repayment, annual percentage rate of charge, creditors will be able to unilaterally decide on the contractual conditions after the time limit has lapsed. Contractual conditions such as the level of compensation due for early repayment or the annual percentage rate of charge are often hidden in calculation methods which are unclear and/or not understandable for the average consumer. If the text of Council and Parliament is adopted, consumers will no longer be able to withdraw from a contract with incomplete or unclear contractual conditions and will just be obliged to bear the increased costs.

From the creditors' side, it was claimed that the *status quo* does not provide the necessary legal certainty. In practice, creditors can mitigate the situation of a prolonged right of withdrawal by providing complete and clear contractual terms and conditions. In Germany where a lot of cases have been brought before court, commercial banks have been able to provide these contractual conditions based on some legal advice. In addition, a model for a withdrawal information for consumer loan agreements has been set up which further facilitates the task for creditors.<sup>41</sup> This idea has been taken up by Parliament (paragraph 7a) and could be further developed as a compromise between the *status quo* and the introduction of a time limit for the right of withdrawal in case of incomplete information.

- Early repayment (Article 29)

The Council suggests that Member States can choose between entitling the consumer either to a right of "full or partial early repayment". Consumers should have the possibility of both forms of early repayment and should be certainly not limited to one or the other. Especially, if there is no possibility for full early repayment, consumers risk being caught in an expensive credit agreement without possibility to terminate it early despite available funds. In addition to the new proposal on the right of withdrawal, this further limits the possibility for consumers to get out of unfair credit agreements.

The Council and the Parliament made both suggestions to clarify which types of costs are included in the calculation for the reduction of the total costs of credit in case of partial or full early repayment.

The Council suggests not to include costs (taxes, fees) directly paid to third parties which are independent from the duration of the credit contract. This seems to be an acceptable compromise wording.

On the Parliament side, all upfront costs are exempted from the calculation which can have unintended consequences: creditors will likely try to move monthly costs to upfront costs (e.g. administrative fees/dossier fees). An analysis of BEUC's Austrian member Arbeiterkammer shows that banks are already very creative when it comes to costs added in addition to the interest rate.<sup>42</sup> **To avoid that costs are increasingly moved to upfront costs, the Parliament's addition to paragraph 1 should be rejected. Instead, the Council or Commission proposal should be supported.**

**In addition, paragraph 2a suggested by Parliament should be supported to increase transparency on the calculation of costs.** It should be noted however that transparency alone does not guarantee effective consumer protection as the information

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<sup>40</sup> [https://www.vzbv.de/sites/default/files/2022-06/Verbraucherprobleme%20bei%20Nullprozent-Finanzierungen%20%20Fallsammlung%20Marktbeobachtung%20Finanzmarkt-Juni%202022\\_.pdf](https://www.vzbv.de/sites/default/files/2022-06/Verbraucherprobleme%20bei%20Nullprozent-Finanzierungen%20%20Fallsammlung%20Marktbeobachtung%20Finanzmarkt-Juni%202022_.pdf)

<sup>41</sup> K.-O. Knops, Falsches Spiel mit dem „Widerrufsjoker“ in: Zeitschrift für Rechtspolitik, Heft 5/2022.

<sup>42</sup> [https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Kreditnebenspesen\\_im\\_Vergleich\\_2021.pdf](https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Kreditnebenspesen_im_Vergleich_2021.pdf)

might be hidden in a long list of pre-contractual information. Sound rules on calculating the reduction and the compensation for banks in case of early repayments are therefore needed. In this regard, the **Parliament's addition in paragraph 4, point b) clarifying that the compensation should not exceed the amount of interest which the consumer would have paid for the remaining period should be supported.**

## Chapter XI Financial education and support to consumers in financial difficulties

- Arrears and forbearance measures (Article 35)

**The Parliament strengthened Article 35 on arrears and forbearance measures which should be supported.** The Parliament introduces an obligation for creditors to exercise reasonable forbearance measures before enforcement proceedings are initiated. This is in line with the EBA Guidelines on arrears and foreclosure<sup>43</sup> and Annex 5 of the EBA Guidelines on the management of non-performing and forborne exposures<sup>44</sup>.

During the COVID-19 pandemic, high costs occurred for forbearance measures. Consumers had to pay for the interest rates occurred during a payment moratorium (sometimes above the marked interest rate<sup>45</sup>) which bear higher instalment rates or charge for changing the instalment plan as reported by BEUC members Arbeiterkammer<sup>46</sup>, Altroconsumo<sup>47</sup>, Test Achats<sup>48</sup>, vzbv<sup>49</sup>, DECO, ZPS, Which?<sup>50</sup> and the Cyprus Consumers' Association. The Parliament's clarifications to the text aim at avoiding an additional financial burden on already financially distressed consumers: A change of the interest rate can only mean a reduction of the interest rate (paragraph 1) and additional charges should not be put on consumers in case of default (deletion of paragraph 4).

- Debt advisory services (Article 36)

**BEUC strongly supports that debt advisory services are independent and offered free of charge as suggested by the Parliament (paragraph 1).** Debt advisory services are a very important support for consumers who experience or might experience financial difficulties. The effectiveness of debt advisory is even higher if they intervene early and not just when consumers are already experiencing financial difficulties. **A large scope as foreseen in the Commission's proposal or in the Council's text is thus preferable** to a narrow access for consumers already experiencing financial difficulties as suggested by the Parliament.

The Parliament suggestion to ensure that creditors systematically monitor (paragraph 1c) financial difficulties and refer consumers experiencing or likely to experience financial difficulties to debt advisory services (paragraph 1) is positive but needs to be matched with the first part of the paragraph 1. A situation where consumers likely to experience financial

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<sup>43</sup> <https://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-arrears-and-foreclosure>

<sup>44</sup> <https://www.eba.europa.eu/regulation-and-policy/credit-risk/guidelines-on-management-of-non-performing-and-forborne-exposures>

<sup>45</sup> <https://thecyprusnow.com/the-consumers-association-sees-the-favorable-treatment-of-the-banks/>

<sup>46</sup> [https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Kreditnebenspesen\\_im\\_Vergleich\\_2021.pdf](https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Kreditnebenspesen_im_Vergleich_2021.pdf)

<sup>47</sup> <https://www.altroconsumo.it/soldi/mutui/news/indagine-sospensione-mutui-e-prestiti>

<sup>48</sup> <https://www.test-achats.be/argent/emprunter/news/prets-hypothecaires-report?skipbean=true>

<sup>49</sup> <https://www.vzbv.de/pressemitteilungen/stundung-von-krediten-verbraucher-zahlten-drauf>

<sup>50</sup> <https://www.which.co.uk/news/2020/11/coronavirus-how-to-apply-for-a-three-month-mortgage-payment-holiday/>

difficulties are referred to debt advisory services but are then not able to use them due to a narrow access to these services, should be avoided.

To ensure sound enforcement of the provision and share best practices, the **Parliament rightly suggests a report on debt advisory services (paragraph 1b)**.

- Debt collection (Article 36a new)

The Parliament introduces a new article to prohibit harassment of consumers in the process of debt collection. Consumers deserve fair treatment when they encounter financial difficulties. Harassment or excessive calls or messages are counterproductive as they put additional pressure on the consumer and prevent a constructive problem-solving approach via forbearance measures.

BEUC French member UFC-Que-Choisir reported that some debt collection agencies tried to collect debt arising from credit contracts which can no longer be enforced in courts or have no proven legal basis.<sup>51</sup> Debt collection using misleading or false legal information should be therefore forbidden as proposed by the Parliament. **BEUC thus supports this new article on debt collection.**

## Chapter XII Creditors and credit intermediaries

- Admission, registration and supervision on non-credit institutions (Article 37)

The Council foresees an exemption for payment institutions and electronic money institutions from admission, registration and supervision. This exemption is problematic, as it means that they would not be supervised for their credit activity.

The exemption proposed by the Council for suppliers of good and services is very wide and includes all suppliers of goods and services, no matter their size. Following that provision large shops and online marketplace would not need to register and be admitted for their credit activity which can be quite significant despite being an ancillary service. For example, a large online marketplace selling goods and services and offering in-house Buy-Now-Pay-Later as a financing option would not need to register and be admitted as creditor or credit intermediary. This will reduce consumer protection and also hamper the level playing field with other creditors and credit intermediaries. **BEUC recommends rejecting the exemption proposed by Council.**

## Chapter XIII Assignment of rights and dispute resolution

- Assignment of rights (Article 39)

**BEUC supports the Parliament proposal of a standardised notification in case credit is assigned to a third party.** This is a good proposal as consumer borrowers should have access to all necessary information enabling them to exercise their rights, when their loan is assigned to a third party (including for example, debt buy-back rights which can be exercised in certain Member States such as France).

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<sup>51</sup> <https://www.quechoisir.org/action-ufc-que-choisir-credits-impayees-et-covid-19-les-emprunteurs-offerts-en-pature-aux-societes-de-recouvrement-n87707/>

- Out-of-court dispute resolution (Article 40)

Disputes arise quite often in the case of financial difficulties and result very quickly in the recourse to debt collection or the opening of a legal court case. This comes with high costs for the consumer who is already under financial pressure. These costs could be prevented by the use of out-of-court dispute resolution. As shown by BEUC's Austrian member Arbeiterkammer, dispute resolution is not the preferred option for creditors: in the 2,000 complaints received against Klarna, there is a clear pattern that debt collection and legal recourse is preferred over quality customer service and alternative dispute resolution.<sup>52</sup>

**The Parliament's proposal to make participation in out-of-court dispute resolution mandatory for creditors and credit intermediaries should therefore be supported.**

## Chapter XIV Competent authorities

- Competent authorities (Article 41)

**The Parliament introduces the possibility for product intervention powers (paragraph 8a) which BEUC supports.** Based on the data collected in line with the new Article 41a, competent authorities are able to withdraw products with a high default rate from the market. There are several products of predatory lending such as some payday lenders which specifically target consumers in financial difficulties. Ex-ante interventions can prevent particularly harmful lending practices with a high risk of over-indebtedness before the harm is done.

- Data collection (Article 41a)

**The new article proposed by Parliament on the collection of data should be supported.** Data on the rate of defaults regarding consumer loans should be collected to be able to monitor the quality of consumer credit products offered in national markets and better detect irresponsible lending practices.

The European Banking Authority recently highlighted in their opinion on the review of the Mortgage Credit Directive that there is a lack of a harmonised database for mortgages and consumer credit gathering data on the default rate by type of credit, type of lender, and by sales channels and suggests to the Commission to create such a database in cooperation with national competent authorities.<sup>53</sup> Therefore, data collection should be undertaken but by EBA rather than the Commission.

## Chapter XV Final provisions

- Penalties and structural remedies (Article 44)

If the significant weakening of the right of withdrawal (see text on Article 26) as a sanctioning mechanism for incomplete contractual conditions is confirmed, penalties based on Article 44 (and remedies as foreseen in Article 44a new) are becoming even more important.

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<sup>52</sup> <https://www.arbeiterkammer.at/klarna>

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[https://www.eba.europa.eu/sites/default/documents/files/document\\_library/Publications/Opinions/2022/Opinion%20on%20MCD%20review%20%28EBA-Op-2022-07%29/1036068/EBA%27s%20response%20to%20the%20EC%20Call%20for%20advice%20on%20the%20review%20of%20MCD.pdf](https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2022/Opinion%20on%20MCD%20review%20%28EBA-Op-2022-07%29/1036068/EBA%27s%20response%20to%20the%20EC%20Call%20for%20advice%20on%20the%20review%20of%20MCD.pdf)

**In this regard, the strengthened provisions suggested by the Parliament should be supported.** This includes extending the scope of fines beyond the CPC-Regulation (paragraph 2) and the addition to foresee structural remedies (paragraph 2a).

- Remedies (Article 44a new)

The Parliament foresees remedies for consumers for damages suffered. As listed in a study by the Commission on national approaches in relation to creditworthiness assessment under Directive 2008/48/EC on credit agreements, such remedies can include lower interest rates, the invalidity of the contract and the right to claims for damages<sup>54</sup> as foreseen by the Parliament text. **This new article should be supported. To ensure that remedies can be effectively implemented, it should be added that the burden of proof is on the creditor.**

- Transposition (Article 48)

**Council suggests deleting a longer transposition period for small and medium enterprises which BEUC supports.** For consumers a longer transposition period would raise legal uncertainty on which consumer rights apply.

END

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<sup>54</sup> [https://ec.europa.eu/info/sites/default/files/mapping\\_national\\_approaches\\_creditworthiness\\_assessment.pdf](https://ec.europa.eu/info/sites/default/files/mapping_national_approaches_creditworthiness_assessment.pdf)



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