

The Consumer Voice in Europe

REVIEW OF THE CONSUMER CREDIT DIRECTIVE

BEUC position



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Why it matters to consumers

In a modern society, it is difficult to imagine life without some form of credit. It helps consumers to finance their buying of a home, their children's education, a new car or other consumer goods. But if credit is misused, becomes unsustainable and causes over-indebtedness, the consequences for borrowers, lenders and the economy's stability can be huge.

Summary

Credit allows consumers to pay for goods and services that they are unable or unwilling to pay for in full in one go. A well-functioning consumer credit market benefits consumers, manufacturers and sellers of goods and services, and stimulates economic growth.

This paper analyses trends in the EU consumer credit markets against the backdrop of important developments since the introduction of the Consumer Credit Directive more than 10 years ago. We examine major drivers of irresponsible lending that may cause consumer detriment. On the basis of our analysis, BEUC addresses its recommendations to EU policy-makers in view of a possible review of the Consumer Credit Directive. The recommendations cover several important aspects such as:

- Scope of the Consumer Credit Directive;
- Product design and suitability assessment;
- Unsolicited credit offers;
- Cost of the credit;
- Product cross-selling;
- Sales incentives and sales targets;
- Treatment of borrowers in payment difficulty;
- Supervision and enforcement by competent authorities.

1. Recommendations for the review of the Consumer Credit Directive

Our recommendations are addressed to the European Commission, the Parliament and the Council in view of a possible review of the Consumer Credit Directive (CCD). Our aim is to ensure the EU consumer credit market functions properly so that creditors and intermediaries act responsibly and treat consumers fairly. A well-functioning market is one that avoids excessive debt levels and over-indebtedness. It is important that the EU initiatives be based on a minimum harmonisation approach so that Member States can keep the existing good consumer protection standards in the area of consumer credit.

a. Scope of the directive:

- Extend the scope to loans below EUR 200 to ensure that small amount loan providers act responsibly, and consumers enjoy their rights and protection under the directive. Specific provisions of the revised CCD should apply to loans below EUR 200.
- Review the list of credit products which are currently exempted from the CCD scope and ensure that there are as few exemptions as possible. This would improve consumer protection across Member States and reduce opportunities for regulatory arbitrage. For example, credit granted free of interest can result in consumer over-indebtedness, as any other type of loans. Specific provisions of the revised CCD should apply to all consumer loans currently exempted from the scope.
- Include peer-to-peer lending in the scope of the directive. Currently peer-to-peer lending is regulated in few EU countries and in a fragmented way. A harmonised EU-level framework is therefore necessary.

b. Product design and suitability:

Introduce rules on product oversight and governance for credit manufacturers and distributors:

- When designing consumer credit products, creditors should take consumer interests, objectives and characteristics into account; identify the target market; test products with consumers before launching them on the market; monitor products once they are brought to market and take timely corrective measures to prevent consumer detriment.¹
- Credit distributors should provide credit only to the relevant target market. Notably, where providers of point-of-sale credit offer revolving credit, they should offer consumers a choice between installment and revolving credit.
- Credit distributors should assess the suitability of annex products, such as insurance, to the consumer's needs and expectations.

c. Creditworthiness/suitability assessment:

- Align the CCD rules related to the assessment of the borrower's creditworthiness with provisions in the Mortgage Credit Directive. Notably, creditors should make prudent allowances for potential negative scenarios in the future and make the credit available to the consumer only where the result of the assessment indicates that the obligations resulting from the credit agreement are likely to be met. Creditors and distributors should ask all relevant questions related to the

¹ See e.g. EBA Guidelines on product oversight and governance arrangements for retail banking products, March 2016: <https://eba.europa.eu/documents/10180/1141044/EBA-GL-2015-18+Guidelines+on+product+oversight+and+governance.pdf>

consumer's income, expenses and other financial commitments using a standardised questionnaire.

- Ensure that creditors are liable in case of poor quality assessment of the borrowers' creditworthiness.
- Ensure that only pertinent and well-founded data are used by creditors when assessing the suitability of a credit offer to the financial situation of the borrower. In particular, investigate the practices by private credit bureaus (what type of data they collect and for what purpose, whether and to what extent credit bureaus contribute to responsible lending and reducing over-indebtedness, whether they comply with the EU data protection legislation, etc.) and regulate them at the EU level.
- In case of variable rate loans, creditors should make prudent allowances for potential negative scenarios in the future in case there is an increase in benchmark interest rates, plus borrowers should be protected against sharp increases in the benchmark rate. This could be achieved by setting an interest rate ceiling.

d. Unsolicited credit:

- Ban unsolicited credit sales based on good national practices (see examples in section 4b of this paper).

e. Credit cost, fees and penalties:

- Introduce EU-level interest rate ceilings for consumer credit based on good national practices. This could be done, for example, through a formula that adjusts to national specificities.
- Ensure that the Annual Percentage Rate of Charge (APRC) is correct and not misleading. This implies that all compulsory expenses linked to the credit are taken into account by creditors when calculating the APRC. In addition, if the consumer considers taking an optional insurance together with the credit, the creditor should present two APRCs: with and without incorporating the insurance cost.
- Consider regulating abusive fees and charges that take advantage of consumer vulnerabilities, e.g. rollover charges, penalties for unauthorised overdraft, etc. Notably, interest rates for unauthorised overdraft should not be higher than for authorised overdraft.
- Ensure that in case of early repayment creditors return a proportional part of the costs, such as insurance premiums paid up-front for the entire credit period.

f. Sales incentives:

- Introduce rules on remuneration schemes for creditors and distributors (internal remuneration and third-party commissions). The remuneration should not incentivise creditors and distributors to focus on volume-based sales to the detriment of consumers. The remuneration arrangements should be linked to the long-term performance of the credit contract for the borrower, the borrowers' satisfaction level and low levels of credit defaults.

g. Fair treatment of borrowers in payment difficulty:

- Introduce obligations for creditors to treat fairly borrowers who are having difficulties with repayment: obligation to detect, as early as possible, borrowers going into payment difficulties; engage with those consumers at an early stage to identify the causes for those difficulties and provide the necessary information; help the borrower to address temporary financial difficulties and return to a normal situation (loan refinancing and restructuring).²

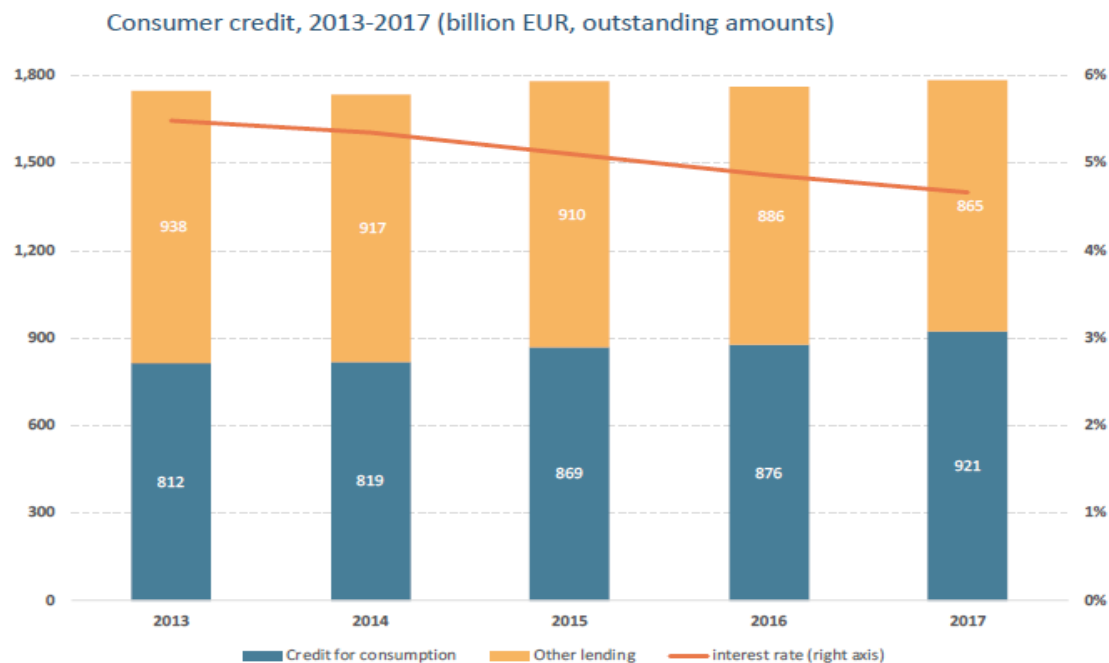
² See e.g. EBA Guidelines on arrears and foreclosure, June 2015: <https://eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-arrears-and-foreclosure>

h. Supervision and enforcement:

- Ensure that national competent authorities responsible for oversight and enforcement of the consumer credit legislation are well-equipped, i.e. have a clear mandate, qualified staff, strong monitoring, investigation and sanctioning powers.
- Harmonise the administrative sanctions, including pecuniary penalties, for infringing the provisions of this directive.
- Bring the CCD into the remit of the European Banking Authority.

2. Background

Over the past decades, household debt in Europe increased tremendously: between 1997 and 2017, it increased from 39.3% to 50% of nominal GDP.³ Mortgage credit and consumer credit contribute to increasing the volume of debt. In 2017, the outstanding amount of consumer credit⁴ in EU28 was around EUR 1,800 billion (see table below). In terms of market size, the 10 biggest EU markets are UK, Germany, France, Italy, Spain, Poland, Greece, Belgium, Austria and the Netherlands.⁵



Source: EBA Consumer Trends Report 2018/19

³ Household debt is defined as all liabilities that require payment or payments of interest or principal by household to the creditor at a date or dates in the future. <https://www.ceicdata.com/en/indicator/european-union/household-debt--of-nominal-gdp>

⁴ Consumer credit is a contract not guaranteed by a mortgage, whereby a creditor grants or promises to grant credit to a consumer in the form of a loan or other financial accommodation. Consumer credit is divided into two classifications: instalment credit and non-instalment (revolving) credit. Instalment credit requires consumers to repay the principal amount and interest within an agreed period of time in equal periodic payments, usually monthly. Types of consumer credit include credit card, charge card, personal loan, overdraft, high-cost short-term loan, credit linked to the acquisition of a new good or service, leasing and hire purchase.

⁵ Overview of the consumer credit market in Europe in 2015, Credit Agricole: [https://www.creditplus.de/fileadmin/03_Ueber_Creditplus/Newsroom_und_Pressebereich/Verbraucherindex/CA CF consumer credit overview in Europe in 2015.pdf](https://www.creditplus.de/fileadmin/03_Ueber_Creditplus/Newsroom_und_Pressebereich/Verbraucherindex/CA_CF_consumer_credit_overview_in_Europe_in_2015.pdf)

A well-functioning consumer credit market benefits households, manufacturers and sellers of goods and services, and stimulates economic growth. But if credit is misused and the debt burden becomes unsustainable, the resulting detriment for borrowers, lenders and economic stability may be huge. Credit mis-selling and over-indebtedness can deteriorate a consumer's financial health and result in social exclusion or psychological and health problems. A recent Commission study⁶ estimated that, in 2016, the total financial detriment for EU consumers in the market for loans, credit and credit cards was EUR 12.8 billion (see table below).

Market	Sample countries			Rest of the EU			EU28		
	Total financial detriment (in millions of Euro)		Total time loss (in millions of hours)	Total financial detriment (in millions of Euro)		Total time loss (in millions of hours)	Total financial detriment (in millions of Euro)		Total time loss (in millions of hours)
	Pre-redress	Post-redress		Pre-redress	Post-redress		Pre-redress	Post-redress	
Mobile telephone services	3,229.73	2,781.15	284.10	4,692.40	4,040.68	346.96	7,922.13	6,821.83	631.05
Clothing, footwear and bags	1,750.17	880.35	126.26	2,639.62	1,327.75	160.12	4,389.80	2,208.09	286.38
Train services	1,309.72	952.34	67.01	1,297.22	943.25	59.72	2,606.94	1,895.59	126.73
Large household appliances	5,587.78	3,092.02	127.37	7,356.67	4,070.83	144.78	12,944.45	7,162.85	272.16
Electricity services	2,434.85	2,148.72	101.53	4,781.12	4,219.28	153.08	7,215.97	6,368.00	254.61
Loans, credit and credit cards	4,566.77	3,145.36	111.68	8,238.00	5,673.92	188.54	12,804.77	8,819.29	300.22

Source: Study on measuring consumer detriment in the European Union, European Commission, February 2017. Note: 'Sample countries' in the first column are France, Italy, Poland and UK.

According to the European Banking Authority, from the total number of consumer complaints reported by national competent authorities in 2017, on average 17% relate to consumer credit. The top reasons for consumer complaints were the level of fees, various issues related to pre-contractual and contractual information, debts and debt collection, levels of interest rates and management issues.⁷

At micro- and macro-economic level, high volumes of unpaid debt (non-performing loans) may endanger the stability of financial institutions, slow down economic growth and drive the economy into recession. It is worth mentioning that in March last year the European Commission proposed a package of measures to reduce the high volume of non-performing loans on banks' balance sheets and prevent their future occurrence.⁸

Thus, a well-functioning EU consumer credit market in which creditors and intermediaries act responsibly and treat consumers fairly, and prevention of excessive debt levels and over-indebtedness is in the interest of consumers, financial institutions and the economy at large.

The central piece of EU legislation governing the provision of consumer credit is the 2008 Consumer Credit Directive.⁹ Its aim is to create a single market for consumer credit and to achieve a level playing field for consumer credit across the EU.

⁶ Study on measuring consumer detriment in the European Union, European Commission, February 2017: <https://publications.europa.eu/en/publication-detail/-/publication/b0f83749-61f8-11e7-9d8e-01aa75ed71a1/language-en>

⁷ EBA Consumer Trends Report 2018/19: <https://eba.europa.eu/documents/10180/2551996/Consumer+Trends+Report+2018-19.pdf>

⁸ https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/managing-risks-banks-and-financial-institutions/non-performing-loans-npls_en

⁹ Directive 2008/48/EC on consumer credit agreements: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>

The directive specifies the information that needs to be mentioned in advertising, the information to be provided to the consumer prior to the conclusion of the credit agreement, the information to be included in the credit agreement, the information to be provided during the contractual relationship between the creditor and the consumer, the right to withdraw from the agreement within 14 days of signing and to repay the loan or credit at any time. The directive applies to unsecured loans between EUR 200 and EUR 75,000. Certain types of loans are excluded from the scope, e.g. overdrafts which have to be repaid within one month, credit granted free of interest and without any other charges, etc.

Since the introduction of the CCD more than 10 years ago, important developments have taken place in Europe. First, a major financial and economic crisis resulted in high unemployment rates and lower household income in many Member States. Second, for several years the EU has experienced historically low interest rates, which gives a further incentive to consumers to borrow for consumption. Third, digitalisation has led to widespread online distribution of credit as well as the emergence of new business models such as peer-to-peer lending.

In June last year the European Commission published a roadmap¹⁰ on the evaluation of the Consumer Credit Directive. The aim of the evaluation is to assess the functioning of the directive in its totality and in particular, regarding the following aspects: design and distribution phases of credit products; cross-selling of credits with other financial products; creditworthiness assessment; credit registers; information disclosure; right of withdrawal; right of early repayment. In addition, national regulatory practices on e.g. usury or predatory lending, authorisation and supervisory requirements will be covered by the evaluation. As part of the evaluation process, the Commission launched a public consultation, to which BEUC responded.¹¹ Due to the limited space for detailed input, our consultation response has to be read in combination with this position paper.

The following sections of this paper will introduce the concept of responsible lending and analyse main drivers and symptoms of irresponsible consumer credit lending.

3. Introducing the concept of responsible lending

The idea behind the concept of responsible lending is that lenders should not act solely in their own interests but that they should also take into account the borrowers' interests and needs throughout the relationship in order to prevent consumer detriment. This refers to both pre-contractual and post-contractual stages of relationships between creditors/intermediaries and borrowers, and encompasses the whole life cycle of credit products, from their inception through marketing and until the borrower has repaid the loan.

An important prerequisite for responsible lending is that **consumer credit products are designed in a responsible way** – that is in the best interests of consumers to whom they are marketed.¹² The importance of financial product design from a consumer protection perspective has been increasingly recognised in the post-crisis era which has witnessed the introduction of the so-called product governance regimes across different areas of financial services.¹³

¹⁰ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-3472049_en

¹¹ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-3472049/public-consultation_en

¹² Cf. European Coalition for Responsible Credit, *Principles of Responsible Credit*, in particular Principle 1: 'Responsible and affordable credit must be provided for all'.

¹³ EBA Guidelines of product oversight and governance arrangements for retail banking products, March 2016: <https://eba.europa.eu/documents/10180/1141044/EBA-GL-2015-18+Guidelines+on+product+oversight+and+governance.pdf>
MiFID and IDD requirements on product oversight and governance.

The creditors' and credit intermediaries' responsible lending obligations in the distribution process should include three major duties aimed at preventing consumer detriment:

- the duty to assess the consumer's creditworthiness;
- the duty to assess the suitability of a credit and related product to the consumer;
- fair treatment of borrowers in payment difficulty.

The duty to assess the consumer's creditworthiness is about the need to conduct the borrower-focused creditworthiness check. While this assessment may also include the assessment of credit risk, it may by no means be limited to it. The borrower-focused creditworthiness assessment should primarily be designed to prevent the consumer from ending up in a problematic repayment situation that may result in over-indebtedness. A problematic repayment situation may arise if the consumer is not able to repay the debt within a reasonable time, and/or the consumer is only able to repay it in an unsustainable way, for example, by cutting back on essential living expenses or by defaulting on other loans. In these circumstances, the consumer may feel the need to take out more credit in order to meet the existing repayment obligations.

The duty to assess the suitability is about the need to check what type of consumer credit product better suits the borrower's interests, objectives and characteristics. For example, choosing between instalment credit and revolving credit to finance new furniture may have different implications for the borrower, so credit providers/intermediaries are well placed to recommend the most suitable option (in terms of costs and convenience) to the consumer. Another example would be choosing between paying with credit or cash, especially when purchasing goods or services which are not essential, e.g. holiday package. Also, credit providers/intermediaries are expected to assess whether annex products, such as insurance, are adapted to the consumer's needs and expectations, i.e. whether they are good value for money.

Fair treatment of borrowers in payment difficulty refers to the lender's obligation to detect, as early as possible, consumers going into payment difficulties; engage with those consumers at an early stage to identify the causes for those difficulties and provide the necessary information; help the borrower to address temporary financial difficulties and return to normal situation (forbearance measures).

4. Drivers and symptoms of irresponsible consumer credit lending

a. Product design

Responsible lending must encompass the whole life cycle of credit products, from their inception through marketing and the post-contractual stage. Design of credit products bears significant importance for their performance and impact on consumers. Credit manufacturers who act responsibly must take due account of consumer interests and needs in the process of designing their products. Failing that, the risk is that certain product features are designed not to serve consumer interests but to deceive them, for example, by specifically targeting low income people and charging high and opaque fees and penalties, or nudging consumers to keep using a credit product as long as possible and pay interests that could be avoided. The high costs of a credit product may result from a variety of sources, including but not limited to the basic interest, costs associated with the conclusion of a credit agreement, charges or penalties triggered by non- or late repayment of loans, and fees for going overdrawn.

Possible consumer detriment resulting from inappropriate product design is illustrated below through two examples: high-cost short-term credit (payday loans) and revolving credit (credit cards).

A **payday loan** is a relatively small, high-cost instalment loan that has to be repaid over a short term, or until 'payday'. Given these characteristics, it can be categorised as a high-cost short-term credit. For some time, payday loans have been offered in many EU countries and have been associated with quick and easy access to credit. Many payday loan customers are vulnerable consumers who do not have credit alternatives available to them.

In the Netherlands, where a payday loan is known as '*flash credit*' (*flitskrediet*), the average amount borrowed in 2011 was EUR 200 and the annual percentage rate of charge (APRC), including but not limited to the annual interest rate, could go up to several hundred percent.¹⁴ In the UK, the average amount borrowed in 2013 was between GBP 265 and GBP 270 and the payback period was usually a month.¹⁵ On an annual basis the interest rate could, however, go up to 5853%.¹⁶ In Finland, consumers were charged an annual interest of nearly 1000 % on average.¹⁷

As reported by our French member UFC-Que Choisir, in France high-cost consumer loans between EUR 200-600 are now being marketed by peer-to-peer lending platforms, bypassing national legislation. These companies have questionable marketing practices, do not properly assess the borrowers' creditworthiness, and do not include an APRC in their loan offers.

Similar products with very high interest rates were also offered to consumers in many Central and Eastern European countries, in particular Estonia, the Czech Republic, Slovakia, Slovenia, Poland, and Romania.¹⁸ Apart from excessive interest rates associated with payday loans, a consumer who does not repay the initial debt on time is often confronted with high additional costs.

It is worth mentioning that other types of consumer credit can sometimes be even more expensive than payday loans. For example, our UK member **Which?** revealed that the most expensive overdraft fees cost seven times as much as a payday loan.¹⁹

The UK consumer organisation Which? revealed that the most expensive overdraft fees cost seven times as much as a payday loan.

It is important to recall that loans below EUR 200 fall outside the CCD scope, which means that many payday loans are currently not subject to the provisions on pre-contractual information, advertising,

APRC calculation, right of withdrawal, etc.

A **credit card** is a form of non-instalment credit which allows the consumer to make use of a credit reserve within the agreed limits and period of time without having to repay the outstanding amount in a fixed number of payments. The terms of a credit card agreement

¹⁴ See also the 2011 statement of the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten (AFM)*); <https://www.afm.nl/nl-nl/consumenten/nieuws/2014/feb/markt-flitskrediet>.

¹⁵ Office of Fair Trading, *Payday Lending: Compliance Review Final Report*, March 2013, p. 9.

¹⁶ See A. Fejős, 'Achieving Safety and Affordability in the UK Payday Loans Market' (2015) 38 *Journal of Consumer Policy*, p. 186, who refers to ASA Adjudication on WDFC UK Ltd t/a Wonga, 9 April 2014.

¹⁷ European Parliament, *Consumer Protection Aspects of Financial Services: Study*, February 2014, p. 58.

¹⁸ U. Reifner et al., *Study on interest rate restrictions in the EU: Final Report for the EU Commission DG Internal Market and Services*, Brussels/Hamburg/Mannheim, 2010, p. 124.


¹⁹ <https://www.which.co.uk/news/2018/05/exclusive-banks-rip-off-overdraft-fees-still-worse-than-a-payday-loan/>

may require that the consumer repays a certain percentage of the outstanding amount on a regular basis (e.g. each month) or only pays interest throughout the duration of the contract and repays the total amount borrowed upon expiration of the contract.

Credit cards are valued by consumers because of their flexibility, which allows consumers to defer payment and spread its costs over a number of months. At the same time, credit card facilities may operate to the disadvantage of consumers, in particular because the providers of such facilities tend to exploit consumer behavioural biases.²⁰

Credit card loan is one of the most expensive types of credit in terms of interest rates. In February 2018, for example, on average credit card providers in the Euro area charged an interest rate of 16.86 % to consumers.²¹ High interest rates on credit cards have been identified as causing financial distress for consumers in the EU.²² Moreover, in some countries, such as Italy, in case of a delay in credit card payments, providers often dramatically increase interest rates not only on the payments overdue, but also on the residual credit on the card.²³

Consumer detriment is often a credit card. As credit card-credit



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associated with the flexible nature of holders are usually allowed to draw again after making minimum payments on their credit card debt for an indefinite period, they have continued access to this expensive credit product. As a result, consumers can accumulate and sustain debt over a long period without having to make a significant effort to get out of credit card debt.

An example related to revolving credit reported by our Belgian member Test-Achats: national legislation obliges consumers to periodically repay the outstanding balance of their credit card. This measure is aimed at avoiding over-indebtedness. However, some credit providers immediately offer another credit card that the consumer can use to repay his/her outstanding balance.

According to our member Spoločnosti ochrany spotrebiteľov in Slovakia, a majority of Slovak consumers do not understand what revolving credit actually means. When consumers use point-of-sale credit, they usually get revolving credit automatically without getting a choice. Most of them are not aware of the possibility to refuse this.

²⁰ E.g. C.R. Sunstein, 'Boundedly Rational Borrowing' (2006) 73 *University of Chicago Law Review*, p. 249; O. Bar-Gill, 'The Behavioural Economics of Consumer Contracts' (2008) 92 *Minnesota Law Review*, p. 749; O. Bar-Gill, 'Seduction by Plastic' (2008) 98 *Northwestern University Law Review*, p. 1373; Y.M. Atamer, 'Duty of Responsible Lending: Should the European Union Take Action?', in S. Grundmann & Y.M. Atamer (eds), *Financial Services, Financial Crisis and General European Contract Law: Failure and Challenges of Contracting* (Alphen aan den Rijn: Kluwer Law International, 2011), p. 179, 183 *et seq.* See also U. Reifner et al., *Study on interest rate restrictions in the EU: Final Report for the EU Commission DG Internal Market and Services*, Brussels/Hamburg/Mannheim, 2010, p. 119.

²¹ European Central Bank, Statistical Data Warehouse; <http://sdw.ecb.europa.eu/reports.do?node=1000005691>.

²² European Parliament, *Consumer Protection Aspects of Financial Services: Study*, February 2014, p. 62.

²³ *Ibid.*, p. 55.

A majority of Slovak consumers do not understand what revolving credit actually means and are not aware of the possibility to refuse a revolving credit which is granted automatically.

Some Member States have adopted preventive policy measures related to the cost and other credit design issues described above e.g. interest rate ceilings are in place in France, Belgium, Germany, Italy, the Netherlands, Portugal, etc. In France, for example, interest rate ceilings are calculated quarterly by the national bank on the basis of the market rates for different amounts of credit. In January 2019, maximum APRC for consumer loans below EUR 3,000 was 21.2%; for amounts between EUR 3000-6000 – 12.49%; for amounts above EUR 6000 – 5.96%²⁴. In addition to that, merchants at the points of sale are obliged to offer consumers an installment loan instead of revolving credit, if the purchase amount is above EUR 1,000.

In France, merchants are obliged to offer consumers an installment loan instead of revolving credit, if the purchase amount is above EUR 1,000.

As reported by our member DECO, in Portugal, the maximum APRC regime is in place since 1 January 2010.²⁵ The maximum rates for the different types of credit correspond to the average of APRCs contracted by all credit institutions in the previous trimester, plus one fourth. In addition, none of the APRCs can exceed 50% the average APRC of all consumer credit contracts in the previous trimester. In the 2nd quarter of 2019, the maximum rate for credit cards, credit lines and overdraft facilities applicable is 16.1%; for car loans, the maximum rate is 9.7%.

Our Italian member Consumatori Italiani per l'Europa reported that in Italy, since 14 May 2011, the interest rate ceilings are calculated by raising the average overall effective rate by one quarter and adding a margin of an additional four percentage points. The difference between the ceiling rate and the average rate cannot exceed eight percentage points. For instance, for the first trimester of 2019 the usury rate for installment loans is 16.51%, and for revolving credit – 24,12%.²⁶

The UK's FCA recently proposed new rules on the treatment of customers whose credit card debt persists over 18 to 36 months.²⁷ Under these rules, financial firms are required to monitor a credit card customer's repayment record and any other relevant information held by the firm and take appropriate action where there are signs of actual or potential financial difficulties.²⁸

²⁴ Taux d'usure, 2019T1, Banque de France : <https://www.banque-france.fr/statistiques/taux-et-cours/taux-dusure>

²⁵ Decree Law n.º 133/2009, with the changes set in Decree Law n.º 42-A/2013

²⁶ <https://www.bancaditalia.it/media/comunicati/documenti/2018-02/20181224-cs-tassi-usura.pdf>

²⁷ Financial Conduct Authority, *Credit Card Market Study: Persistent Debt and Earlier Intervention Remedies – Feedback on CP17/10 and Further Consultation*, December 2017.

²⁸ See Financial Conduct Authority, *Credit Card Market Study: Persistent Debt and Earlier Intervention – Feedback to CP17/43 and Final Rules*, Policy Statement PS18/4, February 2018. The new rules entered into force on 1 March 2018.

Several BEUC members have reported about incorrect and misleading calculation of costs by credit providers. For example, according to Altroconsumo, credit providers in Italy sometimes consider the compulsory expenses for obtaining a loan (such as administrative fees, cost of add-on insurance) a component of the financed capital. This affects the APRC making it appear much lower than in reality.

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Bulgarian member Асоциация Активни потребители reported that a national measure introduced in 2014 set a cap on interest rates: the APRC is limited to 5 times the statutory interest rate on arrears (typically around 10%, i.e. the APRC

may not exceed 50%). However, creditors (mainly non-banking institutions) introduce additional hidden fees not included in the APRC, e.g. guarantor fee, if the borrower cannot submit two guarantors within a short period of time; charge for express processing of the credit application (even though all applications are processed fast); additional paid services such as a grace period for repayment of loan instalments, etc.

In France, banks add a fixed minimum fee (e.g. EUR 7) called "*minimum forfaitaire d'agios*" to the authorised overdraft interest rate. If this fee is taken into account in the APRC calculation, the latter can reach more than 1,000%.²⁹ UFC-Que Choisir reports similar abuses with respect to unarranged overdrafts. For example, for each payment by credit card beyond the authorized overdraft, the bank may charge a fee (*commission d'intervention*) of around EUR 8. This so-called "service", which is automated and systematic but intended to remunerate the assessment of the consumer's creditworthiness, is also not included in the APRC calculation.

As reported by BEUC's member Zveza Potrošnikov Slovenije, it is not uncommon for banks in Slovenia to ignore some costs in APRC calculation, especially costs of other services that are a condition for lower interest rate for the loan e.g. costs of managing a payment account linked to the loan.

b. Unsolicited consumer credit

Unsolicited credit offers can take various forms: bank, credit card company or a credit intermediary calling/visiting consumers to offer an instalment or revolving credit; a credit card proposed to the consumer in a retailer shop; retail point-of-sale instalment credit bundled with credit card that the consumer did not request; a non-requested credit card sent to the consumer by post; consumers approached by a bank's or credit card provider's sales desk set up in a shopping centre; consumers' overdraft/credit card spending limit increased without their prior request and permission; aggressive marketing of payday loans.

These kinds of practices push consumers to borrow more and spend beyond their means, instead of incentivising consumers to save and better manage their finance. This could result in unsustainable levels of indebtedness (high debt-to-income ratio) and over-indebtedness. According to Citizens Advice, in 2017, 28% of UK credit card holders (8.4 million people) received a credit limit increase. However, only 1 in 4 credit card holders

²⁹ <https://www.cbanque.com/banque/actualites/67208/compte-a-decouvert-le-minimum-forfaitaire-agios-est-il-abusif>

who were given a rise actually asked for it – the remaining 3 in 4 limit raises were initiated by credit companies.³⁰

As reported by BEUC's member Zveza Potrošnikov Slovenije, in Slovenia, creditors often send their clients personalised pre-approved credit offers, where a client must opt out in case he/she does not want the credit. For example, creditors offer (automatically) higher amounts of overdraft to the consumer without request and without assessing the consumer's needs.

Unsolicited credit cause trouble to consumers across many EU countries. For example, in Slovenia, creditors offer higher amounts of overdraft to consumers without request and without assessing the consumers' needs.

Similar practices related to pre-approved credit offers were reported by our Slovak member Spoločnosti ochrany spotrebiteľov. Besides that, credit sales desks can be found in Slovak post offices or shopping centres.

In some Member States, unsolicited practices are restricted and banned. For example, the Irish Consumer Protection Code prohibits the offer of unsolicited pre-approved credit to consumers; allows credit providers to increase a consumer's credit limit only with the agreement of the consumer³¹. In France, targeted credit offers sent by post or e-mail must comply with standard requirements: the interest rate and the total cost of credit must be clearly stipulated.

As reported by Belgian consumer organisation Test-Achats/Test Aankoop, unsolicited marketing is strictly regulated in Belgium: it is forbidden, among others, to set up credit sales desks in public places such as railway stations, shopping centres.³² That said, according to Test-Achats/Test Aankoop, when consumers use point-of-sale revolving credit in supermarkets or home appliance stores, sellers almost always offer an additional cash reserve. This encourages consumers to spend more on credit. In addition, credit providers use various tactics to bypass the existing legislation. For example, they call the consumer and arrange an appointment at his/her home, which then becomes a solicited doorstep selling.

At the EU level, the Directive on Distance Selling of Financial Services contains limited provisions related to unsolicited services and communications, which are not specific to consumer credit.³³ The CCD does not touch upon the unsolicited credit issues.

c. Risks related to online distribution

Digitalisation has had a profound impact on all sectors, including the consumer credit area. Since the CCD adoption in 2008, many developments have occurred in that respect.

First, many traditional credit providers and intermediaries have adopted digital tools to diversify their distribution channels through internet and smartphone apps. Second, new FinTech providers offer traditional consumer credit through online channels. When looking

³⁰ Credit card companies pushing credit on millions of people who can't pay, Citizens Advice, November 2017: <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/credit-card-companies-pushing-credit-on-millions-of-people-who-cant-pay/>

³¹ Consumer Protection Code 2012, Central Bank of Ireland, p.11: <https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/brokers-retail-intermediaries/supervision-process/consumer-protection-code-2012.pdf?sfvrsn=4>

³² Cr dit   la consommation: le consommateur mieux prot g , Test-Achats, April 2015: <https://www.test-achats.be/argent/emprunter/news/credit-a-la-consommation-le-consommateur-mieux-protege>


³³ Directive 2002/65/EC, Art 9 and 10: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002L0065>

for a credit, many consumers use the internet to search for information and compare products and their features. And increasingly many people purchase credit online without physical contact with credit providers. In 2015, across 10 EU countries, 40% of consumers searched for personal loans online and purchased offline, while 20% both searched and purchased online.³⁴

Third, new types of credit and business models have emerged, such as crowdfunding, and more specifically peer-to-peer lending (P2PL). It connects those who give, lend or invest money directly with those who need financing. P2PL, also known as debt-based or lending-based crowdfunding, with platforms like Zopa, Funding Circle and Kreditech accounts for the largest share of this emerging market³⁵, with peer-to-peer consumer lending being its biggest segment³⁶. In general terms, P2PL can be defined as *'the use of an electronic platform that matches lenders/investors with borrowers/issuers in order to provide unsecured loans, including consumer lending, as well as lending against real estate'*.³⁷ These services are usually provided by new market entrants known for the heavy digitalisation of their processes, including technological support for credit analysis and payments settlement.³⁸

The above developments present both opportunities and risks for users of financial services. Among the claimed benefits one can mention convenience of an immediate online access to credit or the financial inclusion of vulnerable consumers who cannot obtain credit from conventional lenders.

The risks include the non-respect of responsible lending obligations by online credit providers, aggressive and unsolicited marketing, luring consumers into quickly accessible loans using advertisement such as *"your loan available within 5 minutes"*. Internet and widespread adoption of smartphones offer speed, convenience, 24/7 availability of services to financial services users. Credit products are permanently on the consumers' doorstep, a click away. The key questions here are: how to reconcile this with the time that a potential borrower needs to shop around and choose the right product; how to avoid unsolicited advertising and pushing consumers to take loans through tracking them online and profiling.



Online distribution of credit means also less customer interaction with a bank expert, which is an important source of information in deciding on the type of loan and the risks associated with a particular type of loan. In this regard, several questions arise, in particular, how consumers are informed about their rights and risks related to various credit products when taking credit online. The CCD offers consumers a right to withdraw from the credit contract within 14 days without giving any reason. This right is equally important in the context of offline and online credit contracts. However, the right of withdrawal alone cannot tackle the above issues as in this case liability for acting is shifted to the borrower.

Risk of online distribution: credit products are permanently on the consumer's doorstep, a click away.

³⁴ Consumer Credit, Digitalisation and Behavioural Economics: Are new protection rules needed?, ECRI, Sept 2018

³⁵ European Commission, Legislative Proposal for an EU Framework on Crowd and Peer to Peer Finance: Inception Impact Assessment ((2017)5288649 - 30/10/2017), p. 1.

³⁶ B. Zhang *et al.*, *Sustaining Momentum – The 2nd Annual European Alternative Finance Industry Survey*, 2016, p. 20.

³⁷ International Financial Consumer Protection Organisation (FinCoNet), *Report on the Digitalisation of Short-Term, High-Cost Consumer Credit*, November 2017, p. 20.

³⁸ Ibid.

When assessing the effect of the right of withdrawal, the specificity of financial services and behavioural insight must be duly considered. Most financial services are experience goods where the quality of the service can only be judged after the experience is made. More specifically, in the area of credit, there is usually a time lag between the moment the contract is signed and its possible negative impact on the borrower, i.e. when debt burden becomes unsustainable. Thus, the importance of properly calibrated preventive measures should not be underestimated. In this context, it seems obvious that strict responsible lending obligations should apply to all credit providers and intermediaries, irrespective of their distribution channels and business models.

Referring specifically to P2PL, it presents risks for both consumer lenders and borrowers. Consumer lenders may lose the amount borrowed following either the consumer borrower's or the platform's default.³⁹ They may also be unaware of such risks, relying on misleading advertisements or unverified information, in particular about the consumer borrower and his or her project. It is notable that current data reveal an increase in defaults and business failures in P2PL markets.⁴⁰ In France, UFC-Que Choisir notes that the default rate of the 7 main platforms reaches nearly 10%. Over the last 18 months, the number of defaults increased by 120%.⁴¹

Importantly, in responding to a sector survey, the platforms have identified their own malpractices and borrowers' defaults/failures as the main current risks in Europe.⁴² Consumer borrowers, in turn, may end up in a problematic repayment situation due to the lack of or insufficient assessment of their creditworthiness.⁴³

Therefore, in contrast to the traditional financial sector where irresponsible lending practices may only affect consumer borrowers, in P2PL both consumer lenders and consumer borrowers can become a victim of such practices. At present, P2PL platforms are not regulated at the EU level, and existing national regulatory and non-regulatory regimes are fragmented.

d. Creditworthiness assessment

The Consumer Credit Directive does not contain specific responsible lending obligations for lenders and credit intermediaries, and in this sense, clearly lags behind the standards set by the Mortgage Credit Directive.

First, the CCD does not make clear what kind of creditworthiness test – creditor-focused or borrower-focused – is envisaged by it. As a result, Member States have a large margin of manoeuvre as to how to perceive and design the creditworthiness assessment required by the directive.

³⁹ Ibid., p. 12 *et seq.* See also E. Macchiavello, 'Financial-return Crowdfunding and Regulatory Approaches in the Shadow Banking, FinTech and Collaborative Finance Era' (2017) 14 *European Company and Financial Law Review*, p. 662, 669.

⁴⁰ B. Zhang *et al.*, *Sustaining Momentum – The 2nd Annual European Alternative Finance Industry Survey*, 2016, p. 21, 47; B. Zhang *et al.*, *Pushing Boundaries: The 2015 UK Alternative Finance Industry Report*, 2016, p. 34.

⁴¹ <https://www.quechoisir.org/action-ufc-que-choisir-financement-participatif-face-aux-derives-persistantes-une-regulation-s-impose-n60105/>

⁴² Ibid.

⁴³ European Banking Authority, *Opinion of the European Banking Authority on Lending-based Crowdfunding*, 26 February 2015, p. 16, 20. See also International Financial Consumer Protection Organisation (FinCoNet), *Report on the Digitalisation of Short-Term, High-Cost Consumer Credit*, November 2017, p. 21.

The Consumer Credit Directive leaves a large margin of manoeuvre to the Member States as to how to perceive and design the creditworthiness assessment.

Our Slovak member Spoločnosti ochrany spotrebiteľov reported cases where credit providers split one loan into two separate contracts to avoid a negative outcome of the creditworthiness assessment.

Second, the CCD does not address the issue of what the creditor should do in case of the negative outcome of the creditworthiness test. Member States have a wide margin of discretion as to the consequences of the negative outcome of the creditworthiness test. Some Member States, such as the Netherlands⁴⁴ and Belgium, have introduced an explicit statutory prohibition on granting credit in such a case. But most national laws transposing the CCD do not address the consequences of the negative outcome of the creditworthiness assessment. For example, an anonymous survey conducted in Germany in 2017 indicated that the quality of the creditworthiness assessment varies from one credit provider to another. The assessment may sometimes be very limited.⁴⁵

By way of comparison, the Mortgage Credit Directive obliges lenders to conduct a thorough assessment of the borrower's creditworthiness, including making prudent allowances for potential negative scenarios in the future, and to make *"...the credit available to the consumer where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement."*⁴⁶

Another serious concern related to the creditworthiness assessment process is what types/sources of data are used by lenders to assess consumers' creditworthiness and how artificial intelligence algorithms analyse and interpret those data. With the development of new technologies, the widespread use of big data technics, and the emergence of FinTechs, some lenders and lending platforms (P2P lending) have started using consumer data from external, non-traditional sources to build credit scores. These data may include the consumer's browsing history, log data, personal interests, financial and payment data, social network information, information from store cards/credit cards.⁴⁷

These alternative data, combined with the use of automated tools (algorithms), raise questions about the relevance of data, privacy, fairness, and exclusion. For example, millions of data points might suggest interesting correlations between consumer's behaviour (e.g. their spending habits, online behaviour) and risk of defaulting on credit, but correlation does not mean causality.⁴⁸

It is important that only pertinent and well-founded data are used by lenders when assessing consumers' creditworthiness. In this context, the practices by private credit bureaus should also be closely investigated and regulated (what type of data they collect and for what purpose, whether and to what extent credit bureaus contribute to responsible lending and reducing over-indebtedness, whether they comply with the EU data protection legislation, etc.).⁴⁹

⁴⁴ Financial Supervision Act 2006 (*Wet financieel toezicht 2006*), art. 4:34 (2).

⁴⁵ Umfrage der Verbraucherzentrale Nordrhein-Westfalen zum Umgang mit der Kreditwürdigkeitsprüfung bei Aufnahme eines Verbraucherdarlehens, October 2017: https://www.verbraucherzentrale.nrw/sites/default/files/2017-10/Ergebnisbericht_Umfrage_der_VZ_NRW_zur_Kreditwu%C3%BCrdigkeitspr%C3%BCfung_2017.pdf

⁴⁶ Mortgage Credit Directive, Art 18

⁴⁷ ESAs Joint Committee Discussion Paper on the Use of Big Data by Financial Institutions, 2016, p.10: https://www.esma.europa.eu/sites/default/files/library/jc-2016-86_discussion_paper_big_data.pdf

⁴⁸ BEUC position on big data in financial services, March 2017: https://www.beuc.eu/publications/beuc-x-2017-030_gve_beuc_bigdata_esaconsultation_publication.pdf

⁴⁹ See for example, BEUC study on "The never-ending European credit data mess", October 2017: https://www.beuc.eu/publications/beuc-x-2017-111_the_never-ending-european-credit-data-mess.pdf

For example, in Belgium, lenders must ask relevant questions to borrowers and request supporting documents (account statements, salary slips, tax returns) in order to assess their creditworthiness. Besides that, lenders have the obligation to consult the credit register run by the Belgian central bank, which contains only data on defaulted credit agreements (negative credit data), as well as running credit contracts (positive data). Lenders and intermediaries are not allowed to ask consumers questions about their race, ethnic origin, sexual orientation, political, philosophical and sexual views, membership to a trade union or mutual company.⁵⁰

In France, creditors and credit intermediaries must request supporting documents from the potential borrower for loan amounts above EUR 3,000. For credit distributed in stores, the seller must fill in a standardized sheet showing the borrower's income, expenses and other debts.⁵¹

e. Product cross-selling

Irresponsible lending across the EU is also associated with cross-selling (tying and bundling). According to the 2017 EBA report, cross-selling has been identified as a problematic selling practice in a large number of Member States. The examples include the provision of a loan in combination with payment protection insurance (PPI), car insurance or life insurance, where consumers did not need the insurance or were unaware that they were taking it out when concluding a credit agreement.⁵²

Cross-selling of Payment Protection Insurance (PPI) deserves special attention. PPI is an insurance policy that enables consumers to insure repayment of loans if the borrower dies, becomes ill or disabled, or faces other circumstances preventing him or her from meeting the obligations under the credit agreement. As with any other type of insurance, PPI may exclude or impose restrictive conditions on particular types of claimant (e.g. self-employed or contract workers) or claim (e.g. sickness related to pre-existing medical condition) and may be subject to other terms that limit the cover provided.

Cross-selling of payment protection insurance has resulted in significant consumer detriment across many EU countries, e.g. UK, Ireland, Germany, Belgium, France, Slovakia, Spain.

In the UK, in 2008, our UK member Which? reported that one in three PPI consumers had been sold a 'worthless' insurance where they would never be able to make a claim and as many as 2 million policies were sold to consumers who were not eligible for cover⁵³; as of January

2018, around GBP 30 billion were set aside by financial firms for compensation payouts.⁵⁴ In Spain, some consumers who bought PPI were misled to believe that they were protected in case of unemployment or temporary incapacity, whereas this was not always the case as the coverage depended on the specific situation of the insured person.⁵⁵

⁵⁰ <https://economie.fgov.be/fr/themes/services-financiers/credit-la-consommation/droits-et-obligations/droits-et-obligations-du-0>

⁵¹ <https://www.quechoisir.org/action-ufc-que-choisir-renovation-energetique-halte-au-demarchage-un-raz-de-maree-de-litiges-n51664/>

⁵² European Banking Authority, *EBA Consumer Trends Report 2017*, 28 June 2017, p. 22.

⁵³ <https://www.which.co.uk/news/2008/05/one-in-three-with-ppi-may-find-it-worthless-144107/>

⁵⁴ Financial Conduct Authority, *Monthly PPI Refunds and Compensation* (last updated: 19 April 2018); <https://www.ft.com/content/d9f0050a-739c-11e7-aca6-c6bd07df1a3c>.

⁵⁵ European Parliament, *Consumer Protection Aspects of Financial Services: Study*, February 2014

In Ireland, firms gathered insufficient information on consumers in order to be able to ensure the suitability of PPI for each client; as of May 2012, refunds announced by the Irish banks exceeded EUR 4 million.⁵⁶ In Belgium, PPI tends to be expensive considering the cover offered; between 2011 and 2015, insurers paid out on a claim in only 0.24% of the contracts in force.⁵⁷ In Germany the contract features of PPI policies are very difficult to understand for consumers⁵⁸; in some case, the commissions that insurance undertakings pay to credit institutions exceed 70 percent of the insurance premium. A mystery shopping was carried out by the French Authority DGCCRF in 2018 across 325 credit institutions and point-of-sale credit intermediaries revealed that the insurance option was pre-ticked by most credit sellers.⁵⁹

According to our member Spoločnosti ochrany spotrebiteľov, Slovak consumers have no choice when it comes to add-on insurance. Insurance companies are actual business partners of the credit providers and insurance is usually integral part of the credit contract.

Some Member States have taken a number of regulatory and non-regulatory initiatives in order to tackle problems associate with PPI. In the UK, PPI cannot be sold until at least seven days after the loan was agreed. In Germany, legislators added legal requirements for more advice, information and transparency for PPI policies to the German Insurance Contract Act.⁶⁰ Portuguese regulators issued a guideline in March 2012 on the legal obligations regarding PPI with recommendations to insurers, focusing on product design, pre-contractual information, drafting language of the policies and underwriting practices: insurers should take the target market characteristics into account when designing the product; the necessity of sufficient, adequate and clear pre-contractual information. In France, when offering PPI with a consumer loan, the lender or credit intermediary must inform the borrower of the standard cost of insurance, using a numerical example in euros per month.⁶¹

In the majority of EU countries, no specific actions related to PPI cross-selling with consumer loans have been taken. It is worth stressing that the Consumer Credit Directive is silent with regard to cross-selling practices.

f. Sales incentives and sales targets

The way financial product sellers and intermediaries are remunerated may have tremendous impact on consumer outcomes. When sales incentives and sales targets are ill-conceived and misaligned with consumer interests, financial providers and intermediaries usually engage in aggressive sales of products to consumers without proper assessment of their needs and expectations.

Sales incentives can be financial (bonus for reaching a particular target, commission on the sale of a particular product, sales competition, etc.) and non-financial (promotion and career development opportunities, trainings, vouchers and gifts, company cars, etc.). Sales commissions and targets may create systematic incentives for credit providers and intermediaries to focus on their own financial interest rather than serving the interests of consumers.

⁵⁶ Ibid.

⁵⁷ <https://www.fsma.be/en/news/study-payment-protection-insurance-offered-conjunction-consumer-loans>

⁵⁸ https://www.bafin.de/EN/PublikationenDaten/Jahresbericht/Jahresbericht2017/Kapitel2/Kapitel2_2/Kapitel2_2_2/kapitel2_2_2_artikel_en.html

⁵⁹ <https://www.economie.gouv.fr/dgccrf/credit-a-consommation-loyaute-linformation-precontractuelle>

⁶⁰ https://www.bafin.de/EN/PublikationenDaten/Jahresbericht/Jahresbericht2017/Kapitel2/Kapitel2_2/Kapitel2_2_2/kapitel2_2_2_artikel_en.html

⁶¹ https://eiopa.europa.eu/publications/opinions/eiopa_ppi_background_note_2013-06-28.pdf, p. 19

When sales incentives and sales targets are ill-conceived, financial service providers and intermediaries usually engage in aggressive sales of products to consumers without proper assessment of their needs and expectations.

Information on remuneration schemes related to the sales of credit is scarce because banks, financial and non-financial intermediaries do not make this information public. Some evidence from across Europe about sales incentive and aggressive/misleading

marketing of credit is provided by FinCoNet report in 2016. For example, Slovak authorities referred to conflicts of interest at mortgage intermediaries: *"The regulatory authority identified cases where mortgages recommended and provided by mortgage intermediaries were not the most advantageous to the consumer. According to the consumers who made complaints, mortgage intermediaries were not interested in recommending products by mortgage providers who paid lower commission rates. In some cases, the mortgage intermediary would also charge a service fee to the consumer in addition to the commission received from banks for the sale of the mortgage."*⁶²

Latvian authorities referred to shady marketing tactics teasing people into taking loans: *"A firm released a media campaign promoting an incentive to consumers to sign up for a credit product, emphasising the additional benefits which had no relevance to the lending service (the incentive was a chance to win material prizes such as a new car, television, money etc.). However, Latvia's National Normative Act prohibits an advertisement offering a consumer credit that influences or may influence a decision of a consumer on entering into a credit agreement by additionally offering to acquire goods or receive services or other advantages, if they have no direct relation to the use of the credit, or their receipt has or may have a significant meaning in the taking of the decision by the consumer on entering into the credit agreement. The firm in question was fined for this activity."*

Sales commissions have recently been in the spotlight in relation to PPI mis-selling linked to credit. Selling PPI has proved to be a highly profitable business, in particular as a result of such commissions. In the UK, for example, the commissions payable to loan brokers were typically between 50% and 80% of the gross written premium for policies sold in connection with a personal loan.⁶³ These levels of commission were much higher than those payable for introducing the loan itself, which meant that a large proportion of the profits of loan brokers was derived from selling PPI policies. It is therefore not surprising that many consumers were even pressured into buying such policies.⁶⁴ Similarly, in Germany, the commissions paid by insurance companies to credit institutions for selling PPI together with a personal loan were sometimes extremely high, in some cases amounting to 50 % or more of insurance premium.⁶⁵

Sales incentives and targets can be detrimental not only to consumers, but they also put excessive pressure on sales staff of financial institutions and intermediaries. As reported by trade unions, finance employees work 15 days extra outside registered working hours to reach their targets. In parallel, they acknowledge the causal link between sales targets and the consumer outcome: *"The best product/solution for the customer is not always the best for the adviser. We usually do our best for the customer, but it might lead to poorer achievement of targets for us, which in turn increases the pressure from the top."*⁶⁶

⁶² "Sales incentives and responsible lending", FinCoNet report, January 2016: http://www.finconet.org/Report_Sales_Incentives%20Responsible_Lending.pdf

⁶³ Competition Commission, *Market Investigation into Payment Protection Insurance*, 29 January 2009, p. 2.

⁶⁴ See e.g. the Guardian, 'Liverpool Victoria fined over £840.000 over PPI failings', 30 July 2008.

⁶⁵ BaFin, *Ergebnisbericht zur Marktuntersuchung Restschuldversicherungen*, 21 June 2017, p. 19, 33.

⁶⁶ "Coping with compliance", report by Nordic Finance Unions, January 2018: https://nordicfinancialunions.org/wp-content/uploads/NFU-study_Coping-with-Compliance.pdf

The issue of misaligned sales incentives and conflicting interests is common to all retail finance sectors. Since many years this has been subject of heated debate at the EU and national level within Europe, as well as across the globe. Two EU countries (UK and the Netherlands) have taken strict measures in that respect. The Netherlands decided to ban sales commissions for mortgages and complex investment products (2013) and then extended the ban to all retail investment products (2014). The UK government banned sales commissions for retail investment products (2012).⁶⁷

At the EU level, sectoral retail finance legislation contains provisions aimed at mitigating the negative effects of sales incentives. But those measures mostly consist in disclosing to consumers the amount of commissions received by financial sellers. This raises the question of whether information disclosure reaches its objective of raising consumer awareness and changing their behaviour.

In this respect, the approach taken by the Mortgage Credit Directive can be considered as more interventionist. It provides that remuneration of lenders' staff responsible for the creditworthiness assessment must not be contingent on the number or proportion of credit applications accepted. Further to that, where creditors, credit intermediaries or appointed representatives provide advisory services the remuneration structure of the staff involved cannot be contingent on sales targets. In addition, the directive allows Member States to ban commissions paid by the creditor to the credit intermediary.⁶⁸ The Central Bank of Ireland, for example, is considering banning sales incentives linked to the size of the mortgage credit.⁶⁹

In contrast, the Consumer Credit Directive does not at all deal with remuneration structure of credit providers, financial and non-financial intermediaries.

g. Lack of supervision and enforcement

As explained in previous sections, the EU legislative framework for consumer credit contains gaps that need to be filled in the context of the upcoming CCD review. In fact, national consumer credit laws in some Member States are stricter than the CCD in many respects e.g. rules on product design, distribution, treatment of borrowers in payment difficulty.

Proper regulatory framework must go hand in hand with effective public and private enforcement. Without effective supervision and enforcement, financial consumer protection risks being a dead letter. It is key to ensure that relevant national and EU public competent authorities are well-equipped (clear mandate, qualified staff, strong monitoring, investigation and sanctioning powers) to effectively oversee the business conduct of financial service providers and address consumer protection issues. However, the quality of public supervision and enforcement in retail finance across Member States varies greatly⁷⁰, and EU level harmonisation of the quality of supervision is missing.⁷¹

⁶⁷ "The price of bad advice", BEUC position paper, June 2018: https://www.beuc.eu/publications/beuc-x-2018-055_the_price_of_bad_advice.pdf

⁶⁸ Art 7 of the Mortgage Credit Directive <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32014L0017>

⁶⁹ <https://www.centralbank.ie/docs/default-source/publications/Consultation-Papers/cp116/cp116-intermediary-inducements--enhanced-consumer-protection-measures.pdf>

⁷⁰ For better supervision and enforcement in retail finance, FSUG position, October 2016: https://ec.europa.eu/info/sites/info/files/file_import/1610-supervision-enforcement-retail-finance_en_0.pdf

⁷¹ Proposal for the EU financial supervisory reform, FSUG letter, July 2018: https://ec.europa.eu/info/sites/info/files/fsug-opinions-180705-financial-supervisory-reform_en.pdf

Available evidence shows that compliance with EU and national consumer credit legislation remains an issue. A study conducted by the European Commission in 2013 has shown serious shortcomings in the field of advertising and precontractual information. Only 22% of advertisements containing financial information that were analysed fulfilled all informational requirements set by the legislation. Also, reviewed market practices in the pre-contractual stage have shown that consumers are likely not to receive key information on their rights and the cost of the credit or additional explanations on the credit conditions. The findings of the research vary considerably across the member states and across types of credit products. A further indicator of incomplete implementation was delivered by a consumer survey that has found substantial variations in frequency of consumers experiencing problems with credit between member states, from 3% in Sweden to 21% in

Compliance with EU and national consumer credit legislation remains an issue. Without effective supervision and enforcement, consumer protection risks being a dead letter.

Hungary⁷². In another monitoring exercise of websites offering consumer credit, a coordinated effort of national market supervisors found out that only 30% of websites passed the compliance test⁷³.

In Spring 2018, the French supervisory authority DGCCRF (Direction générale de la concurrence, de la consommation et de la répression des fraudes) investigated 325 credit institutions and point-of-sale credit intermediaries to check their compliance with legal obligations when granting consumer credit. The mystery shopping covered both offline and online credit distribution. Among the main findings: quite often pre-contractual information is provided to the consumer after the signature of the credit contract, and this practice spreads more widely with the growing online distribution of credit; ambiguous and misleading advertising by retailers nudging consumers to use revolving credit; lack of assessment of the borrowers' creditworthiness; insurance option pre-ticked by credit sellers.⁷⁴

In 2016, our Italian member Altroconsumo conducted mystery shopping at 112 travel agencies that offer payment in instalments. Mystery shoppers checked whether the agencies comply with their pre-contractual information obligation by providing consumers with the Standardised European Consumer Credit Information sheet (SECCI). The result was that only in one travel agency consumers received SECCI, at least in the pre-contractual phase.⁷⁵

According to our Belgian member Test-Achats/Test Aankoop, the national consumer credit legislation imposes strict requirements on credit providers, but the rules are not always complied with. Creditworthiness assessment is not carried out properly by some firms, especially non-banking credit providers. The national supervisory authority is empowered to carry out mystery shopping, but it does not have the necessary resources to do so.

Our Greek member KEPKA informed us that most credit providers do not comply with their obligation to provide consumers with a copy of the contract before signing the contract. This means that consumers cannot examine the offer and seek expert advice from consumer organisations or lawyers. Credit contracts are complex, and consumers need time and advice to make the right choices.

⁷² Study on the functioning of the consumer credit market in Europe, European Commission, 2014: <https://londoneconomics.co.uk/wp-content/uploads/2014/05/Final-Report-CCD.pdf>

⁷³ EU investigates consumer credit websites - a market underperforming for consumers, European Commission, press release, 2012: http://europa.eu/rapid/press-release_IP-12-6_en.htm

⁷⁴ Crédit à la consommation : loyauté de l'information précontractuelle, Enquête de la DGCCRF, mars 2018 : <https://www.economie.gouv.fr/dgccrf/credit-a-consommation-loyaute-linformation-precontractuelle>

⁷⁵ <https://www.altroconsumo.it/vita-privata-famiglia/viaggi-tempo-libero/speciali/prestiti-vacanze>

Our German member vzbv informed us about fragmentation between the powers of federal and local authorities. Supervision over credit advertising and APRC is regulated in a general pricing law.⁷⁶ Municipal authorities are locally in charge of dealing with this law. They lack the necessary authority to inquire into banks, options to impose high fines, and have no general oversight beyond their local competence to check whether APRCs provided in advertising are representative and actually comparable to other offers. This control is up to now not a competence of federal authorities.

The CCD does not harmonise the powers of national competent authorities responsible for its enforcement. The directive merely provides that Member States must lay down the rules on effective, proportionate and dissuasive penalties applicable to infringements of its provisions. This means that the solutions adopted across the EU differ greatly. While administrative penalties are commonly used to sanction violations of consumer credit legislation, there are also Member States that have resorted to criminal sanctions for this purpose. In France, for example, exceeding the strict limits imposed by the legislation on an APRC in consumer credit contracts is punishable by criminal law (up to 2 years in prison and a fine of 300,000 euro).

By way of comparison, there are examples of EU measures that profoundly limit national procedural autonomy, in particular by harmonising administrative sanctions. The most notable example is the Markets in Financial Instruments Directive II (MiFID II) which specifies the range of administrative sanctions, including pecuniary penalties, which should be employed for certain types of breach and how the determination as to the appropriate sanction and level of sanction should be made⁷⁷.

END

⁷⁶ § 6 und 6a Preisangabenverordnung

⁷⁷ Directive 2014/65/EU on markets in financial instruments, Art 70-72.



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