
Final Report

Final Report

Directorate-General for Justice and Consumers

February 2020
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<tr>
<td>ACPR</td>
<td>Autorité de Contrôle Prudentiel et de Résolution [FR]</td>
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<tr>
<td>AFM</td>
<td>Netherlands Authority for the Financial Markets [NL]</td>
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<td>AML</td>
<td>Anti-Money Laundering</td>
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<td>AMLD</td>
<td>Anti-Money Laundering Directive</td>
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<td>APR</td>
<td>Annual Percentage Rate of Charge</td>
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<td>BEUC</td>
<td>Bureau Européen des Unions de Consommateurs (The European Consumer Organisation)</td>
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<td>CCD</td>
<td>Consumer Credit Directive</td>
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<td>CEPS</td>
<td>Centre for European Policy Studies</td>
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<td>CHF</td>
<td>Swiss Franc</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>CRPC</td>
<td>Consumer Rights Protection Centre</td>
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<td>CWA</td>
<td>Creditworthiness Assessment</td>
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<tr>
<td>DG FISMA</td>
<td>Directorate-General for Financial Stability, Financial Services and Capital Markets Union</td>
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<td>DG JUST</td>
<td>Directorate-General Justice and Consumers</td>
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<tr>
<td>DGC</td>
<td>Direcção-Geral do Consumidor [PT]</td>
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<td>DGCCRF</td>
<td>General Directorate for Competition, Consumption and Repression of Fraud [FR]</td>
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<td>DMFSD</td>
<td>Distance Marketing of Consumer Financial Services</td>
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<td>EBA</td>
<td>European Banking Authority</td>
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<td>EBIC</td>
<td>European Banking Industry Committee</td>
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<td>EC</td>
<td>European Commission</td>
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<td>ECB</td>
<td>European Central Bank</td>
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<td>ECD</td>
<td>e-Commerce Directive</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECRI</td>
<td>European Credit Research Institute</td>
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<td>EEC</td>
<td>European Economic Community</td>
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<td>EIOPA</td>
<td>European Insurance and Occupational Pensions Authority</td>
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<td>EPD</td>
<td>e-Privacy Directive</td>
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<td>ESMA</td>
<td>European Securities and Markets Authority</td>
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<td>FIN-NET</td>
<td>Financial Dispute Resolution Network</td>
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<td>FSUG</td>
<td>Financial Services User Group</td>
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<td>GDPR</td>
<td>General Data Protection Regulation</td>
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<td>Acronym</td>
<td>Description</td>
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<td>HCC</td>
<td>High Commercial Court</td>
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<td>IDD</td>
<td>Insurance Distribution Directive</td>
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<td>MCD</td>
<td>Mortgage Credit Directive</td>
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<td>MFI</td>
<td>Monetary Financial Institutions</td>
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<td>MS</td>
<td>Member States</td>
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<td>NACP</td>
<td>National Authority for Consumer Protection</td>
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<td>OPC</td>
<td>Open Public Consultation</td>
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<td>PPI</td>
<td>Payment Protection Insurance</td>
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<td>PSD2</td>
<td>Payment Services Directive</td>
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<td>SECCI</td>
<td>Standard European Consumer Credit Information</td>
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<td>STHC</td>
<td>Short-Term High Cost</td>
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<td>UCPD</td>
<td>Unfair Commercial Practices Directive</td>
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<td>UCTD</td>
<td>Unfair Contract Terms Directive</td>
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<td>UK</td>
<td>United Kingdom</td>
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Key concepts and definitions

Ancillary service - means a service offered to the consumer in conjunction with the credit agreement.\(^1\)

Annual percentage rate of charge (APR) - the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 19(2) of CCD;\(^2\)

Automated decision-making - the process of making a decision by automated means without any human involvement. These decisions can be based on factual data, as well as on digitally created profiles or inferred data.\(^3\)

Bank - A financial institution one of whose principal activities is to take deposits and borrow with the objective of lending and investing and which is within the scope of banking or similar legislation.\(^4\)

Borrower - a person, firm or institution that obtains a loan from a lender in order to finance consumption or investment.\(^5\)

Borrowing rate - the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;\(^6\)

Consumer - a natural person who, in transactions covered by the CCD, is acting for purposes which are outside his trade, business or profession;\(^7\)

Consumer Credit - loans granted to households, which in the case of these transactions are acting for purposes outside their business and profession. Mortgage loans for financing house building or buying (amongst others bridging loans) are excluded. It is the intention that consumer credit relates exclusively to credits used for buying goods and/or services which are consumed by the households individually.\(^8\) This can include automotive financing for private use.

Consumer detriment – a measure of harm that consumers may experience when market outcomes fall short of their potential. Consumer detriment can be structural or personal.\(^9\)

Creditor - a natural or legal person who grants or promises to grant credit in the course of his trade, business, or profession;\(^10\)

Credit Agreement - an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;\(^11\)

Credit Card - A card entitling the owner to use funds from the issuing company up to a certain limit. The holder of a credit card may use it to buy a good or service. When one does this, the issuing company effectively gives the card holder a loan for the amount of the good or service, which the holder is expected to repay.\(^12\)

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\(^1\) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property
\(^2\) Consumer Credit Directive
\(^3\) ICO, Guide to the General Data Protection Regulation (GDPR) - Automated decision-making and profiling
\(^4\) IASCF, Key term list; Commission Regulation (EC) No 1126/2008 (international accounting standards)
\(^5\) Collins Dictionary of Economics, 4th ed. 2005
\(^6\) Consumer Credit Directive
\(^7\) Consumer Credit Directive
\(^10\) Consumer Credit Directive
\(^11\) Consumer Credit Directive
\(^12\) Farlex Financial Dictionary, 2012
**Credit intermediary** - a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:

- presents or offers credit agreements to consumers;
- assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (1); or
- concludes credit agreements with consumers on behalf of the creditor;\(^{13}\)

**Credit institution** - an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;\(^{14}\)

**Credit line** - a fixed amount or limit of credit which is established for a customer or borrower by a business or bank. It is the amount of outstanding credit which may not be exceeded at any time;\(^{15}\)

**Credit provider** – see Lender

**Creditworthiness assessment** - evaluation of the prospect for the debt obligation resulting from the credit agreement to be met\(^{16}\)

**Credit rollover** – extending the loan’s due date by paying an additional fee. Loan rollover is common with short-term payday loans.

**Cross-selling practice** - offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.\(^{17}\)

**Crowdfunding** - is the practice of funding a project or venture by raising monetary contributions from a large number of people. It is often performed via internet-mediated registries that facilitate money collection for the borrower (lending) or issuer (equity).\(^{18}\)

**Dynamic pricing** - a customer or user billing mode in which the price for a product frequently rotates based on market demand, growth, and other trends.\(^{19}\)

**Durable medium** - any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;\(^{20}\)

**Financial literacy** - the ability to understand basic principles of business and finance\(^{21}\)

**Fintech** - technologically enabled financial innovation that could result in new business models, applications, processes, or products with an associated material effect on financial markets and institutions and the provision of financial services.\(^{22}\)

**Full harmonisation** (maximum harmonisation) - In the case of full harmonisation Member States must implement the EU measures but may not enact or retain any rules which depart from them.\(^{23}\)

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13 Consumer Credit Directive
14 Regulation (EU) no 575/2013 of the European parliament and of the council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
15 Webster; Collin & Joliffe, Dict. of Accounting, Collin Publ., 1992
18 European Banking Authority, Glossary for financial innovation
19 Techopedia Dictionary, [https://www.techopedia.com/definition/29600/dynamic-pricing](https://www.techopedia.com/definition/29600/dynamic-pricing)
20 Consumer Credit Directive
21 Cambridge Business English Dictionary, 2011
22 European Banking Authority, Glossary for financial innovation
Household - group of persons who share the same living accommodation, who pool some, or all, of their income and wealth and who consume certain types of goods and services collectively, mainly housing and food.24

Implementation - the process of making sure that the provisions of EU legislation can be fully applied. For EU Directives, this is done via transposition of its requirements into national law, for other EU interventions such as Regulations or Decisions other measures may be necessary (e.g. in the case of Regulations, aligning other legislation that is not directly touched upon but affected indirectly by the Regulation with the definitions and requirement of the Regulation). Whilst EU legislation must be transposed correctly it must also be applied appropriately to deliver the desired policy objectives.25

Interest rate cap or Ceiling - The maximum interest rate that may be charged on a contract or agreement.26

Lender - individual, group or financial institution that makes funds or other assets available to another with the expectation that they will be returned, in addition to any interest and/or fees.27

Linked credit agreement - a credit agreement where
- the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, and
- those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement.28

Mortgage loan - consumer real estate credit, usually extended on a long-term basis with the mortgaged property as security.29

Mystery shopping - the activity of pretending to be a normal customer when you are employed by a company to check how its products or services are being sold.30

Non-banks - in general, these are non-monetary financial corporations. More specifically, they include insurance corporations and pension funds, financial auxiliaries, and other financial intermediaries.31

Non-credit institution - any creditor that is not a credit institution.32

Overdraft facility - an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account.33

Overrunning - means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility;34

24 Eurostat’s Concepts and Definitions Database (CODED)
25 European Commission (2017), Better Regulation Guidelines, Glossary
26 Farlex Financial Dictionary, 2012
28 Consumer Credit Directive
29 American State Bank, Banking Glossary
31 European Central Bank, 2016, Bank lending survey for the euro area, Glossary
33 Consumer Credit Directive
34 Consumer Credit Directive
**P2P lending** - enables individuals to obtain loans directly from other individuals, cutting out the financial institution as the middleman. P2P lending is also known as social lending or crowdlending.\(^{35}\)

**Payday loan** - A short-term loan expected to be repaid before the borrower's next pay day.\(^{36}\)

**Payment Protection Insurance (PPI)** - An insurance policy that makes loan payments on behalf of the policyholder in the event of financial hardship.\(^{37}\)

**Personal loan** - credit granted to a private person for non-commercial purposes solely on the basis of that person's creditworthiness, income, and financial circumstances.\(^{38}\)

**Product bundling or Bundling practice** - the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.\(^{39}\)

**Regulatory arbitrage** - The practice of taking advantage of regulatory differences.

**Revolving credit** - credit that is automatically renewed as debts are paid off.\(^{40}\)

**Right of withdrawal** - consumer's right to terminate a contract without reason within a specified time period, provided certain conditions are fulfilled.\(^{41}\)

**SECCI (Standard European Consumer Credit Information)** - a standardised form designed to show exactly what a finance agreement contains. The form will include key details such as type of credit, Annual Percentage Rate (APR), number and frequency of payments, and total amount owed.\(^{42}\)

**Stakeholder** - any individual citizen or an entity impacted, addressed, or otherwise concerned by an EU intervention.\(^{43}\)

**Stakeholder consultation** - a formal process of collecting input and views from citizens and stakeholders on new initiatives or evaluations/ fitness checks, based on specific questions and/or consultation background documents or Commission documents launching a consultation process or Green Papers. When consulting, the Commission proactively seeks evidence (facts, views, opinions) on a specific issue. \(^{44}\)

**Sweeps** – a set of checks carried out on websites simultaneously to identify breaches of EU consumer law in a particular sector. The sweeps operate in in a two-step action process, comprising of (a) screening websites to identify breaches of consumer law in a given online market, and (b) enforcement in which national authorities ask traders to take corrective actions. Sweeps are coordinated by the European Commission and carried out simultaneously by national enforcement authorities in participating countries.\(^{45}\)

**Transposition** - describes the process of incorporating the rights and obligations set out in an EU Directive into national legislation, thereby giving legal force to the provisions of the Directive. The Commission may take action if a Member State fails to transpose EU legislation and/or to communicate to the Commission what measures it has taken. In case


\(^{36}\) Farlex Financial Dictionary, 2012

\(^{37}\) Farlex Financial Dictionary, 2012

\(^{38}\) Dictionary of Banking, UBS 1998 - 2019


\(^{40}\) Oxford Dictionary of English, Oxford University Press 2018

\(^{41}\) IATE EU terminology database, COM-Terminology Coordination, based on: European Commission > Rights & principles applicable when you buy goods or services online

\(^{42}\) Credit Plus, 2019, Glossary, available at [https://www.creditplus.co.uk/car-finance-glossary/secci/](https://www.creditplus.co.uk/car-finance-glossary/secci/)

\(^{43}\) European Commission (2017), Better Regulation Guidelines, Glossary

\(^{44}\) European Commission (2017), Better Regulation Guidelines, Glossary

of no or partial transposition, the Commission can open formal infringement proceedings and eventually refer the Member State to the European Court of Justice.\footnote{European Commission (2017), Better Regulation Guidelines, Glossary}

**Tying practice** - the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.\footnote{Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property}
Abstract

This evaluation provided evidence on whether the current legal framework of Directive 2008/48/EC (Consumer Credit Directive - CCD) is still fit for purpose, via an assessment of its effectiveness, efficiency, relevance, coherence, EU added value and potential for simplification and burden reduction. The evaluation assessed the overall functioning and practical application of the CCD and continued relevance of the original objectives, and established the extent to which the CCD is still relevant in view of new developments. For the evaluation relevant stakeholders were consulted (ministries, enforcement authorities, consumer associations and industry representatives), both consumers and creditors were surveyed and results from the Open Public Consultation were incorporated. The evaluation has also made use of quantification approaches, a mystery shopping exercise and extensive literature review. It finds that the CCD has been partially effective in ensuring high standards of consumer protection and fostering the development of a single market for credit in the context of a regulatory landscape showing significant fragmentation across the EU-28. While the CCD has a number of possible shortcomings, a number of important obstacles are due to the application, implementation and enforcement of the Directive as well as wider market developments not foreseen at the time it was drawn up in 2008.
Executive summary

Introduction

Directive 2008/48/EC on credit agreements for consumers (the Consumer Credit Directive – CCD)\(^48\) was adopted on 23 April 2008 with the objective of ensuring greater consumer protection while fostering the development of the internal market.

This evaluation of the CCD is rooted in Article 27(2) of the CCD and aims to assess the impact of the CCD on the performance of the internal market for consumer credit and consumer protection across the EU. In line with the EU Better Regulation Guidelines, it focuses on five evaluation criteria: effectiveness, efficiency and simplification and burden reduction, coherence, relevance and EU added value.

The evaluation was carried out between November 2018 and October 2019. As part of its legal task, research was carried out in the 28 EU Member States to map and assess the transposition and practical implementation of the CCD. In addition, the evaluation undertook substantial desk research and literature review, a quantification exercise, mystery shopping and extensive stakeholder consultation.

The stakeholder consultation sought to collect information and feedback on various aspects of the CCD and the consumer credit market in the EU. It targeted a broad range of key stakeholders through phone interviews or a survey questionnaire, consumer survey, creditor survey and an open public consultation (OPC). Stakeholders included consumer associations, industry representatives, national authorities and enforcement bodies, as well as EU-level representatives and others (researchers and academics).

The evaluation report uses the data gathered to respond to 18 evaluation questions on the Directive’s effectiveness, efficiency, burden reduction and simplification, coherence, relevance and EU added value. The report gives an overview of the wider context to the evaluation, as well as in-depth case studies on specific provisions of the CCD and topics relevant to consumer credit and its evolution.

Data collection limitations included difficulties in accessing data on costs, benefits and compliance, data on complaints and cross-border access to databases, as well as consultation fatigue among certain stakeholders. These limitations were mitigated through additional research and data collection activity, where possible.

Effectiveness

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

Compliance among credit providers with the provision on pre-contractual information is generally high, although the consumer survey raises some concerns about alleged non-provision of SECCI forms and explanations about pre-contractual matter. The provisions on advertising and pre-contractual information have met with barriers in properly informing consumers. Their effectiveness has been hindered by the way the required information is provided in the online environment and in certain media as well as certain misleading practices and aggressive advertising strategies. The amount of information provided in the SECCI, as well as the technical language employed, constitute barriers, particularly online. Different Member State interpretations of elements of the Directive’s provisions, such as the concepts of ‘clear, concise and prominent’ information and delivery of information ‘in good time’, have led to diverse implementation of the provision, ultimately contributing to a rather fragmented regulatory framework.

Likewise, Member State interpretations of the creditworthiness assessments (CWA) provisions of the CCD also vary. While compliance among businesses is fairly high, there are concerns about data protection, particularly with the use of new or alternative types of data, and granting of loans despite a negative CWA in a small share of loans. These elements hinder the effectiveness of the provision, especially for more vulnerable consumers. Poorly performed CWAs are often identified for those types of credit that are most appealing to consumers with poor credit histories, such as short-term, high-cost (STHC) loans. The evaluation found that properly performed CWAs are indispensable in protecting consumers from over-indebtedness. Such assessments need to be based on suitable and appropriate data, especially in light of the expected increase in the digitalisation of the consumer credit market. However, Member States have gone beyond the CCD and regulated more stringently high-cost credit products (e.g. introduction of interest caps, ban of certain of these products or of their advertising) indicating that, on its own, the CCD may not be fully effective in protecting consumers from inappropriate lending decisions.

Credit databases have been established in all Member States, although their nature (private or public), as well as the type and quality of the data they contain, varies between countries, with associated differences in how they function in practice. The conditions of access to credit databases on a cross-border basis also vary significantly between Member States. These differences, together with certain limitations in accessing credit databases in other Member States, hinder the exchange of cross-border information between creditors.

The provision regulating the Annual Percentage Rate of Charge (APR) has not been subject to interpretation and as such provides a coherent formula for its calculation across all Member States. When correctly conveyed and understood, it helps consumers to choose the credit most appropriate to their needs and emerged from the evaluation as the most comprehensive comparison tool for consumer credit. The APR is sometimes not correctly conveyed to consumers, however, and unclear information may influence consumers’ ability to choose the most appropriate credit, reducing its usefulness as a comparison tool.

The rights of withdrawal and early repayment are widely considered equally important in offering high levels of protection to consumers. They also show good levels of compliance among creditors. The evaluation found that a majority of consumers are aware of both rights, with the right of withdrawal far less frequently used than the right of early repayment.

Relatively few consumers experience problems in exercising their right of withdrawal, with slightly more facing issues with early repayment. A recurring issue with the right of withdrawal relates to a lack of clarity on its application to linked credit agreements, specifically whether the right applies to cases in which the financed object was not mentioned in the linked credit agreement. Issues with the right of early repayment primarily relate to incorrect calculation of the compensation to be paid to the creditors and to disproportionate compensation fees. The extent of these issues has not been ascertained, however. Other issues include consumers being charged the entirety of the interest that they would have to pay over the term of the loan.

An issue running horizontally through the provisions of the CCD is the varying level of harmonisation, with the shortcomings described here contributing only in small part. The CCD has encountered many practical obstacles outside its direct reach preventing it from meeting its objectives. In several instances, Member States have added elements to their own consumer credit legislation, usually imposing additional requirements on creditors (interest rate caps) and affording greater protection to consumers. The CCD does also not cover the entire process of credit granting of which many aspects are only partially harmonised or not at all harmonised across the EU (e.g. anti-money laundering requirements, debt collection, content of credit database etc). This fragmentation represents an important barrier to the creation of a real internal market for consumer credit.
Indeed, cross-border activity has seen no substantial development since the CCD came into effect. The lack of significant changes in cross-border consumer credit uptake between 2008 and 2018 indicates that the CCD has had little noticeable impact on cross-border access to credit. This is chiefly because the CCD provisions, on their own, do not allow to reach this objective, with numerous other factors limiting demand and supply.

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

The evaluation found that the costs of the CCD are proportionate to its benefits, and estimates that those benefits outweigh the costs.

The chief benefit of the CCD is the reduction in consumer detriment. Other factors contributing to a reduction in consumer detriment include the development of the credit sector itself, more stringent legislation in certain Member States, a possible uptake in overall sector compliance due to familiarity with the Directive, and increased consumer awareness.

Costs associated with the CCD include direct compliance costs, such as initial set-up costs. For public entities, this includes transposition of legislation, while private companies incur staff training and adaptation of IT systems costs. Public entities also have the recurring costs of monitoring, compliance and enforcement.

While the 2008-2010 implementation period saw initial start-up costs for businesses - and for public administrations, to a lesser extent – ongoing and recurring costs are relatively limited for most provisions. Consumer detriment in consumer credit is estimated to have decreased over 2010-2018, with 20-25% of that reduction attributed to the Directive.

The evaluation estimates that many consumers may be affected by cross-selling practices where lenders try to push additional products by making them conditional on loan offers, unrequested extensions of the credit line on revolving credit, asking for advance (down) payments, and - to a lesser extent – non-verification of the ability to pay (as part of CWAs) and non-receipt of the APR or SECCI. Consumers’ lack of awareness of their rights under the Directive may impede their exercise of those rights, in particular the right of withdrawal and understanding the APR.

The evaluation concludes that the provisions of the CCD are cost-effective. This is particularly true for the provisions on the rights of withdrawal and early repayment, and to a lesser extent for pre-contractual information, advertisement, the APR and CWA. While some of the costs of implementing these provisions weigh on lenders, some (in particular CWA) costs would also be incurred in their absence in order to mitigate against the risks of defaulting customers. A key concern here is the benefits, given that evidence points to limitations on the information that can be absorbed by consumers, thereby reducing the likelihood that the CCD will achieve the high level of consumer protection it seeks.

While some elements could benefit from simplification, chiefly for those elements that are costly yet without sufficient benefit to consumers, e.g. advertising requirements, such process could risk undermining aspects of the effectiveness of the Directive. Hence, no scope for simplification was identified in the evaluation.

**Coherence**

The CCD and its implementation at Member State level shows a fair degree of internal coherence, overall. The CCD provisions work well together, offering a good standard of consumer protection.

In addition, various provisions of the Directive do not directly support its achievement. The breadth of certain provisions (e.g. Article 8, on the obligation to assess the creditworthiness of the consumer) has contributed to their diverse application across Member States.

Overall, Member States’ transposition of the CCD is highly coherent with the obligations stemming from the Directive. Nevertheless, there are a number of instances where Member States introduced stricter rules when transposing the provisions of the CCD into their national laws. This typically addressed specific national problems and, while it does not
create incoherence per se, may permit a lack of harmonisation that undermines coherence with the Directive’s general objectives.

The CCD is largely coherent and complementary with other EU-level consumer policy and legislation, although some elements could be better aligned. The CCD shares its objectives with Directive 2014/17/EU (Mortgage Credit Directive, MCD). Both Directives aim to provide a harmonised framework for certain aspects of credit agreements, most of which are covered in both pieces of legislation, and also aim to ensure a higher level of consumer protection. The Directives’ approaches to irresponsible lending diverge, however, where greater alignment would improve the implementation of both Directives by fostering legal clarity for Member States and credit providers and ensuring a consistent approach protecting consumers against over-indebtedness.

The provisions of the CCD and their implementation at national level are generally coherent and compatible with data protection legislation, notably the General Data Protection Regulation (GDPR). The evaluation pointed to some issues in data protection and security standards in specific contexts (such as CWA and credit databases). The issue of automated decision-making and transparency, together with their relevant guidance, also emerged.

**Relevance**

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

Ten years on, the CCD covers some of the current consumer needs. Digitalisation has changed the decision-making process and overall habits of consumers and this is not necessarily reflected in the CCD. An example is the amount of pre-contractual information that the CCD requires consumers to process, and the challenges for consumers to absorb and understand (complex) information flows.

The objective on the emergence of a cross-border market for consumer credit also remains relevant, although the CCD provisions do not support its achievement. There are indications, however, that the cross-border market may develop in the future, thus achieving a well-functioning internal market remains both prudent and relevant. As a broad-scope objective, it is difficult for the Directive to achieve it on its own merits.

The adoption of the CCD has led to a certain degree of legal harmonisation, especially for the provisions on the APR and pre-contractual information. While the expected level of harmonisation did not materialise, the evaluation pointed to the ongoing relevance of a specialised framework that takes account of the functioning of consumer credit.

The scope and thresholds of the CCD appear to be somewhat unadjusted with respect to the objectives and current context of the CCD. For example, the CCD excludes certain specific products, some of which have generated concern, such as zero-interest loans, overdraft facilities, leasing agreements that do not impose an obligation to purchase, and agreements with pawnshops. The thresholds (from EUR 200 to EUR 75,000) are noted as only partially relevant to the CCD’s objectives. The distinction between credit based on amount rather than on typology is artificial in light of the findings of the evaluation, in so far as it does not consider the risks linked to high-cost and revolving credit. These types of credit may be of amounts less than EUR 200, and therefore not covered by the CCD and depriving consumers from its protection, despite several Member States moving to legislate further (e.g. interest-rate caps). These ‘payday loans’ are common in many Member States and depend heavily on existing supply and conditions, as well as average wage levels in the countries in question.

Finally, most of the definitions in the CCD remain relevant to the current market situation. However, there are uncertainties as to whether the definition of “creditor” is entirely fit for purpose to address new forms of lending that have appeared online (peer-to-peer lending, crowdfunding).
EU added value

The added value of the CCD emerged clearly from the evaluation and primarily lies in its contribution to increasing consumer protection. The introduction of standardised formats (e.g. the SECCI and the APR) clearly contributes to the provision of a standard level of consumer protection across the EU, although it remains unclear whether similar provisions might have been developed in the absence of the CCD. In some Member States, a framework for the protection of consumers was already in place at the time of transposition, while for others it represented a significant change to their regulatory landscape.

Variations between Member States have been observed not only in the impact of the CCD but also in how it was transposed. In some instances, transposition went beyond the requirements of the Directive, contributing to the fragmented landscape of consumer credit regulation in the EU.

The evaluation found the CCD’s contribution to the harmonisation of the provisions governing consumer credit in the EU to be relatively limited. Were the CCD to be withdrawn, however, further fragmentation is likely, which could lead to vastly different standards of protection over time and negatively impact consumers in those jurisdictions where standards would likely fall. Differences are expected to develop in relation to how information is presented in advertising, which could have an adverse effect on maintaining high levels of consumer protection and ensuring fair competition between lenders. Withdrawing the CCD is also likely to negatively affect lenders, as they could require costly and time-consuming adaptations to their business systems and practices.

The lending sector is progressively getting digitalised with an increasing number of consumer credit contracts obtained online. This digitalisation could help breaking down certain barriers to the cross-border provision of credit thus increasing the number of consumers obtaining credit in another Member State. In such a context, the EU added value of the CCD could increase in the future given that it provides a similar set of rights and obligations for consumers and creditors across the EU.

Overall, withdrawing the CCD and reducing harmonisation could be expected to have a negative impact on the internal market. However, most of the benefits currently delivered would not be achieved in the absence of EU-level intervention.
1 Introduction


1.1 Purpose and scope of the evaluation

The study aims to:


- Identify possible areas of improvement of the CCD.

- Assess the overall functioning of the CCD in relation to its original objectives and to the new emerging needs that have arisen since its implementation, by:
  - drawing on a number of lessons learned since 2008, and
  - highlighting relevant new developments.

- Contribute to the review of the aspects laid down in Article 27(2) of the CCD.

1.2 Methodological approach and limitations

This section presents the methodological approach adopted for the evaluation, including a summary of what was initially proposed under each task, the challenges faced in their implementation, mitigation measures taken and any significant changes to the methodology, and the limitations of the study.

1.2.1 Methodological approach and mitigation measures

The evaluation was carried out during the period November 2018 to September 2019.

Legal analysis

As part of the evaluation’s legal task, research was carried out in the EU-28 Member States with the aim of mapping and assessing the transposition and practical implementation of the CCD.

Desk research and literature review

For the study’s desk research and literature review, a very substantial body of documentation was reviewed and analysed (see Annex 2) from a variety of EU and Member State sources.

Stakeholder outreach and consultation

The stakeholder consultation sought to collect information and feedback on various aspects of the CCD and the consumer credit market in the EU from a wide range of key stakeholders. The consultation plan was structured around a variety of sub-tasks:

- Task 3.1 (Stakeholder interviews and surveys) sought to obtain data, supporting information and views from key stakeholders representing consumers, industry, government and regulators, researchers, and interest groups on the evaluation questions proposed. The synopsis is presented in Annex 6.

- Task 3.3 (Consumer survey) asked consumers across the EU about their experiences of obtaining consumer credit. The overview of results is presented in Annex 4.

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49 The United Kingdom withdrew from the European Union as of 1 February 2020. During the transition period, which ends on 31 December 2020, Union law, with a few limited exceptions, continues to be applicable to and in the United Kingdom and any reference to Member States in Union law shall be understood as including the United Kingdom.
• Task 3.4 (Online survey of creditors) sought to collect creditors and intermediaries’ views of the CCD, as well as of costs incurred by creditors in complying with the CCD.

• Task 3.5 (Analysis and summary of the open public consultation) aimed to maximise the use of the views provided and the data obtained as part of the Commission-run open public consultation (OPC). The results can be found online.⁵⁰

• Task 3.6 (Stakeholder event organised on 18 June 2018) had the objective of discussing preliminary study findings with stakeholders representing Member States, consumer associations, industry representatives and other interest groups and academics.

The key aspects of the implementation of each of these activities are summarised below.

Consultation

The consultation period was launched in January 2019 and finished in May 2019.

Table 1 shows the four main stakeholder groups targeted, the consultation method, the maximum number of consultations foreseen, and those carried out.

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

<table>
<thead>
<tr>
<th>Stakeholder category</th>
<th>Type of consultation</th>
<th>Interviews or online surveys</th>
<th>Replies to the public consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member States</td>
<td></td>
<td>19</td>
<td>24</td>
</tr>
<tr>
<td>Enforcement bodies</td>
<td></td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>National and EU-level consumer associations</td>
<td></td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>National and EU-level industry representatives</td>
<td></td>
<td>33</td>
<td>37</td>
</tr>
<tr>
<td>Creditors/businesses</td>
<td></td>
<td>51</td>
<td>35</td>
</tr>
<tr>
<td>Consumers/Citizens</td>
<td></td>
<td>3,886</td>
<td>108</td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td>2</td>
<td>18</td>
</tr>
</tbody>
</table>

Quantification of costs and benefits

The aim of the quantification was to determine the extent to which provisions or elements in the CCD have impacted consumers, industry and public administration. One part of the quantification included an assessment of the costs and benefits (including consumer detriment) of the CCD and the extent to which these could be attributed to the Directive. The overall approach was based on existing methodologies for such assessments in the consumer area, data obtained from public sources or this study’s research (including the consumer survey) and, subsequently, an economic model drafted for the task.

Mystery shopping

The aim of the mystery shopping exercise was to collect first-hand information on the functioning of the CCD in practice. The aim of the exercise was to observe and better understand the functioning of information requirements for advertisements, the provision of pre-contractual information and consumer creditworthiness assessments (CWA). A total

of 61 mystery shops were carried out, both in person\textsuperscript{51} and online,\textsuperscript{52} across 11 Member States.

1.2.2 Limitations and robustness of findings

The following limitations should be taken into account with respect to the data collection activities undertaken for this study.

The credit and cost data collected to establish the baseline was very limited, particularly from industry. In order to mitigate these limitations, the evaluation team engaged with additional industry stakeholders and carried out further desk research. However, the limitations to the hard data available increased the number of estimates and assumptions within the evaluation.

Hard data on other elements was also very limited. Relevant information was not available in particular for Short Term High Cost loans (STHC), overdrafts and linked credit as well as cross-border access to databases. Very limited information was provided by stakeholders on complaints specifically related to consumer credit.

**Stakeholder interviews and surveys** initially yielded a lower response rate than expected. Responses from non-bank financial providers were particularly low, an outcome that led to difficulties in performing a comparative analysis between the products offered by non-bank and bank financial providers. In order to boost the rate and provide sufficient time for stakeholders to share their views, the evaluation team extended the consultation period. The team also worked closely with the key EU representative associations (for consumers and industry) to gather views from their members. The evaluation team provided stakeholders with all possible alternative ways of contributing, such as phone interviews, online surveys and answering the interview questions via a Word questionnaire. Consultation numbers were lower than expected due to the OPC running in parallel (which was cited by some as a reason for not contributing separately), general stakeholder fatigue and lack of resources/time (particularly for some consumer associations). In other areas (consumer survey, mystery shopping and literature review), additional efforts were made to increase output compared to what was initially foreseen.

1.3 Structure of the report

The remainder of this document is structured as follows:

- Section 2 offers a contextual background for the evaluation of this study, providing a brief overview of the key EU-level legal and policy developments and the evolution of the consumer credit sector in the EU since the adoption of the CCD in 2008.
- Section 3 presents the key study findings against each of the evaluation questions.
- Section 4 summarises the main conclusions of the study and offers a number of key recommendations.

The main report is supported by a number of annexes as follows:

- Annex 1: Case studies.
- Annex 2: Overview of literature reviewed.
- Annex 3: Overview of stakeholders consulted.
- Annex 4: Results of the consumer survey.
- Annex 5: Overview of legal analysis.
- Annex 7: Approach to quantification.

\textsuperscript{51} In the following six Member States: BE, ES, FR, IT, LV, PL.

\textsuperscript{52} In the following 11 Member States: BE, DE, ES, FI, FR, IE, IT, LV, NL, PL, RO.
2 Background to the CCD

2.1 Policy background

2.1.1 Key policy developments leading up to 2008

Prior to the introduction of the CCD in 2008, consumer protection for consumer credit was fragmented across the EU, with no harmonised framework. A first Directive on consumer credit had been introduced in 1986 by the European Economic Community (EEC) but that covered only minimum standards and did not harmonise consumer legislation across the Member States. Directive 87/102/EEC was amended in 1990\(^{53}\) and 1998,\(^{54}\) with the former introducing the Annual Percentage Rate of Charge (APR) for the first time and defining the mathematical formula required for its calculation, while the latter added further examples of the APR calculation in its Annex III.

The existing rights stemming from Directive 87/102/EEC (primarily) covered:

- Credit between ECU\(^{55}\) 200 and ECU 20,000;
- Credit agreements longer than three months in length and minimum four payments over a period up to 12 months\(^{56}\);
- The inclusion of an APR and its calculation and communication to the consumer;
- The right to pursue remedies.

At Member State level, the protection of consumers and the consumer credit market was uneven, as Directive 87/102/EEC only provided for minimum standards of consumer protection. This led to Member States introducing additional provisions that covered other types of credit and credit agreements not covered by the earlier Directives.\(^{57}\) Differences in legislation included, for example, different time limits and procedures in connection with the credit agreement, such as ‘cooling off’, ‘withdrawal’ and ‘cancellation’, as well as repayment.

Other EU pieces of legislation

A key directive in place at the time of the adoption of the CCD was the E-Commerce Directive (Directive 2000/31/EC), which created a basic legal framework for online services, and aimed to remove obstacles to cross-border online services within the internal market of the EU.\(^{58}\) As such, it laid the groundwork for the development of the cross-border credit market that the CCD aims to promote. Similarly, the rights of consumers were protected by various horizontal pieces of legislation adopted during the 1990s and the 2000s. The first of these pieces of legislation was the Unfair Contract Terms Directive (UCTD) (93/13/EEC), which guarantees fair and legible clauses and contracts to consumers.\(^{59}\) This was followed by the Distance Marketing of Financial Services Directive (DMFSD) (Directive 2002/65/EC), which introduced basic rights for consumers in purchasing financial services (including consumer credit) at a distance (e.g. the right of withdrawal). The Unfair Commercial Practices Directive (UCPD) (2005/29/EC) also aimed to boost cross-border trade and ensure a high level of protection of consumers against unfair business practices, such as advertising with untruthful information or aggressive marketing techniques.\(^{60}\)

The protection of credit consumers was further strengthened through the adoption of the Directive on Data Protection (Directive 95/46/EC) and the E-Privacy Directive.

\(^{54}\) Directive 98/7/EC.
\(^{55}\) The Directive referred to ECU (European Currency Unit) was replaced by the euro on 1 January 1999 at parity.
\(^{56}\) In the wording of the Directive it did not apply to "[…]credit agreements under which the consumer is required to repay the credit: - either, within a period not exceeding three months, - or, by a maximum number of four payments within a period not exceeding 12 months."
\(^{58}\) Directive 2000/31/EC.
\(^{59}\) Council, 2011.
\(^{60}\) Council, 2011.
(Directive 2002/58/EC), which constituted the two main pillars of the data protection legal framework in the EU in 2008.

Credit providers were also bound by the EU anti-money laundering legal framework - the Anti-Money Laundering Directive (AMLD3) (2005/60/EC) and the Regulation on information accompanying transfers of funds (2006/1781/EC) – as well as the Payment Services Directive (PSD1) (2006/64/EC). Both the AMLD3 and PSD1 were later replaced by pieces of legislation adopted after 2008.

The 2002 Commission proposal for a CCD argued that the absence of harmonised conditions for drawing up, concluding and cancelling credit agreements distorted competition. It also pointed to differences in existing legislation on marketing practices that gave advertisers in some Member States an unfair advantage. Finally, the proposal noted the different procedures and time limits for injunctions/remedies, arguing that they led to unfair competition and costs for lenders.61

With the European Commission’s first proposal for a revised version of the 1986 Directive on Consumer Credit,62 the overall aim was to offer a more comprehensive set of provisions and provide for a higher level of protection to consumers. The new Directive would constitute a full harmonisation Directive, unlike the minimum standards of the 1986 Directive. However, negotiations between the European institutions on consumer protection standards were protracted and involved substantial suggested changes,63 leading to a revised proposal in October 2004, based on the European Parliament’s published recommendations. As consultations on the proposal continued, another amended version of the proposal was created in November 2005 to consolidate all the amendments. The overall objectives for the introduction of the CCD were the creation of a single credit market in the EU (and thus the improvement of cross-border credit), ensuring a high level of consumer protection and improving the clarity of regulation in the area of consumer credit through recasting the three existing Directives on consumer credit (Directives 87/102/CE, 90/88/CE and 98/8/CE).64

In 2008, the revised proposal was adopted and the CCD (Directive 2008/48/EC) repealed Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit. Although modelled on Directive 87/102/EEC, the CCD went significantly further than its predecessor, with the introduction of a defined scope and clearly defined rights for consumers, such as the right of withdrawal and right of early repayment.

When the CCD was adopted in 2008, not all of the provisions on consumer protection foreseen in the 2002 proposal were adopted. Certain key elements (see Table 2) were not part of the final version.

<table>
<thead>
<tr>
<th>Table 2.</th>
<th>Comparison of key elements from the 2002 proposal for the CCD and the Directive adopted in 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Element</strong></td>
<td><strong>2002 proposal</strong></td>
</tr>
<tr>
<td>Scope</td>
<td>The Directive would apply to surety agreements65</td>
</tr>
<tr>
<td>Scope</td>
<td>No reference to minimum and maximum thresholds</td>
</tr>
</tbody>
</table>

64 COM (2005) 483 final/2.
65 It “...covers all sureties, both personal and in material form: bonds, joint and several liability, mortgages and sureties etc. The agreement must be signed by a consumer, known as the “guarantor” in order to distinguish him from the consumer who has concluded the credit agreement. The surety agreement may relate to any credit transaction undertaken for private or employment-related reasons provided that the guarantor is not acting in a professional capacity.” From COM (2002) 443 final.

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<table>
<thead>
<tr>
<th>Scope</th>
<th>Includes credit agreements in the form of an overdraft facility.</th>
<th>Excludes credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Includes credit agreements free of interest and other charges</td>
<td>Excludes credit agreements where the credit is granted free of interest and without any other charges and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable</td>
<td></td>
</tr>
<tr>
<td>Information requirements</td>
<td>Ban on negotiation of credit and surety agreements outside business premises</td>
<td>No such ban</td>
</tr>
<tr>
<td>Credit database</td>
<td>Compulsory database that includes negative, neutral and reliable data on late payments, identifying consumers and guarantors covering at least the Member State itself. Including positive data is optional</td>
<td>Not mandatory and no requirements on content</td>
</tr>
<tr>
<td>Responsible lending</td>
<td>Specific article that obliges creditors to consult the database before the consumer can conclude a credit agreement, following the Member State principle of acting as a ‘good creditor’</td>
<td>No separate article</td>
</tr>
<tr>
<td>Registration of creditors and credit intermediaries</td>
<td>Creditors and credit intermediaries are required to be registered and supervised, in particular monitoring their compliance with the (applicable) provisions of this Directive</td>
<td>No separate provision on registration</td>
</tr>
</tbody>
</table>

**Source: ICF compilation**

In some Member States, the introduction of the CCD led to the creation of the first consumer code that defined the rights and protection of consumers for financial services and other products. This was the case in some of the newer Member States that had joined the EU in 2004 or 2007 (e.g. Bulgaria), as well as smaller Member States (e.g. Luxembourg). In other Member States, the rights of consumers were already well established. In France and Belgium, for example, the codification of consumer rights started in the 1990s, with consumers afforded a high standard of protection early on. As a result, some provisions contained in the CCD were modelled on the Belgian and French consumer codes, thereby expanding the protections offered across the EU.
2.1.2 Key policy developments over 2008-2019

The policy landscape has changed considerably since the introduction of the CCD in 2008, with the CCD itself undergoing changes in 2011, 2014, 2016 and 2019.

The CCD was amended following Directive 2011/90/EU with respect to Part II of Annex I on calculating the APR.

To further strengthen consumer protection in the area of credit, the Mortgage Credit Directive (MCD) was introduced in 2014, offering more rights for consumers taking out credit for immovable property. With the introduction of creditworthiness assessments (CWA) and the right to early repayment, for example, consumer rights in mortgage credit and consumer credit were aligned, creating a more harmonised credit market at EU level. The MCD expended the scope of the CCD to unsecured credit agreements whose purpose is the renovation of a residential immovable property involving a total amount of credit above EUR 75,000.

Amendments to the CCD in 2016 followed the entry into force of the Benchmark Regulation (EU) 2016/1011, specifically the insertions on referencing a benchmark and the publication of provisions and their communication to the Commission. This regulates benchmarks for interest rates by introducing a regime for benchmark administrators that ensures the accuracy and integrity of benchmarks.69

In 2019, Article 19(5) of the CCD, on assumptions for calculating the APR and empowering the Commission to do so, was amended. Article 24a, on the exercise of delegation, was inserted and Article 25 was deleted.

Also in 2019, the European Banking Authority (EBA) launched a consultation on its draft guidelines on loan origin and monitoring, applying also to consumer credit. These aim to ensure that relevant financial institutions have strong standards in place when it comes to assessing credit risks and that loans are of high credit quality.70

The revised Directive 2015/2366 on payment services (PSD2) that entered into force in 2016 provides the legal foundation for the further development of a better integrated internal market for electronic payments within the EU.71 As such, the PSD2 is a step towards adjusting EU legislation to a digitalised credit market in the EU.

Also from 2016, the General Data Protection Regulation (GDPR) (Regulation 2016/679) reinforced the data protection rules laid down by the previous Directive. This is especially relevant in the context of the CWA for consumer credit. The Insurance Distribution Directive (IDD) (2016/97/EU) is relevant to the area of credit insofar as an insurance may be linked to a credit agreement, but is not directly relevant to consumer credit in itself.

2.2 The consumer credit sector

2.2.1 The consumer credit sector leading up to 2008-2010

This section describes the baseline – set at 2008 for the purposes of this evaluation – at the time the CCD came into being (even if it entered into force in 2010).

The types of consumer credit included in the general definition are personal loans and automotive financing for personal use. Personal loans can be further said to include other types of credit, including revolving credit (credit cards, charge cards, overdrafts), non-automotive credit sold at the point of sale (including linked credit) and specific types of personal loans such as short-term-high-cost credit (STHC). Another important distinction in consumer credit is the difference made between instalment type credit (instalment loans

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69 European Securities and Markets Authority (ESMA), Benchmarks.
70 EBA, 2019b.
71 European Commission, 2017a.
72 European Securities and Markets Authority (ESMA), Benchmarks [https://www.esma.europa.eu/policy-rules/benchmarks].
for personal consumption) and non-instalment type credit (such as revolving credit). It should be noted that definitions are not harmonised across the EU.  

Data are presented below for revolving credit (credit cards) and personal loans. There are, however, no consolidated data on STHC loans, overdrafts and linked credit (although estimates are provided as part of the evaluation findings).

**Personal loans (instalment type credit)**

In the early 2000s, the consumer credit market in the EU experienced high levels of growth, particularly in the new Member States of the EU, such as Lithuania, Estonia, Latvia and Hungary, but also some older Member States, like Greece.  

Household debt, which includes all types of debt such as personal loans and mortgages, showed a constant increase from the late 1990s until 2010. Household debt was an important driver of economic growth during the pre-crisis period. Stable levels of inflation lowered households’ constraints of liquidity and enabled consumers to switch from saving to borrowing. The credit expansion was also boosted by the development of the single market integration in financial services, innovative credit products and the overall optimistic outlook of the EU economy.

The temporary decline of outstanding amounts of consumer credit in 2003 (see Figure 1) was matched by a decrease in the total volume of credit allocated to households. This reflects the negative effect (in the EU) of the temporary stock market downturn of 2002. The positive outlook in the years thereafter, combined with low interest rates over 2003 – 2005, resulted in consumers taking on more credit. This is shown in Figure 1 by an increased volume of consumer credit between 2004 and 2007 and the continued growth of outstanding consumer credit amounts.

In 2010, the outstanding amount of personal loans in the Eurozone constituted EUR 6.4 trillion, up from EUR 4.8 trillion in 2000. The change in the overall volume of credit was negative in 2009 and 2010, denoting less credit being taken out straight after the start of the crisis in 2008, after years of growth in the volume of consumer credit.

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72 ECB, 2017a.
73 Vandone, D., 2009.
74 ECRI, 2013.
75 Loans for consumption excluding revolving loans and overdrafts, convenience and extended credit card debt with collateral and/or guarantees.
76 ECB Statistical Data Warehouse, Volumes of loans to households.
Figure 1. Change in volume and outstanding amounts of consumer credits in the euro area economy, pre-crisis (EUR billion)

Source: ICF compilation of ECB data. Credit for consumption vis-a-vis euro area households reported by MFI excluding ESCB in the euro area (stock)

Note: consumer credit is defined here as loans granted for personal consumption (goods and services), including automotive vehicles, household goods and appliances, travel, as well as overdrafts and credit cards. It excludes mortgage loans.

The share of household consumption financed by credit and the level of indebtedness remained relatively constant over the first decade of the 2000s (see Figure 2). On average, 12.4% of household consumption was financed through consumer credit. The level of consumer indebtedness corresponded to 18.3% of their individual income (wages and salaries), on average.
Figure 2. Share of household consumption financed by credit and consumer indebtedness in the euro area economy, pre-crisis

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

Source: ICF compilation of Eurobarometer 373 data

Statistics on the percentage of consumers in default or arrears (mortgage or rent, utility bills or hire purchase/other loan payment) fluctuated over 2005-2010.  

Figure 3. Percentage of the national population in arrears on financial commitments

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77 Revolving loans and overdrafts, convenience and extended credit card debt, Total, Annualised agreed rate (AAR)/Narrowly defined effective rate (NDER), Households and non-profit institutions serving households (S.14 and S.15), New business.
Incidence rates of personal loans

There are no hard data on the prevalence of personal loans in the EU. However, the Eurobarometer 373 (from 2011) indicates the share of respondents with a personal loan, including those acquired in the past five years. This allows calculation of the share of respondents that acquired a personal loan between 2006 and 2011 and the share that had/did not have a personal loan. This is shown in Figure 3, with incidence rates in 2006 ranging from 2% in Italy to 21% in Denmark.

Figure 4. Estimated share of EU citizens with a personal loan in 2006

Non-instalment type credit (revolving credit)

For non-instalment type credit little hard data is available. However, specifically for credit card data there are estimates for 2006 on the basis of the 2011 data and the share of respondents that acquired one between 2006 and 2011, making it possible to derive the share of consumers that already had a credit card. The data show large discrepancies in the estimated number of citizens with a credit card across the EU, ranging from 5% in Hungary to 69% in Luxembourg.
Figure 5. Estimated share of EU citizens with a credit card in 2006

Source: ICF compilation of Eurobarometer 373 data

Again, while there are no hard data on the total number of credit cards available, the wider trend can be seen from the total number of payment cards in circulation in the EU (see Figure 6). It shows strong growth of the total number of cards over the period 2000-2010, also – importantly – influenced by enlargement in 2004 and 2008.

Figure 6. Total number of payment cards 2000-2010

Source: ICF compilation of ECB PSS: Payments and Settlement Systems Statistics

**Interest rates**
In 2008, the average interest rate in the Eurozone for consumer credit was 8.9% per year. This interest rate had been fairly stable since 2003, always hovering around 8%. Only after the financial crisis did the average interest rate slowly go down, to around 6% in 2019.\(^{80}\) The annual interest rate for revolving loans and overdrafts, convenience and extended credit card debt\(^{81}\) averaged 10.6% in 2008.\(^{82}\)

**Cross-border dimension**

The Special Eurobarometer 373 shed some light on the *cross-border dimension of financial services*.\(^{83}\) It captured retail financial services and, while data were gathered in September 2011, it is the closest approximation of the baseline. It revealed that a rounded 1% of consumers acquired a credit card in another Member State, compared to 0% for personal loans. The share of respondents that considered acquiring a credit card in another country amounted to 3%, and 2% for personal loans.

**Consumer trends and barriers around the time of the entry into force of the CCD in 2010**

The years 2002-2008 leading up to the adoption of the CCD in 2008 showed a number of process barriers to the functioning of the existing Directive 87/102/EEC. These included:\(^{84}\)

- Increase in the types of credit used by consumers, leading to a wider concept of ‘consumer credit’ not captured by existing legislation at EU and national level;
- Perception of inadequate protection of consumers in the existing legislative framework, which prompted Member States to considered adopting more stringent measures nationally;
- Distortion of competition between creditors in the internal market as a result of different protection levels;
- Limitations to the acquisition of cross-border credit;
- Insufficient transparency of financial services;
- Insufficient remedies available;
- Insufficient levels of EU-wide protection, with 70% of consumers in a 2001 Eurobarometer expressing interest in more regulatory harmonisation.

A closer look at the perceptions and views of consumers yields a wide range of differences, highlighting a very fragmented EU-wide market. Special Eurobarometer 373 showed that, in 2011, 78% of respondents who acquired a personal loan in the five years before had received written information about the product. In terms of product comparison, 57% of those getting a personal loan had compared several products before making a decision, while 42% took the first product outright. This again masks substantial differences, ranging from 82% of respondents in Bulgaria comparing products, 77% in Italy and Greece and only 32% in Denmark and 35% in Cyprus. For credit cards, on average 46% of respondents compared products while 52% did not, ranging from 71% in Greece to 20% in Portugal.

At the time, 85% of consumers indicated that they had never had a problem with a financial product or service, while 7% had a problem with the product itself in their own Member State, 5% with the provider in their own Member State, 1% with the product in another Member State, and less than 0.5% with a provider in another Member State. Of those who had a problem, 54% complained to the product provider, 16% complained to an intermediary or advisor, 7% to a consumer rights protection association, 4% to an alternative dispute resolution (ADR) body or ombudsperson, 3% initiated legal

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\(^{79}\) Loans for consumption excluding revolving loans and overdrafts, convenience and extended credit card debt, Total, Annual percentage rate of charge (APR), Households and non-profit institutions serving households (S.14 and S.15), New business.

\(^{80}\) ECB Statistical Data Warehouse, Interest rates on loans to households.

\(^{81}\) Revolving loans and overdrafts, convenience and extended credit card debt, Total, Annualised agreed rate (AAR)/Narrowly defined effective rate (NDER), Households and non-profit institutions serving households (S.14 and S.15), New business.

\(^{82}\) ECB Statistical Data Warehouse, Interest rates on loans to households.

\(^{83}\) Special Eurobarometer 373, 2011.

\(^{84}\) COM (2002) 443
proceedings. 27% did not complain, while 7% only complained to friends or family.\textsuperscript{85} The share of those that did not complain varied considerably, from 62% in Lithuania, 57% in Estonia and 52% in Poland to 12% in Ireland and 8% in Malta. Respondents in the UK were more likely to contact an ADR service or ombuds person, while respondents from Cyprus and Germany were more likely to initiate legal proceedings.

The main barriers to purchasing financial products cross-border suggested a lack of demand, as well as rights-related elements, including awareness, perception of complexity, cost, know-how and overall concerns or worries (see Figure 7). These figures mask substantial differences. For example, 21% of respondents from Italy cited the perceived need as a reason for not purchasing cross-border, compared to 51% in Slovenia. A lack of clear information mentioned by 9% of respondents in Poland but 32% in Bulgaria. Language barriers were cited by only 4% of those in Malta and Luxembourg and 27% in France. Only 7% of respondents in Cyprus considered the process complex, compared to 26% in Denmark. Worries about fraud or crime were cited by 28% of respondents from Germany and Austria, but only 3% of those from Lithuania, Portugal and Romania. Lower levels of consumer protection were noted by 15% of those in Sweden and 0% in Estonia, Greece and Poland. This figure is particularly interesting as it may say something about consumer perceptions of the functioning of their own financial market (vis-à-vis other countries). Finally, outright refusal was mentioned by a rounded 0% of respondents in Estonia and was 3% or lower in all countries except Luxembourg (5%) and Austria (4%). This might indicate that some respondents may have tried and failed to purchase financial products cross-border at that time.

\textit{Figure 7. Main barriers to purchasing financial products cross-border}

\begin{figure}[h]
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\includegraphics[width=\textwidth]{figure7.png}
\caption{Main barriers to purchasing financial products cross-border}
\end{figure}

\textit{Source: ICF compilation}

\subsection*{2.2.2 The consumer credit sector 2008-2018}

This section describes the current situation in the consumer credit sector. It focuses particularly on the functioning of the sector in the EU and the protection of consumers, including how the sector has evolved since the financial crisis. It also includes a brief summary of the relevant policy and legal framework.

\textbf{Consumer credit}

After almost a decade of marked growth in the volume of consumer credit, the 2008 financial crisis began a period of contraction that lasted until 2014. The volume of credit

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\textsuperscript{85} Special Eurobarometer 373, 2011. Please note that multiple answers are possible and therefore the sum of the percentages quoted exceed 100%.
has since recovered, with annual growth figures above 5% in each of the last three years (see Figure 10).

**Figure 8. Consumer credit outstanding amounts and (below) volumes of credit in the euro area economy, post-crisis (EUR billion)**

![Graph showing consumer credit outstanding amounts and volumes of credit in the euro area economy, post-crisis.](image)

**Source:** ICF compilation

The total volume of credit decreased rapidly from the beginning of the crisis, becoming negative from 2009.

The level of total consumer indebtedness adjusted within the following years and shows decreasing trends. Nevertheless, despite the financial crisis, consumer indebtedness remained higher than at the beginning of the 2000s.

**Figure 9. Share of household consumption financed by credit and consumer indebtedness in the euro area economy, post-crisis**

![Graph showing share of household consumption financed by credit and consumer indebtedness in the euro area economy, post-crisis.](image)

During the crisis, banks drastically reduced the amount of credit given. Thus, the outstanding amount of credit gradually decreased (as older credit still had to be repaid – and generally was repaid). For this reason, the level of indebtedness decreased as well.
Source: ICF compilation

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

Similar to the decreasing consumer credit outstanding amounts, consumer indebtedness and the share of household consumption financed by consumer credit showed a decreasing trend over time.

While personal loans saw some growth between 2016 and 2017, credit for the financing of private vehicles has been on a downward trend since 2015 as illustrated in Figure 10.

Figure 10. Average annual growth rate of credit in % for personal consumption in the Eurozone (2008–2019) and financing of vehicles for private use (2012–2017)

![Average annual growth rate of credit in % for personal consumption in the Eurozone (2008–2019) and financing of vehicles for private use (2012–2017)](image)


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

**Interest rates**

Figure 11 shows that consumer credit and revolving credit interest rates have gradually dropped since 2008.
Figure 11. Interest rates for consumer credit in the Eurozone, 2008–2019


Note: *data on revolving credit and overdrafts not available for 2008-2010.

Net consumer credit remains the most important type of credit. Although not necessarily representative of the whole sector, 2018 figures provided by the European federation of consumer credit providers (Eurofinas) show that all consumer credit (personal loans and automotive financing for private use) represented 70% of total credit granted in 2017, with personal loans (including revolving credit) representing 47% and automotive financing for private use accounting for 23%. There are no ECB data on the total volume of credit for each of these sectors, nor any indications of the approximate share of each of these credit types. Based on this evaluation’s estimates of approximately 71.6 million personal loans in 2017 (47%), the total number of loans for consumption are 107 million, with car loans at 35.2 million.

There are no comparable data on the numbers of EU citizens with a personal loan, but incidence rates show that, in 2016, the share of EU citizens with a personal loan was around 11%, down from 13% in 2011 (see Figure 12).

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87 Excludes new loans granted to finance cars for business use and commercial vehicles, as well as industrial credit and mortgages.
88 The study estimates that the number of personal loans in 2017 was 71.6 million, which is equivalent to 47%. This would mean that all consumer credit (100%) is 107 million, of which personal loans are the largest group, at 71.6 million, followed by car loans at 35 million, based on the percentages provided by Eurofinas figures (47% of 70% being equal to 67% for consumer consumption, with the remainder for car loans).
89 European Commission, 2016b.
Figure 12. Estimated share of EU citizens with a personal loan in 2011 and 2016

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

Based on EU population data, in 2018 there were an estimated 59.8 million EU citizens with a personal loan, and a total number of personal loans in the EU of 71.8 million.

Revolving credit (credit cards)

The offer and demand for each of the products comprising consumer credit varies across countries, but within the category of personal loans, EU-level data indicate that revolving credit is the largest category. Since 2012, revolving credit represented around half of the credit for personal loans granted by Eurofinas members, while direct personal loans accounted for 35%, and non-automotive credit at the point of sale for approximately 15%.

The numbers of consumers opting for revolving credit has increased slightly since 2011, with 43% of Europeans having a credit card in 2016 (three percentage points (p.p.) higher than in 2011), compared to 11% who had a personal loan (2 p.p. lower than in 2011). The share of EU citizens with a credit card has risen by 3% over the period 2011-2016, according to Eurobarometer figures (see Figure 13).

Figure 13. Estimated share of EU citizens with a credit card in 2011 and 2016

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90 Based on the EU population older than 15 years, and on the assumption that the share of EU citizens with a personal loan is still unchanged at 13%.
91 Based on an estimate of an average of 1.2 loans per EU citizen who has a loan.
92 Eurofinas, 2017.
Figure 14 shows that the total number of payment cards has gradually increased in the EU, going from 474 million in 2010 to 544 million in 2018.

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

Figure 14. Total number of payment cards, 2000-2018

Source: ICF compilation of ECB PS: Payments and Settlement Systems Statistics

There are limited EU-wide data on overdrafts, but data from the UK showed that 19 million people an arranged overdraft in 2017, while 17 million use an unarranged overdraft facility.  

Short-term high cost (STHC) loans

High-cost personal loans are a type of instalment credit that is usually unsecured. High-cost instalment loans - especially payday loans - have warranted particular attention in the EU during the last decade. This type of credit is usually taken by consumers who are hard-pressed to meet their financial needs. The credit amount is relatively small and the initial duration short, although such loans are very likely to be extended over time. Payday loans are a relatively small, high-cost instalment loan that has to be repaid over a short term, or until ‘payday’. Given these characteristics, it can be categorised as an STHC form of credit. Payday loans have existed since the 1990s, being largely restricted to the Nordic countries and the US until the latter part of the 2000s. Since 2008, the provision of payday loans has expanded across the EU and they are now available in many Member States. Although there are no consolidated data (nor estimates), Section 3 and Annex 1 provide some useful pointers.

Loan amounts and duration

There are limited data on the average amounts and duration of personal loans. Data from the Netherlands show that the average personal loan amount is EUR 6,400. In the UK, this is around GBP 7,311 per household, or GBP 3,909 per adult. It should be noted that these figures are typically calculated based on the total outstanding credit and the number of household or adults, and not on the median loan taken out.

No data are available on the average duration of consumer loans.

94 FCA, 2018c.
96 BEUC, 2019.
97 Oswald Stoll [UK], 2019; New Statesman, 2014.
98 16 EU Member States were captured in a recent OECD report examining the provision of STHC credit in a selection of countries, of which 10 reported the presence of this type of credit product (AT, CZ, DE, DK, EE, LV, NL, RO, SK, UK), while six did not (EL, ES, FR, PT, SE, SI); OECD, 2019.
99 Pricewise [NL], 2019.
100 The Money Charity, 2017.
Key digitalisation trends

Digitalisation has expanded rapidly from 2008-2010 to 2018, as evident in various indicators. Firstly, there has been a steady decline in the number of financial institutions, in particular banks, denoting a trend towards fewer points of sales and increased online activity. Similarly, the number of bank branches decreased by 27% from 2008-2018, while the number of bank employees reduced by 14% over 2009-2018.  

Figure 15. Commercial bank branches (per 100,000 adults) in EU-28

Source: World Development Indicators database, 2019

Secondly, online banking penetration in the EU has risen steadily over 2008-2017, as shown below.

Figure 16. Online banking penetration in the EU, 2007-2017, %

Source: Statista, 2019

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101 EBF, 2019.
Even without specific data on the exact trends in consumer credit sales, wider trends in financial services paint a clear picture. One study estimated that for overall sales channels used in financial services, 70% of providers used both online and offline channels, 26% online (desktop, mobile) only and 4% online only via desktop.

Digitalisation in the consumer credit market has seen a significant rise in the development of the fintech market. With a transaction value of EUR 682 billion in the EU in 2018, fintech is expected to grow 13.3% by 2022.\textsuperscript{102} The total value of the P2PL market in Europe reached EUR 3,815.7 million in 2017.\textsuperscript{103}

The first P2PL platform emerged in 2005.\textsuperscript{104} Although the current total is unknown, the sector is substantial, with P2PL comprising more than 50% of the alternative financing market, itself valued at EUR 7.7 billion in 2016 (up from EUR 1.1 billion in 2013). Consumer P2PL is responsible for 33% of the alternative financing market.

P2PL platforms operate in many Member States,\textsuperscript{105} although they represent only a small proportion of the market for consumer credit in the EU. In 2017, the total amount of P2PL in Europe was EUR 3,815.7 million.\textsuperscript{106}

### 2.3 Implementation of the CCD

The CCD has been fully transposed in all Member States, with the only differences emerging from the use of regulatory choices. Table 3 below shows the state of transposition, including whether Member States went beyond the Directive by applying more stringent measures in certain areas or made use of the regulatory choices foreseen in several articles.

The 2014 implementation report showed that a sizeable number of Member States (16)\textsuperscript{107} did not meet the deadline of complying with the CCD and notifying the Commission by 11 June 2010, leading to infringement proceedings. Four Member States initially failed to ensure timely entry into force of the legislation. In the years thereafter all Member States complied and infringements cases were closed.

The analysis of both the transposition and the implementation of the CCD shows that the Directive triggered substantial reform of the consumer credit environment in most Member States. Irrespective of whether or not Member States have had to develop and set up an entire legal framework applicable to the credit market or simply amend their existing legislation, all countries have undergone significant changes to successfully transpose and implement the CCD.

As a full harmonisation Directive, the CCD was transposed (in due course or with delay, depending on the country) in all Member States, with a view to achieving maximum harmonisation. Cyprus, Estonia and Greece appear to have opted for a rather literal transposition of the Directive, applying every single provision verbatim. In other cases, Member States transposed them in an array of substantially different ways (see Annex 5 for more details).

As per the specificities of a full harmonisation Directive, Member States had to maintain or lay down provisions that could not be more or less restrictive than those of the CCD in the fully harmonised areas. In other words, as the principle of full harmonisation pertains to the whole Directive, Member States were left with little room for manoeuvre to transpose the EU instrument. Flexibility was nevertheless given to national lawmakers for nine optional provisions under Article 27(2), offering the possibility for Member States to make

\textsuperscript{102} London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex, 2019.

\textsuperscript{103} London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex, 2019.

\textsuperscript{104} Jørgensen, T., 2018.

\textsuperscript{105} In 2019, the EESC carried out a survey of consumer credit, with half of the respondents confirming that these instruments are used in their Member State (EESC, 2019. Evaluation of the CCD).


\textsuperscript{107} BE; CY; DK; EE; ES; FI; FR; IT; LT; LU; LV; NL; PL; SI; SE and UK.
use of particular regulatory choices. In addition, some provisions, while setting clear objectives, did not specify how these should be achieved. This lack of specifics opens the door to diverse interpretations, allowing Member States to freely implement those objectives.

In addition to making use of regulatory choices, some Member States\textsuperscript{108} went beyond the CCD in areas not covered by the CCD (and where the restrictions in respect of a full harmonisation Directive do not apply). This mainly includes interest rate caps in at least 23 Member States.\textsuperscript{109} A bill for interest rate caps in Romania is currently pending, while wider interest rate caps are under review in Ireland as part of the responsible authority's sector review. No caps exist in Austria, Latvia, Luxembourg, Romania and Sweden. These countries all have interest rate caps that apply to defaults loans only, rather than the interest rates themselves. Further details on other measures applied are described in Annex 5.

\textsuperscript{108} AT, BE, BG, CZ, DK, DE, EE, ES, FI, FR, HR, HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, RO, SI, SK, SE, UK

\textsuperscript{109} BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, FR, IE, IT, LT, MT, NL, PT, SE, SI, SK, UK.
Table 3. **Overview of the implementation of the CCD (part 1)**

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<th>Member States</th>
<th>Transposition going partially beyond the Directive</th>
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*Yes*, *Beyond*, *Partial*
Yes = MS opted for the regulatory choice; Beyond = MS went beyond the scope of the CCD and implemented more stringent rules; Partial = MS only implemented part of a regulatory choice.
Table 4. Overview of the implementation of the CCD (part 2)

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</tr>
</tbody>
</table>

- ☑️ Yes
- ☑️ Beyond
- ☑️ Partial
Yes = MS opted for the regulatory choice; ○ Beyond = MS went beyond the scope of the CCD and implemented more stringent rules; ○ Partial = MS only implemented part of a regulatory choice.

2.3.1 Relevant EU-level case-law

In the area of pre-contractual information, in GT v HS C-38/17 of 5 June 2019, the Court of Justice of the European Union (CJEU) stated that Member State legislation can provide that a loan agreement is not invalid if it is denominated in foreign currency and does not indicate the exchange rate applicable to that sum for the purpose of determining the definitive amount of the loan in foreign currency. At the same time, it stipulates in one of its terms that that rate will be set by the lender in a separate document after the agreement has been concluded, provided that the ‘term is in plain intelligible language, within the meaning of Article 4(2) of Directive 93/13, in that the mechanism for calculating the total amount lent and the exchange rate applicable are indicated transparently, so that a reasonably well-informed and reasonably observant and circumspect consumer may evaluate, on the basis of clear, intelligible criteria, the economic consequences for him of entering into the agreement, including, in particular, the total cost of the loan, or, if it is apparent that the term is not in plain intelligible language.’

The Court reiterates the prerequisite that the exchange rate applicable must be indicated transparently so that a reasonably well-informed and reasonably observant and circumspect consumer may evaluate, on the basis of clear, intelligible criteria, the economic consequences of entering into the agreement. This is confirmed through other case law, such as Andriciuc and Others (C-186/16) or ERSTE Bank Hungary (C-126/17).

In Case C-312/14 of 3 December 2015, the CJEU stated that in a loan agreement such as the one at issue in the main proceedings, the value of the currencies to be taken into account for the calculation of the repayments is not fixed in advance because it is determined on the basis of the sale price of those currencies on the due date of each monthly instalment. It follows ‘subject to verification by the referring court, that foreign exchange transactions effected by a credit institution in the performance of a foreign currency denominated loan agreement such as the one at issue in this case cannot be regarded as investment services, with the result that the institution inter alia is not subject to any obligations to assess the suitability or appropriateness of the service to be provided’.

On pre-contractual information duties and the obligation to check the creditworthiness, in CA Consumer Finance SA v Ingrid Bakkaus and Others C-449/13 of 18 December 2014, the Court confirmed that the creditor ‘has to prove that it has correctly and fully complied with its pre-contractual obligations and, secondly, that the inclusion of a standard term in the credit agreement, whereby the consumer acknowledges that the creditor has fulfilled its obligations, without that term being supported by documents issued by the creditor and supplied to the borrower, cannot be sufficient to prove that the creditor has correctly fulfilled its pre-contractual obligations to provide information, as this undermines the effectiveness of the rights conferred by Directive 2008/48’. The Court also concluded that Article 8(1) of Directive 2008/48 must be interpreted to the effect that, first, it does not preclude the consumer’s CWA from being carried out solely on the basis of information supplied by the consumer, provided that that information is sufficient and that mere declarations by the consumer are also accompanied by supporting evidence and, secondly, that it does not require the creditor to carry out systematic checks of the veracity of the information supplied by the consumer.

The Court also decided that although a creditor is not precluded from providing the consumer with adequate explanations before assessing the financial situation and the needs of that consumer, it may be that the assessment of the consumer’s creditworthiness means that the adequate explanations provided need to be adapted, and that those explanations must be communicated to the consumer in good time before the credit agreement is signed, without requiring a specific document to be drawn up.
Specifically on **CWA,** in Michel Schyns v Belfius Banque SA C-58/18 of 6 June 2019, the Court stated that Directive 2008/48 does not contain any provision regarding the course of action to be taken by the creditor in case of doubt as to the creditworthiness of the consumer. However, the Directive does not preclude a national rule, such as that at issue in this case, which obliges the creditor to refrain from concluding the credit agreement if he cannot reasonably take the view, following the check of the consumer’s creditworthiness, that the consumer will be able to fulfil the obligations arising from the proposed agreement.

In Case C-449/13 of 18 December 2014, the Court stated that it must be found that a creditor’s breach of a vitally important obligation in the context of Directive 2008/48 may be penalised, under national law, by the creditor’s forfeiture of entitlement to interest and charges. The obligation to include in a credit agreement, inter alia, information such as the APR, referred to in Article 10(2)(g) of Directive 2008/48, the number and frequency of payments, in accordance with Article 10(2)(h) of that Directive, and, where applicable, a statement that notarial fees will be payable and the sureties and insurance required, as provided for in Article 10(2)(n) and (o) of the Directive, constitutes such a vitally important obligation.

On **information to be included in credit agreements,** as part of Powszechna Kasa Oszczędności (PKO) Bank Polski S.A. v Jacek Michalski C-632/17 of 28 November 2018, the CJEU ruled that the examination by a national court, of its own motion, of compliance with the requirements which flow from Directive 2008/48 constitutes an appropriate means of achieving the result sought by Article 10. In proceedings like the one at issue in this case (order for payment issued solely on the basis of the examination of the formal validity of the bank ledger excerpt), the national court does not have the means to ensure that the obligations concerning the information to be provided to consumers, within the meaning of Article 10 of Directive 2008/48, have been met. Therefore, Article 10 of Directive 2008/48 must be interpreted as precluding national legislation which permits the issue of such payment order.

Ernst Georg Radlinger and Helena Radlingerová v Finway a.s. C-377/14 of 21 April 2016 touched on the **APR.** The Court pointed out that the improper inclusion in the total amount of the credit of sums which form part of the total cost of credit to the consumer necessarily has the effect of undervaluing the APR, since its calculation depends on the total amount of the credit. It is for the referring court to ascertain whether one or more sums have improperly been included in the total amount of the credit ‘within the meaning of Article 3(1) of Directive 2008/48, since that fact is likely to affect the calculation of the APR and, in consequence, affect the accuracy of the information which the lender must set out, by virtue of Article 10(2) of that Directive’. The Court also stressed that the Member States’ authorities must ensure, when transposing and implementing the Directive, that effective, proportionate and dissuasive penalties are implemented. As the Court has consistently held, where national courts apply domestic law, they are bound to interpret it, so far as possible, in the light of the wording and the purpose of Directive 2008/48 in order to achieve the result sought by the Directive. The Advocate General’s opinion also emphasised that Directive 2008/48 is a full harmonisation measure and it is thus essential that ‘the total amount of credit’ and ‘the sums included in the drawdown’ for the purposes of applying the formula in Annex I are interpreted in the same way throughout the Member States.

On obligations on the **creditor and variable interest rates,** for joint cases Renata Horžić and Siniša Pušić v Privredna banka Zagreb and Božo Prka C-511/15 and C-512/15 of 12 October 2016, the Court concluded that Articles 23 and 30(1) of Directive 2008/48 must be interpreted as not precluding national provisions, such as those at issue in the main proceedings, which require the creditor, on pain of criminal penalties, to comply with obligations concerning variable interest rates in respect of credit agreements existing at the date on which those provisions came into force, since those credit agreements fall...
outside the material scope of that Directive and those obligations do not constitute an implementation of that Directive.

On the right of early repayment, in Lexitor Sp. z o.o v Spółdzielcza Kasa Oszczędnościowo - Kredytowa im. Franciszka Stefczyka and Others C-383/18 from September 2019, the CJEU ruled that Article 16(1) of Directive 2008/48 must be interpreted as meaning that the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer (including those not dependent on the duration of the credit), after three Polish banks had applied a commission where the amount was not dependent on the duration of that agreement as specified in the CCD. The Court referred to the objective of the CCD in guaranteeing a high degree of consumer protection and noted that this would be more limited if a reduction in the total cost of credit were to be dependent on the duration of the credit.

2.4 Intervention logic for the CCD

Figure 16 below presents the intervention logic for the CCD. It served to guide the evaluation process by identifying the general and specific objectives of the Directive and explaining how the obligations contained therein (i.e. content) translated into outputs intended to lead to the desired outcomes and results. The intervention logic also provides an overview of the needs to which the adoption of the CCD responded, the main stakeholders directly or indirectly affected by the Directive, and the external factors that may influence the achievement of long-term results.

The objectives of the CCD, at the time of its drafting, were intended to respond to the main needs addressed by the Directive. Primarily this grew from a realisation that the existing Directive 87/108/EEC had become obsolescent by no longer fully responding to the needs of consumers and leading to reported consumer dissatisfaction with the quality of consumer protection. In addition, the absence of a single credit market meant sub-optimal demand and offer of consumer credit. The different levels of consumer protection standards had led to differences in legislation and lending practices. With changes in the form of new types of credit and the risks for consumers this entails, these factors gave rise to the CCD, which was intended to address these needs.

The main objectives of the CCD - improved consumer protection and the emergence of a well-functioning internal market for consumer credit - are intended to be achieved by the Directive’s provisions (content/inputs). The first objective of improving consumer protection consists of three specific aspects of implementation: to inform consumers about the costs and conditions of the credit they requested, to provide consumers with rights to terminate their contract, and to foster responsible lending among credit providers.

The second objective of fostering the emergence of an internal market for cross-border credit provision has the specific aim of facilitating cross-border access to consumer credit offers and agreements.

The objectives of the CCD are linked to a set of specific provisions that relate to individual articles of the Directive. These include the provision of pre-contractual information (Articles 5 and 6), rules on credit database access (Article 9), definition of the APR (Article 19), introducing rights of withdrawal and early repayment (Articles 14 and 16), and CWA (Article 8). These inputs related to the CCD’s provisions in turn lead to outputs in the form of completing the transposition, the practical application and enforcement of the Directive, and other effects (application to other areas or elements outside the scope of the CCD). These outputs are directly measurable in terms of their transposition or practical application and functioning in Member States.

Flowing from these outputs, two outcomes can be expected. Firstly, enhanced consumer awareness and empowerment through access to clear information, ease of withdrawal from credit agreements and early repayment, and protection from inappropriate practices. Secondly, improved functioning of the internal market for consumer credit, through ease of access to cross-border credit and the establishment of a level playing field between providers.

February 2020
These two outcomes should ultimately result in a high level of protection for consumers, and free movement of credit under optimal conditions for both consumers and credit providers.

Finally, there are several external factors outside the remit of the CCD. This includes changes to the consumer credit market (the growth of e-commerce) and wider digitalisation trends and new developments in financial technology. In addition, the harmonisation through the Directive does not impact the wider socio-economic differences between Member States which explain credit demand and supply, as well as factors such as interest rates. There are also discrepancies in the status, mandate and resources/power of national authorities and enforcement bodies, and consumer associations.
**Evaluation of Directive 2008/48/EC on credit agreements for consumers**

**Figure 17. Intervention logic for the Consumer Credit Directive**

**Directive 2008/48/EC on credit agreements for consumers**

<table>
<thead>
<tr>
<th>Objectives of the CCD</th>
<th>Content (inputs)</th>
<th>Outputs</th>
<th>Outcomes</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improve consumer protection</td>
<td>Information and practices preliminary to the conclusion of the credit agreement</td>
<td>Transposition completed by MS</td>
<td>Consumer awareness and empowerment</td>
<td>Free movement of credit, and takes place under optimum conditions for both parties</td>
</tr>
<tr>
<td>Better inform consumers about the costs and conditions of the credit</td>
<td>Rules on database access</td>
<td>Practical application of the Directive by creditors</td>
<td>Consumers have access to clear information about credit products to help them</td>
<td>High level of consumer protection and confidence</td>
</tr>
<tr>
<td>Provide consumers with rights to terminate the contract</td>
<td>Definition of the Annual Percentage Rate of Charge</td>
<td>Information provided on the APR</td>
<td>Consumers can easily withdraw from consumer credit agreements or repay them early</td>
<td></td>
</tr>
<tr>
<td>Foster responsible lending</td>
<td>Introduction of rights of withdrawal and early repayment</td>
<td>Calculation of the APR</td>
<td>Consumers are protected from inappropriate practices and decisions</td>
<td></td>
</tr>
<tr>
<td>Foster the emergence of a well-functioning internal market for consumer credit</td>
<td>Creditworthiness assessments</td>
<td>Information included in advertising and marketing</td>
<td>Improved functioning of the internal market for consumer credit</td>
<td></td>
</tr>
<tr>
<td>Facilitation of cross-border access to credit offers/agreements</td>
<td><strong>Needs addressed by the CCD</strong></td>
<td>Timeframe for providing pre-contractual information</td>
<td>Providers can engage easily in cross-border credit provision</td>
<td></td>
</tr>
<tr>
<td>Increase in the number of consumer credits and related risks for consumers (e.g. surcharge, insolvency)</td>
<td>Development of new types of credit</td>
<td>Thoroughness of the CWA and information requested from the consumer</td>
<td>Level playing field between providers</td>
<td></td>
</tr>
<tr>
<td>Different level of consumer protection across Member States due to differences in legislation and lending practices</td>
<td>Consumer dissatisfaction with the quality of consumer protection</td>
<td>Application of and information provided on early repayment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Absence of a single credit market in the EU</td>
<td>Obsolescence of Directive 87/108/EEC</td>
<td>Application of and information provided on right of withdrawal</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**External factors**

- Changing consumer credit market (i.e. growth of e-commerce), including digitalisation
- New developments in financial technology
- Socio-economic differences between Member States, which may affect credit demand and supply, as well as interest rates
- Disparities in power/resources between national authorities and enforcement bodies across EU Member States
- Differences in the number and power of consumer associations across EU Member States

**Source:** developed by ICF
3 Study findings

This section presents the key findings for each evaluation question. Further details of the findings in relation to each of the case studies are presented in Annex 1, and other supporting annexes.

3.1 Effectiveness

3.1.1 EQ1 – To what extent has the CCD achieved its objectives? What are the main benefits and drawbacks of the CCD?

The CCD has two overarching objectives. The first is to ensure a high level of consumer protection and the second is to facilitate the emergence of a well-functioning internal market.

Objective 1: Ensuring a high level of consumer protection

Main findings

The objective of ensuring a high level of consumer protection has been partially achieved, with differences observed between the various provisions. Consumers and consumer representatives consider the provisions of the CCD to be helpful and effective, but point to areas for improvement. Credit providers agree that the CCD has led to a high level of consumer protection, although they question the effectiveness of some specific provisions. Nearly all Member State authorities argued that the CCD has been effective in ensuring a high level of consumer protection.

The CCD enabled the development of a specific legal framework to protect consumers, which did not exist in numerous Member States at the time of its introduction. However, several Member States transposed the CCD provisions with additional elements (e.g. interest rate caps), implying that the CCD on its own was not sufficient to reach the highest level of protection and that more stringent measures were needed to improve protection and/or address detrimental practices. These measures often relate to certain national market specificities.

Overall, the CCD has been effective in ensuring a higher level of consumer protection than existed at the time of its introduction in 2008-2010. The majority of stakeholders interviewed\(^1\) considered the CCD effective in ensuring better protection of consumers. Of the consumer associations interviewed, only a slight majority (just over 50%) of respondents considered the CCD effective in this respect, compared to a substantial majority (over 75%) of industry representatives, Member States and enforcement bodies. A majority of respondents to the OPC also considered the CCD effective in this respect.\(^2\) New elements were introduced to the CCD, in particular on pre-contractual information (SECCI) and advertisement, as well as the right of withdrawal and early repayment. These elements have, over time, helped to ensure a higher level of consumer protection. These provisions are considered positive and largely effective by most national authorities, consumer associations and consumers themselves (see Section 3.1.2 on their application in practice, or Sections 3.1.3, 3.1.4 and 3.1.6 for specific provisions). Other areas, such as requirements on the APR, already existed prior to the CCD but were completely harmonised under the Directive, affording a high level of consumer protection across the EU.

While it can therefore be concluded that the CCD has led to a generally high level of consumer protection, its introduction brought regulatory fragmentation, as some Member States went beyond the requirements of the CCD and adopted more stringent measures. This typically followed specific problems with consumer credit in the Member State, such as the introduction of interest rate caps or banning payday loans.

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\(^1\) This includes both those interviewed on the phone and those surveyed.

\(^2\) The total of the respondents to the ‘Specific OPC’ considered all provisions either very or somewhat effective, with the exception of the information to be included in advertising.
The ability of the CCD to fully meet its objective of ensuring a high level of consumer protection has thus been hampered by a number of specific barriers, some of which are outside the current scope of the CCD to address (see Table 5).

Studies from the early 2000s found that consumers expressed a need for further harmonisation (see Section 2.2.1), and this initial barrier has generally been overcome by the CCD, as overall consumer protection standards have gone up.

A key barrier that is inherent to the CCD and that persists today – albeit a reflection of the political choices made by the co-legislators - relates to the Directive’s scope (see EQ7). The restricted scope of the CCD (in comparison to the scope of the Commission’s original proposal) has somewhat reduced the effectiveness of the Directive in terms of consumer protection. The exclusion of other types of credit from the scope of the CCD (Article 2(2)) have also fragmented the framework throughout the EU.

The concept of ‘consumer credit’ in the Directive has generally ensured that many types of credit are covered, although exceptions to the scope, along with digitalisation trends, have meant that some forms of credit fall outside the current definition (or are, at least, subject to debate). This concerns novel forms of credit, such as crowdfunding or P2PL, for instance. This means that this initial barrier has been only partially addressed.

The wording of certain provisions of the Directive has been implemented and interpreted in different ways between the Member States. From a consumer protection perspective, this has limited the full effectiveness of the CCD, as such differences have led to different approaches to consumer protection across the EU in these areas. This is partially due to the CCD itself but also due to the further choices made by Member States at national level in going beyond the Directive.

Insufficient levels of trust in redress chiefly relate to cross-border activity but also mean that the CCD has not fully achieved the objective of boosting consumer protection standards to the highest level. Overall, the CCD has certainly provided better protection than existed prior to its introduction, but benefits have not been maximised.

Finally, there are areas that were not covered at all in the CCD but where Member States nevertheless decided to act. These could be said to be inherent to the CCD, given that such rules were not foreseen at EU level but are ultimately outside its scope of action and thus exogenous to the current Directive.

In many instances, Member States have added elements to their own consumer credit legislation, usually imposing additional requirements on creditors and affording greater protection to consumers. The fact that Member States have felt the need to add such measures may indicate that the CCD was not considered entirely sufficient to ensure a high level of consumer protection, often in view of national specificities. This is particularly relevant in relation to the CCD fostering responsible lending, where Member States have gone beyond the CCD provisions to address specific forms of problematic lending practices (see EQ4). These additional measures have also contributed to regulatory differences across the EU. (See Annex 5 on legal research for more detail on these additional measures.)

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

**Main findings**

Consumer credit is predominantly provided at national level, with a very limited (and stagnant) cross-border market (0.9% of all loans) compared to the baseline. This lack of a cross-border market for consumer credit can be explained by a series of barriers,

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113 European Parliament, 2018; CEPS and ECRI 2015.
114 The provision of pre-contractual information ‘in good time’ as per Article 4, and to present it in a ‘clear, concise and prominent way’ as per Article 5, and the assessment of the creditworthiness of the consumer on the basis of ‘sufficient information’ as per Article 8.
115 All Member States, with the exception of Cyprus and Greece.
several of which are directly linked to the way some of the CCD provisions have been implemented by Member States. However, the evaluation identifies many other barriers related to aspects beyond the provisions of the CCD, including supply and demand.

This objective has been partially achieved due to certain provisions harmonising key aspects of the provision of consumer credit in the EU (the APR, rights of withdrawal and early repayment, SECCI) ensuring a level-playing field between providers and consistent rights for consumers.

Between 2008 and 2019, cross-border household loans remained almost unchanged,\(^\text{116}\) at around 0.9% of all outstanding credit in the Eurozone. The lack of significant changes in these figures suggests that the CCD has had little noticeable impact on cross-border access to credit (see case study 7).\(^\text{117}\) With the exception of consumer associations (whose opinions were divided on whether the CCD has facilitated cross-border access to credit and resulted in increased competition at EU level), all stakeholder groups agreed that the CCD has not triggered a significant increase in cross-border operations or EU-level competition.\(^\text{118}\) Similarly, while national authorities were relatively positive about the impact of the CCD on the level of consumer protection in cross-border operations, the CCD is seen by the vast majority of stakeholders as having had little or no impact in this respect.\(^\text{119}\) The cross-border market for consumer credit in the EU remains small, with little growth in the past decade, and ongoing low offer and demand for these services.\(^\text{120}\) The consumer credit market in the EU remains predominantly national.

The stakeholder opinions described above must nevertheless be weighed against the many other factors that hinder the emergence of an internal market. The lack of an internal market for consumer credit is due in part to the ways in which some of the CCD provisions have been implemented, but is primarily due to the fact that the CCD alone cannot actually achieve this objective because of its limited set of provisions.\(^\text{121}\) It can also be partly attributed to developments in the credit market itself.

Perceptions of distortion of competition between creditors in the internal market due to different protection levels was largely addressed by the CCD in the form of a more level playing field, with the same standards applying across the EU. However, it has come under pressure as new market players are not necessarily following the same standards and requirements (see case study 9).

The concept of credit is itself a barrier, in the sense that new types of credit might not be covered and this uncertainty can have a negative impact on consumers acquiring credit cross-border.

The main barrier in respect of demand is the lack of consumer awareness of cross-border offers of financial products, due to the fact that creditors rarely target consumers in other countries.\(^\text{122}\) Consumers’ lack of knowledge of available redress mechanisms\(^\text{123}\)

\(^\text{116}\) Dropped to 0.8% between 2011 and 2016.
\(^\text{117}\) Interviews with consumer associations, industry, and Member States; survey of creditors; OPC (specific).
\(^\text{118}\) Interviews with consumer associations, industry, and Member States; survey of creditors; OPC (specific).
\(^\text{119}\) Interviews with consumer associations, industry, and Member States; survey of creditors; OPC (specific); OPC (general).
\(^\text{120}\) European Commission, 2016b; Consumer survey; OPC (general).
\(^\text{121}\) This is also covered under EQ11 in terms of the apparent incoherence between this objective and its provisions, and EQ15 in terms of the extent to which this objective can still be considered relevant.
\(^\text{123}\) OPC (general); consumer survey.
in other Member States is a key barrier that creates a perception that such mechanisms are neither available nor sufficient.

The lack of awareness of applicable legislation in other Member States creates a similar obstacle. Indeed, the lack of knowledge of their rights abroad was the second most common obstacle highlighted in the consumer survey.

While creditors reported low demand from consumers for cross-border credit, the evaluation finds that variation between the national regulatory frameworks represents a significant structural barrier to the cross-border provision of consumer credit (see EQ2). This lack of harmonisation of consumer credit rules was cited by several industry representatives as an obstacle. The consumer survey showed a slightly different picture, with a majority of those not seeking cross-border credit because they were unaware of the option to do so, and not because of the different regulatory framework.

Ultimately, legal fragmentation is a key factor hindering the emergence of a fully functioning internal market for consumer credit. The uneven interpretation of the CCD has led to variations in the levels of consumer protection between Member States. However, these limitations are only partially due to the CCD itself. While the regulatory fragmentation is a challenge, the lack of legal clarity should not be attributed exclusively to the CCD, as providers of consumer credit operate in a complex regulatory framework that combines EU and national rules.

Indeed, in addition to this uneven interpretation of the CCD, Member States have introduced additional consumer protection measures beyond those foreseen in the CCD. Enforcement standards also vary (see EQ2). While the evaluation finds that the Directive lacks in clarity and depth in respect of some provisions, uneven application is also due to elements not covered by the CCD, some of which were in the original proposal (see Section 2.1). These elements that were included in the original 2002 proposal and excluded from the 2008 Directive are relevant to various elements of the Directive. One such element is the scope of the Directive, which was broader in the proposal and included surety agreements, agreements free of interest or charges, and overdraft facilities, and had no upper or lower thresholds whatsoever. There was also a more stringent information requirement, which prohibited the negotiation of agreements outside of business premises. The provision on credit databases was also stricter, with their creation being compulsory and having to contain specific types of information.

The proposal also obliged creditors to consult those databases before concluding an agreement and, as such, responsible lending was explicitly covered in the proposal. A clear provision on responsible lending was included in the 2002 proposal. Monitoring and supervision of creditors and credit intermediaries was originally included via compulsory registration, a provision that aimed to ensure compliance with the Directive.

When it comes to uneven implementation, differences can be noted for CWA (see Section 3.1.4), advertising and pre-contractual information (Section 3.1.3). For instance, national approaches to CWA differ substantially between Member States. Concepts such as the provision of information 'in good time' have been implemented in different ways across the EU. On the other hand, the harmonised nature of some of the CCD’s provisions has favoured the emergence of an internal market in other respects.

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124 As far as contractual obligations are concerned, as per Rome I, this is applicable in those cases in which it is the consumer seeking the credit in another Member State, which is considered to be the most common type of cross-border loan.

125 The comparison should be interpreted with caution as a specific option on different regulatory frameworks was not provided.

126 58% replied that they ‘did not think it was possible’.

127 23% replied that they did not seek this type of credit because they were unsure of their rights.

128 Interviews with consumer associations, industry representatives and Member States; survey of creditors; OPC (specific).

129 Survey of creditors.

130 Negative, neutral and reliable data on late payments, identifying consumers and guarantors covering at the least the Member State itself.
The APR, for example, is calculated in a harmonised way across the EU, providing a level playing field for creditors and a useful comparison tool for consumers. The EU-wide introduction of the rights of withdrawal and early repayment have also contributed to providing a level playing field for credit providers, as well as to increased consumer protection. This has been confirmed by the OPC and the stakeholder interviews, which confirmed that these provisions were most valued by all respondents (see Section 3.1.6).

Other barriers to consumer interest in cross-border credit include language and cultural barriers and geographical restrictions imposed by credit providers. These latter barriers may be used by providers to adapt to the geographical restrictions they face. Indeed, if providing credit cross-border is expected to raise additional adaptation costs of the products, then providers may restrict the provision to their own Member State. Such restrictions could include the requirement imposed by providers on consumers wishing to obtain a credit from a lender based in another Member State to provide a national ID or social security number, address, telephone number or tax declaration as a prerequisite for the transaction. This was corroborated by the mystery shopping exercise, in which it proved impossible to obtain cross-border credit. Lack of language skills was mentioned by 14% of respondents to the consumer survey as a reason for not seeking credit from a provider in another Member State.

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

Main findings
Overall, the CCD has worked well in practice, despite encountering several obstacles limiting its effectiveness. These obstacles include issues inherent to the Directive (its scope, the way certain provisions are drafted so as to allow a certain discretion to Member States in their implementation), as well as external factors (such as digitalisation).

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

Legal clarity has improved following the entry into force of the CCD and the subsequent degree of regulatory harmonisation. However, the numbers and types of case-law indicate that some provisions have created fragmentation, uncertainty and a lack of legal clarity.

Legal clarity
Consumer credit legislation in the EU remains very fragmented, limiting the impact of the CCD on legal clarity. This fragmentation is due to how the CCD has been implemented by Member States but also by aspects not covered by the CCD which have been regulated differently across the EU. The situation presents a significant obstacle to the development of a cross-border market for consumer credit and ultimately prevents it from creating a well-functioning internal market.

Different interpretations of the CCD provisions have similarly contributed to regulatory differences between Member States. These differences are rooted in the broad discretion allowed by Article 5(1) and Article 8(1) (see EQ3 and EQ4). Nevertheless, compared to the baseline, the CCD has managed to improve legal clarity in respect of most

131 Interviews with consumer associations; OPC (general).
132 See case study 7 (Cross-border access to credit) for more details.
133 See EQ1.
requirements on the right of withdrawal, right of early repayment, SECCI, the APR and advertisement. CWAs remain particularly problematic, however.

In order to improve consumer protection across the EU and foster the emergence of a well-functioning internal market for consumer credit, the proposal presented by the European Commission in 2005 sought to improve legal clarity of the EU legislative framework in the area of consumer credit through a set of key provisions. To achieve this, the Commission proposed to recast the three Directives on consumer credit (Directive 87/102, Directive 90/88/CE and Directive 98/7/CE). This objective was reflected in Article 1 of the adopted version, which sets forth the objective of providing a framework for certain obligations linked to agreements covering credit for consumers.\(^\text{134}\) The CCD has partially achieved this objective, as it has increased the level of harmonisation in the aspects covered (e.g. calculation of the APR, the rights of withdrawal and of early repayment, certain standardisation of advertising and pre-contractual information) (see EQ1).

Despite these improvements, there are indications that legal clarity has not improved in all areas since the adoption of the CCD. Very few stakeholders (chiefly those representing industry and consumers) believe that the CCD has brought more legal clarity.\(^\text{135}\) Credit providers stated that the lack of clarity in respect of their obligations is the second most important obstacle they face in complying with consumer credit legislation.\(^\text{136}\)

This lack of legal clarity should not be attributed exclusively to the CCD, as providers of consumer credit operate in a complex regulatory framework that combines EU and national rules. However, the discretion left to Member States (due to the limited scope of application and the high number of regulatory choices),\(^\text{137}\) combined with the imprecise wording of some provisions, has limited the ability of the CCD to achieve legal clarity and led to uneven implementation and enforcement of the CCD across Member States.\(^\text{138}\)

Both the desk research and stakeholders suggest that the ambiguity of some of the definitions and terms included in the CCD has limited its impact on legal clarity.\(^\text{139}\) It is similarly evident in some of the most relevant CJEU case-law, with national courts often requesting support in interpreting the specific obligations under the CCD, particularly the provisions relating to information in advertising and at pre-contractual stage.\(^\text{140}\) One of the most striking examples of a term posing problems for credit providers is the provision of information ‘in good time’. In addition, this study found that the definitions of ‘creditor’ and ‘credit provider’ could usefully be clarified.\(^\text{141}\)

Examples of different interpretation or implementation of the CCD by Member States have been found across all key aspects examined. In most cases, Member States have decided to impose stricter obligations on credit providers by adopting additional requirements for elements of the CCD that have not been harmonised. Some of the most relevant obligations are:

\(^\text{134}\) COM (2005) 483 final/2.

\(^\text{135}\) OPC (specific).

\(^\text{136}\) See case study 8 (Thresholds and scope) for further details on the scope of application of the CCD. A detailed analysis of the regulatory choices used by Member States is included in Annex 5 (Legal analysis).

\(^\text{137}\) Legal analysis; interviews with consumer associations, interview representatives, Member States and enforcement authorities.

\(^\text{138}\) See case study 2 (Pre-contractual information) and case study 8 (Thresholds and scope) for more details on issues relating to definitions or terms.
• Information to be provided in advertising: rules on the type and size of font in the advertisement, adaptation of the content to visually impaired consumers, or additional information to be provided, including (in some cases) a message warning consumers that borrowing money also costs money.

• Pre-contractual information: obligation for credit providers to provide additional information and advice, such as explaining the advantages and disadvantages of the contract or presenting a benchmark on interest rates.

• CWA: definition of the information that has to be considered or documents that consumers need to provide, or obligation to consult a national credit database.

• Right of withdrawal: ban on credit providers imposing sanctions for withdrawal, reimbursement of any fees paid by the consumer to obtain the credit, specific rules for the right of withdrawal from linked credit agreements, or extending the validity of the right of withdrawal for unlimited periods of time (in certain cases).

• Right of early repayment: obligation on consumers to inform the creditor of their intention to repay early, right of consumers to a refund of part of the amount of the charges, surrender of the right to compensation if the credit agreement did not contain all of the information, or the establishment of the right of consumers to receive written information about the consequences of early repayment.

• Some Member States have decided to regulate additional aspects of the credit provision beyond those covered by the CCD (see EQ7).

It is clear that consumer credit legislation in the EU remains very fragmented, limiting the impact of the CCD on legal clarity. This presents a significant obstacle to the development of a cross-border market for consumer credit and ultimately prevents it from creating a well-functioning internal market.

Level of compliance

Some stakeholders, in particular consumer associations, enforcement authorities and consumers themselves, have identified compliance issues in relation to all provisions of the CCD. The use of information in advertising that is not ‘clear, concise and prominent’ or does not include a representative example of the APR are the most commonly identified breaches of the CCD’s provisions. Poor CWAs and the provision of pre-contractual information without using the SECCI or without providing individualised information were also identified by stakeholders, albeit to a lesser extent.

Stakeholders noted some issues of poor communication of the right of withdrawal and non-compliance with the 14-day period, and the amount to be repaid in compensation to creditors (right of early repayment).

There is no comprehensive data on sector compliance itself. Based on the Consumer Market Scoreboards from 2010 and 2017, the share of consumers who experienced at least one problem went down from 14% to 8%, which is an indication that the CCD has been effective in increasing compliance with its provisions.

However, a 2011 consumer credit sweep showed that across the then EU-27, Norway and Iceland, only 30% of over 560 websites passed the sweep compliance test. A variety of problems were found for 61% of financial institutions covered and for 87% of

142 See case study 7 (Cross-border access to credit) for more details.
143 See EQ1.
144 Stakeholder consultation, interviews with enforcement bodies and Member States.
145 Survey with consumer association; mystery shopping (the mystery shopping exercise is based on a restricted sample so the findings should be interpreted with caution).
146 London Economics, 2014; London Economics, 2013; EBA, 2019; Consumer survey (20% of the respondents who contracted a loan within the past three years did not receive the SECCI before signing their contract, and less than 30% were not informed of the value of the APR).
147 European Commission, 2012.
intermediary websites,\textsuperscript{148} mostly relating to the omission of information in advertising or the contract, as well as misleading representation of the costs. It appears that non-compliance among credit intermediaries is higher than for traditional banks. For other non-traditional credit providers, it is estimated that both non-compliance and not acting in the spirit of the law is higher than for traditional credit providers, though there are no hard data. Stakeholders consulted did not provide data on compliance of creditors with the CCD, though the problems cited by consumer associations and Member States authorities on the various provisions (see relevant sub-sections 3.13, 3.1.4 and 3.1.6) do indirectly highlight their views. Of the seven enforcement authorities that expressed themselves in the evaluation’s survey, four each marked overall compliance as ‘good’ and two as ‘average’ and one as ‘fair’. Seven indicated marketing and advertisement to be problematic with regards to compliance, five found creditworthiness assessments to be problematic, while four considered this to be the case for pre-contractual information and one for the right of withdrawal.

Although there are no data on the number of non-compliant banks, it can be estimated based on the number of consumers affected by problems (see EQ8), and the number of banks in the EU for 2018. It is assumed that the share of problems are equally divided among banks and Member States. A range has been estimated for key provisions where consumers indicated providers were not compliant. While the range of credit providers that are not compliant cannot be estimated on the basis of the data at hand, Figure 18 provides approximations of the possible range of non-compliance. The upper bound indicates the potential share of banks implicated, based on the share of consumers that had issues with the various provisions. The lower bound indicates the share of problems ultimately unresolved, giving an indication of compliance. The share of compliance is expected to be found in this range, though there are no data or indications to further approximate compliance. For pre-contractual information, for example, 18% of consumers indicated that they had not received the SECCI and 27% did not receive a simulation, but the actual figure of non-compliance is expected to be lower, as not all of these consumers will be fully aware of the information received or may have considered the credit provider non-compliant even if this were not actually the case.

This evaluation generally finds that compliance is high, and Member State authorities and enforcement bodies generally agreed.

\textit{Figure 18. Estimated share of non-compliance among banks}

Source: ICF elaboration of ICF consumer survey data on incidence rates of problems.

\textsuperscript{148} The sweep points out that enforcement authorities do not consistently select the websites randomly, focusing at times on websites known to be problematic.
Note: the minimum has been calculated on the basis of the share of consumers experiencing problems, who registered complaints and who’s problems were not resolved. The maximum is calculated based on the share of consumers who experienced problems.

Enforcement, remedies and sanctions

Vast differences in enforcement and remedy practices are evident across the EU. Judicial remedies are available to consumers in different forms. At the same time, specific sanctions also differ, with Member States applying monetary and/or criminal sanctions, as well other administrative sanctions, for breaches of the CCD.

Enforcement

A variety of authorities are involved in enforcement. In most Member States, the enforcement authority is either the financial supervisory authority, the consumer protection body or the national bank. A small majority of Member States have only one enforcement body responsible for compliance with the CCD, while almost half have appointed several bodies\(^{149}\) to ensure correct implementation of the different aspects of the Directive.

For instance, the CWA requirements stemming from the CCD are generally enforced by the consumer authority (for all creditors in BE, EE, EL, FR, IS, LV, PL; for non-bank lenders in DK, SE, SI and regional ES authorities), the financial supervisory authority (for all creditors in EE, FR, NL, PL, UK and for bank lenders in DK, SE) or the national central bank (for all lenders in CY, CZ, ES, HU, IE, IT, LT, PT, RO, SK and for bank lenders in ES, SI).

Enforcement effectiveness

Member States do not clearly distinguish enforcement approaches for the CCD from other relevant consumer protection legislation. In addition, the evaluation did not obtain data on enforcement or complaints. Effectiveness of enforcement is therefore mostly based on consumer perceptions of issues with the right of withdrawal and right of early repayment, pre-contractual information and advertisement, CWA and the APR. There is a disincentive in highlighting potential problems in enforcement as it could exacerbate existing problems by showing systemic weaknesses or blind spots.

There are issues with enforcement, in particular different standards across the EU. These can be due to division of responsibilities in the Member State, likelihood of non-compliance being detected and followed up, breadth of sanctions, and resources available at Member State level.

Annual inspections are carried out in two Member States,\(^{150}\) with random inspections taking place in others.\(^{151}\) These bodies can also carry out specific actions, such as consumer sweeps, inspections or investigations and reports.

87% of the respondents to the EESC survey found that the CCD had been fully and effectively enforced. However the fact that within one Member State several authorities can be responsible for the supervision and enforcement of the CCD (with different authorities being responsible depending on whether the creditor qualifies as a bank or not) was noted by stakeholders in the OPC, who pointed out that this may impact the level-playing field between different categories of providers and the consistency of enforcement.

In addition, the EESC survey highlighted that 30% of respondents found that supervising authorities do not have sufficient resources, staff and powers to ensure effective

\(^{149}\) CZ, EE, EL, ES, FI, HR, IE, IT, PL, SI, SE.
\(^{150}\) BE, RO.
\(^{151}\) BG, FI, PL, PT, SK.
enforcement of the Directive. The report notes, however, that this situation varies substantially between Member States.

**Recourse and remedies**

The consumer is able to pursue remedies against the creditor where there are problems with the credit agreement. The fact that such remedies are available point to the fact that the CCD has led to a level playing field and higher standards of consumer protection compared to the baseline. However, there are a number of limitations to the effectiveness of remedies. Firstly, consumer behaviour influences the extent to which consumers will see problems resolved (whether consumers complain and what avenues of recourse they opt for). Secondly, it depends on the specific structures made available to consumers by national authorities, together with their general level of accessibility.

The extent and type of remedies available are determined by the Member States themselves. The likelihood of consumers needing or requesting remedies depends on the scale of the problems they encounter. Based on the estimated share of non-compliance (see Figure 18), issues most often relate to areas where they could not exercise their rights, in particular the right of withdrawal and disputes over early repayment, or not having received all or sufficient information. The London Economics study showed that in cases of complaint, 31% complained only to the lender, while 62% made no complaint.\(^{152}\) This evaluation's survey showed that 26% of those experiencing issues did not make any complaint, while 50% took it to the lender and 23% to a third party.\(^{153}\) According to Eurobarometer 373 (2011), over half of consumers reported their issue to the product provider, following by an intermediary or advisor (16%), consumer rights protection association (7%) ADR body or ombudsperson (4%), legal proceedings (3%), while 27% did not complain and 7% only complained to friends or family.\(^{154}\)

The recourse avenue of first resort, therefore, appears to be the lender itself, showing a fairly high degree of awareness of the possible avenues for processing complaints and pursuing remedies. This avenue is followed by resorting to third parties, including consumer associations, intermediaries and ombudsmen, and, finally, more direct forms of complaints, such as ADR or legal proceedings.

Remedies available to consumers include the annulation of contracts that are not compliant with the CCD (Belgium), reimbursement of consumers for amounts that were wrongly collected (Italy), the loss of the right to interest for the creditor (France) or the suspension of advertising campaigns (Romania).

**Sanctions**

Criminal sanctions are found in Austria, Belgium, Denmark, Finland, France, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Poland, Slovenia and the UK. In Belgium, for example, the failure to provide consumers with the SECCI can be punished with a one-year prison sentence. In Croatia, Latvia and Poland, misleading information or advertising is a criminal offence, while in Luxembourg, the act of providing credit without the appropriate authorisation is punishable with prison time, as is doorstep selling in spite of the consumer's objection.

Monetary sanctions vary considerably across Member States, with different levels of sanctions according to the seriousness of the infringement. The amounts of the fines range from EUR 26 in Belgium to EUR 1 million in Greece and EUR 5 million in Portugal and the Netherlands. An overview of sanctions is shown in Table 7.

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\(^{152}\) London Economics, 2014.  
\(^{153}\) Consumer survey, 2019.  
\(^{154}\) Eurobarometer 373, 2011.
Table 5.  **Indicative overview of sanctions in certain Member States**

<table>
<thead>
<tr>
<th>Member States</th>
<th>Types of sanctions</th>
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| Belgium       | EUR26 - 100,000 at the highest level  
Prison sentence and removal of licence |
| Bulgaria      | Up to EUR 7,500 |
| Croatia       | EUR 11,000 - 27,000 for legal persons  
EUR 1,300 - 6,700 for natural persons within the legal persons  
3% of total income of the credit institution  
EUR 500 - 2,600 for the management or supervisory board member responsible |
| Czechia       | From EUR 200,000 - 800,000  
Private law penalties, from the invalidity of the contractual clauses on the price of credit to invalidity of a contract as a whole |
| Estonia       | Up to EUR 9,600 (certain infringements) and up to EUR 32,000 (responsible lending infringement) |
| Greece        | Up to EUR 1,000,000 |
| Ireland       | EUR 10,000 at the highest level  
Prison sentence and removal of licence |
| Lithuania     | Up to 5% of the gross annual income of the legal entity |
| Netherlands   | Up to EUR 5,000,000 (or EUR 10,000,000 for repeat offences) |
| Portugal      | Up to EUR 5,000,000 |
| Slovakia      | EUR 3,000 – 7,000 (natural person)  
EUR 150,000 - 700,000 (legal person) |
| Slovenia      | EUR 12,500 and EUR 25,000 for smaller breaches  
EUR 50,000 - 125,000 for serious breaches |
| Spain         | Two or three times the value of the benefit accruing from the infringement  
3% or 5% of the total annual net turnover or between EUR 2,000,000 - 5,000,000 where such percentage is lower than the last mentioned amount |

*Source: ICF, based on responses to the consultation and research carried out*
Six Member States apply the administrative sanction of suspending creditors for a limited period of time, or permanently for repeat offences. A common administrative sanction is the suspension of the creditor’s activity in case of repeat offences, while other measures include the annulation of contracts that are not compliant with the CCD (Belgium), reimbursement of consumers for amounts that were wrongly collected (Italy), loss of the right to interest for the creditor (France) or the suspension of advertising campaigns (Romania).

There is considerable disparity in the types and levels of sanctions used by national authorities when enforcing the CCD. The survey carried out by the EESC shows that 40% of respondents would be in favour of the CCD harmonising these penalties (versus 26% who would be against and 33% who did not express any opinion) so that they are ‘effective proportionate and dissuasive (…), [and] harmonised as far as possible, so as to avoid a dumping effect whereby operators base themselves wherever controls are more lenient and sanctions less severe’.

Administrative complaints and ADR mechanisms are also available in some Member States. Consumers can seek support from institutions such as the consumer ombudsman and other enforcement bodies or consumer associations. These bodies receive official consumer complaints and can handle cases outside of courts. While most enforcement bodies are public authorities that have special competence in the consumer protection area or financial markets, the enforcement bodies in many Member States are the national banks.

3.1.3 EQ3 – Is the Directive – through advertising requirements, pre-contractual information (including SECCI and APR), draft credit agreements and other additional information – ensuring that consumers are effectively provided with accurate, clear, concise, timely and comprehensive information free-of-charge?

Main findings

The practical implementation of the provision on pre-contractual information (Article 5) and the provision on advertising (Article 4) varies between Member States and between providers. Indeed, the wording of certain parts of these provisions, such as the requirement to provide information to the consumer ‘in good time’ (Article 5) and to present it in a ‘clear, concise and prominent manner’ within advertising (Article 4) have led to regulatory fragmentation across the Union.

While the previous section showed relatively high levels of overall compliance, the study estimates lower levels of compliance in relation to pre-contractual information, and consumers still face issues with advertisements.

In relation to Article 4, stakeholder views are split as to the effectiveness of the provision on advertising. Evidence shows that its impact varies depending on the prominence it is given and the media used. Some practices used at the advertising stage, especially in the online environment, can also limit the effectiveness of Article 4.

The pre-contractual information provided to consumers under Article 5 is considered effective by a large majority of stakeholders. However, its degree of effectiveness is impacted by its length, complexity and timing of delivery, as well as the way in which...
it is provided, notably in the online environment. Consumers’ awareness of the SECCI and levels of digital literacy are also important factors to consider.

Overall, the disclosure of information mandated by the Directive is not entirely adapted to all channels used by providers to communicate with consumers.

**Advertising**

Member States and creditors’ associations agreed that all of the required information is provided at the advertising stage in accordance with Article 4 CCD. However, consumer associations raised issues with the provision and presentation of this information. For example, the font size in certain instances was considered to be too small to be considered ‘clear’, while in others important information was included only in footnotes. Another issue that was mentioned is the presentation of unrealistic interest rates, or the presentation of interest rates as if they were the APR. A handful of stakeholders - mostly representing consumers and enforcement bodies - reported cases of non-compliance in relation to incomplete or missing information in advertising, in particular when it comes to the conditions attached to the credit agreement which are either omitted or presented in a misleading way by advertising low or favourable interest rates without indicating the conditions attached.

Overall, views are divided on whether the current requirements are effective to inform consumers: 53% of stakeholders responding to the OPC (mainly consumer organisations and authorities) considered the provisions of Article 4 somewhat effective or very effective while 42% (mainly business representatives) considered it somewhat or very ineffective. A survey carried out by the European Economic and Social Committee (EESC) for its information report on the CCD evaluation shows similar results: 40% of respondents considered that the standard information requirements should be presented differently to be more effective while 53% believed that they were sufficiently clear. Of the individuals responding to the OPC, 44% considered information in advertising to be insufficient and 26% thought it was sufficient, while 13% thought it was too much and 16% did not pay attention to the information.

The effectiveness of the provision on advertising has been somewhat confirmed in the online environment by a recent behavioural study. Those results suggested that the provision of the APR and the representative example in advertising displayed online (as mandated under the CCD) is effective in pushing consumers to compare other offers rather than opt for the first one they see. This implies that the provisions of Article 4 do have a role in raising consumer awareness of the conditions of the credit advertised and in enticin them to compare alternative offers.

The clarity and prominence of information included in advertising is debatable in some cases, as noted by stakeholders (see previous paragraphs). Yet, the display of the information in advertising (framing, colours, fonts, etc.) is recognised as having a strong impact on consumer decision-making. The wording of Article 4 is too vague to ensure that the information is provided consistently and presents all necessary information in a clear and understandable way and without distracting the consumer from what is most relevant. Member States have also gone beyond the requirements of Article 4, either

159 Interviews and surveys of key stakeholders.
160 One consumer association.
161 Three consumer associations.
162 European Commission, 2019; Interviews and surveys of consumer associations and enforcement bodies.
163 INT/884-EESC-2019-01055-00-00-ri-tra - This survey was answered by 30 organisations representing businesses (9), consumers (9), trade unions (2), local, national and regional authorities (9) and legal practitioners (1).
164 European Commission, 2019b;
166 European Commission, 2019; Interviews and surveys of consumer association and Member States.
by mandating additional information that should be provided to the consumers in advertising or by specifying presentation requirements.

Issues have been identified in relation to advertisements for consumer credit aired on television and radio, with important information either shown for a very limited amount of time or spoken very quickly, not giving consumers enough time to process and recall it.\textsuperscript{167} This would suggest the difficulty of Article 4 being consistently effective across all media types.

Information overload is an issue for creditors as it may hinder their ability to provide attractive advertisements and increase their costs, possibly leading to the inclusion of poorer quality information.\textsuperscript{168}

Consumer associations noted that some advertising practices, although compliant, may nevertheless be unclear, incomplete or somewhat misleading for consumers, together with aggressive marketing strategies that could lead consumers to engage in imprudent borrowing (a more detailed discussion can be found in case study 2).\textsuperscript{169} These strategies include methods such as time-limited offers, dynamic pricing, baiting and teaser rates,\textsuperscript{170} and lend themselves well to online sales, which increases their relevance in an increasing digital market.\textsuperscript{171} Indeed, around half of OPC respondents expressed doubts about the effectiveness of the information requirements for advertisements in protecting consumers,\textsuperscript{172} while the effectiveness of this provision is also hindered by low levels of consumer understanding stemming from limited financial literacy and limited experience of financial services.\textsuperscript{173}

These practices can hinder the effectiveness of Article 4 and may lead to consumer detriment. Time-limited offers may increase pressure on consumers to make a rapid decision based on relatively complex information, possibly leading to the choice of non-optimal credit.\textsuperscript{174} This is all the more likely given that this type of credit often targets more vulnerable consumers, in some instances including targeted spamming via SMS and email,\textsuperscript{175} practices that have led Member States to legislate to prohibit their use.\textsuperscript{176} Several of the online mystery shops (17\%) revealed advertising that offered products for a limited amount of time, with the majority found either on comparison websites or on websites accessed via a comparison website.\textsuperscript{177}

Even without a time limit, information may attract consumers and entice them into making a purchase without properly considering their options. This is true of ‘baiting rates’, which may attract consumers with an example that is very low and not applicable to most. The actual repayment rates will be much higher,\textsuperscript{178} shedding doubt on whether the information provided can be considered ‘accurate’. This practice was observed in 40\% of online mystery shops.\textsuperscript{179}

\textsuperscript{167} Interviews and surveys of Member States, creditors and creditor associations.
\textsuperscript{168} London Economics, 2014.
\textsuperscript{169} Surveys and interviews with consumer associations.
\textsuperscript{170} London Economics, VVA and Ipsos, 2016; Surveys and interviews of consumer association.
\textsuperscript{171} Surveys and interviews with Member States and consumer associations.
\textsuperscript{172} OPC (other); Interviews and surveys of consumer associations.
\textsuperscript{173} London Economics, VVA and Ipsos, 2016.
\textsuperscript{174} UK FCA, 2017.
\textsuperscript{175} ASGECO [ES], 2015b.
\textsuperscript{176} Belgium and the Netherlands.
\textsuperscript{177} The mystery shopping exercise is based on a restricted sample so the findings should be interpreted with caution.
\textsuperscript{178} A study conducted by Which? in the UK, revealed that rates for repayment were up to 150\% higher than initially budgeted [Which? [UK], 2019a].
\textsuperscript{179} The mystery shopping exercise is based on a restricted sample so the findings should be interpreted with caution.
Pre-contractual information

Stakeholders acknowledge that the SECCI has had a positive impact on consumer protection by providing them with information in an easily understandable and well-structured format.\(^{180}\) Nearly two-thirds of the organisations responding to the OPC considered the SECCI to be effective. While the majority of responding public authorities (74\%) and consumer associations (65\%) clearly stated that the SECCI was effective in protecting consumers, for industry representatives this was just over half (56\%). Stakeholders also acknowledge, however, that this is true only where consumers properly understand the SECCI content.\(^{181}\) The technicality of the pre-contractual information requires a certain level of legal and financial knowledge. As financial literacy is generally agreed to be quite low,\(^{182}\) the provision on pre-contractual information is less effective in protecting consumers.

68\% of consumers surveyed for this evaluation indicated that they had received the SECCI form, a finding backed up by the mystery shopping exercise, where the SECCI was provided in 74\% of cases.\(^{183}\) 10\% of respondents to the OPC had not received the form, while 26\% were not sure. The fact that not all consumers received the SECCI could be explained by two factors. Firstly, a lack of compliance on the creditors’ side in certain instances (see previous question). Secondly, consumers may not be aware that they should receive the SECCI before the conclusion of the credit and therefore do not notice if they have received it or not. For instance, the survey for this evaluation showed that 29\% of consumers consulted were unaware of the existence of the SECCI before signing the credit offer. A similar figure emerges from the individuals who responded to that question in the OPC. This lack of awareness of a key right granted by the CCD reduces the effectiveness of this provision, as it implies that the consumers concerned do not know that they are entitled to receive it.

The provision of the SECCI is considered by all stakeholders to have increased consumer awareness of their rights and obligations of their loan agreements. However, its length and complexity may create barriers to the proper understanding of the information.\(^{184}\) Indeed, 49\% of individuals who responded to the OPC somewhat or totally agreed that information contained in the SECCI was easy to understand, while 27\% disagreed. 47\% considered it well-presented, while 29\% disagreed. Overall, 75\% of the respondents to the consumer survey found the SECCI helpful or somewhat helpful.

The use of excessively technical language may create confusion and an inability to properly grasp the details of the contract to be signed. In a recent study, consumers rated the understandability of the information at 2.91 out of 10, with 73\% reportedly signing contracts they did not fully understand.\(^{185}\) Different levels of financial literacy among consumers and their (in)ability to understand the information contained in the SECCI because of the way it is drafted can also reduce its effectiveness. Complex documents do not cater to consumers with low levels of financial literacy\(^{186}\) and some struggle. Behavioural studies shows that consumers with relatively low levels of financial literacy have difficulty in understanding key credit information such as interest rates or the APR, for example.\(^{187}\)

The length and amount of pre-contractual information has also been flagged as potentially problematic. In the OPC, opinions from individual respondents were divided

\(^{180}\) OPC (general); Survey of consumers; Interviews and surveys of stakeholders.

\(^{181}\) Surveys and interviews with stakeholders; OPC (specific).

\(^{182}\) London Economics, 2013.

\(^{183}\) Given the small sample size of the mystery shopping (51) and taking into account non-completed and rejected loan requests (7), this should be used as anecdotal evidence only.

\(^{184}\) Surveys and interviews with enforcement authorities, Member States, consumer associations and industry representatives.

\(^{185}\) ADICAE [ES], 2013.

\(^{186}\) Interviews and surveys of consumer associations and creditors associations.

on whether the information was concise (35% thought it was, 36% did not), implying that it may not be fully effective, with the risk of consumers being overloaded with information.

Even where consumers are provided with complete pre-contractual information and have the financial literacy to understand the terms and conditions of the offer, presentation of the information may still entice them to make a poor decision.\textsuperscript{188} Indeed, while lenders are aware of their obligation to inform consumers of the pre-contractual information - with the majority\textsuperscript{189} providing this information in full\textsuperscript{190} - the format in which they do so does not necessarily facilitate consumers’ understanding. This is in part due to the vagueness of the wording of Article 5 that means some lenders may be technically compliant with the provision yet fail to provide information that allows consumers to exercise an informed decision. This is particularly true in the online environment, where providers can use certain techniques in the disclosure of information that can negatively impact consumers’ understanding of credit offers, as demonstrated by behavioural research\textsuperscript{191}. Such techniques include highlighting several elements and hiding others (e.g. the high price of add-ons), the use of non-transparent pricing structures, the placing of information where it may be overlooked by consumers and the presentation of some elements more prominently than others. Creditors can thus bias the transfer of information and influence consumer purchases.

Stakeholders representing consumers and creditors found that the format and length of the SECCI is not well adapted for mobile technology. How information is conveyed is important in pre-contractual information, particularly in the online environment. Given the rise in the number of consumers using online channels, it is debatable whether the CCD provisions on information disclosure are fully adequate to a digital environment.\textsuperscript{192} The table format of the SECCI is not user-friendly on a mobile screen, while lengthy documents can lead consumers to quickly skip through relevant information,\textsuperscript{193} thus defeating its original purpose. In the online environment, it can be provided through a hyperlink, reducing the likelihood that consumers will actually open and read it.\textsuperscript{194} Consumers’ understanding of complex information is not helped by the fact that information is not always provided sufficiently in advance to allow for proper review. In fact, research has shown that most credit agreements could be concluded just a few days after being requested. Some credit can even be released in a few minutes.\textsuperscript{195} This is used as a marketing tool to entice consumers to a swift and efficient conclusion of a contract.\textsuperscript{196} Indeed, speed of delivery is both a selling point for creditors and an element that consumers consider when choosing between credit options.\textsuperscript{197} The wording of Article 5 of the CCD allows for a broad interpretation of the amount of time to be granted to consumers before they sign an agreement. The wording can also make a difference, in particular whether information is to be made available to consumers (assuming a more passive role on the part of lenders) or provided to consumers (implying a more active role for lenders).

Short amounts of time mean that the SECCI has only partially contributed to enhancing the comparability of credit options. The OPC showed that 44% of individual respondents

\textsuperscript{188} ECRI, 2015; Luzak, J. and Junuzović M., 2019.
\textsuperscript{189} Instances of non-compliance have been identified and include the failure to provide information via the SECCI, the failure to provide information on the calculation of the APR, the use of abusive contractual terms and the failure to inform consumers of their right to withdraw from the contract.
\textsuperscript{190} London Economics, 2014; Interviews and surveys of enforcement authorities, Member States, consumer associations and industry representatives.
\textsuperscript{191} London Economics Europe, VVA Europe, Ipsos NV, ConPolicy, Timelex, 2019; EBA, 2019; ECRI, 2015.
\textsuperscript{192} El Economista [ES], 2019; Surveys and interviews with creditors association and Member States.
\textsuperscript{193} European Commission, 2019; Interviews and surveys of creditors associations.
\textsuperscript{194} European Commission, 2019; Interviews and surveys of creditors associations.
\textsuperscript{195} Mystery shopping.
\textsuperscript{196} FSUG, 2019
\textsuperscript{197} NIBUD, 2018.
did not consider they had sufficient time to read and fully understand pre-contractual information.\textsuperscript{198} The consumer survey shows that 40\% of respondents received it on the day they signed the contract. Some Member States have tried to remedy this by either providing guidance\textsuperscript{199} or including more details in the transposing legislation.\textsuperscript{200}

From the perspective of creditors, the provision of pre-contractual information has led to increased transparency of available offers, thus positively impacting competition and engaging creditors on a more level playing field (more detail is provided in case study 1). While there are no hard data, this follows from the fact that similar rules applying to the presentation and content of information invariably boost competition in attracting consumers.

3.1.4 EQ4 --To what extent have the provision of the APR and the performance of a CWA contributed to helping consumers find the credit best suited to their needs and avoid over-indebtedness?

Main findings

The APR is generally perceived as a useful tool to help consumers to find the credit best suited to their needs. However, its potential is hampered by a lack of awareness and understanding of the APR among consumers. This is particularly pertinent in light of low levels of financial literacy among certain categories of consumers.

The obligation on providers to assess the creditworthiness of consumers is applied in various ways by Member States and providers. This patchwork implementation of Article 8 of the CCD renders the assessment of its effectiveness difficult. In the face of digitalisation, novel types of data are used by providers to assess the creditworthiness of consumers, raising questions of proportionality and added value, particularly as the relevant provision in the CCD does not specify which data should be used in this process.

Stakeholder views are divided on whether the two provisions are effective in helping consumers to find the credit best suited to their needs and prevent over-indebtedness. The fact that several Member States have introduced specific measures, such as interest caps or product governance rules (not foreseen in the CCD) to curb problematic lending practices, would suggest that the provisions on the APR and the CWA obligations are not sufficient on their own to protect consumers from poor credit decisions.

Provision on the APR

The provision on the APR was introduced to provide a numerical and comparable representation of the cost of credit to consumers,\textsuperscript{201} although it should be noted that it preceded the current CCD and existed already in the previous Directive. Calculation of the APR is entirely harmonised, with the formula implemented uniformly.

The APR is used by consumers to select their credit offer: 90\% of the individuals who replied to the OPC considered the APR somewhat or very important in their decision.

75\% of stakeholders responding to the OPC consider the APR effective, while 60\% of respondents to the EESC survey believe that it enables consumers to compare credit offers across the market. However stakeholders (across all groups) acknowledge that

\textsuperscript{198} OPC, 2019
\textsuperscript{199} UK.
\textsuperscript{200} PL and RO.
\textsuperscript{201} Recital 19 CCD.
the APR, both as a formula and as a tool, is difficult to understand, especially in light of low levels of financial literacy. According to the consumer survey, up to one-quarter of consumers found the APR calculation unhelpful, while three-quarters found it helpful or very helpful. In the same survey, 40% of consumers either did not know or did not understand the APR.

This lack of awareness and understanding by consumers shows an important limitation of a tool considered (potentially) helpful. Indeed, when correctly conveyed and understood, the APR works well as a comparison tool and helps consumers to choose the credit most appropriate to their needs. This has been established through observations of consumer behaviour and confirmed by stakeholders. (See case study 5 for more detail).

However, obstacles persist that limit its effectiveness as a comparison tool for consumers. These obstacles are linked to low levels of financial literacy, how consumers interact with the APR during their decision-making process and, generally, how the APR is presented in advertising (see case study 2), such as how it is provided or displayed (font size).

Difficulty in understanding the APR may be exploited to foster cross-selling practices in the EU (see case study 8), which advertise optional products as though they were a compulsory and integral part of the credit. This skews the APR and reduces its usefulness as a comparison tool. The evaluation estimates that cross-selling practices can affect up to 25 million consumers and is the single most common practice that affects consumers. The evaluation also estimates that, based on views expressed by consumers in surveys, between 0.5% and 10% of consumers are not informed of the APR. While this is based on consumer self-reporting and some consumers might not remember having received the APR (which is possible in view of the general level of awareness of only 60%), it nevertheless shows that there might be a relatively small degree of non-compliance. Non-compliance among credit providers, a lack of understanding among consumers, and low levels of financial literacy all reduce the effectiveness of the APR.

Creditworthiness assessment (CWA)

Member States’ obligations to ensure that the creditor assesses the consumer’s creditworthiness on the basis of sufficient information before the conclusion of the credit agreement have been implemented differently across the EU. Although Article 8 has been fully transposed, its practical implementation varies significantly between Member States. This leads to a diverse regulatory landscape, as shown by a mapping of national approaches in relation to CWA, carried out by the Commission. Depending on the Member State, therefore, the type of data collected by creditors, as well as the techniques used to do so, differ greatly. Member State authorities consulted were divided on whether the regulatory fragmentation causes problems, while almost two-thirds of credit providers did not agree that it created problems.

This patchwork implementation of Article 8 of the CCD renders assessment of its effectiveness difficult. Stakeholder views are mixed on the effectiveness of the CWA obligation in helping consumers finding the credit best suited to their needs and preventing over-indebtedness, as demonstrated by the survey carried out by the EESC and the stakeholders replies received as part of the OPC. Nearly 7 in 10 organisations responding to the OPC found the CWA provisions effective, although, in practice, consumers have raised a number of issues.

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202 Interviews and surveys of creditors, consumer associations and enforcement bodies.
204 Interviews and surveys with consumer associations. CEPS-ECRI, 2015; London Economics, VVA and Ipsos, 2016; European Commission, 2019.
205 Article 8(1) CCD.
Around one in 10 consumers responding to the OPC and to the survey claimed that the credit provider did not verify their ability to pay, and there are numerous court cases that point to specific issues with the CWA. Consumer associations are evenly split as to whether lenders in their Member State consistently carry out CWAs and whether those assessments are sufficient and appropriate. Results from the consumer survey and individual responses to the OPC suggest that in 80% of cases creditors check whether the consumer is able to repay the credit. Two-thirds of consumer associations believe that consumers are dissatisfied with current CWA practices.

Stakeholders across all categories agree on its importance for ensuring responsible lending and avoiding consumers taking out loans they are not able to pay for.

Two-thirds of enforcement bodies considered existing requirements - in particular the provision of 'sufficient information' - unclear and problematic. However, credit providers all agreed on the usefulness of the provision, with a few suggesting discretion in how they should perform this obligation.

Digitalisation has changed the way CWAs are carried out. Compared to the baseline, the digitalisation of our economy and society has increased the number and types of data about consumers generated online. This evolution impacts CWA methodologies, which are evolving rapidly, with innovations focusing on the use of unstructured data in CWA based on data-scrubbing, social media and machine learning. An increasing number of creditors (primarily fintech companies, including P2PL) use such types of assessment. Such novel techniques are presented by the industry as a way to help consumers with a thin credit profile to obtain a loan which they would not receive under more traditional CWA practices. However, they raise question in terms of their actual added value compared to more traditional techniques. These practices can circumvent the need for a solid credit history and sound financial situation, but their impact throughout the whole duration of the credit is unclear.

They also raise questions related to data protection legislation (in particular the principles of data minimisation and purpose limitation) and proportionality. There are concerns about the algorithms used to calculate consumers’ creditworthiness, especially with regard to the logic, data sources used, significance and consequences for the consumer, which are considered insufficiently transparent. The International Committee on Credit Reporting raised further challenges in respect of ensuring the accuracy, quality and completeness of credit-reporting data.

The CCD does not provide guidance on the approach to be taken based on the outcome of the assessment, i.e. whether the credit should be granted or rejected, depending on whether the CWA outcome was positive or negative. While rejecting a credit application in case of a negative CWA outcome is not required by the CCD, the CJEU has found that Member States are not precluded from adopting such an approach.

CWAs aim - to a certain extent - to foster responsible lending (see EQ 15 for more detail on responsible lending) and thus to help reduce over-indebtedness. The CJEU has confirmed that CWAs as per Article 8 of the CCD are ‘intended to protect consumers against the risks of over-indebtedness and bankruptcy’. Personal credit, especially when it is provided at high interest rates, can be an important reason for the financial difficulties of households.
If ‘arrears on hire purchase instalments or other loan payments’ are taken as an indication of over-indebtedness directly linked to consumer credit, there has been little significant change in the percentage of households in arrears over the last decade, but, rather, a gradual decrease across EU-28 countries (see Figure 19).

Figure 19. Percentage of households in arrears on hire purchase instalments or other loan payments

Source: ICF, based on Eurostat [lfc_mdes08]

Figure 19 shows how the percentage of households in arrears has been consistently greater among those that are below 60% of median equivalised income and thus below the ‘at risk of poverty’ threshold.

Less financially stable households are among those which will have greater difficulty in passing a CWA, making them more likely to turn to STHC-type credit. Lower levels of compliance with the CWA obligation have been identified among this type of credit.216 In certain cases, poor performance in repayment is considered part of the creditor’s business model.

Stakeholders differ in their opinions on how CWA should be performed and there is no consensus as to whether the methodology should be harmonised at EU level.217 These different approaches may present an obstacle to the facilitation of an internal market, as they do not help to create a level playing field for creditors (see case study 7 for more detail).

Overall, the open-ended character of the CCD provision on CWA has led to regulatory and practical divergence. The ongoing work of the EBA, which is preparing draft guidelines on loan origination that would cover CWA processes,218 should (once finalised) lead to more convergence in how CWA is carried out across the EU.

The role of CWA and the APR in protecting consumers from inappropriate lending and practices

216 Interviews with enforcement bodies.
217 The OPC, in particular, revealed that harmonisation was viewed positively mostly by (but not limited to) consumer associations.
In relation to the impact of the CWA obligation and the APR on fostering responsible lending, several Member States have put in place specific ‘product governance’ measures – not foreseen in the CCD – aiming to ban certain credit products, cap interest rates or regulate specific credit product characteristics that are considered potentially too costly/harmful for consumers. This implies, that, on their own, CWA and the APR are not perceived as effective enough to protect consumers from poor loan decisions, and that more stringent measures are deemed necessary by Member States to protect consumers from certain credit products.

Two-thirds of Member State authorities did not consider the provision of the APR and the CWA obligation sufficiently effective to protect consumers and they thus argued for various additional measures, including stricter requirements and alignment with the MCD on responsible lending standards (see section on coherence). Similarly, the survey of the EESC shows that 47% of stakeholders consider the CWA obligation insufficient to prevent situations of over-indebtedness.

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

**Main findings**

Credit databases have been established in all Member States, with the exception of Luxembourg. The Directive does not require a credit database to be set-up (although the original Commission proposal from 2002 did foresee such a database). The type of database (public or private) and its content vary greatly depending on the Member States. The conditions of access to credit databases on a cross-border basis also vary significantly between Member States. These differences, together with certain limitations in accessing credit databases in other Member States, hinder the exchange of cross-border information between creditors.

Nearly all consumer associations considered credit databases to work in accordance with data protection legislation. Member States authorities overwhelmingly (9 out of 10) considered access to credit databases to work well, while a handful of authorities held that access to credit databases varies on a cross-border basis (most did not know).

Overall, the provision in the CCD on access to credit databases has had limited impact on fostering the emergence of cross-border access to credit offers because of the lack of harmonisation on the nature and content of these databases.

Articles 8 and 9 of the CCD contain provisions dealing with credit databases. Article 8 lays down the obligation for creditors to assess the consumer’s creditworthiness on the basis of sufficient information. Although it does not define the type of information to be considered, it states that this may be obtained from the consumer and, where necessary, on the basis of consultation of the relevant database. This leaves it to Member States to impose such an obligation on credit providers. Article 9(1) further establishes that access to such databases shall be granted to credit providers from other Member States on a non-discriminatory basis.

Article 8 has been transposed by all Member States, but its wording leaves Member States with considerable leeway in defining ‘sufficient information’, leading to different approaches at national level on the information that should be considered and how it should be assessed, with 16 imposing the further obligation to consult the

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219 See case study 6 (Creditworthiness assessment) for further details.
The consultation of credit databases at national level appears to be functioning well generally, although a number of issues have been reported by some of the credit providers consulted. In some cases, explicit restrictions are imposed on certain credit providers (e.g. in Romania not all creditors have access to the credit database). Issues reported also relate to the quality and depth of the information held or to the retention period of such information. Additional difficulties are faced by credit providers wishing to access consumer data in other Member States. Although few Member States reported different requirements for foreign providers, industry representatives specifically referenced the different requirements to access credit databases in other Member States or the differences in the content of such databases as one of the main obstacles to accessing the information needed to conduct CWAs for foreign consumers. These difficulties have emerged as the second most important barrier preventing credit providers from offering consumer credit cross-border. Along with the explicit limitations on certain credit providers established in some Member States, the principle of reciprocity plays a significant role in the limitation of access to credit databases in a cross-border context.

The principle of reciprocity is a key component of credit databases (both public and private). Reciprocity requires credit providers to supply the same type of data that they wish to access through the credit database. This proves difficult for credit providers in other Member States, as it means they would need to feed data into every database (both public and private) that they may eventually need to consult. Private credit databases have nonetheless tried to develop bilateral reciprocity agreements to facilitate cross-border data access to credit databases. Most Member State authorities consulted indicated that conditions of access do not differ based on the location of the lender, while many did not know and only a few thought they did differ. Between half and two-thirds considered the conditions of access to work well in practice, while around 1 in 10 argued for harmonisation of their content.

Exact figures on cross-border access to data are not available. However, data from eight Member States show that the share of cross-border data requests ranged from 0.0004% to 16%, but in seven of these countries this was 1.1% or lower, and for another six Member States it was 0%. In four out of eight countries, the share of cross-border requests increased, in two it remained the same and in one it declined. This shows either a stronger growth in cross-border access requests than national requests or better capture of cross-border data. As the number of cross-border loans is very low - and indeed lower than 0.5% in all but a handful of Member States - there are no indications of whether the share of cross-border credit database access requests approximates figures on cross-border credit. Operational factors also play an important role in the difficulties of accessing credit data of foreign consumers. Since the CCD did not establish the nature, coverage and type and breadth of the data contained in the databases, these differ extensively between Member States, further obstructing the effective exchange of data across Member States.

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220 European Commission, 2018a; See case study 6 (Creditworthiness assessment) for further details on the different approaches taken by Member States.
221 Legal analysis.
222 Interviews with industry representatives
223 European Commission, 2015; Interviews with industry representatives and Member States.
224 See case study 7 (Cross-border access to loans) for more details.
227 In the private sphere, ACCIS has promoted a cross-border data exchange model, allowing its members to sign bilateral agreements with credit bureaux in other Member States.
228 World Bank Group, 2011; European Commission, 2009; European Commission 2016c; BEUC, 2017; European Commission, 2015; Interviews with industry representatives.
The databases can include only negative data (such as in France, where the public register only includes data about arrears on repayment or application to the over-indebtedness commissions) or, most frequently, both negative and positive data (such as ongoing financial commitments). There is a growing push from credit providers and credit registers to include ‘non-traditional data’ (such as data from GPS, social media, web-browsing) in these databases. However the added value of such data, its proportionality and compliance with data protection rules is challenged, for instance by consumer organisations229 (see also reply to EQ4). Data protection authorities are looking into the functioning and content of credit databases, as demonstrated by the recent Code of Conduct approved by the Italian Data Protection authority, which frames the use of peer-to-peer lending data.230

These differences, coupled with the lack of common terminology (e.g. the definition of default varies between credit registers), means that there is a very low level of uniformity in the information held on consumers, not only between but within countries. This presents a considerable obstacle to the exchange of information between credit providers, with attendant disadvantages for both credit providers and consumers, as it gives a distorted picture of the consumer that does not allow credit providers to accurately determine their creditworthiness.231

3.1.6 EQ6 – To what extent are the rights of withdrawal and early repayment functioning well? How frequently are consumers making use of them?

Main findings

Both the right of withdrawal and the right of early repayment are working well, with creditors generally compliant. Overall, consumers are well-informed about both rights, with 72% of consumers aware of the right to withdraw, and 82% of the right to repay early. Only around 1% of consumers make use of the right of withdrawal, while the right of early repayment is more commonly used, with around 25% of consumers repaying their loan early, partially or in full. Issues with the right of withdrawal primarily relate to linked credit agreements. For the right of early repayment, key problems relate to the calculation of compensation for creditors.

Stakeholders generally considered the right of withdrawal to work well. Only a handful of consumer associations and enforcement and Member State authorities raised any specific issues, mostly in relation to awareness and delivery of the withdrawal notice outside the 14-day period. The right to early repayment is considered to work well by half of the Member State authorities, while the other half argued that it could be improved (mostly in relation to fees and penalties and their communication). About half of the consumer associations had received complaints about this, mostly in relation to the applicability and communication of certain penalties and fees.

Over 80% of organisations responding to the OPC rated both rights as effective.

The right of withdrawal and right of early repayment are important rights under the CCD that offer an improved level of consumer protection. The right of withdrawal is rarely used, while the right of early repayment is used more widely. Article 14 of the CCD defines the right of withdrawal and sets a 14-day period for withdrawal from the contract. The right of withdrawal is also defined for linked credit agreements and credit that includes an ancillary service. Article 16 of the CCD establishes the right of early repayment, which allows the consumer to repay their credit, partially or in full, before the end date of the agreement. Paragraph 4 contains a regulatory choice that allows

231 ACCIS, 2017; ACCIS, 2018d; Experian, 2017; Interviews with industry representatives.
Member States to decide whether the creditor can claim compensation for early repayment, to offset the amount lost in interest rate payments.

**Right of withdrawal**

Most stakeholder groups believe that the right of withdrawal is functioning well. Industry representatives were unanimous in stating that the right of withdrawal is respected, while the majority of enforcement bodies, Member State ministries and regulators, and consumer associations believe it to be working well. A considerable majority (80%) of responding organisations to the OPC found the right of withdrawal effective, making it the second most effective provision of the CCD. There are no indications of significant problems in the functioning of the right of withdrawal.

The number of consumers making use of the right of withdrawal was very low across the Member States, with around 1% of consumers, on average, withdrawing from credit agreements. Apart from the creditors and consumers themselves, other stakeholders were unaware (or did not have access to statistics) of the numbers of consumers that had tried to withdraw from a credit agreement.

Consumers are highly aware of the right of withdrawal. The majority were aware (72%) and informed of their right by the credit provider (75%), before signing a credit agreement. There seem to be potential compliance issues in some cases, however, as 15% of the consumers surveyed were not informed of their right prior to signing the contract. Other stakeholders also noted small compliance issues, where credit providers refused to apply the right of withdrawal on consumer request, demonstrating that outliers exist, despite the majority compliance. The extent to which this is the case cannot be ascertained from the data available. Overall, a small majority of stakeholders reported that they were not aware of consumers encountering such issues.

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

Other problems included lack of awareness of the right of withdrawal in some Member States and difficulties with creditors’ respecting consumers’ right of withdrawal (with

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232 Interviews and surveys of enforcement authorities, industry representatives, Member States and consumer associations.

233 OPC (specific).

234 London Economics, 2013; European Commission, 2014a; OPC (general); survey of creditors.

235 Interviews and surveys of enforcement authorities, industry representatives, Member States and consumer associations.

236 Consumer survey.

237 The exact questions asked in the survey of consumers were: ‘Are you aware that (within a certain number of days) you have the right to withdraw from the credit contract without giving any reason?’ and then ‘Before you contracted the credit, were you informed (either in writing or orally) of your right to withdraw from the contract?’

238 Consumer survey.

239 Surveys of enforcement bodies, Member States and consumer associations.

240 Surveys and interviews with enforcement bodies, Member States and industry representatives.

241 Surveys and interviews with Member States and consumer associations.

242 Surveys and interviews with Member States and consumer associations.
some refusals noted). A significant minority of consumers had experienced lenders making it difficult for them to exercise their right of withdrawal. Consumer associations generally held that the right to withdrawal is well-respected, but a few issues were raised about awareness of the 14-day withdrawal period and delivery of the notice in time.

In terms of relevant court cases, the German Courts provided consumers with a perpetual right of withdrawal where the consumer does not receive all of the correct pre-contractual information or is given incorrect information, meaning that they could withdraw from the credit agreement for an unlimited period of time. However, the CJEU recently stated, in Case C-143/18, that the notification of the right of withdrawal is not invalidated when the creditor informs the consumer that its right of withdrawal does not apply to the contract when it is executed in full by both parties at the express request of the consumer, even if this notification does not comply with the regulations of the national country. Slovakia also has a perpetual right of withdrawal, but reported no associated problems.

Case C-66/19, on the start of the withdrawal period, remains pending.

**Right of early repayment**

The right of early repayment is applied quite effectively by creditors and functions well. All industry representatives stated that relevant rules are respected, while the majority of other stakeholders agreed that it functions well. According to the OPC, 80% of organisations responding believe the right of early repayment to be effective. In fact, they consider it the most effective provision of the CCD. Despite this, a fairly large number of consumers reported issues with the right of early repayment.

A significant majority of consumers are aware of the right of early repayment, with 75% informed by the creditor about their right before contracting the credit. The number of consumers making use of early repayment is quite high, with around one-quarter of consumers paying off their credit early. This increased slightly between 2013 (22%) and 2019 (27%). No data are available on the average cost of early repayments made by consumers.

Consumers nevertheless face some problems with the right of early repayment. These primarily relate to the calculation of the compensation to be paid to the creditors, as the compensation was reported to be calculated incorrectly (whether deliberately or not) at times. Several stakeholders also referred to cases of disproportionate compensation.

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243 Surveys and interviews with Member States and consumer associations.
244 Consumer survey.
245 31% of consumers. For this question, the options were 'Strongly agree', 'Agree', 'Disagree' and 'Strongly disagree'. There was no option for 'not applicable'. As a result, all survey respondents answered this question (n=3,886). While only some consumers will have tried to withdraw from their credit agreement, it seems logical that only those really encountering problems would say so, which supports the validity of 31% having experienced difficulties. The consumer survey did not contain a question on whether consumers had attempted to withdraw from the contract. No other data were available to support this high number of persons experiencing difficulties.
246 Request for a preliminary ruling from the Landgericht Bonn (Germany), Case C-143/18 – Romano, Judgment of the Court of 11 September 2019 ECLI:EU:C:2019:701.
247 Legal analysis.
248 Interviews and surveys of enforcement bodies, industry representatives, Member States and consumer associations.
249 OPC (specific).
250 The numbers of consumers facing issues with the right of early repayment varied according to the source, ranging from 10-50% of consumers facing issues. See case study 4 (Right of early repayment) for more detail.
251 Consumer survey.
253 Interviews and surveys of enforcement authorities, industry representatives, Member States and consumer associations.
254 Interviews and surveys of enforcement authorities, Member States and consumer associations.
It is not possible to ascertain either the extent of the issue or the deliberate nature of any incorrect calculations.

Not all Member States impose a compensation fee for early repayment. Article 16(4)(a) offers Member States the regulatory choice to only apply the obligation to pay a compensation fee to the creditor where the amount repaid exceeds a national threshold, which must not exceed EUR 10,000. Eighteen Member States opted to use this regulatory choice, thus consumers are not required to pay compensation to the creditor, unless the amount they repay is higher than the national threshold. For the Member States not applying this regulatory choice, the compensation to be paid is limited to 1% of the amount repaid ‘if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. If the period does not exceed one year, the compensation may not exceed 0.5% of the amount of credit repaid early’. Very few stakeholders have mentioned that this threshold is disadvantageous to businesses insofar as the compensation may not cover the administrative costs of facilitating early repayment. While set-up costs for lenders include systems dealing with early repayment and staff costs (time) it can be expected that these administrative costs will presumably have been passed on to the customer and thereby covered by the profit margins of the agreement itself and as such are not considered to be a particularly heavy burden. Other issues reported with the right of early repayment include consumers being charged the entirety of the interest they would have had to pay for the loan and consumers not receiving all of the necessary information about their right of early repayment. In a recent judgment on these issues, the CJEU clarified that Article 16(1) of Directive 2008/48 gave concrete expression to the right of the consumer to a reduction in the cost of the credit in the event of early repayment by replacing the general concept of ‘an equitable reduction’ with the more specific concept of ‘a reduction in the total cost of the credit’ and by adding that the reduction must therefore cover ‘the interest and the costs’.

In some cases, consumers were denied the right of early repayment altogether, or creditors included clauses in the general conditions that obliged the consumer to renounce that right. The consumer survey found that more than one-third of respondents had experience of the lender making it difficult for them to use their right of early repayment, pointing to a relatively high number of compliance issues. Similarly, a 2013 London Economics survey found that while close to one-quarter of consumers attempted to repay early, only 86% were successful in doing so.

Creditors faced some issues with the right of early repayment for small and short-term loans. Calculation of the fee to be paid in cases of early repayment was more difficult for short-term loans that had to be paid back within one month, for example. Creditors’ concerns centred on their ability to recover the costs of such loans, as Article 16(2) CCD stipulates that ‘if the period does not exceed one year, the compensation may not exceed 0.5% of the amount of credit repaid early’. The right of early repayment

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255 Interviews and surveys of enforcement authorities; interviews with Member States.
256 AT, CY, EL, FI, FR, HR, HU, IE, IT, PL, LT, LU, LV, MT, RO, SI, SK, UK.
257 See Annex 5 for more details.
258 Article 16(4) CCD.
259 Business representatives.
260 Costs may include for example communicating the termination of the agreement.
261 For the Member States that apply this regulatory choice.
262 Please also see EQ 16 for the relevance of the thresholds.
263 Surveys of Member States.
264 Survey of enforcement authorities.
265 Request for a preliminary ruling from the Lublin-Wschód District Court in Lublin with its seat in Świdnik, Poland, Judgment of the Court of 11 September 2019, Lexitor Sp. z o.o v Spółdzielcza Kasa Oszczędnościowo - Kredytowa im. Franciszka Stefczyka and Others - Case C-383/18
266 Surveys of consumer associations.
267 Consumer survey.
269 Surveys and interviews with industry representatives.
269 Surveys and interviews with industry representatives.
was a particular concern in the Netherlands, where industry representatives considered the maximum early repayment fees laid down in national legislation to be too strict.270

Member States have solutions in place for problems with the right of withdrawal and right of early repayment, with remedies including judicial proceedings, administrative complaints to national banks, and assistance from consumer associations.271

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

Main findings

The CCD sets various thresholds, in particular a minimum of EUR 200, and a maximum of EUR 75,000. The latter maximum has changed with the entry into force of the MCD, as loans for renovation works are now also covered under the CCD.

Uncertainty about the scope of application of the CCD has allowed some types of credit products to remain partially or entirely outside the CCD. It has also resulted in a very fragmented legal framework across the EU and different degrees of consumer protection standards and enforcement rules. As Member States are free to regulate credit agreements not covered by the CCD, they have opted to tackle their own most pressing issues in diverse ways. As such, the types of credit regulated at national level and the provisions applied to them (beyond those foreseen in the CCD) vary significantly. This has hindered the ability of the CCD to establish a level playing field for all consumer credit providers, potentially creating incentives for regulatory arbitrage.

The number of definitions increased and their exact wordings were amended following the entry into force of the CCD (compared to the previous Directive) but ambiguity about whether the CCD covers certain types of credit not explicitly referred to in the Directive has created uncertainty.

Article 2 of the CCD excludes from the Directive’s scope ‘credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75,000’, with the exceptions of renovations of immovable property following the entry into force of the MCD.272 The list of exemptions in Article 2(2) is extensive and encompasses many widely used loans, most of which were included within the scope of the European Commission’s first proposal for a Directive concerning credit for consumers.273 The limitation of the scope of the CCD means that Member States have the freedom to regulate credit agreements above or below the thresholds. As the consumer credit market varies significantly across the EU, Member States have resorted to a wide variety of solutions – both in terms of consumer protection standards and enforcement of rules - to tackle the most pressing issues in their own territory. This has resulted in a very fragmented regulatory framework that has hindered development of the cross-border market and which may create incentives for credit providers to choose markets based on more lax regulatory frameworks.274

Over 90% of consumer associations argued that the current thresholds are no longer adequate, with 80% of Member State authorities agreeing. Among the credit providers,

270 Surveys and interviews with industry representatives.
271 Surveys and interviews with enforcement authorities and consumer associations.
272 With the exception of unsecured credit agreements, the purpose of which is the renovation of a residential immovable property. These types of credit will be covered by the CCD even in the event that they are worth more than EUR 75,000, as per Article 46 MCD.
274 See case study 7 (Cross-border access to loans) for further details.
30% considered the scope inadequate, with the lower limit cited as a particular problem.

With the exception of Cyprus and Greece, all Member States have adopted transposing measures that go beyond the requirements of the Directive. Some extend the scope of application of the CCD (or certain of its provisions) to consumer credit not covered by the Directive, either below EUR 200, above EUR 75,000 or to leasing agreements, overdraft facilities, revolving credit, mortgages, zero-interest rate credit and agreements with pawnshops. The growth of consumer credit – in both volume and value – due, inter alia, to digitalisation and fall of interest rates, has facilitated access to credit for consumers, while bringing new challenges and risks that may fall outside the CCD scope. These include zero-interest rate loans, STHC credit, and credit for leasing and hire purchase, while bearing in mind that issues like interest rate caps, provisions for insolvency of the debtor and recovery of unpaid loans are not addressed by the Directive.

By setting the bar for entry within the scope of the CCD at EUR 200, potentially detrimental types of credit are excluded from its protection. These include the STHC-type credit that is more appealing to vulnerable consumers, who struggle to access other types of credit due to their existing CWAs, as well as zero-interest rate loans. STHC loans are offered in many EU Member States, although the extent to which they are used varies between countries. STHC credit is not necessarily problematic. Indeed, under the right circumstances (i.e. properly supervised by the relevant authorities and undertaken by consumers with a good level of financial literacy), these types of credit could help to increase the financial inclusion of consumers with little or no credit history, possibly preventing them from having recourse to illegal lenders. However, the high cost of the credit represents a risk in itself, particularly as most consumers of STHC credit are categorised as risky consumers, meaning that credit providers increase the interest rates to cover the risk of default, which, in turn, makes it more difficult for the consumer to repay. STHC credit also tends to become more expensive over time, worsening the consumer’s financial situation as they are forced to either use the rollover option or take up more credit to repay the initial debt. These risks are further exacerbated by a widespread lack of transparency and insufficient disclosure of information to the consumer which, together with the low level of financial and digital literacy among consumers of this credit product, results in a lack of consumer awareness of the true cost of the credit. Significantly, the accessibility of this type of loan favours impulsive decisions (especially as typical payday loan marketing strategies tend to emphasise the benefits of obtaining a loan instantly), further heightening the risk of over-indebtedness.

To offset the potential for detrimental effects, some Member States have sought to bring these types of credit within the scope of the CCD, regardless of the loan amount.

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276 While 2 out of 10 did not know.
277 Legal analysis; interviews with consumer associations, industry representatives and Member States.
278 BE, BG, CZ, DK, EE, FI, HU, IT, LV, PT, SK.
279 DE, DK, CZ, EE, ES, FI, FR, HU, PT, RO.
280 AT, EE, HU, IT, FI, FR, PT, UK.
281 AT, BE, FI, PT, FR.
282 FI, NL, FR, IT.
283 BG, CZ, HR, HU, RO, SI, SK.
284 BE, UK.
285 BE.
287 A 2019 London Economics study noted that payday loans are especially widespread in Lithuania and the UK, where 37% of low-income households have resorted to this type of credit.
288 OECD, 2019, p. 28.
291 BG, ES, FR, HR, PT, SE, SI, SK.
which is often below the lower CCD threshold of EUR 200. The EESC argued that the minimum threshold does not take into account the differences in the average income across the EU.\textsuperscript{292} The stakeholder consultation exercise suggests that there is an appetite to abolish (or at least lower) the minimum threshold of the CCD, especially among consumer organisations and Member States.\textsuperscript{293} Stakeholders did not comment on the extent to which the CCD could be expected to address these types of products if they were included in its scope. Indeed, even if covered by the CCD, most of these credit products could still have a very elevated APR even if fully compliant. It does not therefore automatically address the main problems, especially for more vulnerable consumers.

The scope of application of the CCD does not specifically exclude credit cards or revolving credit if the amount borrowed falls under its scope of application.

**Credit cards** are a type of non-instalment credit product that allows the consumer to make use of a credit reserve within an agreed limit and time-period, without having to repay the outstanding amount in a fixed number of payments. Although the evolution of the market share of credit cards varies significantly across Member States, the overall size of the credit card market in the EU increased slightly in the last decade against the share of EU citizens with a personal loan.\textsuperscript{294} Although the variation is not pronounced, the negative correlation may indicate a growing preference for credit cards over personal loans. The flexibility of credit cards is valued by consumers because it allows them to defer payments and spread large expenses over several months. Ultimately, however, this flexibility can be detrimental for consumers, as they generally have continued access to credit if they make minimum payments on their debt. This practice is very likely to play to the disadvantage of consumers, since it rests on several behavioural biases likely to lead consumers to accumulate debt over a long period of time.\textsuperscript{295} Consumers may consequently end up in situations where they are making minimum repayments that simply cover the interest and fees, without ever reducing the debt (i.e. persistent debt).\textsuperscript{296} This is highly profitable for credit providers,\textsuperscript{297} particularly given the very high cost of a credit card. FSUG argued that common practices, such as sending credit cards to consumers who have not requested them or increasing the limit of the card without it being explicitly requested (see below) can nudge consumers to borrow more and spend beyond their means.\textsuperscript{298} While the extent of this problem could not be verified on the basis of hard data, such practices would go against EU legislation (DMFSD).

*Revolving credit* is a line of credit where consumers pay a fee to a financial services provider to borrow money if and when needed, with the exact borrowing amount dependent on their specific monthly needs. Although relatively few, the issues reported for revolving credit related chiefly to information and choice. Belgium noted the issue of offering consumers the choice between revolving credit or payment in instalments, rather than making the former the default option. Slovakia reported that many consumers are not aware of revolving credit or how it could impact them.\textsuperscript{299} In the UK, Citizens Advice found that three-quarters of consumers with a revolving credit line had

\textsuperscript{292} As pointed out by the EESC, EUR 200 corresponds to approximately 50\% of the average monthly wage and 75\% of the average monthly pension in some European countries.

\textsuperscript{293} Interviews with consumer organisations, industry representatives, Member States and enforcement authorities; OPC (specific).

\textsuperscript{294} 43\% of Europeans had a credit card in 2016, three p.p. more than in 2011. In the same period, the share of Europeans with a personal loan fell from 13\% in 2011 to 11\% in 2016.

\textsuperscript{295} These behavioural biases are: over-optimism: overestimating one's ability to maintain a zero balance; myopia: overvaluing the short-term benefits of a credit transaction and neglecting the future impact; and cumulative cost neglect: dismissing the cumulative effect of a large number of small credit options.

\textsuperscript{296} According to the UK FCA, persistent debt is defined as a situation where, over a period of 18 months, a consumer pays more in interest, fees and charges than on the principal of the debt.

\textsuperscript{297} European Parliament, 2018; BEUC, 2019.

\textsuperscript{298} FSUG, 2019.

\textsuperscript{299} BEUC, 2019, p. 9.
seen their credit ceiling raised without their explicit request.\textsuperscript{300} There are no figures at EU level for the share of consumers who had an increase in their credit ceiling without their consent/request. While only part of the credit line increase could pose problems for consumers who could not afford it, the effects could be substantial at EU level. A 2011 consumer sweep showed problems with credit intermediaries in 11% of cases. These mostly related to revolving credit, though further details or more recent data are not available.\textsuperscript{301} Some Member State regulators have acted to curb revolving credit, most notably in France, where consumers must be offered the choice between revolving credit and payment in instalments when sold products in shops.\textsuperscript{302} In May 2019, in conjunction with the AFM, the Dutch credit institutions association agreed stricter rules on revolving credit, including maximum withdrawals, more frequent CWAs (with credit refused where the outcome is negative), and a maximum revolving credit duration of 15 years (currently unlimited).\textsuperscript{303}

Some stakeholders see the need to cover specific products currently exempt from the scope of application of the CCD or benefitting from a lighter regime, like those listed below. They claim that reducing the number of exceptions would contribute to legal clarity, limiting the risk of circumventing CCD rules.

Authorised \textbf{overdraft facilities} are credit agreements that allow consumers to become overdrawn up to a certain limit at a set interest rate, effectively acting as pre-approved credit. Unauthorised overdraft facilities, on the other hand, are not pre-agreed and usually entail very high interest rates and additional fees for the consumer. Although there are no EU-wide data on the extent to which overdraft facilities are used by consumers, national data from France and Germany suggest that they are increasingly used in some Member States as alternatives to payday loans and revolving credit.\textsuperscript{304} One of the main advantages of overdraft facilities is that they constitute a useful tool to cover small and sudden financing needs. However, like credit cards, they are a very expensive credit product compared to instalment consumer credit, and in some cases even compared to payday loans.\textsuperscript{305} The use of overdraft facilities also entails similar risks to those linked to credit cards.\textsuperscript{306} In addition, consumers risk misunderstanding the conditions applicable to the overdraft facility in terms of costs, limits, etc. While CCD covers authorised overdraft facilities that do not need to be repaid within one month, some ambiguities remain regarding those to be repaid within one month. Unauthorised overdrafts are only subject to a ‘light regime’ under Article 18. As a result, some countries (e.g. France) have noted that credit providers are encouraging consumers to turn to types of products that are slightly less controlled.\textsuperscript{307}

\textbf{Zero-interest rate loans} (i.e. loans with an interest rate of 0%) are commonly used in the EU, especially when financing the purchase of certain products, such as electronic devices. These loans are very often concluded via retailers, who act either as credit providers or credit intermediaries. They fall outside of the scope of the CCD (Article (2)(f)), but even if they may appear to be very advantageous credit products, they have the potential to be detrimental to the consumer. This is because, despite the lack of interest, they generally foresee very high fees for late or missed payments, conditions of which the consumer is often unaware.\textsuperscript{308} For this reason, some countries (e.g.

\textsuperscript{300} Citizens Advice, 2017.
\textsuperscript{301} European Commission, 2012.
\textsuperscript{302} BEUC, 2019, p. 10.
\textsuperscript{303} VFN, 2018.
\textsuperscript{304} Que Choisir [FR], 2019c; Finance Watch, 2018 and 2019.
\textsuperscript{305} BEUC, 2019.
\textsuperscript{306} Namely over-optimism (i.e. the consumer wrongly assumes that he or she will not become overdrawn) and myopia (i.e. the consumer over-values the benefits of the present transaction while dismissing the impact on his or her financial situation).
\textsuperscript{307} Que Choisir [FR], 2019c.
\textsuperscript{308} House of Lords, 2006; EBA, 2019.
Germany) have decided to apply some CCD provisions (i.e. right of withdrawal) to all consumer credit, irrespective of whether or not an interest rate is charged.  

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

In relation to pawnshops, one consumer association pointed out that they should be bound by information requirements, as in many cases the fees applied are very high.

The upper limit of the CCD of EUR 75,000 did not generate as many negative reactions as the lower limit of EUR 200, especially following the amendment to the CCD on foot of the entry into force of the MCD.

Various articles of the CCD provide for regulatory choices that allow Member States to make specific exclusions to the Directive. Member States’ use of regulatory choices vary significantly: all have made use of the choice in Article 10(1), many use the choices in Article 2(6) and 16(4)(a), while less than a half use those in Article 2(5), Article 4(1) and 4(2)(c), Article 6, Article 10(5), Article 14(2) and Article 16(4)(b).

In terms of definitions, Article 3 is generally considered to be effective and successful by all stakeholders. Clarifications have been suggested, particularly to ensure that the CCD covers the new market players that have emerged as a result of increased digitalisation (e.g. P2PL). Aside from the risks and consumer detriment potential, uncertainty as to whether these platforms are bound by the same rules as traditional credit providers, together with differences in Member State regulation, appears to be one of the key obstacles to ensuring a level playing field for all credit providers, regardless of their nature.

P2PL is not included in the list of exemptions in Article 2(2) of the CCD and is thus not explicitly excluded from its scope of application. However, there is little clarity (either in the literature or among the stakeholders) on whether or not it is covered by the CCD. This is because the CCD has defined ‘creditor’ as ‘a person who grants or promises to grant credit in the course of his trade, business or profession’ (Article 3(b) CCD). Given that the lenders in P2PL are usually private individuals, many stakeholders consider them to fall outside the scope of the CCD, an argument that is also reflected in recent studies. In some countries (e.g. Denmark), the national legislator has explicitly placed private lenders under the obligations of consumer credit. However, whether it would fall inside the scope would also depend on the potential role of the P2PL platform.

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309 Finance Watch, 2018 and 2019; Legal analysis.
310 Que Choisir [FR], 2019a.
311 For more details, see Legal Analysis
312 Stakeholder interviews
313 Which consists of the use of an electronic platform to match lenders/investors with borrowers/issuers to provide unsecured loans, including consumer credit
314 According to ECRI 2018, a lot of consumers using these platforms lack sufficient knowledge of their functioning. For instance, many of the complaints involving peer-to-peer lending in the UK are from consumers who were not aware that they were borrowing from a peer-to-peer lending facility, while others had doubts about their recourse from the lender, compared to other forms of credit
315 For more details, see Annexed Study
316 This discussion culminated in Case C-311/15, TrustBuddy AB, where the Finnish Supreme Court brought the issue before the CJEU. The financial supervisory authority in Finland had earlier ruled it a banking activity, and thus likely a creditor. TrustBuddy, however, went bankrupt and no judgment followed.
3.2 Efficiency

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

Main findings

Overall, the benefits of applying the CCD outweigh the costs, especially in terms of reduction in consumer detriment. That reduction stems primarily from the provision of pre-contractual information (such as the APR, SECCI). Issues that continue to lead to considerable consumer detriment include consumers incorrectly granted a loan following an inaccurate CWA or consumers affected by a sub-optimal cross-border market.

Individual consumers, national authorities and consumer organisations agree that the costs and benefits of the CCD are proportionate. On the other hand, a majority of industry representatives disagreed, stressing that costs for the implementation of the Directive outweigh the benefits of the new rules, especially those on advertisement. However, it is unclear whether these costs are directly attributable to the CCD or to its national implementation and additional rules put in place by Member States.

The costs associated with the CCD encompass direct compliance costs (including administrative burden) and consumer hassle costs. Indirect costs include reduction in available credit (costs passed on to the consumer), lower consumer spending and an associated reduction in GDP.

The benefits can be direct, for example higher levels of consumer protection (and lower consumer detriment), development of the single market through cross-border activity, and associated welfare gains and increased consumer choice. Indirect benefits include greater consumer awareness and more thoughtful behaviour, resulting in reduced indebtedness.

Overall, the evaluation finds that the benefits outweigh the costs of applying the CCD (see Figure 20) although the results should be treated with caution. Full details of the quantification approach are shown in Annex 7.

For public administration, initial set-up costs for the CCD are estimated to have been up to EUR 6 million for the EU-28 in transposing EU legislation into national law, with recurring costs of around EUR 300,000 per year for the EU-28, mostly in monitoring compliance, enforcement costs (sweeps, investigations), reporting to the EU and maintaining the credit database (where applicable).

The costs to industry were calculated on the basis of the roughly 7,400 banks in the EU in 2010 (as opposed to 5,100 in 2018). Set-up costs included: familiarisation with the Directive; adapting IT systems for pre-contractual and SECCI requirements, CWA and the APR; internal communications and staff training on advertisement, pre-contractual information and the APR; updating websites and adapting contractual documentation. These are estimated to be in the order of EUR 340 million in the period 2008/2010, or EUR 46,000 on average per bank. Recurring costs\textsuperscript{317} are estimated to be between EUR 160,000 and 200,000 per year for additional costs in complying with advertisement requirements, for staff to provide pre-contractual information and SECCI forms and the API, and carrying out CWAs. Pre-contractual information and other relevant information would still be provided in the absence of the CCD and this has been taken into account in the estimates of recurring costs. These recurring costs therefore

\textsuperscript{317} As per the Better Regulation Guidelines, compliance costs include the following sub-costs: administrative costs and substantive compliance costs. Unfortunately, the data available does not allow us to estimate each type of sub-cost.
reflect the action needed on behalf of credit providers to prepare and make such information available. However, only part of these costs stem expressly from the CCD.

While there are other industry players (non-banks, credit intermediaries and those involved in advertising), it is not possible to estimate costs for these stakeholders from the information available, as their approximate number is not known.

Benefits in terms of a reduction in personal consumer detriment since 2008 are estimated at EUR 2.6 billion, of which EUR 1.55 billion is reduced financial detriment and EUR 1.05 billion is reduced time losses due to the CCD. The attribution to the CCD is tentatively estimated at 20-25%, although there are no data as such that enable an assessment of attribution. Other factors influencing a reduction in consumer detriment include the development of the credit sector itself, more stringent legislation in certain Member States, a possible uptake in overall sector compliance due to familiarity with the Directive, and increases in consumer awareness over time, as well as the impacts of other legislation and other factors not taken into account.

**Figure 20. Overview of estimated costs (public administration and industry) and benefits for the period 2010-2018, in EUR million (2010 prices)**

Source: ICF compilation based on existing data and assumptions (see Annex 7).

This suggests that developments in the market, EU and national level legislation, and other factors came together to substantially reduce consumer detriment. This figure has risen from 2014 onwards, showing increased detriment reduction in later years. A share

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318 The annual reduction of consumer personal detriment is equal to the consumer detriment in each year minus the consumer detriment in the baseline year (2010). The total reduction of the consumer personal detriment is the net present value (assuming a discount rate of 4%) of all the annual reductions of consumer personal detriment in the period 2011-2018. The annual consumer personal detriment is calculated by multiplying the number of problems experienced by consumers with credits in that year (obtained based on data from the Consumer Market Scoreboards) by a) the post-redress financial costs (i.e., magnitude of a problem) experienced by a consumer due to having had one problem with his/her credits and b) the monetised time losses that the consumer had in order to try to solve one problem (and or get redress). The data from CIVIC study on magnitude and time losses for the year 2015 was extrapolated to the other years considering the evolution of the number of complaints (used as a proxy for the size of the problems experienced by the consumers) from the Consumer Markets Scoreboards. Note: the discount rate (=It means the economic opportunity cost for providers and society) comes from DG REGIO recommendations for cost-benefit analyses (on investment, but it is the most reliable source available).

319 Based on expert judgement of the value of the predominant factors. This includes consumer trust levels (which have gone up) and thereby probably higher compliance than was the case in 2010, higher consumer awareness levels and slightly higher financial literacy (as appeared from the 2018 London Economics Study that in certain circumstances consumer do make better choices) more stringent legislation in some MS (which helped reduce consumer detriment even more, so beyond CCD), other legislation at EU-level. See Annex 7 for a detailed explanation.
of consumer detriment savings are due to developments in the credit market (more competition, lower prices), with some part attributable to the CCD, although most relate to external factors (such as lower interest rates in the current economic climate). Other developments include national practices and policies, such as changes in national legislation, their application, enforcement and monitoring.

The benefits of the CCD for consumers can also be measured by looking at consumer trust levels. Figure 21 shows that consumer trust in banks (for loans, credit and credit cards) has risen steadily since the 2010 baseline, from 6.2 to 7, on a scale of 0 to 10. While this figure cannot be directly linked to the CCD itself - as it is also influenced by the economic upturn after the financial crisis from 2007-2008 (and the effects in the years thereafter) and wider trends in satisfaction - gradual increases in trust levels point to customers’ overall satisfaction with their loans, to which the CCD will have contributed (as with detriment). Higher levels of consumer trust can be linked in part to the CCD’s objective of higher levels of consumer protection.

**Figure 21. Consumer trust in banks regarding loans, credit and credit cards (on a scale of 0-10)**

![Graph showing consumer trust in banks from 2010 to 2017]

Source: ICF compilation of Consumer Market Scoreboard data

The ways in which consumers are still affected by problems with consumer credit or issues of general compliance and enforcement can be approximated from data from several consumer surveys.

Figure 22 provides an overview of the number of consumers still experiencing issues in exercising their rights under the CCD. The share of consumers affected is expected to be substantially lower than before the entry into force of the CCD. Not all of the problems that consumers face could be addressed through the CCD, however. Some relate to consumer awareness, national application and enforcement of legislation, and new market developments, and are beyond the scope of the Directive to address directly.

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

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320 The total number of consumers affected cannot be easily compared, given that the consumer credit market was smaller.
The number of consumers negatively affected by issues linked to the right of withdrawal is comparatively small. The rate is higher for the right of early repayment, although still relatively insignificant as a share of all loans and compared to other areas.

In the area of pre-contractual information, many more consumers are affected by imperfect information in respect of the APR and the SECCI, although not all of the consumers impacted will have encountered specific problems or detriment as a result. For the CWA, the number of consumers affected by lenders not ascertaining their ability to pay is substantial. Other problems, such as consumers who were incorrectly granted a loan (possibly incurring debts) or where procedures were not followed correctly, can be estimated, if not assessed.

Some 25 million consumers are estimated to be affected by issues with revolving credit and the same number again by cross-selling practices. For the latter, revenue generated by the sector for payment protection insurance (PPI) is substantial. In the UK alone, GBP 36 billion has been repaid by banks since 2011, after the UK FCA found that PPI was often mis-sold and consumers were provided with opportunities for refunds.\textsuperscript{321}

Consumers are negatively impacted by both the overall costs of such insurance (especially when this was not explicitly requested, or was offered by default) and the limitations or lack of coverage that such insurance affords in certain cases. This hampers the maximisation of the benefits, in particular for consumer credit products offered to consumers at seemingly beneficial rates/costs.

No reliable estimates of cross-border detriment could be made, as there are no data on the numbers of consumers who could not obtain a loan even if they wished to do so. However, the evaluation’s mystery shopping exercise experienced obstacles in all attempts to shop cross-border for consumer credit. Although solely anecdotal evidence, it seems reasonable to assume that the practical obstacles to cross-border shopping would affect many consumers (see case study 7). According to Eurobarometer 443, less than 0.5% (3 million consumers) have purchased a personal loan in another Member State, compared to 29% who sought one (17 million consumers) according to the survey conducted as part of this evaluation. This means that up to 14 million consumers are impacted by cross-border shopping. Many will have personal reasons not to proceed, but a subset will have been unable to do so. There are also cases of consumers who did not look for cross-border loans because the conditions were not right. Overall, the evaluation estimates that the number of consumers affected by a sub-optimally functioning cross-border market is substantial, being up to 25 million consumers for some provisions, as shown below.

\textsuperscript{321} While the data concern all PPI in all sectors, the small subset of personal loans represents a very high total volume, certainly at EU-wide level.
Figure 22. Estimated number of consumers potentially negatively affected, by CCD provision/area, in millions of consumers, 2018.

Source: ICF compilation (see details in Annex 7)
Stakeholders views of whether the costs and benefits of the CCD are proportionate

Stakeholders consulted for this study were asked about the extent to which the costs and benefits can be considered proportionate.

Numerous consumers generally agreed that costs generated by the CCD are proportionate to the benefits, a view shared by the national authorities and consumer associations consulted. The results from the OPC also revealed that benefits were considered to outweigh the costs, overall. Dissenting views mostly came from industry representatives, a considerable share of which pointed to the fact that the implementation of the CCD implied additional costs that were not matched by its benefits. However, the evaluation also finds that the regulatory landscape is fragmented due to Member States going beyond the Directive, differences in enforcement levels and specific national contextual factors influencing demand and supply. Indeed, stakeholders commented on the implementation of the national legislation rather than the CCD itself. The extent to which the costs of implementation can be attributed to the CCD itself cannot be reliably estimated, but a more harmonised implementation across Member States would likely have implied fewer costs for industry, and benefits more strongly outweighing costs.

Just over half of the organisations responding to the OPC considered the benefits to outweigh costs, while one-quarter argued the opposite and the remainder were unsure. Almost one in six representatives of consumer creditors did not consider the benefits proportionate to the costs. Industry stakeholders noted, in particular, administrative burden and the compliance costs of elements such as information requirements, the right of withdrawal, the right of early repayment and CWAs. At the same time, half of the respondents to the creditors’ survey had no opinion on whether the costs outweigh the benefits of the CCD. This evaluation estimates that there were initial start-up costs for businesses but that ongoing costs do not exceed benefits to lenders in view of the increase in the number of loans and the volume of outstanding loans.

Advertisement requirements were argued to be very costly (to the extent that some credit providers have stopped advertising on certain channels) (see EQ9) and to overload consumers with ineffective information (see EQ3). The obligation to provide an adequate explanation to consumers was claimed to increase front office costs, chiefly relating to IT system updates and training and certification of front office employees. No hard evidence was found on the extent of these costs or whether they followed the implementation of the Directive itself. This, in and of itself, represents an important finding of the evaluation. The fact that front office or compliance costs could be neither generated nor estimated by industry strongly suggests that they are not a major concern.

Overall, the evaluation suggests that the CCD has had an impact in reducing consumer detriment by providing pre-contractual information (such as the APR, SECCI), with an expected small share of consumers not receiving such information. The problems with the right of withdrawal and right of early repayment are comparatively small in terms of consumers affected, and are likely to have reduced substantially, given the limitations of these rights prior to the CCD.

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

Main findings

The overall costs of the provisions of the CCD to industry, public administrations and consumers are estimated to be lower than the reduction in consumer detriment and
thus to render them generally cost-effective. There are no indications that certain provisions significantly hamper the maximisation of benefits.

However, it appears that the cost-effectiveness of certain provisions, notably stemming from Article 4 on advertising, varies substantially, depending on the medium used to reach the consumer.

Overall, the evaluation concludes that the provisions of the CCD are cost-effective, although data limitations warrant a cautious approach (see EQ8). The overall reduction in consumer detriment (through key provisions on pre-contractual information, the right of withdrawal and right of early repayment) is estimated to have been considerable.

As outlined in Figure 22, there are few existing provisions that hamper the maximisation of benefits. While provisions such as the right of withdrawal and right of early repayment, as well as provisions on the APR and SECCI, hinder the maximisation of benefits to some degree (given that some consumers are still affected by problems in exercising their rights), the key gains lie in enforcement rather than the provision in the CCD itself. Two-thirds of industry representatives indicated that certain provisions are particularly costly or burdensome, with the obligations stemming from providing pre-contractual information most often mentioned, in view of their length and perceived inadequacy in digital contexts. Member State representatives overwhelmingly did not consider costs to be particularly problematic, although one Member State authority pointed to current requirements in pre-contractual information and advertisement as too prescriptive and stated that the CCD lacked flexibility. Consumer associations did not consider provisions generally cost-effective, with one arguing that current pre-contractual requirements are too complex for consumers and thereby cost-ineffective.

Advertising is not particularly cost-effective. While several industry stakeholders pointed to the cost of advertisements, this seems less of a problem for the application of existing rules at the point-of-sale, on websites of credit intermediaries or directly on websites of the lender, but rather for specific contexts, such as radio and possibly TV. For mobile devices and in social media contexts, current rules are also contested by some industry representatives. This evaluation estimates the compliance costs to industry at several thousands of euro a year per bank, and while there are no data for other channels, the joint cost to industry is considerable. The issue, however, lies not only in the burden and cost itself, but in the fact that some credit information messages on channels – such as radio – have an impact on a limited number of consumers, reducing their usefulness and their cost-effectiveness (see EQ10). At the same time, a 2019 study pointed out that the provision of the representative example in advertising helps consumers to make better choices in the online environment. Whether that ultimately makes those adverts sufficiently cost-effective cannot be ascertained. Overall, the efficiency of the provision seems to depend on the medium used to convey the advertising.

Benefits to consumers in terms of reducing the number of consumers affected could be larger for areas of the CCD that are currently either partially regulated or outside its scope (see Figure 22 in EQ8). However, as pointed out throughout this report, inclusion in the scope of the CCD does not necessarily maximise the reduction in consumers affected, which would depend, rather, on national legislation and enforcement. Table 4, for example, highlights that up to 11 million consumers might not receive the SECCI currently, which hampers the maximisation of benefits of the CCD but is due to enforcement rather than the Directive itself.

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322 Eurofinas, 2018b; Eurofinas, 2018c; Association of European Radios (AER), 2018.
323 European Commission, 2019b.
3.2.3 EQ10 – Is there scope for simplification and burden reduction? What provisions or areas of the CCD could be simplified to reduce the burden on stakeholders without undermining the effectiveness of the Directive?

**Main findings**

While there are elements that could benefit from simplification, the evaluation does not identify scope for simplification and burden reduction as to do so could risk undermining aspects of the effectiveness of the Directive. The main elements identified concern the advertising requirements for certain types of media types (such as radio), and pre-contractual information where it applies together with other legislation. Around one-quarter of Member State authorities argued for simplification, compared to only a handful of consumer associations and around half of industry representatives. Some two-thirds of organisations responding to the OPC argued for simplification.

Opinions on whether the CCD could - or should - be simplified were divided among consumer organisations. Some argued that simplification of legislation (particularly the provision of information) would enable better consumer understanding of the information, as well as their rights. However, others linked simplification to a potential narrowing of consumer protection standards.

A considerable share of industry stakeholders pointed to administrative burden and compliance costs as a current issue (even if they could not qualify that burden with relevant data). At the same time, several industry representatives highlighted that any change to the CCD – even a reduction in administrative burden – also implies new compliance costs, thereby partially undoing some of the intended gains.

To strike a better balance between costs and benefits, the creditors surveyed suggested simplifying the rules on the provision of information and minimising legal disparities by ensuring a higher degree of harmonisation. It has been demonstrated above that pre-contractual information (including the SECCI) and advertisement information are considered by industry to impose significant costs yet to have sub-optimal effects in their main objective (informing consumers). At the same time, having been in place for around a decade, the initial costs for providing pre-contractual information are now sunk costs, and there are few indications of substantial ongoing compliance costs (with existing systems increasingly automated). In the area of advertising, industry representatives from the radio sector considered there to be substantial recurring costs and pointed to ample scope for simplification.³²⁴

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

³²⁴ The Association of European Radios (AER) argued that the existing regulatory framework is particularly burdensome on radio ads given the specific form (and short duration of ads) and credit warning messages should rather be provided at the point-of-sale. They argued this is ineffective in protecting consumers and is thus an unnecessary burden on radio operators. Eurofinas pointed out that simplification is possible in the social media domain, with existing information requirements in the CCD not being adapted to the space and time requirements in the digital age. See AER, 2018. Only a tiny share (3-4% of consumers surveyed in the UK and France) were able to recall the exact credit amount mentioned in a radio ad. See also: Radiocentre, 2016; IFOP [FR], 2016; Eurofinas, 2018c.
3.3 Coherence

3.3.1 EQ11 - To what extent is the CCD internally coherent?

Main findings

The CCD and its implementation at Member State level shows a fair degree of internal coherence, overall.

The obligations set out by the Directive appear coherent when it comes to achieving its objective of ensuring consumer protection.

The main issue, however, is that the CCD provisions are not particularly coherent with the objective to facilitate the emergence of a well-functioning consumer credit market, which cannot be achieved solely through the Directive’s existing provisions (see EQ1 and EQ15 in sub-sections 3.1.1 and 3.4.1).

Stakeholders did not provide specific feedback on the CCD’s internal coherence.

The CCD provisions work well together and have been able to contribute to the CCD in achieving the objective of improving consumer protection: this includes the obligation to provide pre-contractual information, information to be included in advertising, the obligation to assess consumers’ creditworthiness, as well as the possibility to withdraw from a credit agreement and/or to repay the credit earlier than agreed at contractual stage.

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

There is also a degree of incoherence when it comes to the second objective of the Directive, i.e. fostering an internal credit market in the EU, in particular – as argued above – that the objective itself has a highly strategic aim that the CCD’s provisions cannot be (fully) expected to address. The various provisions of the Directive do not directly support achievement of this objective. Recital 6 of the CCD states that ‘The development of a more transparent and efficient credit market within the area without internal frontiers is vital […] to promote the development of cross-border activities.’ Supporting the development of a cross-border market by improving the credit market in the EU is an objective of the Directive. The vague wording of certain provisions (e.g. Article 8, on the obligation to assess the creditworthiness of the consumer) has led to their diverse application across Member States (see case study 7 on cross-border credit). Similarly, Member States’ choices in defining their own requirements for CW and access to credit databases show considerable discrepancies. These present obstacles for creditors to operate across the internal market of the EU. They are, however, chiefly the result of the implementation and practical application of the Directive at Member State level (see also EQ2, sub-section 3.1.2).

In addition, the CCD does not, and is mostly not set up to, address certain barriers that have been identified by stakeholders and which prevent the creation of internal market for consumer credit. These barriers include language and cultural barriers, and uncertainty over cross-border access to redress and debt collection. Similarly, the CCD does not harmonise the content of credit database (see EQ 5) which has been flagged as a key barrier to the provision of cross-border loans by creditors.

It must however be noted that the discrepancy between the general objective and the specific provisions of the Directive is partly attributable to the negotiation process whereby several elements of the Commission’s proposal were not included in the final text, including on responsible lending and the content of credit databases.
3.3.2 EQ12 – To what extent is the CCD coherent with other national-level consumer policy and legislation (including legislation going beyond the scope of the CCD, relevant for consumer credit)?

**Main findings**

The transposition of the CCD offers a high level of coherence between national legislation and the provisions of the Directive. A degree of incoherence is, however, created by the fact that several Member States have implemented some provisions of the Directive in very different ways and/or have introduced provisions going beyond those foreseen in the CCD. The subsequent legal fragmentation undermines the internal market objective of the CCD.

Six in 10 organisations responding to the OPC did not observe any coherence or consistency issues between national-level legislation and the CCD.

Overall, Member States’ transposition of the CCD offers a high level of coherence between national legislation and the obligations stemming from the Directive.

Most of the national transposing measures are largely coherent with the CCD. A few Member States, however, transposed several EU Directives in a single piece of legislation, which has reduced clarity in some cases. Only Cyprus and Greece did not adopt measures beyond the requirements of the CCD, instead opting for a literal transposition of the Directive.\(^{325}\)

Overall, a minority of 4 in 10 respondents to the CCD considered there to be a degree of incoherence of the CCD with national-level legislation. This evaluation finds that, on the basis of research conducted, this mainly relates to specific choices made upon transposition or much after its implementation.

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

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

Going beyond the provisions of the Directive when transposing it is ultimately a choice of the national legislators. However, the fact that several Member States have legislated to address similar issues (by way of product governance rules and interest caps\(^{327}\) to limit the cost of HCST loans or revolving credit, for instance) is a reflection of possible limitations of the Directive in these instances. On the other hand, these provisions can also be perceived as hindering the development of a cross-border credit market and could therefore be considered partially incoherent with the CCD.

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\(^{325}\) See case study 7 (*Cross-border access to loans*) for further details.

\(^{326}\) See case study 7 (*Cross-border access to loans, under 3.2*) for further details.

\(^{327}\) At least 11 Member States have introduced such interest caps: BG, ES, FI, HR, FR, LT, NL, PT, SE, SI, SK.

\(^{328}\) In Italy, for example, the cost of the loan cannot be higher than the ‘usury’ ceiling calculated as a coefficient of the average credit market price, above which it becomes illegal. Banca d’Italia [IT].
3.3.3 EQ13 – To what extent is the CCD coherent and complementary with other relevant EU-level legislation?

Main findings

The CCD is generally coherent and complementary with other EU-level consumer policy and legislation. There is some degree of discrepancy with the MCD, which lays down more detailed obligations than the CCD in relation to over-indebtedness and responsible lending. This may be in part due to a misalignment but is also partially due to the nature of the MCD (and size of the average mortgage).

No major inconsistencies were identified between the CCD and other relevant EU-level legislation, although room for further alignment or synergies was identified in several instances. The majority of organisations responding to the OPC believe the CCD to be consistent with other EU-level legislation.

Overall, the CCD appears largely coherent and complementary with other EU-level consumer policy and legislation. However, some elements could be better aligned.

A majority of the organisations responding to the OPC considered the CCD to be consistent with other relevant legislation at EU-level. Between 57% and 65% of respondents thought this to be the case for the MCD, UCPD, PSD2, GDPR, UCTD and DMFSD. The most common examples of incoherence mentioned by Member State authorities concerned the MCD and its requirements for responsible lending and CWAs, the reflection period and right of withdrawal, its definitions, and the level of harmonisation required under the MCD, allowing for stricter rules compared to the maximum harmonisation of the CCD.

Several EU-level legislative instruments touch upon aspects that are covered by the CCD or are potentially relevant for the provision of consumer credit. Some were adopted prior to the CCD (e.g., the Unfair Commercial Practices Directive (UCPD), the Distance Selling of Financial Services Directive (DMFSD), the Unfair Contract Terms Directive (UCTD)), while others entered into force after 2008 (e.g., the MCD, the AMLD and the PSD2).

The analysis of coherence with the MCD warrants special attention. In fact, while the MCD differs in scope to the CCD, both Directives aim to provide a harmonised framework in relation to certain aspects of credit agreements, most of which are covered in both pieces of legislation. Table 6 below summarises the main similarities and differences in the way that the CCD and the MCD have regulated some of these aspects. Overall, the MCD has gone further than the CCD, laying down more specific obligations in relation to most aspects and providing a higher level of consumer protection, especially against over-indebtedness and irresponsible lending.

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329 Responses of somewhat/very coherent: Businesses: MCD 74%; UCPD 62%; PSD2 58%; GDPR 72%; UCTD 80%; DMFSD: 65%. Consumer associations: MCD 64%; UCPD 38%; PSD2 50%; GDPR 25%; UCTD 38%; DMFSD 52%. Public authorities: MCD 70%; UCPD: 87%; PSD2 52%; GDPR 86%; UCTD 87%; DMFSD 65%. Please note that with the exception of the opinion of consumer associations on the GDPR, in the absence of an absolute majority there is nonetheless a relative majority due to the % of ‘do not know’ replies.

330 Directive 2014/17/EU.

331 Article 1 of the MCD establishes that it covers credit agreements that are secured by a mortgage or another comparable security used on residential immovable property and those whose purpose is to acquire or retain property rights in land or in an existing project building (explicitly excluded from the CCD as per Article 2(a) and (b)).
<table>
<thead>
<tr>
<th>Key aspect</th>
<th>Furthest reaching Directive</th>
<th>Regulation under the CCD and MCD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising</td>
<td>MCD</td>
<td>Both Directives establish similar standard information to be included in advertising (Article 4 CCD and Article 11 MCD). The MCD also provides that any advertising and marketing communication must be “fair, clear and not misleading”, prohibiting the use of wording that may create false expectations (Article 10).</td>
</tr>
<tr>
<td>Pre-contractual information</td>
<td>MCD</td>
<td>The standard information to be disclosed by credit providers is similar under the CCD (Article 5) and the MCD (Article 14). The MCD also includes specific information duties for credit intermediaries, who are obliged to disclose at least the general information contained in Article 15.</td>
</tr>
<tr>
<td>Explanations and advice</td>
<td>MCD</td>
<td>Both Directives establish the obligation for credit providers and credit intermediaries to provide adequate explanations to consumers (Article 5(6) CCD and Article 16 MCD). The MCD further includes the minimum explanations to be provided. It also establishes the obligation for credit providers to inform the consumer if advisory services can be provided and lays down certain standards for such services, including the obligation to recommend a suitable credit agreement (Article 22 MCD). This is further strengthened by the obligation for credit providers and intermediaries to ensure an appropriate knowledge and competence in relation to the manufacturing, offering and granting of credit agreements among their staff members (Article 9 MCD).</td>
</tr>
<tr>
<td>APR</td>
<td>Same</td>
<td>Both Directives establish a common formula (Article 19 CCD and Article 17 MCD).</td>
</tr>
<tr>
<td>CWA</td>
<td>MCD</td>
<td>The CCD and the MCD establish that credit providers must conduct CWAs based on sufficient information (Article 8 CCD and Article 18 MCD). The MCD further specifies the type of information that shall be considered (Article 20 MCD) and the obligation for credit providers to reject the credit application where the outcome of the CWA is negative (Article 18 MCD).</td>
</tr>
<tr>
<td>Access to databases</td>
<td>Same</td>
<td>Both Directives provide that Member States shall ensure access to the national databases for credit providers from other Member States and that the conditions of access to credit databases shall be non-discriminatory (Article 9 CCD and Article 21 MCD).</td>
</tr>
<tr>
<td>Right of withdrawal of CCD</td>
<td></td>
<td>The right of withdrawal is mandatory under the CCD (Article 14), while the MCD leaves this to the discretion of Member States to provide a right of withdrawal or a reflection period before the conclusion of the credit agreement (Article 14 ).</td>
</tr>
<tr>
<td>Right of early repayment</td>
<td>Same</td>
<td>Both Directives set out the right of consumers to repay their debt early (Article 16 CCD and Article 25 MCD).</td>
</tr>
<tr>
<td>Conduct of business rules</td>
<td>MCD*</td>
<td>The CCD does not establish any conduct of business obligations for credit providers, while the MCD requires them to act honestly, fairly, transparently and professionally when designing, manufacturing and selling credit products (Article 7). The MCD also prohibits tying practices (Article 12).</td>
</tr>
<tr>
<td>Financial education</td>
<td>MCD*</td>
<td>The CCD does not include any provision on financial education, while the MCD requires Member States to promote measures that support the education of consumers in relation to responsible borrowing and debt management, especially in relation to mortgage and credit agreements (Article 6).</td>
</tr>
<tr>
<td>Arrears and foreclosure</td>
<td>MCD*</td>
<td>The CCD does not include any provisions on arrears and foreclosure. The MCD foresees several measures that Member States shall or may adopt in the event of arrears (Article 28).</td>
</tr>
<tr>
<td>Foreign currencies and variable rate credits</td>
<td>MCD*</td>
<td>The CCD does not include any provision on these aspects. The MCD requires that any indexes or reference rate used to calculate the borrowing rate be clear, accessible, objective and verifiable by the parties and competent authorities. Historical records of these indexes must also be kept (Article 24). It also lays down certain rights for consumers of loans in foreign currencies (Article 23).</td>
</tr>
</tbody>
</table>
* This aspect is only regulated in the MCD

The MCD provides a higher level of consumer protection against over-indebtedness and irresponsible lending. By comparison, the tools provided by the CCD to promote responsible lending and avoid over-indebtedness (e.g. CWA and information duties) are underdeveloped and rely on the assumption that consumers will act rationally if they are provided with the correct information (see EQ15). By contrast, the MCD has transferred a significant part of the duty to ensure that consumers are borrowing responsibly onto credit providers. The additional obligations in respect of explanations and advice and CWA are intended to ensure that consumers are not sold products that are unsuitable for them. The introduction of conduct of business rules governing the design, manufacturing and sale of credit products also plays a key role in protecting consumers against over-indebtedness, complemented by the obligation for Member States to promote financial education.

Despite the divergent approach to responsible lending, apart from Member States authorities, very few stakeholders raised concerns about coherence between the CCD and the MCD. This may be because the obligations imposed by the two Directives govern different types of credit, thus do not hinder credit providers in complying with both. Some of the differences, such as the provisions on foreclosure, could be explained by the fact that the MCD is related to immovable property.

However, better alignment of the provisions could improve the implementation of both Directives, as it would improve legal clarity for Member States and credit providers and ensure a consistent approach to protection of consumers against over-indebtedness. This was noted by several stakeholders representing consumer associations, industry representatives and national authorities, who identified room for greater consistency between both texts. National authorities were particularly keen to see the CCD provisions on CWA aligned with those in the MCD. Several also suggested introducing other MCD provisions to ensure more coherence, such as the conduct of business rules or the prohibition of tying practices.

A handful of stakeholders referred to the need to achieve better alignment of the definitions included in Article 3 of the CCD and Article 4 of the MCD and the terms used throughout the texts. An example is the definition of the APR, which in the MCD includes a reference to the costs that need to be included and the present value of all future or existing commitments.

No major inconsistencies were identified between the CCD and other relevant EU-level legislation, although room for further alignment or synergies were identified in several instances. This is in line with the feedback from key stakeholders, most of whom believed that the Directive was coherent with other EU-level legislation. Consumers typically referred to the PSD2, the UCPD, the GDPR and the DMFSD, while other key stakeholders pointed to the e-Privacy Directive, the e-Commerce Directive, the Benchmark Regulation, the Insurance Distribution Directive (IDD) and the AMLD.

Table 9 presents the main points of interaction between the CCD and other pieces of legislation, including any potential inconsistencies, gaps and synergies.

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332 Interviews with consumer associations, industry representatives and Member States; OPC (specific).
333 The need to improve consumer protection against over-indebtedness was identified as one of the main shortcomings of the CCD (see EQ15).
334 Interviews with industry representatives and Member States.
335 Interviews with Member States.
336 Article 4(15) MCD.
337 In regards to UCPD it should be pointed out that in 2016 the European Commission issued guidance on the application of the UCPD, which indicates that the elements on commercial practices in the CCD (Article 4) prevail where there is overlap.
338 OPC (general).
339 Interviews with consumer associations and industry representatives; OPC (specific).
Table 7. Coherence and complementarity between the CCD and other key pieces of legislation

<table>
<thead>
<tr>
<th>Legislation</th>
<th>CCD key aspects</th>
<th>Interactions</th>
<th>Potential inconsistencies, gaps, synergies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfair Contract Terms Directive (UCTD)(^{340})</td>
<td>Contractual information, right of early repayment, right of withdrawal</td>
<td>The UCTD applies to all business-to-consumer contracts and concerns contractual terms that have not been individually negotiated in advance (e.g. general conditions of the credit agreement).</td>
<td>Credit providers are bound by the UCTD. Unfair credit agreement terms are therefore not binding on consumers. The UCTD complements the CCD, as the latter does not cover unfair contract terms. There is extensive CJEU jurisprudence on the fairness of the terms in financial service business-to-consumer contracts. Major issues referenced payment acceleration and terms that fixed the interest payable upon default. Note that guidance on the interpretation and application of UCTD was published in July 2019.(^{341})</td>
</tr>
<tr>
<td>e-Commerce Directive (ECD)(^{342})</td>
<td>Precontractual information, cross-border market</td>
<td>The ECD was introduced to promote eCommerce across EEA countries and remove barriers to trade by setting up a &quot;Country of Origin&quot; principle. It applies to services provided at a distance by electronic means. Credit providers are not explicitly excluded from its scope of application, meaning that it covers credit providers selling credit online. Together with the DMFSD, it contributed to creating a legal framework for the online provision of financial services.</td>
<td>The ECD regulates the provision of information on the identity, geographical address and details of the service provider, as well as information on public registers. The CCD regulates aspects of advertising and pre-contractual information with specific reference to pre-contractual and contractual information to be provided to borrower, while the ECD provides for more general provisions on misleading advertising and on the compliance with the consumer protection legislation including the CCD, as mentioned by Recital 10 ECD. There is no evidence of overlap between the ECD and CCD. Article 3 of ECD expressly provides that the ECD does not apply to the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 8(1) of Directive 2000/46/EC (3), which concerns issuers of electronic money. In addition, Article 20 CCD provides for the supervision of creditors by a supervisory authority when they are non-banking institutions already supervised by the competent supervisory authority. No major discrepancies were found between the two Directives.</td>
</tr>
<tr>
<td>Distance Marketing of Consumer Financial Services Directive (DMFSD)(^{343})</td>
<td>Pre-contractual information, right of withdrawal, cross-border market, ban of</td>
<td>The DMFSD aims to ensure the free movement of financial services in the single market by harmonising consumer protection rules. The Directive sets out a list of information</td>
<td>There are no major discrepancies between the CCD and the DMFSD, although there are some small differences.</td>
</tr>
</tbody>
</table>

\(^{340}\) European Council, 2011.  
\(^{341}\) C(2019) 5325 final.  
\(^{342}\) Directive 2000/31/EC.  
\(^{343}\) Directive 2002/65/EC.
unsolicited services and communications concerning the financial service and its provider that the consumer should receive before the distance contract is concluded. It also establishes the right of consumers to withdraw from the contract within a 14-day period.

The pre-contractual information required by the DMFSD is more general than that in the product-specific CCD, as it applies to all financial services in general. CCD is specific and it constitutes a lex specialis applicable to consumer credit contracts. The DMFSD foresees the provision of information on redress at pre-contractual stage, which under the CCD is only provided at contract stage.

The conditions to exercise the right of withdrawal under the CCD are aligned with those in the DMFSD, although the DMFSD foresees a reinforced protection of consumers by establishing that the supplier may not require the consumer to pay any amount unless they can prove that the consumer was duly informed.

e-Privacy Directive (EPD)[344]

Advertising of consumer credit, pre-contractual information, CWA

The EPD seeks to protect the right to privacy and confidentiality with respect to the processing of personal data in the electronic communication sector and to ensure free movement of such data. It is relevant where consumers are targeted by online advertisements or where communications between credit providers and consumers are made electronically.

The Directive is under revision to be aligned with the GDPR.[345] Although the CCD does not explicitly cover the electronic transmission of information and documents (e.g. SECCI), it can be argued that electronic communications fall under the definition of “any durable medium”, especially given the objective of the CCD to develop a cross-border consumer credit market.

There are no inconsistencies between the CCD and the EPD. Better alignment could be ensured by explicitly indicating that credit providers are bound by the EPD (or the future ePrivacy Regulation) when collecting, sharing, processing and storing consumer data electronically.

Unfair Commercial Practices Directive (UCPD)[346]

Advertising of consumer credit

The UCPD protects consumers against unfair, misleading or aggressive advertising practices, prohibiting behaviours contrary to the requirements of professional diligence that materially distort (or are likely to) the economic behaviour with regard to the product of the average consumer it reaches or to whom it is addressed. The CCD contains specific provisions on the advertising of credit agreements and standardises the information to be provided.

As explained by the Guidance to UCPD, since a robust set of EU sector-specific legislation exists in this sector, the ‘safety net’ character of the UCPD is particularly apparent, ensuring that a high common level of consumer protection against unfair commercial practices can be maintained in all sectors. The provisions of the CCD on information to be provided to consumers are to be regarded as “material” under Article 7(5) UCTD.

In 2016, the European Commission issued guidance on the application of the UCPD. If provisions of sector-specific EU law, such Article 4 of the CCD (standard information) apply and overlap with provisions of the UCPD, the provisions of the lex specialis prevail. Therefore, the UCPD will not apply to the specific aspect of

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344 Directive 2002/58/EC.
345 COM/2017/010 final - 2017/03 (COD).
346 Directive 2005/29/EC.
The commercial practice that is covered by Article 4 of the Consumer Credit Directive.

### Anti-Money Laundering Directive (AMLD)\(^{347}\)

CWA, market cross-border

The CCD only requires that CWAs be carried out. The AMLD obliges entities to apply customer due diligence requirements when entering into a business relationship (i.e. identify and verify the identity of clients, monitor transactions and report).

Credit providers are bound by AMLD requirements. There are no inconsistencies between the CCD and the AMLD, but some Member States have imposed specific anti-money laundering requirements when transposing the Directive that may constitute an obstacle to cross-border activity (e.g. face-to-face ID verification), despite the European Union’s Electronic Identification and Trust Services Regulation (eIDAS) Regulation.

### Payment Services Directive (PSD2)\(^{348}\)

Scope of application

The PSD2 aims to drive increased competition, innovation and transparency in the internal payments market. It also foresees the possibility for payment institutions to grant credit, namely the granting of credit lines and the issuing of credit cards, only where it is closely linked to payment services (Article 18(4)).

Although there is some overlap between the two Directives in relation to payment service providers granting credit, they regulate different aspects. The definition of “credit agreement” should clarify whether certain payment instruments are included in the CCD.

According to Article 18(4)(b) PSD2 credit lines can be provided by payment service provider only if they are granted in connection with a payment and shall be repaid within a short period which shall in no case exceed 12 months.

### Benchmark Regulation\(^{349}\)

Pre-contractual information, the APR

The Benchmark Regulation introduced rules to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts. The Regulation amended Article 5 of the CCD (pre-contractual information) to ensure that when a benchmark is referenced in the credit agreement, adequate information is provided by creditors or credit intermediaries at pre-contractual stage (in an annex to the SECCI).

There are no inconsistencies between the Benchmark Regulation and the CCD. The Benchmark Regulation acknowledges that while consumers are able to enter into consumer credit contracts that refer to benchmarks, the unequal bargaining power and use of standard terms mean that they have a limited choice about the benchmark used (Recital 71). It therefore amended the CCD to ensure that consumers are correctly informed in these cases.

The Regulation also refers to the CCD in several instances when defining terms used, ensuring consistency of terms between both texts.

### Insurance Distribution Directive\(^{350}\)

Cross-selling of insurance policies

The IDD sets out regulatory requirements for firms designing and selling insurance products. It establishes conduct of business and transparency rules, procedures and rules for cross-border business, and rules for the supervision and sanctioning of insurance distributors where they breach the IDD provisions.

The Directives have different scopes of application. However, credit providers that sell insurance policies to consumers as part of a package are acting as insurance distributors within the meaning of the IDD and are bound by IDD requirements. This includes Article 24(3) IDD, which obliges insurance distributors selling insurance policies ancillary to consumer credit (as part of the same

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\(^{349}\) Regulation (EU) 2016/1011.
\(^{350}\) Directive (EU) 2016/97.
Geo-blocking Regulation\textsuperscript{351} prohibits discrimination against consumers based on their nationality, place of residence or establishment when they buy goods or services. However, there is no interaction between the CCD and this Regulation, as financial services are excluded from the Regulation. No specific issues were identified because financial services do not fall under the scope of the Geo-blocking Regulation. Regulation (EU) 2018/302 addresses unjustified online sales discrimination based on customers' nationality, place of residence or place of establishment within the internal market. Geoblocking is mainly relevant for e-commerce and for removing barriers to use of electronic payment systems cross-border. However, it does not directly relate to consumer credit.

### 3.3.4 EQ14 – To what extent are there any synergies, overlaps or gaps between the CCD and data protection legislation that would need to be addressed?

#### Main findings

Several overlaps or gaps between the CCD and data protection legislation need to be addressed, in addition to those referred to in Section 3.3.3 above.

In particular, several provisions of the CCD are directly impacted by the GDPR. In this respect, more synergy between the CCD and GDPR could be achieved through better referencing and guidance on key aspects. However, the fact that the CCD does not specify the data that should be used (or not used) in the CWA process is a gap that the GDPR cannot itself fill effectively, particularly considering the objective of the CWA obligation, i.e. to ensure that consumers are provided with loans that are appropriate to their financial situation.

Overall, the provisions of the CCD and their implementation at national level are generally coherent and compatible with other relevant policy and legislation, in particular data protection legislation. However, since the entry into force of the GDPR, a number of practical issues have presented themselves and these are set out below.

There are no inconsistencies between the CCD and the GDPR, as such. However, the CWA must be carried out in full compliance with the GDPR, including the maintenance of credit databases.

Better alignment could be ensured by explicitly indicating that credit providers are bound by GDPR obligations when collecting, sharing, processing and storing consumer data. Referencing the GDPR and its key principles in the CCD could also ensure a higher degree of legal certainty.

The GDPR sets out seven key principles, including: lawfulness, fairness and transparency; purpose limitation; and data minimisation. Where data are collected, organisations must be clear about why they are collected and how they will be used. In addition, organisations should only store the minimum amount of data required for their purpose. Personal data must be accurate, fit for purpose and up to date. When personal data are no longer needed for the purpose for which they were collected, they should be deleted or destroyed unless there are other grounds for retaining it. The GDPR states that organisations should have the appropriate levels of security in place to address the

\textsuperscript{351} Regulation (EU) 2018/302.
risks presented by their process. Organisations must take responsibility for the data they hold and demonstrate compliance with the other principles.

These specific principles relate to a number of relevant articles: the accountability principle and the responsibility of the controller (Article 5 and Article 24 GDPR), data protection by design (Article 25 GDPR) and – possibly – data protection impact assessment (Article 35). In addition, the article on automated decision-making (Article 22 GDPR) and its guidance, as well as transparency (Articles 12 to 14) and the relevant guidance are relevant for creditors with respect to the way CWAs are carried out and credit databases are used.

The vast majority of stakeholders argued that the CCD is applied in full compliance with EU-level data protection laws (primarily related to the use of credit databases that are used to assess the creditworthiness of consumers). However, a number of risks were highlighted by some stakeholders. BEUC and the FSUG, for instance, expressed concerns about the new types of information collected online (notably by new types of providers such as crowdfunding platforms) for verifying the creditworthiness of consumers and the impact this could have on vulnerable consumers and their access to credit. These stakeholders argue that little or no rigorous scrutiny of consumers’ ability to pay (creditworthiness) can in fact lead to higher risks of indebtedness, with vulnerable consumers accessing loans they cannot repay.

While only 13% of organisations responding to the OPC reported that the GDPR is incoherent with the CCD, there is uncertainty as to the practical implications of requirements on the identification, collection and use of consumer data for the purposes of the CWA. Recent work by the European Data Protection Board and national data protection authorities is thus helpful in providing guidance on how the GDPR impacts the functioning of the CCD provisions.

However, the fact that the CCD does not specify the data that should or should not be used in the CWA process is a gap that the GDPR alone cannot fill, particularly given the objective of the CWA obligation, i.e. to ensure that consumers are provided with loans that are appropriate to their financial situation (see also EQ15 on the relevance of the CCD provisions in light of digitalisation).

Apart from CWA obligations, compliance with the GDPR is also pertinent to advertising requirements.

### 3.4 Relevance

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

**Main findings**

The objectives and provisions of the CCD are still relevant. However, there is a mismatch between the CCD’s objectives and the ability of the current set of provisions to meet them. This impacts its ability to address current and anticipated future needs and challenges, in particular in the context of digitalisation trends and fostering a cross-border credit market and responsible lending.

While the objectives of the CCD remain relevant, certain shortcomings prevent it from addressing all of the current and anticipated future needs and challenges of consumers.
and credit providers. Key here is the inability of the CCD to tackle issues linked to digitalisation and irresponsible lending.

The CCD was intended to establish a well-functioning internal market in the field of consumer credit and to ensure a high level of consumer protection. In pursuing these objectives, the Commission expected the legislation to have a positive impact on competitiveness and competition (i.e. growth of the cross-border market, which would result in improved efficiencies and economies of scale, new opportunities for credit providers and consumers, and stimulate competition), as well as to improve consumer protection across the EU.\(^{356}\)

More than 10 years after the CCD was adopted, both objectives remain relevant. In fact, although they are both pursued by other relevant EU-level legislation (e.g. MCD, DMFSD, PSD2), the evidence gathered suggests that the CCD is still considered relevant, as it provides a specialised framework that takes account of the functioning and specific issues related to consumer credit.

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

**Main findings**

The need to ensure a high level of consumer protection is readily acknowledged by all stakeholders. The CCD provisions have enhanced consumer protection since the introduction of the Directive. However, their relevance is less evident in light of the changes in the credit market and in consumer behaviour. Stakeholders point to important gaps in helping consumers to absorb digitalisation and protecting them from irresponsible lending.

The relevance of this objective is reflected in the way that most Member States have transposed and implemented the CCD, in most cases going beyond the requirements laid down by the Directive to ensure better consumer protection. This points to direct relevance for Member States as well. Examples of additional steps are: the extension of the scope of the CCD to other credit; caps on interest rates; authorisation regimes; stricter CWA obligations; strengthened supervisory and enforcement measures; and further requirements with respect to advertising.\(^{357}\) Some industry representatives noted that credit providers are not opposed to rules seeking to protect consumers, provided that they are actually effective and not simply burdensome to lenders.\(^{358}\)

The extent to which the provisions of the CCD are aligned with the needs of consumers in practice is subject to debate. Several provisions of the CCD proved particularly relevant to addressing issues faced by consumers a decade ago. The extension of the rights of withdrawal and early repayment, harmonisation (to a certain extent) and establishment of a common formula to calculate the APR all proved useful for consumers (e.g. by allowing them to better compare offers).\(^{359}\)

Ten years on, the CCD covers some – but not all - of the current consumer needs.\(^{360}\)

The last decade has seen important changes in consumer behaviour that are not reflected in the provisions of the CCD. Consumers’ decision-making processes in deciding to take up credit have changed as a result of digitalisation and the

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\(^{356}\) COM (2005) 483 final/2; EBA, 2018; ECRI, 2018a.

\(^{357}\) Legal analysis; interviews with Member States. See case study B (Thresholds and scope) for further details.

\(^{358}\) Interviews with industry representatives.

\(^{359}\) Interviews with consumer organisations and Member States.

\(^{360}\) Interviews with consumer organisations, Member States and enforcement authorities; FSUG, 2019. Although opinions on whether the CCD addresses current needs were evenly divided among national authorities and industry representatives, all consumers organisations stated that it meets consumer needs in their Member State. It should be noted, however, that most consumer complaints concern the level of fees, pre-contractual and contractual information, debts and debt collection, levels of interest rates and management issues, meaning that some of consumers’ main issues are not addressed by the CCD.
transformation of consumption habits (see section 3.1.3 on pre-contractual information and section 2.2.2 on the cross-border consumer credit market). For instance, consumers are slightly less concerned with the location of the provider, instead prioritising smoother and faster processes, as a result of the industry's push for quicker, more efficient processes and enhanced customer experience. The approach to consumer protection adopted by the CCD is anchored in the information paradigm, where consumers are assumed to make good decisions based on the information received. This is somewhat outdated, however.361

While the general feedback collected in the OPC shows that a substantial majority of stakeholders consider the CCD provisions on consumer information to be relevant, the details contained in their contributions, as well as the evidence collected as part of this study, paint a more nuanced picture. Indeed, the provisions of the CCD are not entirely adapted to current consumer behaviour and the way information is displayed online. For instance, the Directive does not specify how the information should be presented to consumers, specifically in a digital or online environment, where different dynamics apply (e.g. speed of information and consumer experience). Consumers are unlikely to read and process large amounts of information (which only in part derives from the CCD) and often sign without understanding the conditions of the agreement, especially when undertaking credit online.362 Such behaviour is amplified by the way the information is disclosed in the online environment. In fact, unlike non-digital environments, the online experience makes it easier for consumers to act on the information provided (by clicking on it, soliciting information directly, rather than more active engagement via the phone or going to a physical point of sale). Two-thirds of organisations responding to the CCD considered new market players to have changed the provision of credit since 2008, with over 90% agreeing that digitalisation has changed the market. Meanwhile, more than 8 in 10 industry representatives considered the CCD unfit for dealing with future needs, compared to half of the Member State authorities and two-thirds of the consumer associations.

Another shortcoming relates to the CCD’s limited coverage of responsible lending. While earlier versions of the CCD proposed by the Commission spelled out the objective of avoiding consumers’ over-indebtedness and included specific obligations to ensure responsible lending (i.e. avoiding unreasonable credit contracts, introducing duties of credit providers to assess and advise on the risks of default and holding them responsible during all phases), the final version did not establish such a clear duty.363 Avoiding irresponsible lending and over-indebtedness is mentioned in Recital 26 of the CCD and can be assumed to be the final objective of some of its key provisions, especially the obligation to perform a CWA and to provide adequate and comprehensive information. However, these tools are too underdeveloped to effectively foster responsible lending and avoid over-indebtedness. The MCD, by contrast, requires not only a thorough CWA but also requires refusal of credit where obligations of the agreement are unlikely to be met. Under the CCD, a negative outcome of the CWA does not have direct consequences, unless specifically foreseen in the national legislation (such as the Netherlands, which prohibits granting consumer credit following a negative CWA).

From the perspective of credit providers, responsible lending requires them to design credit products responsibly and to establish business practices that ensure that these products are sold to consumers who can reasonably fulfil their obligations. Several products are intrinsically risky for consumers due to their high cost, for example. The CCD fails to address product design issues, with many of these products falling outside

361 BEUC, 2017; European Parliament, 2018; interviews with industry representatives.
362 Interviews with consumer associations, Member States and industry representatives; Survey of creditors; FinCoNet, 2017; Danish Competition and Consumer Authority, 2018; European Commission, 2016d; See case study 1 (Pre-contractual information) for further details.
363 BEUC, 2017.
the scope of the CCD. Even where they are covered, the CCD does not contain any provision to mitigate their risks. Responsible lending concerns were highlighted by two in 10 consumer associations, while several industry representatives argued that responsible lending requirements can reduce consumer detriment and costs for credit providers.

Some Member States have implemented national-level provisions, such as interest rate caps to avoid excessively high costs to consumers. Others have banned certain products or imposed obligations that effectively pushed them out of the market. For example, by extending the scope of the CCD to loans below EUR 200, Belgium has indirectly eliminated payday loans. Similarly, the strict regulatory requirements applicable to consumer credit in the Netherlands have rendered it a very unattractive market for payday loan providers. The new consumer code in Denmark has placed restrictions on showing payday loan ads in specific cases (such as next to gambling ads).

Several irresponsible lending practices have been observed in the consumer credit market. Chief among these is the cross-selling of products like insurance policies (in many cases to unsuitable consumers), particularly targeting vulnerable consumers by promoting easy and quick access to some of the most potentially dangerous credit products (e.g. STHC credit) and failing to support consumers who are struggling to repay on time. This study estimates that cross-selling affects up to 25 million consumers annually, and non-verification of CWA up to 6 million consumers a year, with several millions of consumers potentially affected by unrequested extensions of their credit line (revolving credit) (see Section 3.2.1).

A number of shortcomings prevent the CCD from tackling these issues:

- It does not specify whether the CWA should be creditor-focused (i.e. whether the consumer can repay the debt) or borrower-focused (i.e. whether this can be done without incurring substantial financial harm and whether the product is suitable for them).
- It does not establish the consequences of a negative CWA (i.e. that credit should be refused). This aspect may be clarified, to a certain extent, through interpretations of this provision by the CJEU. For instance, in C-58/18 Schyns, the CJEU noted that the obligation to perform a CWA seeks to protect consumers against the risks of over-indebtedness and insolvency.
- It does not impose any restrictions on cross-selling nor does it contain rules designed to ensure the suitability of products.
- It does not impose an obligation on credit providers to inform and advise consumers on variable interest rates, the impact on their financial situation, or the risks and consequences of default payments.
- It does not establish the obligation of fair treatment of consumers at risk of default by ensuring their early detection and assessing the best solution in each case rather than imposing unreasonable charges.

Some Member States have gone beyond the requirements of the CCD to mitigate these risks. Measures taken include defining the information and documents that must be assessed by credit providers to determine whether a person is able to repay the debt, or establishing further requirements in advertising, e.g. obliging credit providers to include messages warning consumers that borrowing money costs money.

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364 See case study 8 (Thresholds and scope) for further details.
365 See case study 5 (Annual Percentage Rate of Charge) for further details.
366 Interviews with Member States.
367 See case study 8 (Thresholds and scope) for further details.
368 Judgment of the Court C-58/18 Schyns (C-58/18 Schyns ECLI:EU:C:2019:467).
369 Legal analysis; See case study 2 (Advertising and Marketing) and case study 6 (Credit worthiness assessment) for further details.
From a consumer perspective, responsible lending focuses on their ability to understand their options, the conditions applicable, and the potential risks. Although the provision of adequate, comprehensive and timely information is clearly central, such efforts must be coupled with an adequate level of financial literacy among consumers. Stakeholders note a lot of room for improvement in this area.\(^{370}\)

The stakeholder consultation reveals a perceived need – particularly among consumer associations and national authorities - for the CCD to further promote responsible lending and increase consumer protection against over-indebtedness. Other than the adaptation of information requirements to ensure that consumers understand the agreement conditions,\(^{371}\) there were no suggestions for specific supporting measures. However, FSUG recently put forward several suggestions:\(^{372}\)

- Introducing rules on product oversight, similar to the 2016 EBA Guidelines on product oversight and governance;
- Imposing EU-level interest rate caps based on good national practices and defining an acceptable default rate within a risk pool for all creditors\(^{373}\) (although the impact on access to credit for risky consumers should be considered);\(^{374}\)
- Ensuring that all advertising warns consumers that credit costs money, and banning unsolicited credit sales;
- Establishing conduct of business rules to be observed by all credit institutions throughout the process (e.g. ensuring suitability of products, proper advice and support of consumers at risk of arrears);
- Imposing stricter rules on CWA.

To further promote responsible lending, specific obligations for Member States in relation to financial education (both among credit providers’ employees and consumers) could be explored in the future, with many stakeholders noting their support for prioritising such an initiative.\(^{375}\)

In conclusion, some consumer associations highlighted that better protection of consumers could be achieved by strengthening enforcement of credit providers’ obligations.\(^{376}\) While this is primarily a Member State-level issue, a small number of stakeholders argued that the CCD could potentially contribute to better enforcement by harmonising sanctions across the EU.\(^{377}\)

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

**Main findings**

The relevance of the objective to establish a well-functioning internal market is less clear-cut, since both credit providers and consumers do not seem to consider cross-border access an important need. However, stakeholders acknowledge the importance of having a harmonised framework. The transformations linked to digitalisation in terms of emergence of new players and ways in which credit providers (both traditional and new) communicate and engage with consumers might not be adequately captured by the provisions of the CCD.

Recitals 6 and 7 of the CCD state that a well-functioning internal market is multidimensional. It comprises an area in which cross-border access to consumers is ensured and requires a harmonised legal framework that ensures a level-playing field

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370 EESC, 2019; interviews with industry representatives and enforcement authorities.
371 See case study 1 (Pre-contractual information) and 2 (Advertising and Marketing) for further details.
372 FSUG, 2019.
373 Alternatively, EU-level legislation could provide that Member States shall impose a cap on interest rates.
374 ECRi, 2019; interviews with industry representatives.
375 FSUG, 2019; EESC, 2019; interviews with industry representatives.
376 Interviews with consumer associations.
377 Interviews with Member States.
for all credit providers. Neither consumers nor credit providers see achieving an effective cross-border market for consumer credit as the most pressing need. However, while cross-border credit is insignificant as a whole,\textsuperscript{378} nearly 30\% of consumers surveyed indicated having looked for loans in other countries, showing potential demand.\textsuperscript{379} Although several obstacles play a role, the low levels of demand are also explained by a lack of interest, as consumers are satisfied with the national offer (especially in large economies) or prefer to purchase products in their own country.\textsuperscript{380} From the perspective of the offer, the low demand for cross-border credit results in a lack of incentives for credit providers, especially traditional providers.\textsuperscript{381} (See case study 7 (Cross-border access to loans) for further details on the development and obstacles to the cross-border market for consumer credit.)

There are indications, however, that the cross-border market may develop in the future, in part thanks to the developments linked to the digitalisation of business processes and changes in consumer behaviour, bringing with it new issues for consumers and credit providers.\textsuperscript{382} Against this background, achieving a well-functioning internal market is likely to become increasingly relevant.

The relevance of a harmonised framework is more evident at present. Stakeholders across all groups – especially industry representatives and national authorities - acknowledge the importance of a harmonised framework that allows a level playing field for all credit providers (regardless of their nature and location) in ensuring the functioning of the internal market (see case studies 7 and 8 for more detailed discussion).\textsuperscript{383}

The adoption of the CCD led to a certain degree of legal harmonisation, especially with regard to the calculation of the APR and the provision of standardised pre-contractual information by means of the SECCI, but did not achieve the intended degree of uniformity of rules across the EU (see EQ1 for further details). Similarly, credit providers believe that the new framework did not significantly improve legal clarity and required some investment to ensure compliance with the legal obligations originating either directly from the CCD or from the national transposition measures (see EQ7 for further details).\textsuperscript{384} The limited impact of the CCD may be an indication that the provisions of the CCD were not entirely relevant to the objectives pursued (see EQ11 for further details).

A decade after the adoption of the CCD, important shortcomings have been identified that suggest it is ill-equipped to address several current and future needs.\textsuperscript{385} Most stakeholders argued that the CCD is not able to deal with future needs, highlighting concerns about the impact of digitalisation on the current market structure and business processes. These developments do not make the objectives of the Directive less relevant but, rather, bring into question the ability of the CCD provisions to be effective in the medium and long-term.

The impact of digitalisation on the consumer credit market is discussed in detail in Sections 3.5.1, 3.5.2, and case study 9 (new markets for lending). In brief, digitalisation has triggered the emergence of new players (e.g. fintech companies providing consumer credit or related services) and has transformed the way that credit providers (both

\textsuperscript{378} European Commission, 2016b; Consumer survey; OPC (general).

\textsuperscript{379} Consumer survey.

\textsuperscript{380} European Commission, 2016b; ECRI, 2018a; OPC (general); interviews with Member States, consumer associations and industry representatives.

\textsuperscript{381} Due to the digital environment in which they operate, fintech companies are less constrained by geographical barriers.

\textsuperscript{382} See case study 7 (Cross-border access to loans) for further detail.

\textsuperscript{383} Interviews with consumer organisations, industry representatives, Member States and enforcement authorities.

\textsuperscript{384} Creditors’ survey; See EQ7 for further details.

\textsuperscript{385} European Parliament, 2018; EESC, 2019; interviews with consumer organisations, industry representatives, Member States and enforcement authorities.
traditional and new) communicate and engage with consumers.\(^{386}\) One study showed that between Q2 2016 and Q2 2018 the volume of fintech credit rose about threefold,\(^{387}\) while another found that the fintech market is expected to grow 13.3% by 2022, from a 2018 transaction value of EUR 682 billion.\(^{388}\)

The emergence of new players has changed the way in which consumer data are processed, both for marketing and CWA purposes.\(^{389}\) The limitations of the CCD in (fully) adapting to these trends is highlighted as one of the main issues limiting its relevance today.\(^{390}\) This limitation was noted by all stakeholder groups, especially industry representatives and national authorities.\(^{391}\)

Business processes have also been significantly impacted. A majority of consumer credit is now sold using a combination of online and offline processes,\(^{392}\) and credit providers are increasingly using alternative data in CWAs.\(^{393}\)

These transformations are likely not adequately captured by the provisions of the CCD. Firstly, there is a debate about whether or not new market players (such as crowdfunding/P2PL) fall within the scope of the Directive. Secondly, as discussed in EQ4 and 5, the provisions on access to credit databases are limited and do not address the information these databases should contain nor specify the data to be used for carrying out CWAs. This presents potential risks when certain creditors are using alternative data and automated decision-making processes (e.g. discrimination and subsequent exclusion of certain population groups).\(^{394}\)

In both cases, this raises questions about the level playing field between creditors depending on their type and practices, which is an important aspect in view of the CCD’s objective of fostering the internal market for cross-border credit.\(^{395}\)

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

**Main findings**

The scope of application of the CCD seems somewhat inadequate to ensure sufficient protection for consumers for certain credit products. The main issues here include the minimum threshold of EUR 200 (which hinders consumer protection against products such as high-cost and revolving credit), and the exclusion of specific products (e.g. overdraft facilities, leasing agreements, zero-interest rate credit and agreements with pawnshops). The definitions of creditor and credit intermediaries are no longer entirely relevant in the context of a digital era.

Article 2 of the CCD defines its scope of application, complemented by the definitions in Article 3. Briefly, it typically applies to credit agreements of amounts between EUR 200 and EUR 75,000 (though amended with the MCD’s entry into force)\(^{396}\) that do not fall

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\(^{386}\) See case study 7 (Cross-border access to loans), case study 8 (Thresholds and scope) and case study 10 (New market for lending) for further details.

\(^{387}\) BIS, 2018.


\(^{389}\) See case study 5 (Annual Percentage Rate of Charge) for further details.

\(^{390}\) ECRi, 2018a; EESC, 2019.

\(^{391}\) Interviews with consumer organisations, industry representatives and Member States.

\(^{392}\) See case study 7 (Cross-border access to loans) for further details.

\(^{393}\) See case study 5 (Annual Percentage Rate of Charge) and EQ5 for further details.

\(^{394}\) See case study 5 (Annual Percentage Rate of Charge), 8 (Thresholds and scope) and EQ16.

\(^{395}\) ECRi, 2018a; EESC, 2019; interviews with consumer associations, industry representatives, Member States and enforcement authorities.

\(^{396}\) With the entry into force of the MCD in 2014, the CCD was amended to include unsecured credit agreements whose purpose is the renovation of a residential immovable property involving a total amount of credit above EUR 75,000 to ensure an equivalent level of protection to those consumers and to avoid any regulatory gap between the two Directives.
under the exemptions listed in Article 2(2). This list of exemptions is comprehensive and covers many loans that were included within the scope of the initial 2002 Directive proposal. The relevance of the scope of the CCD is discussed in more detail in case study 8 (Thresholds and scope) and the main findings are summarised below. The scope of application of the CCD excludes a significant share of consumer credit commonly used in the EU, either due to the small amount of the loans usually taken or because the credit product is explicitly exempted.

While three-quarters of organisations responding to the OPC argued that the scope of the CCD is relevant, the minimum and maximum thresholds of Article 2(2)(c) are generally perceived as partially relevant at best, if not largely irrelevant, as they establish an artificial distinction based on the amount rather than the nature of the credit. Only one in 10 consumer associations and two in 10 Member State authorities consider this adequate, compared to half of the industry representatives.

The EUR 200 minimum threshold is particularly problematic as it prevents the CCD from tackling some of the issues linked to high-cost and revolving credit. These types of credit may result in high levels of consumer detriment, as they tend to be very expensive and are typically used by vulnerable consumers with limited access to other types of consumer credit, often leading to over-indebtedness.397

Particularly common in this regard is STHC credit, which is not intrinsically excluded from the scope of application of the CCD but is very likely to be excluded in practice, as the amount borrowed is generally lower than the minimum threshold of the Directive (EUR 200).398 Even for the cases that are covered, the CCD is considered ill-equipped to address issues with STHC loans and overdraft facilities.399

This is a significant shortcoming of the CCD, as many Member States have observed an increase in the use of such credit, facilitated by the lighter regulatory framework to which they are subject. Many Member States thus opted to extend the scope of application of the CCD to credit below EUR 200, with the effect – in certain cases – of eliminating some of the most problematic products (such as exercising right of withdrawal from payday loans). However, extending the scope to these types of credit does not in and of itself address existing excesses, as the APR could have an extremely high rate even if compliant. In certain cases, Member States have opted for stricter measures, including interest rate caps, to drive these loans out of use. Moves by Member States to extend the scope or put in place additional rules have resulted in increased relevance of consumer credit legislation for their national markets.

An important issue with the lower threshold is that it does not take into account the differences in average income across the EU, which impact its prevalence and importance to certain groups of consumers that depend on such types of credit to make ends meet.

In relation to credit above EUR 75,000, it can be argued that there is a gap in legislation, as only those for the purposes of renovating an immovable property are covered by the MCD. However, as they are less common (in total numbers, not total value), stakeholders view the upper threshold as less problematic.

The thresholds laid down in Article 16 refer to the compensation to which creditors are entitled to in the event of early repayment. The threshold foreseen is of 1% of the amount repaid early, which is reduced to 0.5% if the period of time between the early repayment and the agreed termination of the credit agreement does not exceed one year. This study has not identified any issues with regards to this threshold and as such it is still considered relevant to the needs of the consumer credit market.

397 See case study 8 (Thresholds and scope) for further details on the specific risks linked to high-cost credit (including STHC credit and credit cards) and revolving credit.
The inclusion of certain credit products in the list of exemptions in Article 2(2) raises several concerns. Four main products are perceived as particularly risky: 1), zero-interest loans as they are not necessarily covered by the CCD and can have high penalties for running late for periodic instalments; 2) overdraft facilities, as they can be raised to higher ceilings without consumers’ knowledge (see also case study 8) and the recent FCA consultation in the UK that led to substantial reforms of overdraft, facilities in June 2019; 3) leasing agreements that do not impose an obligation to purchase the good in terms of the ability to exercise rights; 4) agreements with pawnshops for exercising rights. Although the extent to which these credit products are used by consumers varies, some Member States nevertheless highlighted their increasing importance in the field of consumer credit and the need to ensure that at least some of the provisions of the CCD (e.g. information duties or the right of withdrawal) apply to these products to minimise the risks for consumers. Given their prevalence, therefore, they can limit the relevance of the CCD in protecting consumers.

Much of the Article 3 definition remains relevant to the current market situation, with only a slight revision or clarification of the definition of ‘creditor’ and ‘credit intermediary’ suggested as necessary to ensure that the CCD covers the new players in the market since 2008. The need for the CCD to reflect the changes triggered by digitalisation emerges as one of the key aspects to ensure that the CCD remains relevant and adapted to the current market (see EQ15 (Section 3.4.1)). Stakeholders pay particular attention to P2PL platforms, which pose risks for both lenders and borrowers. Although P2PL platforms are not one of the exemptions of Article 2(2), there is little clarity on whether they are covered by the CCD, as lenders on such platforms are usually private individuals. It is somewhat unclear, therefore, if they fall strictly within the definition of ‘creditor’, as they do not necessarily provide credit ‘in the course of [his] trade, business or profession’ even if the individual grants or promises to grant credit in the course of that trade, business or profession. The non-explicit nature of coverage of P2PL platforms has created a degree of uncertainty, diminishing the relevance of the CCD and the degree to which it is adapted to current trends.

Finally, the regulatory choices defined in the CCD are overall considered to remain relevant. Articles 2(5) and Article 2(6) on the type of credit agreements respectively apply to seven and 18 Member States. Articles 4(1) and 4(2)(c) on standard information were opted for by eight and nine Member States respectively. Article 6(2) on the provision of pre-contractual information for specific credit agreements was opted for by ten Member States. The articles 10(1) and 10 (5) on information to be included in credit agreements apply to 27 and seven Member States respectively. The validity of the right of withdrawal in specific cases is covered in Article 14(2), a regulatory choice used by one Member State. The choices foreseen in Article 16(4)(a) and (b) on the right to early repayment are used by 17 and eight Member States. The existence of this set of regulatory choices has indeed, as the CCD foresees, differences in the applicability of rules governing credit agreements. This has led to the exact scope of the provisions not being the same for consumers across Member States. The effects of the regulatory choices have also impacted the internal market for consumers insofar as they pose some boundaries to cross-border operations for creditors. Especially in cases where the regulatory choice was either opted for by few or nearly all Member States, the continuing relevance of providing such choices can therefore be put into question.

Overall, a majority of stakeholders across all groups argued that the scope of application of the CCD is no longer adequate and could be revised. The industry representatives that held this view pointed out that all consumer credit providers should be bound by

400 FCA, 2018c.
401 See case study 8 (Thresholds and scope) for further details on the specific risks linked to these credit products.
402 See case study 8 (Thresholds and scope) for further details.
403 Article 3(b) CCD defines ‘creditor’ as a ‘natural or legal person who grants or promises to grant credit in the course of his trade, business or profession’.
the same rules (even if enforcement standards might currently be different for banks and non-banks), while national authorities and consumer organisations argued for certain credit products to be brought within the scope of the CCD to enhance its overall effectiveness (see Section 3.1.7 for further discussion).

3.5 EU added value

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

Main findings

The added value of the CCD lies in laying down a set of key provisions that have led to a regulatory framework that is harmonised even if somewhat fragmented due to differences in practical application and enforcement. The benefits of the CCD in terms of a higher level of consumer protection and, to a lesser extent, fostering an internal market for consumer credit would probably not have been achieved throughout the EU in the absence of EU-level intervention. In some Member States, consumer protection standards were already high at the time of adoption of the CCD and would have continued. However, in other Member States, the CCD enabled the development of a specific framework to protect consumers in relation to consumer credit, which did not already exist. The added value of the CCD lies in the standards it sets, which mitigate the broad discrepancies that would otherwise have developed between Member States.

Overall, the findings of this study present a rather fragmented regulatory landscape across the EU, with some elements of the CCD more harmonised than others. This is an indication that the CCD has partly achieved its potential to add EU value. As described in the previous sections, this fragmentation stems from several vague provisions of the CCD that have been implemented in various ways by Member States, as well as aspects beyond the CCD that have been regulated differently across the EU.

The CCD managed to create a level playing field through a harmonised regulatory framework, although this playing field is still somewhat unequal and unbalanced due to substantial differences in the extent of (further) legislation, the application of the Directive, enforcement (standards), and contextual differences in the demand and supply of the credit market. At the same time, key benefits of the CCD – higher levels of consumer protection and limiting unfair competition through the development of an internal market for consumer credit – would likely have been only partially achieved in the absence of EU-level intervention.

The added value of the CCD is widely recognised by all stakeholders, with overwhelming agreement that its provisions should all remain regulated at EU level.\(^{404}\) EU added value lies in the CCD’s contribution to increased consumer protection and, to a lesser extent, harmonised provisions on consumer credit in the EU.\(^{405}\)

Stakeholders agree that consumer credit - and consumer protection, in particular – benefits from EU-level action and a harmonised approach. 83% of the respondents to the EESC survey found that the CCD had increased transparency and fairness in credit agreements between creditors and consumers. All stakeholder groups acknowledge the importance of a harmonised framework allowing for a level playing field for all credit providers (see case studies 7 and 8).\(^{406}\) Between 88-93% of organisations responding to the OPC considered all provisions to have added value at EU-level, with only CWA

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\(^{404}\) OPC (specific); surveys and interviews with all stakeholders.

\(^{405}\) ICF analysis based on stakeholder consultations and literature (as cited throughout).

\(^{406}\) Interviews with consumer organisations, industry representatives, Member States and enforcement authorities.
somewhat lower, at 74% (probably because of the various ways it has been implemented at national level).

The added value of the CCD varies significantly between Member States, often based on the existence of relevant national predecessors (especially for newer Member States). Some of the provisions introduced by the CCD were entirely novel for some Member States and as such had a unique impact. For example, several Member States had no standardised information sheet prior to the introduction of the SECCI. This points to the clear added value of the CCD in ensuring certain consumer protection standards.

As discussed in Section 3.1, the introduction of standardised formats such as the SECCI and the APR clearly contributes to the provision of a standard level of consumer protection across the EU. This standardisation goes some way towards reducing fragmentation across the EU and minimising disparities in consumer protection between Member States. Similarly, the rights of withdrawal and early repayment are other well-harmonised provisions that help to create EU-wide levels of consumer protection.

What remains unclear, however, is whether such provisions would have been developed by Member States in the absence of the CCD and thus whether the same result would have been achieved. Indeed, in some Member States, the transposition of the CCD had little impact on the national framework regulating consumer protection, making it difficult to establish whether the impact would otherwise have been delivered. By contrast, Slovenia notes that in the absence of the CCD there might be little or no regulation of consumer credit, which would seem to indicate that the CCD played a fundamental role in the regulation of that sector. In most cases, Member States have implemented significant changes to national legislation in order to transpose and implement the CCD, thus it could be assumed that the introduction of the CCD’s provisions had an impact on the national framework that may not otherwise have happened. However, this assumption must be weighed against the fact that a number of Member States were planning to revise their national legislation in any case and that the foreseen amendments may have been incorporated in the CCD. Any such amendments, had they been carried out individually by Member States, would likely have fostered greater national disparity than the provisions of the CCD and its harmonising framework. As such, the differences would have been much bigger than those stemming from the CCD’s application in practice. It would also have likely led to competitive advantages for credit providers in certain Member States over others, fuelled by different degrees of regulatory arbitrage where loopholes could be exploited in Member States with lower levels of protection, thereby bringing about challenges in enforcement.

The evaluation finds that most Member States have gone beyond the requirements of the CCD and implemented additional measures at national level, almost exclusively focused on raising consumer protection standards. This may be an indication that the CCD’s provisions alone were not sufficient to protect consumers to the level required by those Member States, especially where those legislators adopted stricter measures as part of the transposition. However, additional measures adopted by Member States significantly later than 2008-2010 are usually responses to specific national problems that emerged after the adoption of the CCD and/or responses to particular issues that did not need to be addressed by EU-wide legislation. This is the case for the various product-governance rules and caps put in place by Member States, which were often designed to address emerging problematic practices at national level (such as payday loans) that were not widespread across the EU at the time of adoption of the CCD (though there is limited data on its scale).

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407 For example, Belgium.
408 Legal analysis; interviews with Member States and consumer associations.
409 Legal analysis.
411 The practice of taking advantage of regulatory differences.
The lack of a harmonised framework could prove detrimental, especially as the market evolves (see Section 3.5.2 for further discussion). While the benefits of the CCD outweigh its costs and would not have been achieved without EU intervention, the wider trends in digitalisation and increased discussion about the scope of application of the CCD in the face of new market players and credit products point to potential weaknesses. Indeed, fragmentation would increase, as some Member States are likely to opt for further regulatory action while unequal levels of enforcement also raises the risk of regulatory arbitrage. While the added value of the CCD so far is clear, its current form runs the risk of diminishing in value as areas not foreseen at the time of its drafting become more prevalent. The added value of the CCD in its current form may thus decrease in the future, given that it is not entirely adapted to market changes (changing consumption patterns, unfair lending, new market players, etc. – see EQ15) that are likely to intensify in the context of digitalisation.

Section 3.2.1 estimated the benefits of the CCD in the reduction of consumer detriment. In the absence of the CCD, some of these benefits might have been partially achieved by Member States acting on their own, although likely to a lesser extent.

A key indicator is consumer trust in credit and loans (see Figure 21 in Section 3.2.1). This has increased over the years and while such increases cannot be directly attributed to the CCD, the steady progress would likely not have been achieved in the same way (and most certainly not in all Member States) without the CCD. It therefore supported Member States that might have had lower standards prior to 2008, while Member States with higher standards were not prevented from adopting additional measures.

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

<table>
<thead>
<tr>
<th>Main findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>The evaluation finds that withdrawing the Directive would entrench or widen the relatively fragmented landscape that currently exists. These changes would not necessarily damage the interests of Member States, although lowering or raising standards could affect other countries in the medium-term by way of regulatory arbitrage and associated unfair competition. It would likely lead to substantially different levels of consumer protection across the EU. Withdrawing the Directive (and thus the standards it sets across the EU) could negatively impact the level playing field between creditors and the cross-border provision of credit that is likely to increase in the context of digitalisation.</td>
</tr>
</tbody>
</table>

If the CCD were to be withdrawn, Member States might, over time, legislate (differently) on those elements of consumer credit that are currently harmonised by the Directive, entrenching the relatively fragmented landscape that currently governs consumer credit.

This could result in Member States having different formulas for the calculation of the APR, for example, or requiring creditors to provide different types of pre-contractual information and advertising, and in various formats. Consolidated rights, such as the right of withdrawal and the right of early repayment, could be amended, making them subject to different timeframes in the Member States.

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

It is possible that the APR, if changed, would no longer be a comprehensive, representative or adequate tool for consumers to compare credit offers between Member States. Differences in the market, such as the prominence of short-term loans in a given
Member State for example, could lead to a different calculation methodology that is more favourable to certain types of credit, which could impact supply.

The provision of information is harmonised in the SECCI, whose benefits are clearly acknowledged (see case study 1). When it comes to the implementation of the provision on pre-contractual information, however, Member States have used different interpretations of ‘in good time’ (as per Article 5 CCD). Such differences could be expected to be entrenched in the absence of harmonised legislation. In certain Member States the requirement could be removed altogether, leading to different levels of consumer protection and to a fragmented framework.

With the emergence of an increasingly digital consumer credit market, the way in which information is conveyed to consumers will change as the market adapts to new technology. The absence of harmonised standards would invariably lead to (even) more different approaches between Member States to address the challenges of information disclosure online, with different formats or prominence given to the SECCI, for example.

CWAs and the use of credit databases are another area where differences would almost certainly deepen. Member States could opt for different approaches to automatic credit scoring carried out by artificial intelligence (at present, consumers must be informed if their application is rejected on the basis of a consultation of a database, see Article 9(2) CCD). Equally, they may authorise creditors to use new forms of data that would not be considered appropriate or proportionate for CWAs today.

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

Reduced harmonisation of the provisions governed by the CCD would invariably have a negative impact on cross-border access to credit. Greater differences between Member States would lead to greater difficulties for creditors to comply with the different regulations and thus lead to greater costs, possibly hindering the emergence of an internal market in consumer credit. With almost 30% of consumers surveyed expressing an interest in cross-border offers for consumer credit,412 bigger discrepancies would likely reduce possible cross-border credit supply and, in turn, diminish demand. As digitalisation can have an impact on cross-border credit supply - through enhanced ease of access and reaching consumers in other Member States - withdrawing the CCD would hamper this trend and negatively impact both consumers and the development of an internal market for consumer credit.

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412 Consumer survey question 6a.
Annex 1 - Case studies

Case study 1 - Pre-contractual information
Case study 2 – Advertising and marketing
Case study 3 – Right of withdrawal
Case study 4 – Right of early repayment
Case study 5 – Annual Percentage Rate of Charge
Case study 6 – Creditworthiness assessment and credit databases
Case study 7 – Cross-border access to loans
Case study 8 – Thresholds and scope
Case study 9 – New markets for lending
Case study 10 – Credit intermediaries

Case study 1: Pre-contractual information

Provision and disclosure of contractual details by the lender (compliance)

Article 5 of the CCD prescribes the pre-contractual information that must be provided to the consumer by the creditor or the seller of a product, in good time, before signing the contract. This information (shared on a durable medium) is provided through the SECCI, which consists of 19 elements of the terms and conditions of the credit contract that are considered the essential information necessary for the consumer to make an informed decision on the credit contract. Any additional information (e.g. specific terms and conditions of the contract) should be provided in an annex to the SECCI. In addition to these documents, the credit provider (or the intermediary, if applicable) is required to provide explanations, including, if necessary, an explanation of the pre-contractual information as it is presented in the SECCI. The objective is to empower the consumer to determine whether the proposed credit contract is suitable for their needs and financial situation. Based on the national research and analysis carried out for this study, it appears that 10 Member States have transposed this obligation by adopting stricter measures.

Credit providers are aware of their obligation to inform consumers of the pre-contractual information, with the majority providing this information in full.

Like previous studies, however, this research highlights cases of non-compliance with pre-contractual information requirements. These include: consumers failing to be provided with the SECCI; consumers not being informed how the APR was calculated; and consumers not being informed of their right to withdraw from the contract. A study carried out by COFACE (using a mystery shopping exercise) revealed that creditors were sometimes reluctant to provide individualised pre-contractual information. While these practices are clear breaches of the law, many providers take advantage of the vague prescriptions of Article 5 and remain at the ‘edge of the law’. Creditors (and credit intermediaries, where applicable) must provide consumers with adequate information about the pre-contractual information to make an informed decision. However, some credit providers use non-transparent pricing structures, layer

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413 Directive 2008/48/EC.
414 BE, BG, DE, HU, LV, MT, PT, SE, SI, SK.
415 London Economics, 2014; interviews and surveys of enforcement authorities, Member States, consumer associations and industry representatives.
417 Survey of consumer association COFACE; mystery shopping.
information in places that may be overlooked by consumers, highlight specific elements and cover others, and use needless information overload or complexity to confuse the customer.\textsuperscript{418} The European Commission confirmed that if the information is not presented in a clear and understandable form, or if the creditor is not able or willing to explain the terms of the contract, the requirements of Article 5 are not met.\textsuperscript{419}

**Interpretation of ‘in good time’**

Article 5 of the Directive requires pre-contractual information to be provided to consumers in good time before they are bound by the contract. This provision aims to reinforce the principle of responsible lending, with consumers given enough time to compare several credit options and make a well-informed decision on concluding a credit agreement.\textsuperscript{420}

Consumer associations have requested that additional attention be paid to the speed of credit delivery.\textsuperscript{421} Research suggests that some consumers have/take insufficient time to fully read and understand the terms and conditions of the contract.\textsuperscript{422} A study carried out by the EC indicated that a speedy decision from the consumers often leads them to take a loan that is not adequate to their situation. Only a small number of consumers actually compare alternative offers, putting them at risk of taking credit that does not fully meet their needs.\textsuperscript{423} Indeed, research has shown that most credit agreements are ready to be signed just a few days after the consumer has requested the loan.\textsuperscript{424} Most creditors, for both online or in-person credit applications, provide the pre-contractual information and the SECCI just before or at the same time as the draft contract.\textsuperscript{425} However, the speed of this process is, in part, due to consumers’ expectation of quick credit. A study carried out by NIBUD showed that consumers look first at the speed of credit delivery, even before the interest rate.\textsuperscript{426}

Member States struggle to interpret the idea of adequate timing. They must find the right balance between protecting consumers by further specifying credit provision and avoiding obstacles to the credit market by unnecessary delays. During the transposition process of the Directive in Poland, for example, a fixed-time period was discussed but ultimately considered too heavy a burden for the consumer credit industry.\textsuperscript{427}

Several Member States have gone somewhat further than the Directive and specified or clarified ‘in good time’. The UK, for example, stipulates that ‘in good time’ depends on the circumstances of the credit but the creditor must in all instances give the consumer adequate opportunity to consider the pre-contractual information before signing. Romania specifies a minimum of 15 days (a priori), which can be shortened with the written agreement of the consumer. In Poland, the time between the provision of pre-contractual information and the conclusion of the agreement should be enough for consumers to familiarise themselves with the terms and conditions of the contract.\textsuperscript{428} Belgium does not prevent concluding the agreement shortly after the SECCI has been provided. However, providing pre-contractual information with a timeframe too short to compare offers constitutes an infringement of the law.\textsuperscript{429}

Where Member States retain a certain flexibility in their interpretation of the timing of the provision of pre-contractual information, they should “provide the consumer with

\textsuperscript{418} London Economics Europe, VVA Europe, Ipsos NV, ConPolicy, Timelex, 2019; EBA, 2019; ECRI, 2015.
\textsuperscript{419} European Commission, 2014a.
\textsuperscript{420} European Parliament, 2012a.
\textsuperscript{421} Surveys and interviews of consumer associations.
\textsuperscript{422} Consumer survey; OPC (general); Interviews of consumer associations.
\textsuperscript{423} European Commission, 2019; ECRI, 2018a; Interviews of consumer associations.
\textsuperscript{424} Mystery shopping.
\textsuperscript{425} Consumer survey and OPC (general).
\textsuperscript{426} NIBUD, 2018.
\textsuperscript{427} European Parliament, (Article 5) 2012a
\textsuperscript{428} European Parliament, 2012a
\textsuperscript{429} Service Public Wallonie, 2019.
the information needed to compare different offers in order to take an informed decision" (Article 5). In other words, they must take appropriate action to ensure that consumers are taking the time necessary to understand and think about their credit agreement, and that creditors are not putting undue pressure on consumers to enter into a credit agreement too quickly. In this respect, the Directive has added a provision in the SECCI on the timeframe where the creditor is bound by the pre- contractual information (Article 5(1)): ‘The information in question shall specify: [...] if applicable, the period of time during which the creditor is bound by the pre- contractual information.’ Consumer awareness of the validity of the pre- contractual information is believed to reduce pressure, particularly where the timeframe is long enough for the consumer to consider their decision. This specific provision is not applicable in all situations nor does it actually enforce a minimum time for the validity of the pre- contractual information. During the mystery shopping exercise, it was observed that the validity of the pre- contractual information varied considerably from one credit offer to another. Some shoppers were given one month, others only 48 hours to decide on the credit agreement. Consumers reported that this short timeframe was insufficient to shop around for other offers. Similarly, the results from the consumer surveys indicate that almost half of consumers felt pressured into signing their contract and the time allocated was too short for them to understand the information. To avoid such situations, France has enforced a minimum validity of the pre- contractual information of 15 days.

Variation in approaches to the SECCI

Articles 5 and 6 of the Directive stipulate that if the creditor has provided the consumer with the SECCI as prescribed in Article 5(1), they are deemed to have fulfilled the information requirements. Article 5 regulates pre- contractual information for credit agreements in general, while Article 6 contains information on specific types of agreements. More specifically, they define 19 pieces of information on the contract terms and conditions, including the identity and contact details of the credit provider, a description of the main characteristics of the product, the costs of the credit, other important legal aspects, and additional information in the case of distance marketing of financial products. Thanks to its standardised format, the SECCI facilitates the comparison of alternative credit offers. However, not all 19 Article 5 provisions are mandatory - some depend on the specificities and types of credit, which can vary between Member States.

At national level, the standard format of the SECCI has chiefly benefitted consumers as a comprehensive summary of the contract rather than for comparison purposes. The SECCI helps consumers to understand the conditions of the credit offer in an easy- to-read format (compared to long legal terms and conditions). Given the slow development of the cross- border market for consumer credit (Case Study 7), the SECCI has been less effective in facilitating the comparison of credit offers internationally. The differences in types of credits and other specificities across Member States, leading to differences in the content of the SECCI across Member States are therefore not believed to have had a negative impact on consumer protection. Nevertheless, some industry representatives believe that the lack of SECCI harmonisation across Member States represents an obstacle to a fully functioning cross- border market.

Methods of communication (post, mail, face- to- face)

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430 Directive 2008/48/CE.
431 In one exceptional case, one shopper was given 48 hours.
432 Consumer survey; OPC (general); interviews of consumer associations.
433 Article L. 312-18 alinéa 2 du code de la consommation.
434 Consumer survey; OPC (general and specific).
435 Verbraucherzentrale [DE], 2019b; surveys and interviews of Member States.
436 European Commission, 2019a; survey of stakeholders.
437 Interviews and surveys of industry representatives.
Creditors primarily sell their credit through face-to-face interactions with consumers at their place of business, via an intermediary or broker. Although consumers are increasingly using with online banking and management of their finances, they remain cautious about taking credit fully online. Consumers frequently look for and compare credit online, then engage with the lender via email or phone, and finally conclude their contract in person with the lender. The combination of online and offline communication suits both the consumer and the creditor. The consumer interaction with a bank expert is an important source of information for both parties. By meeting the consumer in person, creditors can better assess their creditworthiness and provide them with the loan that best fits their needs. By meeting the creditor in person, consumers aim to decrease the risk and consequences of misunderstanding or overlooking important information. In person, the creditor can explain the pre-contractual information that is necessary for the consumer to make an informed decision.

Given the rising trend of consumers using online media, creditors’ associations are calling for the requirements for the provision of pre-contractual information to be adapted to better fit the digital environment. The table format of the SECCI is not easily read on mobile technology, while lengthy documents can prompt consumers to quickly scroll through information and skip the terms and conditions. One creditor association stated that it can take over 30 swipes to cover the pre-contractual information required under CCD. Focus on digitalisation is therefore essential to ensure that creditors can provide pre-contractual information to consumers in a sensible way, increasing their awareness of the conditions of their credit contract and safeguarding their protection. The aforementioned Behavioural Study argued that consumers should be provided with pre-contractual information that is short and easily understandable, well-presented and adapted to users’ devices.

Facilitating the distribution of information through online channels will become increasingly important in addressing the future needs of the consumer credit market. Allowing consumers to securely conclude contracts through distance sales will decrease overall costs in the market and foster cross-border activity, while also posing new challenges in terms of consumer protection.

**Consumer understanding and satisfaction with the information provided – effectiveness of the information**

The pre-contractual information provided does not seem to be sufficiently clear to ensure that all consumers understand the specific conditions of the credit agreement. This lack of understanding is also a consequence of consumers’ low financial literacy and insufficiently transparent credit contracts.

- Low financial literacy of consumers

Some stakeholders pointed out that the technical nature of the pre-contractual information requires a certain level of legal and financial knowledge. Several recent studies have highlighted the low level of financial literacy among consumers. This is not restricted to vulnerable groups but is widespread across the general population. Even

438 Survey of creditors; Interviews of consumer association.
439 European Commission, 2019; consumer Survey.
440 ECR, 2018a.
441 BEUC, 2019.
442 European Commission, 2019a.
443 European Commission, 2019a; Interviews and surveys of creditors associations.
444 Focus on digitalisation is therefore essential to ensure that creditors can provide pre-contractual information to consumers in a sensible way, increasing their awareness of the conditions of their credit contract and safeguarding their protection. The aforementioned Behavioural Study argued that consumers should be provided with pre-contractual information that is short and easily understandable, well-presented and adapted to users’ devices.
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447 Focus on digitalisation is therefore essential to ensure that creditors can provide pre-contractual information to consumers in a sensible way, increasing their awareness of the conditions of their credit contract and safeguarding their protection. The aforementioned Behavioural Study argued that consumers should be provided with pre-contractual information that is short and easily understandable, well-presented and adapted to users’ devices.
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consumers with higher education struggle to understand some financial information.\footnote{Luzak J. and Junuzović M., 2019.} According to the consumer survey carried out for this study, 40\% of consumers do not understand APR and how to use it, though the 2014 London Economics study showed that figure to be as high as 60\%.\footnote{London Economics, 2014; Consumer survey.} A Spanish study found that half of consumers consider themselves to have little or no financial literacy, while the majority (85\%) would like to improve their literacy to avoid abuse and to feel more confident.\footnote{ADICAE [ES], 2013.} Low financial literacy means that consumers are not equipped with the minimum knowledge needed to make well-informed financial decisions. This can lead to inappropriate choices or irresponsible credit agreements, which, in turn, increases the risk of over-indebtedness.\footnote{EBA, 2019.}

- Lack of transparency from creditors

According to Article 5(6) of the Directive, Member States must ensure that creditors (and credit intermediaries, where applicable) provide the consumer with adequate explanations to allow them to determine if the credit is adapted to their needs and financial situation. However, financial entities do not always adapt their language to consumers’ financial literacy level. A Spanish study found that the information frequently includes jargon/technical language that consumers cannot understand. Consumers rated the understandability of the information at 2.91 out of 10.\footnote{ADICAE [ES], 2013.} Member States thus need to pay additional attention to the transparency of the information provided.

Creditors’ associations believe that the required pre-contractual information is too lengthy and complex for consumers to understand.\footnote{Surveys and interviews of creditor association.} In Germany, the pre-contractual and contractual phases are divided into three steps, each with specific documents. This information overload confuses consumers.\footnote{Interviews and surveys of all the stakeholders.} When combined with financial jargon, excess information creates confusion and risks consumer rejection of the agreement or the conclusion of a contract that is not fully read or understood.\footnote{ADICAE [ES], 2013.} An ADICAE study found that 73\% of consumers reported signing contracts they did not fully understand.\footnote{DGCCRF, 2018.}

Some stakeholders believe that employees from the consumer credit sector should be trained to better inform consumers on the pre-contractual information. A study led by the DGCCRF in France indicates that there is a lack of awareness among salespersons, who have insufficient training on the provision of pre-contractual and contractual information. Although the vendors attend mandatory training on consumer credit, the training (provided online) is brief and is not updated for new types of credit.\footnote{DGCCRF, 2018.} Any revision of the Directive could usefully include a provision on financial advice that stipulates that consumers must be guided at all stages up to conclusion of the credit agreement.\footnote{EESC, 2019.}

- Behavioural insights

Several studies have shown that standardised information disclosure policy that integrates a long list of requirements, while necessary, is not sufficiently effective in empowering consumers to make well-informed decisions on credit agreements. These studies indicate that although consumers are provided with complete pre-contractual information (as provided in the SECCI) and have the financial literacy to understand the

\begin{itemize}
  \item \footnote{ADICAE [ES], 2013.} Surveys and interviews of enforcement authorities, Member States, consumer associations and industry representatives.
  \item \footnote{ADICAE [ES], 2013.} Interviews and surveys of enforcement authorities, Member States, consumer associations and industry representatives.
  \item \footnote{ADICAE [ES], 2013.} Surveys and interviews of creditor association.
  \item \footnote{ADICAE [ES], 2013.} Interviews and surveys of all the stakeholders.
  \item \footnote{EBA, 2019.} Surveys and interviews of creditor association.
\end{itemize}
terms and conditions of the offer (as provided in the SECCI and additional pre-contractual information), they might still not make the best decision. Consumers’ purchasing strategies are strongly influenced by the specific context and psychological factors.

Different types of stakeholders have suggested relying on these behavioural studies to better assess consumer behaviour and then refine the pre-contractual information to include only the essentials. Evidence indicated that consumers do not fully read the pre-contractual information. According to one creditors association, even the SECCI is sometimes disregarded. Hence, providing a more limited amount of key information could enhance their ability to compare offers. The Behavioural Insights Team of the Department for Industry in the UK published a best practice guide for improving consumer understanding of contractual terms and privacy policies. It highlights that the use of illustrations, using icons, displaying key terms as FAQs, providing information in short chunks, telling consumers how long it will take to read a policy, when is their last chance to read something,

Denmark suggested that consumers should be provided with fewer essential and beneficial information, presented in a simple manner and at the right time in the purchase process. In the UK, for example, the credit card market uses a 'summary box' that includes four to five pieces of information that are essential for the consumer to compare credit offers (in addition to the pre-contractual information). The initiative was so positive it has been expanded to the automotive market.

Costs of pre-contractual information and the SECCI for creditors

Several elements affect the cost to creditors to provide the SECCI and pre-contractual information as required by the Directive:

- Adaptation of the process (IT systems, papers, etc.);
- Training staff on pre-contractual information;
- Additional time spent preparing pre-contractual information and explaining information to consumers;
- Lack of adaptation of pre-contractual information and SECCI to digital media is an opportunity cost borne by creditors, who cannot then fully benefit from the digital credit market.

On the other hand, elements deriving from the SECCI and pre-contractual information can benefit creditors:

- Increased transparency in the market leads to increased competition and helps to promote a beneficial level playing field among creditors;
- Increased transparency promoted through the SECCI will make credit more accessible to consumers who will get a better understanding of the offers and feel more confident in taking credits.

The overall effect of the Directive on consumer protection will eventually (indirectly) benefit creditors in different ways, by decreasing over-indebtedness, reducing default or non-payment, increased market competition, etc.

Effectiveness of pre-contractual information and the SECCI in protecting consumers

461 ECRI, 2018; CEPS and ECRI, 2015
462 CEPS, 2017; European Commission, 2019a.
463 Interviews and surveys of enforcement authorities, Member States, consumer associations and industry representatives.
464 Interviews and surveys of creditor associations.
466 Interviews and surveys of Member States.
467 Interviews and surveys of creditor associations.
This case study has described the different elements decreasing or contributing to consumer risk.

Elements decreasing consumer risk:

- The SECCI increases consumer awareness of their contracts. Increasing consumer awareness has decreased the risk of default or non-payment.
- The SECCI has been partially successful in facilitating comparison of credit agreements. To a limited extent, consumers comparing credit offers has increased competition and pushed the cost of credit down.
- The SECCI has ensured greater transparency of information, in turn decreasing asymmetry of information and increasing competition on the credit market. This ultimately leads to a more fluid market by ensuring a level playing field among creditors.

Elements increasing consumer risk:

- Consumers’ lack of financial literacy limits their understanding of the SECCI and pre-contractual information. This creates confusion and hinders the smooth conclusion of credit agreements.
- The SECCI is usually given to consumers at the same time as the contractual information. This hampers their ability to compare credit offers before signing/rejecting the agreement.
- A still considerable share of one third to half of consumers are unaware of the SECCI and its purpose. Lack of communication of the SECCI prevents consumers from requesting the information in good time and thus benefitting from their right to compare credit offers before signing the agreement.
- Stakeholders have highlighted the length and complexity of the SECCI and pre-contractual information as barriers to transparency of credit contracts. More specifically, the lack of adaptation of the SECCI and pre-contractual requirements for use on mobile devices is a key obstacle to transparent online purchase of credit.

Industry, Member States and consumers acknowledge that the SECCI has had a positive impact on consumer protection, providing information in an easily understandable and well-structured format. It also plays an important role in better consumer decision-making.

**Case study 2: Advertising and marketing**

**Provision and disclosure of information by the lender**

Article 4(1) of the CCD regulates the information that credit providers need to provide as standard in all credit advertisements. More specifically, any advertisement that includes an interest rate or other figures relating to the cost of credit must also include information on the borrowing rate, total amount of credit, APR, cash price, number of advance payments for credit in the form of a deferred payment, duration of the agreement, total amount payable and instalment amounts. It also states that the information must be given clearly, concisely and prominently, by means of a representative example. Article 4(3) stipulates that if conclusion of the credit contract requires an ancillary service (e.g. insurance) for which the costs cannot be pre-determined, the advertisement must mention this obligation, clearly, concisely and prominently, in addition to the APR. Article 4 is the minimum standard that all Member States must transpose into their national legislation. In practice, however, Member

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468 OPC (general); consumer survey;
469 OPC (general); consumer survey; Interviews and surveys of enforcement authorities and Member State.
470 Interviews and surveys of consumer association and Member States; ECRI, 2015.
471 Directive 2008/48/CE.
States have opted for a range of different implementation approaches. Eighteen have used the transposition as an opportunity to set out even stricter rules with respect to the type of information that must be provided in advertisements. While many Member States impose stricter requirements about the presentation of information in advertisements, most also require additional substantial information to be displayed (such as clear information on the risk of indebtedness).

The research undertaken for this study found general compliance with Article 4 of the Directive. While a large majority of Member States and creditors’ associations agreed that all required information is provided at advertising stage, consumer associations were less certain of compliance with advertising rules. Some cases of non-compliance were highlighted, usually relating to incomplete or missing information in credit advertisements. More specifically, the conditions attached to the credit agreement are sometimes omitted and/or creditors advertise low or favourable interest rates without indicating the conditions attached to these offers, which often include fees or other variable costs. In Belgium, for example, a 2016 study of credit intermediaries showed that 32% of infringements related to the omission or incomplete mention of the representative example. These non-transparent practices increase consumers’ vulnerability and the risk of contracting irresponsible loans.

### Misleading advertisements

Consumer associations are most concerned about compliant yet misleading information advertised to consumers. They reported numerous cases of information that is either deliberately confusing or not displayed prominently. Consumer associations have also reported aggressive marketing and customised advertisements targeting vulnerable consumers.

- **Display of information**

Consumers’ perceptions are influenced by the way in which the information is expressed and presented. Elements such as headlines, framing, font, size and colour may distract consumers from what the words literally say. To remedy this potential bias, Article 4(1) indicates that advertisements must show, in a clear, concise and prominent way, by the means of a representative example, the different elements that relate to the credit offer. Stakeholders highlighted that Article 4 does not put enough emphasis on how information should be provided to consumers, noting that the phrasing ‘in a clear, concise and prominent way’ is ambiguous. Some Member States have introduced stricter rules on the presentation of advertisements. In Belgium, the law specifies the size of the font used for information related to the nature of the transaction. In France, all information related to the APR must be written in a larger font than all of the other information related to the credit. In Austria, the Chamber of Labour forbids the disclosure of important information in small print, in a place that is hard to find or in a footnote referenced with an asterisk. It is similarly forbidden to highlight individual favourable costs by putting them in a larger font than the representative example.

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472 BE, BG, FR, LU, PT.
473 Legal analysis.
474 Surveys and interviews of key stakeholders.
475 European Commission, 2019a; Surveys and interviews of consumer associations and enforcement bodies.
476 Economie [FR], 2016.
477 London Economics, VVA and Ipsos, 2016.
478 Surveys and interviews of consumer associations.
479 UK FCA, 2017.
480 Directive 2008/48/CE.
481 European Commission, 2019a; Surveys and interviews of consumer association and Member States.
482 Article VII. 64 §1 CEL; Article VII. 64 § 2 CEL.
483 Legal analysis.
484 Surveys and interviews of enforcement bodies.
Studies have shown that emotional and psychological experiences strongly influence consumer preferences and decision-making, with many purchase decisions driven by emotions and intuition rather than economic rationality. Simple elements such as the number of alternatives, the default options (e.g. type of loan or instalment amount), preference settings, website design, disclosure of specific information on the landing page and the saliency of specific product features can have a strong effect on consumer choice. In the UK, for instance, there have been examples of advertisements promoting well-being, showing credit as an easy option, or even as a means of deferring debt, enticing customers to put themselves in risky situations. Policy makers could thus consider the intentions of the advertisements.

- **Aggressive and customised marketing**

Different types of practices are used by advertisers to exploit consumers’ behavioural biases. These include time-limited offers, dynamic pricing and baiting rates. These practices become more concerning as online selling of credit increases. With consumer complaints of unsolicited advertising noted already, there is a fear that creditors may adopt more aggressive approaches and seek to attract consumers with quick and accessible loans.

**Baiting rates**

Advertising very low or 0% interest rates is tolerated by the CCD. However, this information becomes misleading if the interest rate advertised is not applicable to most consumers. Often, these favourable conditions advertised in the mass media only apply to a very limited group of consumers (e.g. those with excellent credit profiles) or concern offers of very short duration and high instalments. These are seldom useful or relevant for consumers. Research for this study reveals that these practices are sometimes used by creditors to attract customers. This has led some Member States to put in place provisions on the representativeness of the example. In Germany, the example used must be the one that will reflect at least two-thirds of the contracts ultimately taken out for these products. A study carried out by Which? in the UK revealed that, on average, borrowers probably pay hundreds of pounds more than the best advertised rates. The gap between the advertised rates for which consumers applied and the actual rates may account for a repayment that is 150% higher than that initially budgeted by the consumer. The study concluded, however, that the majority of consumers do not report feeling manipulated. Results from the consumer survey and mystery shopper exercise undertaken for the present study indicate that, in most cases, the advertised loan corresponded to the actual offer.

**Teaser rates**

Similar to baiting rates, the use of teaser rates is most harmful to vulnerable consumers. Taking advantage of consumers’ present bias and over-confidence, teaser rates offer very low or 0% interest rates, but for a limited period. The cost of the credit is then charged to consumers through subsequent higher rates and fees, which were often hidden from the consumers at the advertising stage. The terms and conditions, and

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486 AFM, 2016b.
487 BIS, 2011.
488 London Economics, VVA and Ipsos, 2016; Surveys and interviews of consumer association.
489 Surveys and interviews of Member States and consumer associations.
490 BEUC, 2019.
491 European Commission, 2019a; Mystery shopping.
492 Surveys and interviews of Member States.
493 DE, UK.
494 Interview and survey of consumer association.
495 Which? [UK], 2019a.
496 Consumer survey Q19; Mystery shopping.
in particular also the APR, would have to mention additional fees in order to be compliant. There is, however, limited data on the extent and scale of the use of such teaser rates and the extent to which these might pose a problem.

**Time-limited offers**

Introducing time limits for consumers to consider information and/or make decisions is more likely to result in instinctive or heuristic judgements. Behavioural research shows that time pressure makes people more likely to rely on their emotions when making decisions. Combining time-limited offers with complex information may lead consumers to take hasty decisions without fully considering the key information.\(^{498}\) Several stakeholders believe that stricter regulation is needed to protect consumers against fast and easy credit, as such credit may promote irresponsible lending. Given the risk of unhealthy and excessive consumption, credit should be more strictly regulated. Creditors should not be allowed to target advertisements towards vulnerable consumers or consumers with payment defaults and should not encourage consumers to make hasty decisions.\(^{499}\) The Spanish Consumer Association (2015) found that advertisements for quick credit are often designed to take advantage of economic difficulties among vulnerable groups. These advertisements tend to promote ill-informed decisions and provide very little time to think. Once they request the credit, consumers become part of a database and are spammed via SMS and email. The Association considers this technique invasive and aggressive, with considerable potential to engage consumers in irresponsible borrowing.\(^{500}\) The Belgian legislator has added a specific provision to Article 4 of the CCD to prohibit advertisements targeted at indebted consumers and/or advertisements that emphasise the ease or speed of credit.\(^{501}\) The Dutch legislator has similarly prohibited financial institutions from advertisements emphasising the ease or speed with which credit is granted.\(^{502}\) In Estonia, quick loan providers have been criticised for predatory practices that engage consumers in vicious cycles of over-indebtedness. In 2014, the Estonian government was in favour of banning advertising easy access non-secured loans on TV and radio, but the law was not ratified by the parliament.\(^{503}\) Research has found that slowing down the consumer decision process by including “friction points” in the online application and purchasing process improves consumer’s decision-making. For instance, including a review screen helped consumer to improve their choice. Other practices to slow down the consumer decision process and let him think about the offer are to enforce scrolling through the terms and conditions and to add a few “clicks” towards the conclusion of the contract.\(^{504}\)

The mystery shopper exercise undertaken for this study did not particularly reveal invasive or aggressive advertisements, nor did it find advertisements that would impede the ability to freely shop around. One shopper reported an advert suggesting that the offer was valid for a limited period of time.\(^{505}\)

**Warning messages against irresponsible lending**

To protect consumers against misleading practices, some Member States have opted for a warning message to be included in advertisements. While Member State approaches vary, the objective is to warn consumers about the risks of credit.\(^{506}\) Consumers need to be made aware that borrowing money costs money and may affect their financial situation. In Sweden, for instance, the risk of indebtedness must be disclosed in the advertisement of high-cost credit. The disclosure must also indicate where the consumer

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\(^{498}\) UK FCA, 2017.

\(^{499}\) Surveys and interviews of consumer association and Member States.

\(^{500}\) Legal analysis.

\(^{501}\) Legal analysis.

\(^{502}\) ERR, 2014.

\(^{503}\) European Commission, 2019a.

\(^{504}\) Mystery shopping.

\(^{505}\) Surveys and interviews of consumer association.
may turn to for support with budgeting and debt questions. In Slovenia, an explicit warning about the possible risk of increases in interest rates must be given in advertisements. In Belgium and the Netherlands, credit advertisements must include the statement ‘Please note that borrowing money also costs money’. Similarly, French legislation introduced an obligation for all advertisements (apart from radio ads) to include the following warning: ‘You are committed by a loan and obliged to pay it back. Check whether you have the financial capacity to repay a loan before committing.’

The effectiveness of such warning messages is uncertain. Empirical studies show the positive impact of warnings on consumer behaviour, yet their limitations have also been noted. The effectiveness of the warning depends heavily on the design of the message, which is difficult to regulate. Research carried out by the Netherlands Authority for the Financial Markets (AFM) in the Netherlands shows that credit warnings do not specifically encourage customers to make more careful decisions. While they raise consumer awareness, they do not influence the ways in which consumers make their decisions. A German study showed, however, that these messages can help in decreasing consumer irrationality in selecting financial products. The Digitalisation study (2019) also showed the advantages of using warnings, but that effectiveness depends on the wording and format used, and that its effects could wear off after time.

Effect of advertising regulation on consumer protection

Recent research indicate that the disclosure of the representative example and APR have a positive impact on consumers who are then more often looking for alternative offers rather than selecting the first offer advertised. Yet, the research carried out for the purpose of this study does not lead to a similar consensus. Around half of those who responded to the OPC expressed doubts about the effectiveness of the information requirements for advertisements in protecting consumers. While the majority of consumer associations agree that the advertising requirements of the CCD are effective, they also note considerable room for improvement. Stakeholders consider advertising requirements (relatively) ineffective because of the amount of information that must be disclosed. Others point to the lack of consumer understanding of financial information as a for the failure of advertising requirements to ensure greater consumer protection.

- **Amount of information disclosed**

Member States, creditors and consumer associations agree that consumers must deal with a lot of information in a single advertisement, which makes it difficult to read or understand. Too many statements in a single advertisement not only overshadows essential information but undermines the intelligibility of the message. Consumers subjected to information overload may eventually stop paying attention to all of the information displayed.

One stakeholder reported that the representative example is shown for just a few seconds during a TV advertisement, which is not enough for consumers to process the information. Similarly, on street billboards, the attention span of consumers is too short to read all of the information displayed. Long sentences are similarly inappropriate for radio ads, with one stakeholder indicating that it adds 25 words of
technical financial jargon and 12-15 seconds of airtime. Increasing the length of a radio ad increases the costs borne by the creditors but does not guarantee a proportionate effect on consumer protection. Research carried out by the Association of European Radios in the UK and France demonstrates that the requirements to provide more, rather than less, information in advertising are failing to inform and protect consumers. The study revealed that only 3-4% of radio listeners recall the total amount payable immediately after hearing a radio advertisement with a consumer credit offer.\footnote{Surveys and interviews of creditor associations and Member States.}

The complexity and costs of advertising credit through these channels has resulted in creditors limiting the information displayed or disclosed.\footnote{Surveys and interviews of creditor associations.} Research carried out by London Economics in 2014 showed that nearly one-third of all credit advertisements reviewed did not include any financial information, allowing them to circumvent the information requirements of Article 4.\footnote{Surveys and interviews of creditor associations.}

- **Lack of understanding**

Many studies have reported low levels of consumer understanding of financial terms, such as the APR and diversification. Similarly, consumers have difficulty in processing complex information concerning financial products and services. In the EU, 40% of consumers do not understand the APR and how to use it.\footnote{UK FCA, 2017; Surveys and interviews of creditor associations.} This lack of understanding stems from both limited financial literacy and limited experience of financial services.\footnote{London Economics, VVA and Ipsos, 2016.} There is a risk that creditors may take advantage of this situation to offer unwanted products to consumers. Recently, French consumers have increasingly complained about revolving credits related to loyalty programme, as consumers did not realise that they had subscribed to a loyalty programme. One authority pointed out that responsibility for such misunderstandings rests equally with consumers (unable or unwilling to fully understand the information at hand) and creditors (marketing offers that are insufficiently clear).\footnote{Surveys and interviews of Member States.}

**Room for simplification**

Stakeholders from different groups argued for a simplification of the provision on advertising requirements in order to inform consumers more effectively about the terms of credit agreements. Creditors’ associations called for a rationalisation of the key elements that must be included in advertisements.\footnote{Surveys and interviews of creditor associations.} They noted that the Directive is somewhat burdensome for creditors, who face either high costs for advertising or exclusion from certain advertising channels.\footnote{Surveys and interviews of creditor associations.} In addition, recent insights from behavioural studies have shown that extensive information requirements are not always beneficial for consumers.\footnote{Surveys and interviews of Member States.} For instance, a research commissioned by the Association of European Radios revealed that the information requirements in advertising as per Article 4 of the Directive fails to inform and protect consumers; “only 3 to 4% of radio listeners recall the total amount payable immediately after hearing a radio advertisement with a consumer credit offer”. However, “when presented with a shorter focused alternative to the current requirement for standard information the recall rate improved dramatically”.\footnote{Surveys and interviews of creditor associations and Member States.}

In particular, with the development of digitalisation, stakeholders are struggling to comply with the advertising requirements on digital media.\footnote{Surveys and interviews of creditor association and Member States.}
whether the representative example is needed on websites where a credit payment calculator is provided.\textsuperscript{530} In such cases, the advertisement requirements may confuse consumers, who are faced with three different figures on a single webpage (the advertised APR, the APR from the representative example, and the APR from the customised simulation).\textsuperscript{531} The Austrian Chamber of Commerce notes that consumers may be even more confused when they notice that the simulated APR is not the same as the actual APR offered in the credit agreement.\textsuperscript{532} Nevertheless, recent research has shown that the disclosure of a representative example does impact consumers during the decision process. First, when shown a representative example together with the advertisement consumers where more enticed to look for comparable offers rather than selecting the first offer. Secondly, consumers could more easily understand the arrangement fees and contract details when they were shown a representative example together with the advertisement.\textsuperscript{533}

\textbf{Case study 3: Right of withdrawal}

Article 14 of the CCD defines the right of withdrawal. It grants the consumer a 14-day withdrawal period either after the day of the conclusion of the credit agreement or from the day on which the consumer receives the contractual terms and conditions, if the consumer receives this information only after the conclusion of the credit agreement. The article further defines the right of withdrawal from linked credit agreements. The case study analyses the functioning of the right of withdrawal.

\textbf{Examining the practical application of the right of withdrawal} majority of all groups of stakeholders believe that the right of withdrawal works well and is correctly applied by creditors.\textsuperscript{534} Consumer associations reported few issues with the right to withdrawal, and no other studies have pointed to any substantial problems. Several respondents across the different stakeholder groups, however, noted difficulties with the application of the right of withdrawal, particularly in linked credit agreements.

In all Member States, the number of consumers making use of the right of withdrawal is very low, with evidence suggesting only around 1\% of consumers (on average) withdraw from credit agreements.\textsuperscript{535} With the exception of creditors and the consumers themselves, stakeholders were unaware of the numbers of actual consumers that had tried to withdraw from a credit agreement, nor did they have access to such statistics.

\textbf{Consumer challenges and lender compliance}

The extent to which stakeholders perceive challenges and problems with the right of withdrawal varies between Member States. While industry representatives stated that the obligation to ensure consumers’ right of withdrawal poses few issues, Member State authorities and consumer associations reported receiving complaints linked to this right, mainly related to a lack of clarity on the application of the right to linked credit agreements.\textsuperscript{536} They also noted other problems, such as the lack of awareness of the right of withdrawal in some Member States and the incorrect application of the right of withdrawal from the creditors’ side (e.g. not respecting the 14-day period).\textsuperscript{537} 31\% of consumers surveyed for this study reported experiencing problems with lenders making it more difficult for them to exercise their right to withdraw from a credit agreement.\textsuperscript{538}

\begin{itemize}
  \item \textsuperscript{530} Surveys and interviews of Member States.
  \item \textsuperscript{531} Mystery shopping.
  \item \textsuperscript{532} Interviews and surveys of consumer associations
  \item \textsuperscript{533} European Commission, 2019a.
  \item \textsuperscript{534} Interviews and surveys of enforcement authorities, industry representatives, Member States and consumer associations.
  \item \textsuperscript{535} London Economics, 2013; European Commission, 2014a; OPC (general); survey of creditors.
  \item \textsuperscript{536} Interviews and surveys of Member States and consumer associations.
  \item \textsuperscript{537} Interviews and surveys of Member States and consumer associations.
  \item \textsuperscript{538} Consumer survey.
\end{itemize}
The right of withdrawal is generally well enforced. Consumers may make administrative complaints to the respective national bank, receive assistance from consumer associations, or undertake judicial proceedings in right of withdrawal disputes. The pursuit of legal remedies is the most common response in right of withdrawal cases, as courts typically impose monetary fines on creditors for breaches of the CCD or, for repeated violations, temporarily suspend their commercial activities. In Germany, for example, recourse to the courts in right of withdrawal disputes has led to the development of relevant jurisprudence at the German Federal Court of Justice. Some Member States have institutions such as a ‘Consumer Ombudsperson’ (or similar bodies) to receive consumer complaints and handle cases outside of the courts. This extra-judicial settlement of disputes is an alternative remedy to judicial proceedings. It is facilitated by consumer associations that liaise between consumers and creditors to find a solution.

ECJ Case C-383/18 from September 2019 ruled that Article 16(1) of Directive 2008/48 must be interpreted as meaning that the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer (including those not dependent on the duration of the credit), after three Polish banks had applied a commission whereby the amount was not dependent on the duration of that agreement as specified in the CCD. The Court referred to the objective of the CCD in guaranteeing a high degree of consumer protection and that this would be more limited if a reduction in the total cost of credit were to be dependent on the duration of the credit.

**Consumer awareness of the right of withdrawal**

The level of knowledge about the right of withdrawal appears to be high among consumers. Although some respondents claimed a low level of awareness among consumers, the consumer survey suggests otherwise. A majority of respondents reported that they were aware of the right of withdrawal (72%) and were informed of it by the credit provider before signing a credit agreement (75%).

There seems to be a compliance issue in some cases, however, as 15% of consumers surveyed stated that they were not informed about this right before signing the contract. Other stakeholders noted cases where credit providers refused to apply the right of withdrawal at the consumer’s request, suggesting that there are some compliance outliers. Neither the circumstances in which such refusal takes place nor the scale of the issue could be determined from the available evidence.

**Costs and benefits per stakeholder**

Creditors incur costs associated with the right of withdrawal, through loss of anticipated income. This loss is limited by the 14-day withdrawal period, unless - as in the case of Germany - the right of withdrawal is, under certain conditions, prolonged indefinitely. The Court clarified in Case C-143/18 that a Member State may not provide in its national regulation such an obligation for the creditor to communicate the right of withdrawal to the consumer if the contract is fully executed by both parties at the express request of the consumer before he exercises his right of withdrawal, therefore invalidating this practice of prolonging the right of withdrawal. Given the limited numbers of consumers withdrawing (1%), in practice, the loss for creditors is close to negligible (except, indeed

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539 Interviews and surveys of enforcement authorities and consumer associations.
540 Interviews and surveys of enforcement bodies.
541 Legal analysis.
542 Interviews of enforcement body.
543 Legal analysis.
544 Legal analysis.
545 Interviews and surveys of Member States and consumer associations.
546 Consumer survey.
547 Consumer survey.
548 Surveys of enforcement authorities, Member States and consumer associations.
possibly for Germany). The costs are typically initial set-up costs for new loans (contractual arrangements) and would usually be passed on to other consumers via the institution's standard service charges. They can thus be considered part of its operating model.

The right of withdrawal is very beneficial to consumers as it ‘helps [to] reduce the effects of overconfidence in snap decision-making’ and gives consumers a brief window in which to reconsider and potentially change their decision.\(^{549}\) The right of withdrawal is also an important tool to counteract irresponsible lending, for which ‘calibrated preventive measures’ are very important.\(^{550}\) It thus ‘contributes to alleviating the effect of behavioural biases such as overconfidence, present bias, availability heuristics or even loss aversion’.\(^{551}\) The right of withdrawal is viewed as an effective deterrent to poor or non-compliant creditor behaviour, as consumers can leave credit agreements that contain incorrect information or other incorrect measures.\(^{552}\) It also provides for better protection in general, as no such right existed in some Member States prior to the CCD.\(^{553}\)

Based on the number of personal loans in the EU (see section 2.2), it is estimated that 600,000 consumers sought to withdraw from them in 2018, of which an average of 43.5% are estimated to have been successful, or 260,000, and of which 338,000 were not successful. Not all 338,000 consumers that were not successful were denied the possibility to withdraw because some consumers are not aware of the timeframe of withdrawing and would likely have been too late. It is therefore estimated that of this group up to 237,000 consumers might have been impeded from withdrawing from the contract, though this figure should be used with caution.\(^{554}\)

In summary, stakeholders believe that the CCD provision on the right of withdrawal functions well and remains fit-for-purpose. Any issues raised seem to be relatively minor.

\(^{549}\) ECRI, 2018a.
\(^{550}\) BEUC, 2019.
\(^{551}\) BEUC, 2019.
\(^{552}\) Interviews of consumer associations.
\(^{553}\) Interviews of consumer associations.
\(^{554}\) Based on the number of consumers with a loan, withdrawal rate (1%), share of successful withdrawals (43.5%), awareness of the period of withdrawal 70%).
**Case study 4: Right of early repayment**

The right of early repayment is defined in Article 16 of the CCD and allows consumer to pay back early any amount of the credit, at any time. In some cases, the creditor is entitled to a compensation.\(^{555}\)

**Functioning of early repayment**

Overall, the functioning of the right to early repayment yields a mixed picture, with several sources noting its effectiveness, while others point to relatively high numbers of consumers facing difficulties exercising their right. A majority of respondents from all stakeholder groups believe that the right is respected.\(^{556}\) The study found that around one-quarter of consumers repay their credit early,\(^{557}\) which is in line with the 23% early repayment identified in a 2013 study.\(^{558}\) A considerable majority of consumers stated that they are aware of the right of early repayment, with most being informed of that right by the creditor before contracting the credit.\(^{559}\)

Sources differ on the numbers of consumers facing difficulties in repaying their credit early. A 2013 London Economics study found that of the 25% of consumers that tried to repay early, around 86% succeeded, while the remainder faced difficulties with the early repayment.\(^{560}\) Other sources found significant numbers of consumers experiencing issues with early repayment. Although creditors state that they apply the right of early repayment consistently, consumer associations note that around half of consumers have faced issues or made related complaints.\(^{561}\) In the consumer survey for this study, over one-third of respondents stated that the lender had made it difficult for them to use their right of early repayment.\(^{562}\) These findings indicate that the right to early repayment is not consistently applied by creditors, or is applied incorrectly, to the detriment of the consumer.

Consumers’ reported issues relate chiefly to the calculation of the compensation to be paid to the creditors, with the compensation being incorrectly calculated in some instances, or creditors seeking to profit from consumer ignorance. For example, some consumers were charged the entirety of the interest they would have had to pay on the loan had it gone to term. In some cases, consumers were denied the right of early repayment altogether, or creditors included clauses that obliged the consumer to renounce their right of early repayment.\(^{563}\) There is little further information or data to determine the exact scope of this issue, however.

For their part, creditors reported facing issues with the right of early repayment for small and short-term loans. Calculation of the fees to be paid in cases of early repayment was more difficult for short-term loans that had to be paid back within, for example, one month.\(^{564}\) Their concern was their ability to recover the costs of such loans, as Article 16(2) of the CCD stipulates that ‘if the period does not exceed one year, the compensation may not exceed 0.5% of the amount of credit repaid early’. In the Netherlands, for example, the maximum early repayment fees laid down in national legislation were considered too strict by creditors.\(^{565}\)

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\(^{555}\) See Annex 5 for further details.  
\(^{556}\) Interviews and surveys of enforcement authorities, industry representatives, Member States and consumer associations.  
\(^{557}\) European Commission, 2014a; OPC (general).  
\(^{558}\) London Economics, 2013.  
\(^{559}\) Consumer survey.  
\(^{560}\) London Economics, 2013. More recent data on early repayment are not available.  
\(^{561}\) Surveys of enforcement bodies and consumer associations.  
\(^{562}\) Consumer survey; it should be noted that the consumer survey did not ask how many people had attempted to repay their credit early. All respondents were required to answer the question on whether the lender had made it difficult to exercise the right to early repayment.  
\(^{563}\) Interviews and surveys of enforcement authorities, Member States and consumer associations.  
\(^{564}\) Interviews and surveys of industry representatives.  
\(^{565}\) Interviews and surveys of industry representatives.
In a recent judgement on these issues, the Court clarified that Article 16(1) of Directive 2008/48 gave concrete expression to the right of the consumer to a reduction in the cost of the credit in the event of early repayment by replacing the general concept of 'an equitable reduction' with the more specific concept of 'a reduction in the total cost of the credit' and by adding that therefore, the reduction must also cover 'the interest and the costs'.

**Impact of early repayment on consumer protection**

The right of early repayment is important for consumer protection. Its chief benefit for consumers lies in allowing them to avoid higher interest costs. Many consumers struggle to see the benefits of repaying early. This may be due to loss aversion, which favours small payments over a long time over large one-off payments. This suggests that there may be benefits if consumers are thoroughly informed about the right of early repayment and its benefits when initially contracting credit.

The definition of the maximum amount to be repaid (Article 16(2) and (3) CCD) helps to protect consumers from having to pay excessive compensation fees for the creditor. The compensation for lenders for early repayment should not exceed 1% of the credit repaid early if the period between repayment and end date of the contract is more than one year, or 0.5% if this is less than one year, as per Article 16(2).

The majority of Member States made use of the regulatory choice in Article 16(4)(a), which states that creditors can only claim compensation if the amount of the early repayment exceeds a threshold set by the Member State, which may not exceed EUR 10,000. Consumers in most Member States thus do not have to pay any compensation for smaller amounts paid back early. This was borne out by the consumer survey results, with almost half of the respondents stating that there was no penalty fee for repaying credit early (46%), while one-third stated that there was a penalty fee.

Data from the UK showed that in 2019 59% of personal loans available come with early-repayment charges, which would translate into an estimated 4 million loans for the year 2018. While there are no figures for the EU as a whole it is estimated that if the rate of 59% would be the same this would translate into 35 million loans with early repayment charges. If the figures of the consumer survey for this study are taken as reference then 33% or 20 million loans would have a penalty fee.

Views on the impacts of early repayment on industry are mixed. Industry representatives from three Member States specifically pointed out that the maximum limits to charging costs for early repayment were below the costs incurred for the credit institutions, though representatives from the 12 other Member States did not explicitly mention early repayment as a problematic provision.

**Costs and benefits per stakeholder**

The evaluation identified few problems for consumers. A key issue pointed out by a European consumer representative was the potential detriment to consumers in terms of financial losses because of insurance premiums and other costs paid up front for the...
entire period.\textsuperscript{571} There are no indications of the scale of consumer detriment specific on this point.

Creditors incur costs related to the right of early repayment, as they are not able to gain the full amount of interest from consumers and the compensation to which they are due is limited by Articles 16(2) and (3) of the CCD and the regulatory choice in Article 16(4)(a). Nevertheless, Article 16(4)(b) of the CCD provides an exception that allows the creditor to "exceptionally claim higher compensation if he can prove that the loss he suffered from early repayment exceeds the amount determined\textsuperscript{572} in Article 16(2). Nine Member States have opted to use this regulatory choice.

Based on the total number of consumers with a loan of around 60 million, and the share of consumers that sought to repay early (25%) and those who did not succeed (14%), there are approximately 2.5 million consumers affected by problems with the right to early repayment, though only a subset will be related to the CCD. A part of the problem is likely related to issues with consumer awareness, as well as Member State level practical application and enforcement. The issue, however, is larger than for the right to withdrawal simply because more consumers exercise this right.

\textsuperscript{571} BEUC, 2019.
\textsuperscript{572} Article 16(4)(b) Consumer Credit Directive.
Case study 5: Annual Percentage Rate of Charge

Introduction

Directive 87/102/EEC\(^{573}\) described the APR as ‘the total cost of the credit to the consumer expressed as an annual percentage of the amount of the credit granted and calculated according to existing methods of the Member States.’ This Directive aimed to bring about ‘a certain degree of approximation of the laws’ concerning consumer credit. The objective of the CCD, which repealed Directive 87/102/EEC, has the potential for broader reach.

The aim of the CCD is to facilitate the emergence of a well-functioning internal market that offers consumers an equivalent high level of protection. To this end, it has fully harmonised the methodology and assumptions used to calculate the APR.

Full compliance with this provision will help to ensure maximum transparency and comparability of offers, allowing consumers to make fully informed decisions.

All Member States have correctly transposed this requirement of the Directive. However, the extent to which creditors comply with the transposed provision is less clear.

APR as a comparison tool

Recital 19 of the CCD states that the APR is intended to provide a numerical and comparable representation of the cost of credit to the consumer (among other things). The literature reviewed for this study and stakeholders consulted\(^{574}\) both suggest that the APR is effective as a comparison tool. As a formula, it is considered the most comprehensive tool to compare consumer credit offers.\(^{575}\)

Irrespective of its effectiveness as a formula, the APR must be properly communicated if consumers are to make comparisons. This is less straightforward, especially in light of recent technological developments in the consumer credit market. Increased digitalisation has led to a greater number of credit agreements being concluded on computers and mobile devices,\(^{576}\) requiring the methods for providing information to similarly adapt.

The extent to which information contained in advertising or pre-contractual information on digital media is easy or complex to understand is dealt with in Case Studies 1 and 2. One practice worth mentioning here, however, is that of providing unclear information (including on APR), which influences consumers’ ability to choose the most appropriate credit.\(^{577}\) The provision of unclear information on the APR thus negates its effectiveness as a comparison tool.

Commercial practices are evolving, and not only in how information is conveyed. There is a growing focus on providing products to customers as quickly and with as few barriers as possible. This sees commercial practices - such as making the product quick and easy to purchase or emphasising the time limited nature of the offer – used to entice consumers into rapid decisions.\(^{578}\) These practices may make the APR less attractive as a comparison tool for consumers, who instead base their decisions on other reasons, or, in any case, have insufficient time for a detailed comparison (as should be the case, based on Recital 19 of the CCD).

Although the APR is nevertheless considered the most effective comparison tool in consumer credit,\(^{579}\) an alternative opinion emerged from the stakeholder consultations

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\(^{573}\) Council Directive 87/102/EEC.

\(^{574}\) Interviews of consumer associations; Interviews of industry representatives and enforcement authorities.

\(^{575}\) ECRI, 2015; London Economics, VVA and Ipsos, 2016; European Commission, 2019.

\(^{576}\) See case study 10 (New markets for lending) for further details.

\(^{577}\) European Commission, 2019.

\(^{578}\) European Commission, 2019.

\(^{579}\) ECRI, 2015; European Commission, 2016a; Interviews of consumer associations, industry representatives and enforcement authorities.
in this study. A small minority of industry representatives stated that the APR is not a good comparison tool, with some pointing out that short-term loans generate very high percentage rates compared to the rate of a long-term loan. While this is correct, there is no evidence to suggest that this has a negative impact on consumer demand for short-term loans.

**Extent to which the APR influences consumer decision-making**

The fact that the APR is used as a comparison tool to select which credit is most appropriate emerged clearly from the study consultations. A considerable majority of respondents to the OPC considered the APR to be beneficial in helping consumers to choose an appropriate credit product. Similarly, a majority of those respondents to the consumer survey that were informed by the credit institution about the value of the APR found it helpful in choosing which consumer credit to purchase. Similar results emerged from the 2019 European Economic and Social Committee’s survey of civil society organisations.

Creditor are aware of the importance of the APR in fostering consumer choice, with a low APR often highlighted in advertisements. Conversely, the visibility of an unattractive APR may be reduced in advertising, by, for example, reducing the size of the font or by less prominent placement, especially in online advertising.

Hiding the costs and highlighting the benefits is a practice that is perceived as detrimental to consumers. The effectiveness of the APR indeed depends on its visibility, with greater visibility increasing the chances that a consumer will choose the most appropriate credit for their needs. Presenting the APR in large font at the top of an offer results in a statistically significant increase in the share of correct choices with follow-up questions finding that this improved decision-making was due to more consumers basing their choices on the APR. (See case study 2 for more detailed discussion.)

In other instances, such as revolving credit agreements, the attractiveness of the credit is generated by offering initial credit with a low APR which then increases for subsequent credit. There are also examples where the APR was not provided to the consumer at all. In some Member States, in order for the APR to be considered representative, it must be tied to the average APR included in a certain number of credit agreements concluded. Where national legislation does not state otherwise, instances have been noted in which the representative example of the APR is provided at a lower rate than the average.

**Consumer detriment**

The ability of consumers to use the APR as a comparison tool may be impaired by incorrect calculations by creditors. Observations from a recent study found that in over one-third of cases, the information contained in the representative example was insufficient to be able to re-calculate an APR, while in just under one-third of cases, the calculated APR did not match the stated APR. The study also found that the stated APR

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580 Interviews of industry representatives.  
581 89% of the general public and 83% of other stakeholders.  
582 32% found it ‘very helpful’ and 43% found it ‘helpful’.  
583 Interviews of enforcement authorities and Member States.  
584 Interviews of consumer associations and Member States.  
587 The study was conducted in a select number of countries (Denmark, Lithuania, Portugal Romania and the UK).  
588 London Economics, VVA and Ipsos, 2016.  
589 Interviews of enforcement authorities.  
591 Interviews of consumer associations.  
592 Interviews of consumer associations and enforcement authorities.
matched the calculated APR in only about one-third of advertisements. Similar findings emerged in 2015, when only about half of advertisements with sufficient information included a correctly calculated APR.

Cross-selling practices have also been identified as a serious issue in several Member States. The CCD requires the APR calculation to include all products whose purchase is compulsory, rather than solely those that are optional. Some creditors have sold additional products, for example optional PPI policies. These products are not included in the total calculation of the APR, creating consumer expectations of lower prices and associated potential for financial detriment. (See case study 8 for more detailed discussion of cross-selling and mis-selling.)

Ensuring that creditors are compliant is not the only difficulty surrounding the implementation of the provision on APR. Consumers - and sometimes creditors and enforcement authorities alike - are struggling to fully understand what the APR includes and how it is calculated.

**Consumer understanding of the APR**

There are practical challenges and limitations in comparing the cost of consumer credit and understanding the full costs involved. Some consumers struggle to fully comprehend how the APR is calculated, how it differs from the borrowing rate, and the elements it should include. This is not surprising, given low level of financial literacy among consumers in the EU.

The survey conducted as part of the 2013 study found that less than two-thirds of respondents (64%) knew whether the APR was mentioned in their contract, compared to 84% who were aware of the type of interest rate (i.e. fixed or variable) and 74% who were aware of penalty charges associated with early repayment.

Results of the consumer survey in this present study similarly raise issues about understanding of the APR, with 40% of respondents declaring to be either aware of the existence of the APR but unsure as to what it means, or entirely unaware of the APR.

**Costs and benefits for stakeholders**

The immediate benefit for consumers is that the APR is the most comprehensive indicator allowing comparison of loans. The key cost surrounds the ability for consumers to understand the APR and their ability to make an informed decision.

Creditors noted that the APR calculation is difficult to understand for consumers but also to perform, in their view having - since the introduction - led to additional time and effort, and increased costs to the business. These positions were confirmed by the results of the OPC, with the majority of business responses considering the APR costly. However, while implementation costs from the period 2008-2010 could not be established, though ongoing costs are expected to be relatively limited due to the standardised character of the APR calculation.

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594 ECRI, 2015.
595 European Parliament, 2018; Interviews of consumer associations, enforcement authorities and Member States.
596 ECRI, 2015; Interviews of consumer associations and industry representatives.
600 Interviews of industry representatives.
601 OPC (specific).
Case study 6: Creditworthiness assessment and credit databases

Overview

Article 8(1) of the CCD requires Member States to ensure that before the conclusion of the credit agreement, the creditor assesses the consumer's creditworthiness based on sufficient information.

The practical application of CWA in Member States has lead to different types of CWA carried out in Member States. These differences may mean that the CWA is either lender or borrower-focused but may also refer to the type of information used and whether it comes mainly from consumers or credit databases (which in itself show substantial differences, see also EQ5 and section 3.1.5). The CJEU has confirmed that creditworthiness assessments as per article 8 of the CCD are 'intended to protect consumers against the risks of over-indebtedness and bankruptcy'. The extent to which this ensures that the assessments will be borrower focused is questionable.

Stakeholders noted that the wording of Article 8(1) allows for different interpretations by Member States, a view confirmed by the interpretation of the CJEU. This leaves Member States with considerable leeway in establishing how creditors may gather information about consumers' financial situations, as it does not specify the kind of creditworthiness test (lender-focused or borrower-focused) envisaged.

Indeed, most Member States have laid down further provisions about CWAs and related access to databases. Most Member States who went beyond the CCD specified the documents that consumers must provide to assess their creditworthiness. Three Member States also implement a measure that obliges creditors to only approve the credit if the consumers are deemed creditworthy and there is no reasonable doubt about consumer repayment capacity. The UK has adopted a borrower-focused test, meaning that financial firms need to 'take into account more than assessing the customer’s ability to repay the credit' and take reasonable steps 'to assess the customer’s ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.'

As well as differences in the types of information they can request, creditors can also access different types of information from public and private databases. In Belgium and Germany, databases provide positive data on consumers, such as their good performance with past credit agreements. By contrast, the databases in Denmark, France and Finland provide only negative data.

In carrying out CWAs, creditors may choose to rely on information that is specific to the individual consumer or to consumer type. In the latter case, the information is chiefly statistical. In Denmark, for example, CWAs are primarily based on statistics rather than an individual consumer's ability to repay or their economic situation.

Forms, tools, methods and data used by lenders to assess creditworthiness

They way traditional creditworthiness assessments work in practice is that a credit score is derived from the data put into the lender's systems, an algorithmic decision-making
system that generates a credit score, which in turn establishes the consumer’s ability to borrow money.

New trends in the use of data mostly concern the volume and type of data being used, and in particular the so-called “all data is credit” principle,\textsuperscript{613} which in Spain and Poland is documented to be up to 20,000 data points (individual instances or facts) for a person’s credit risk.

While CWA methods may differ, the type of data that creditors collect directly from consumers is similar across Member States. Consumers consulted\textsuperscript{614} through both the survey and OPC for this study were most frequently required to: provide payslips (55% and 51%, respectively); fill-in questionnaires, either online or on paper (45% and 36%, respectively); and present account statements (41% and 42%, respectively), while others were required to provide their tax declaration (34%).\textsuperscript{615} These findings are corroborated by the mystery shopping exercise and the literature reviewed.\textsuperscript{616}

The survey of creditors confirms that this information is gathered by banking and non-banking institutions, with all but one respondent\textsuperscript{617} indicating that they consider the borrower’s current income, cost of living and credit record and debts (i.e. outstanding financial commitments, credit track record, performance on past payment obligations, national consumer credit register). Some creditors noted that they require tax returns. Creditors explained that they complement the analysis by using information on the personal characteristics of the consumer, such as their age, marital status and level of education.

Alongside requesting information directly from the consumer, creditors consult relevant databases, as per Article 8(1) of the CCD. In their survey responses, all but one creditor indicated gathering information on consumers from national consumer credit registers. This was confirmed in the responses from the general public to the OPC, with a majority stating that the credit provider mentioned checking other sources of information, in addition to those requested directly.\textsuperscript{618}

On the data used to perform CWAs, some stakeholders pointed to the need to focus on the quality rather than the quantity of information gathered.\textsuperscript{619} This point was also raised in a recent study on consumer credit, which found a need to justify the use of adequate and relevant data in CWAs, with the aim of determining whether the consumer can comply with payment requirements within the duration of the credit and without particular hardship.\textsuperscript{620}

**Extent of compliance with CCD provisions**

Evidence reveals that a majority of creditors comply with the obligation to carry out CWAs, although there are doubts about the sufficiency of these checks. The OPC results reveal that in a majority of cases, the creditworthiness of those requesting the credit was checked (68%), with 11% stating that it was not checked.\textsuperscript{621} An even higher rate of compliance was found among consumers that had obtained or attempted to obtain credit in the last 3 years (79%), with only 10% stating that no CWA was performed.\textsuperscript{622} However, stakeholder interviews and desk research suggest that such checks may not be sufficient. In 2012, a UK study suggested that while all lenders performed CWAs, it

\textsuperscript{613} Hurley et al, 2017.
\textsuperscript{614} 79% of all respondents to the consumer survey indicated having gone through a CWA.
\textsuperscript{615} OPC (general).
\textsuperscript{616} European Commission, 2018a.
\textsuperscript{617} This traditional banking institution mentioned only personal characteristics such as age, marital status and level of education.
\textsuperscript{618} OPC (general).
\textsuperscript{619} Interviews of consumer associations and industry representatives.
\textsuperscript{620} ECRI, 2018a.
\textsuperscript{621} OPC (general): 21% of respondents stated that they did not know.
\textsuperscript{622} Consumer survey: 11% of respondents stated that they did not know.
is unclear whether these were always sufficient to meet the statutory test. For example, high street lenders sometimes checked bank statements and pay slips primarily to verify identity and the existence of a bank account, rather than to check repayment ability. Similar findings were reported in 2014, with concerns voiced by stakeholders about the sufficiency of the information obtained by creditors offering point-of-sale contracts. They specifically referred to a conflict of interest between selling a good/service and upholding legal obligations. The study concluded that consumer creditworthiness is not always assessed in sufficient detail. Stakeholders noted that market practices are sometimes geared towards poor performance of CWAs, as this is an integral part of certain business models. They also pointed to ‘payday lending’ as a particularly problematic type of product in relation to CWAs. The 2012 UK study found that the majority of lenders across the entire payday lending sector did not conduct adequate affordability assessments, i.e. they did not properly assess the borrower’s ability to repay a specific loan. In the Netherlands, the Financial Market Authority has highlighted payday loan creditors operating without a licence or failing to conduct CWAs. In this particular sector, there is little incentive to perform adequate CWAs, as revenue streams rely heavily on rolling over or refinancing loans. An EU-wide study in 2018 found that creditors across the EU have not always done a good job of assessing consumers’ creditworthiness, especially in those segments of the market where small amounts of credit are at stake and/or the costs of credit are much higher than the average. Evidence is found in the UK, where one in three loans is either repaid late or not repaid at all. The EU-wide study ascertains that as rollover practices are highly profitable for creditors, they have little incentive to perform an adequate assessment of the consumer’s creditworthiness before a loan is granted or rolled over.

**Irresponsible lending**

The levels of non-compliance described above could be considered irresponsible lending practices. Irresponsible lending acts as a complementary driver of household over-indebtedness in the EU and can lead to widespread detriment. Recital 26 of the CCD refers to the importance of warning consumers against over-indebtedness and promoting responsible lending, thereby underscoring the role that CWAs play in fighting irresponsible lending. This interpretation is confirmed by the CJEU, which found that the aim of the CCD obligation to assess borrowers’ creditworthiness is to protect consumers against the risk of over-indebtedness and insolvency. Article 8 and recital 26 are both improvements to repealed Directive 87/112/EEC which did not include any reference to creditworthiness or responsible lending at all. Recital 26 however does not play such a strong role as the provision included in the 2005 proposal for a directive did, which required creditors and credit intermediaries to ‘adhere to the principle of responsible lending.’ The CCD does not appear to be sufficiently robust in its promotion of responsible lending, as it does not establish an obligation for creditors to reject a credit request in the event of a negative CWA

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623 OFT, 2013.
625 Interviews of consumer associations and Member States.
629 OFT, 2013.
631 CEPS, 2016
633 COM (2005) 483 final/2 (article 5).
outcome. Nevertheless, the CJEU stated in a recent judgement that attaching to the creditor’s obligation to check the consumer’s creditworthiness a legal consequence on the course of action to be taken in case of a negative assessment does not impair the objective of Article 8(1) of Directive 2008/48. Indeed, recital 26 of the CCD reiterates the objective of making creditors accountable and deterring them from engaging in irresponsible lending. The CCD, therefore does not preclude a national rule which obliges the creditor to refrain from concluding the credit agreement if he cannot reasonably take the view, following the check of the consumer’s creditworthiness, that the consumer will be able to fulfil his obligations.

Stakeholders confirmed that poorly performed CWAs may contribute to overindebtedness, while the need to define a CWA procedure was also mentioned in a recent study. Indeed, the sole obligation provided under EU law is for the creditor to provide the consumer with an adequate explanation, in good time before signing the credit agreement. The study found the obligation to reject a credit request that does not pass a creditworthiness assessment to be a key issue to address.

In the absence of an adequate legislative framework, overindebtedness may have severe consequences for the individuals concerned. Health issues correlated to high levels of stress, reduced labour market participation, social exclusion and poverty are among the risks of overindebtedness. There can also be damaging consequences for the stability of the financial sector as a whole.

Some Member States have addressed the vagueness of the Article 8 wording by clarifying certain terms of the CCD. Belgium and the UK, for example, have clarified ‘sufficient information’, which has had a positive impact on consumers. Despite this, variations persist in Member States’ implementation of Article 8.

Further developments in the UK include the Open Banking approach introduced by the CMA, set-up to help consumers find better deals by sharing transaction data. This is supposed to help consumers that are particularly vulnerable, though there are concerns about how such data can be used in different contexts. The introduction of PSD2 will see an increase in such approaches, opening up the consumer credit market. A study for DG CONNECT pointed out that traditional credit bureaus are increasingly aware of these developments and likely to engage with or acquire FinTech companies already operating in the field of Open Banking. This could pose various risks for the collection of data being used in creditworthiness assessments.

Variation in CWA approaches across the EU

As noted above, Article 8 of the CCD establishes that the CWA should be based on ‘sufficient information’ obtained from the consumer and/or the relevant database. This provision affords the creditor a wide margin of discretion to determine the information it needs to determine whether the consumer is creditworthy. The existence of this margin has been confirmed by the CJEU, which stated that ‘the sufficient nature of the information may vary depending on the circumstances in which the credit agreement was concluded, the personal situation of the consumer or the amount covered by the agreement’. A more recent CJEU judgment further established that Article 8(1) should be interpreted so as not to prejudice national legislation, allowing for different interpretations and additional requirements. In that case, the national legislation

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634 Case C-58/18 Michel Schyns v Belfius Banque SA, Judgement of the Court of 6 June 2019 ECLI:EU:C:2019:467
635 Interviews of consumer associations and enforcement authorities.
637 CEPS 2016.
639 European Commission, 2016.
640 CJEU C-449/13, para. 36.
642 C-58/18 (Michel Schyns v Belfius Banque SA) ECLI:EU:C:2019:467.

considered by the Court established that a creditor may only enter into a credit agreement if it is possible to reasonably believe that the consumer could honour the agreement.

Variations in CWAs will depend on how Article 8 of the CCD has been implemented in national legislation. Broadly speaking, Member States have taken three different approaches: (1) leave the choice of the exact information to the discretion of creditors;643 (2) leave the choice of the exact information to the discretion of creditors but with some minimum information either suggested or required;644 and (3) specify the information to be used,645 potentially including a formula or threshold.646

Only three Member States have implemented the requirement - omitted from the CCD - that creditors deny credit to a consumer whose CWA did not yield a positive outcome.

Opinions differ substantially on the extent of regulation that should be imposed on the sector. Around three-quarters of stakeholders stated, in their OPC responses, that CWAs should remain regulated at EU level, while 21% of respondents disagreed, either fully or somewhat.647 Industry representatives, in particular, argued that CWAs should not be further harmonised at EU level, claiming that it is strongly linked to national conditions and that it touches upon the core expertise of lenders, such as risk management.648

The position expressed by industry representatives in the OPC is corroborated by the majority of those interviewed and surveyed. Stakeholders pointed to the need to maintain the flexibility currently granted to the CWA, which allows businesses to adapt to the specificities of a given Member State market. Overall, these variations were not perceived as an obstacle by the industry representatives.

EU-level harmonisation was identified as positive by consumer associations, among others. Calls for harmonisation stem from the need to avoid distortions in how credit is granted, which can lead to different levels of consumer protection across the EU and - possibly – be detrimental to consumers.

**Extent of consumer detriment**

Irresponsible lending and lack of compliance can both be detrimental to consumers, especially when it comes to vulnerable groups. A recent study found that poor CWAs across the EU often allowed vulnerable consumers who were already facing a problematic repayment situation to gain access to ‘risky’ credit products. This situation arises because people on low incomes, with no prospects and/or existing debt cannot easily obtain a long-term instalment credit or mortgage loan. As a result, they may have little choice but to turn to those market segments where providers of small but expensive loans are ‘often more generous with regard to creditworthiness’.649

Non-compliance is being tackled in different ways. Most Member States foresee administrative sanctions, both warnings and cautions,650 either in the form of the cancellation or limitation of the creditor’s licence,651 or as a penalty or fine.652 A smaller number of Member States provide for civil consequences to non-compliance.653 One Member State foresees criminal sanctions.654

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643 AT, CZ, DE, DK, MT.
644 EL, FR, IE, IT, LU, UK.
645 CY, EE, FI, HR, IS, PL, SE, SI.
646 BE, HU, LT, LV, NL, PT, RO, SK.
647 OPC (specific).
648 OPC (specific).
650 CZ, ES, IE, PT, RO, SE.
651 BE, CZ, EE, IE, LT, LV, NL, PT, RO, SE, SI, UK.
652 AT, CZ, DE, DK, EE, EL, ES; IE, IS, IT, LT, LV, NL, PT, RO, SE, SI, UK.
653 BE, CZ, DE, EE.
654 BE.
Non-compliance and variation between Member States are not the only factors with the potential to be detrimental to consumers. The desk research and stakeholder consultation also raised the questionable relevance of the information gathered and the processing and storage of such (often intrusive) data.

Indeed, a wider array of new data are emerging in the credit-risk analysis of lenders. For instance, data compiled by credit bureaus may be data by private firms for commercial purposes that are not directly relevant for CWAs. In addition, online lenders and fintech companies also use alternative data sources, including social media, which raises questions about privacy in the context of the data protection legislation. Other stakeholders mentioned the need to ensure that consumers consent to the storage and use of their data.

A related issue is the lack of transparency surrounding both the logic and data sources used by algorithms, which goes against the need to use pertinent, proportionate and well-founded data in CWAs. CWA methodologies have evolved rapidly, with innovations focusing on unstructured data, based on data scrubbing, social media and machine learning. These new types of assessment are mostly used by fintech companies (including peer-to-peer lenders) and are particularly relevant for consumers with a thin credit profile, as they can bypass the requirement to have a solid credit history. It is important to ensure that the use of alternative data will preserve the accuracy, quality and completeness of credit reporting data and that the principles of data minimisation and proportionality are respected.

The extent to which these new practices could be detrimental to consumers remains unclear. Even assuming that the data used are accurate – and the potential for inaccuracy is an issue in itself, as it could lead to consumers being refused access to credit - many potential issues can arise. Implicit demographic bias, for example, together with economic discrimination, can prompt financial exclusion of certain categories of consumer, likely the most vulnerable groups. There is a risk that algorithms ‘lock’ users in their vulnerability by excluding them from accessing certain services. This type of data analysis relies on the identification of patterns and correlations, which means that any user whose data are highly unusual and who does not fit into a model might also face discrimination.

Discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation, or that result in measures having such an effect, should be prevented by technical and organisational measures implemented by the data controller, as established by the GDPR. The extent to which this is the case remains to be established.

It should be noted that the majority of stakeholders interviewed either had no opinion or did not provide responses on data protection, with the exception of industry representatives, all of whom confirmed that CWAs are always performed in accordance with data protection laws.

655 ECRI, 2018; Interview of consumer associations.
656 Interviews of consumer associations.
657 BEUC, 2017; ECRI, 2018a.
658 European Commission, 2016c, p. 128.
659 European Commission, 2016c, p. 130.
660 GPFI, 2018.
661 EBA 2016b, p. 24.
662 FSUG, 2016, p. 5.
663 FSUG, 2016, p. 5.
665 Interviews of industry representatives and consumer associations; survey of industry representatives.
Costs and benefits for stakeholders

This study has sought to gather and understand the perspectives of the various stakeholders involved and the extent to which the CCD had generated either costs or benefits for them.

CWAs are considered burdensome by a small majority overall of OPC respondents but by a great majority of businesses. This is because it must be carried out manually (requiring them to look up all of the consumer’s information) and because of the need for new IT systems for the assessment. This burden, while real, should be considered alongside the fact that such assessments are performed to an extent by creditors as part of their risk assessment, regardless of the CCD.

The OPC results show satisfaction with CWAs overall. A considerable majority of respondents believe them to be beneficial, with some stakeholders noting that they protect consumers from over-indebtedness. This position is supported by the majority of OPC respondents considering CWAs to be effective for consumer protection. This opinion is shared by less than half of consumers’ associations, however. Stakeholders made it clear that CWAs could be improved through a revision of the CCD, whose provision was least well perceived.

Credit databases

Section 3.1.5 pointed to wide differences in how Member States have transposed the CCD’s article on credit databases. The content of these databases is not legislated by the CCD, and the vast differences in practical approaches point to a fragmented landscape impacting the way requests for access are handled, and what data on consumers is available in such databases.

In terms of the size of the sector, there are an estimated nearly 200 private credit bureaus in 109 countries worldwide. In the EU, the most common institutional design relies exclusively on private credit databases, followed by a dual system combining both public and private databases. Four Member States have an exclusively public credit register, while Luxembourg has not set up any credit database. Figure 23 below shows the coverage of private and public databases in each Member State in 2018, showing that it varies considerably across the EU and credit databases.

666 Interviews of industry representatives and consumer associations; survey of industry representatives.
667 OPC (general).
668 Interviews of consumer association and industry representatives.
669 OPC (general).
671 CY, DK, EE, EL, FI, HR, HU, NL, PO, SE, UK.
672 CZ, DE, ES, IE, IT, LT, LV, PT, SK.
673 BE, BG, FR, MT, SI.
674 Credit registry coverage means the number of individuals and firms listed in a public/private credit registry with current information on repayment history, unpaid debts, or credit outstanding. The number is expressed as a percentage of the adult population.
Differences in the quality of the data contained in the databases have been noted across the EU, hindering the effective exchange of information between credit providers, both for national and cross-border operations. Three main aspects determine the quality of the data captured: (1) the comprehensiveness of data sources; (2) the relevance and detail of the data; and (3) the period covered by the data. Most credit databases in the EU collect information from banks, leasing companies, credit card suppliers and credit retail suppliers, but the extent to which other organisations (e.g. insurers, brokers and intermediaries, national authorities, utility services providers) feed information into the system varies greatly between Member States (see Table 8).
Table 8. Types of organisations supplying data to credit reporting agencies, by Member State (selected group)

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Source: ICF (2019), with data from the 2017 ACCIS Survey of Members

Differences also exist in the breadth and depth of information collected. All credit databases gather data on the individual, particularly identity information, solvency status, and previous and existing accounts (including mortgages, consumer loans, credit and store cards and, to a lesser extent, overdrafts). Court judgments are often included. In some cases, this is complemented by information on income or assets and, in several cases, structured non-traditional data such as information provided by utility services companies. Some databases collect data on the family group, although this is forbidden in many other Member States. Additionally, many databases have a minimum financial threshold below which information is not recorded, with amounts ranging from approximately EUR 30 in Sweden to EUR 300 in Austria.

The use of non-traditional credit data, also referred to as alternative data, in credit databases deserves special attention in the current context, where credit providers are

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678 ACCIS, 2017.
paying growing attention to alternative data with a view to allegedly improve the accuracy of CWA processes.\footnote{Further details on the impact of digitalisation on CWAs can be found in Section 2.2, EQ5 and case study 6 (Creditworthiness assessment).}

**Definition and use of non-traditional data by credit providers**

Although the categorisation of data into traditional and non-traditional varies from country to country, non-traditional credit data refers to information that goes beyond an individual’s credit history. It can be structured (e.g. information on rent, utility bill payments and banking transactions) or unstructured (e.g. web browsing, mobile phone use, psychometrics, social media data).\footnote{Inspired by the new risk analysis techniques used by fintech companies, many credit providers have incorporated alternative information in their analyses, including financial information other than that contained in credit registers, such as payments. In contrast, the use of non-structured alternative data is still very limited and raises important concerns among consumer associations, who point to major risks associated to it such as legal compliance with data protection rules, information bias and issues with the quality of the data. The possible negative impact of the use of (non-structured) alternative data on consumer protection is further discussed in case study 6 (Creditworthiness assessment).}

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Case study 7: Cross-border access to loans

Developing the cross-border market for consumer credit

Although, strictly speaking, cross-border activities refer exclusively to operations where the credit provider and the consumer are located in different countries (i.e. direct cross-border lending), the term may be also used in the literature and by stakeholders to refer to instances where a credit provider establishes subsidiaries or branches in other countries to target consumers in that market (i.e. indirect cross-border lending). This distinction is relevant, as the evidence shows that while the latter practice has gained popularity in the field of consumer credit in recent decades, direct cross-border lending concerns only a limited number of institutions. For the purposes of this case study, ‘cross-border lending’ should be understood to mean direct cross-border activities.

In 2002, the European Commission identified a number of factors underlying the slow development of the European cross-border credit market. These were: technical problems in accessing another market; lack of adequate harmonisation of laws in the field of consumer credit; and changes to the methods and styles of credit since the 1980s (i.e. when the previous Directive regulating consumer credit was adopted). In the revised proposal that ultimately led to the adoption of the CCD, the Commission argued that cross-border activities would allow credit providers to achieve economies of scale, and that this would lead to a wider and cheaper selection of credit products for consumers. At the same time, it concluded that to develop a cross-border market, certain harmonisation of the level of consumer protection across the EU was needed. With this in mind, the Commission set out to establish a harmonised regulatory framework that would facilitate (among others) the development of a more transparent and efficient credit market that would ultimately promote the creation of a true single market in the field of consumer protection.

Evolution of cross-border credit since 2008

The cross-border market for consumer credit in the EU remains small, with little significant growth in the last decade. ECB data on outstanding positions of domestic and cross-border loans to households (which include consumer loans and housing loans) indicate that cross-border lending represented less than 1% of total household loans for the entire 11-year period since the adoption of the CCD. These figures suggest that the market for cross-border household loans provided by Monetary Financial Institutions (MFI) has not developed in the last decade and that it remains far less developed than the market for cross-border wholesale loans (see Figure 24). According to the ECB, the 2008 financial crisis may have played an important role in this retrenchment, as cross-border loans were one of the products most affected by the crisis.

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683 ECRI, 2015.
684 EBIC, 2010.
687 Recital 6 CCD.
688 CPEC, 2008.
689 ECB, 2018.
Figure 24. Cross-border positions in relation to household (personal loans)\(^\text{690}\) and wholesale\(^\text{691}\) loans provided by MFIs in the eurozone

The small size of the cross-border market for consumer credit has been highlighted on numerous occasions since 2008. Shortly after the CCD was adopted, industry representatives noted that cross-border lending was insignificant and that the market remained very fragmented. Similar conclusions were reached in various studies published since 2013,\(^\text{692}\) with cross-border lending in the segment of household retail loans found to represent less than 1% in most Member States, and to be generally restricted to border areas.\(^\text{693}\) This finding was corroborated by stakeholders across all groups consulted for this study,\(^\text{694}\) with most creditors stating that cross-border operations represent 5% or less of credit agreements concluded.\(^\text{695}\)

The importance and evolution of cross-border operations in the past decade varies significantly from one Member State to another.\(^\text{696}\) While large economies like Germany have registered very low levels of cross-border lending, countries with small, open economies – and generally with large numbers of expats or international mobility of workers – present much higher shares of cross-border operations. In Luxembourg, for example, even following a sharp decrease in cross-border loans for households, they still represented approximately 30% of total household loans in 2013. The UK and Belgium also saw higher than average percentages, albeit to a substantially lesser extent than Luxembourg.\(^\text{697}\)

However, these figures only concern loans provided by monetary financial institutions and may not provide an entirely accurate snapshot of the total current level of cross-border operations in the field of consumer credit. Although the market share gathered

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\(^{690}\) Household loans refer to loans reported by MFI provided to households and non-profit institutions serving households in the euro area.

\(^{691}\) Wholesale loans refer to loans reported by MFI provided to other MFI in their Member State and in other Member States in the euro area.


\(^{693}\) EBIC, 2010.

\(^{694}\) Interviews of consumer associations, interview representatives, Member States and enforcement authorities; survey of creditors; consumer survey.

\(^{695}\) Survey of creditors.

\(^{696}\) European Commission, 2016c; Interviews of consumer association and industry representatives.

\(^{697}\) European Commission, 2016c.
by newly emerged fintech companies remains insignificant compared to traditional credit providers, their impact on the development of a cross-border market for consumer credit is comparatively higher, given that they usually target consumers in various Member States and are primarily focused on providing unsecured consumer loans.\textsuperscript{698} Their specific impact on the size of the cross-border market for consumer credit cannot be assessed from ECB data, as they are not considered MFIs. A comparison of trends in public opinion on financial services in 2011 and 2016 does not reveal significant changes in the numbers of consumers that have taken up cross-border personal loans.\textsuperscript{699} Nevertheless, a potential expansion of this type of credit could be expected to contribute to creating a cross-border market for lending or entry into the market of new providers that more easily operate in different Member States and/or cross-border.

**Offer and demand for cross-border loans and the impact of digitalisation**

As explained above, the offer of cross-border credit is not commonplace across the EU. Traditionally, the needs of the two segments of consumers who usually turn to cross-border loans (commuters and expats) have been met by two main types of credit providers:\textsuperscript{700}

- Banks located in border areas or specialised in cross-border sales, mostly targeting cross-border commuters. Handling this specific segment of consumers requires specific skills, namely a good knowledge of the two national markets involved and the languages concerned.
- Specific departments in mainstream banks specialised in selling loans (both consumer and housing loans) to non-residents, usually expats who would like to take up credit in their country of origin.

In the last decade, the technological advances brought by digitalisation have impacted the offer of cross-border credit. This has led to the development of new business models based on digital technologies, i.e. fintech companies such as peer-to-peer platforms. Unlike traditional credit providers, these companies do not have a physical presence through branches and offices and they usually target consumers in various Member States, especially as they are often based in small economies (e.g. Bandora in Estonia). (See case study 10 for more detail on the emergence of this new type of credit provider and their impact on the consumer credit market).

Digitalisation has also impacted the pre-sale and sale processes of all credit providers. At the pre-sale stage, distribution and communication channels have been digitalised, minimising the impact of geographical barriers.\textsuperscript{701} Most fintech companies have opted to develop an exclusively online presence, meaning that their distribution channels are also digital-based, with many of them placing mobile services at the core of their business model.\textsuperscript{702} Traditional credit providers have also incorporated digital communication methods in their distribution models, opting for a hybrid model combining digital and non-digital interactions.\textsuperscript{703} The majority of creditors consulted for this study stated that they sell credit both online and in person, with only a minority opting for solely offline methods.\textsuperscript{704} This finding is in line with the observations of a 2019 London Economics study analysing the impact of digitalisation on financial services, where most traditional providers declared that they offered services both offline and online.\textsuperscript{705}

\textsuperscript{698} European Commission, 2016c.
\textsuperscript{699} European Commission, 2011; European Commission, 2016b.
\textsuperscript{700} European Commission, 2016c.
\textsuperscript{701} European Commission, 2016c; ECRI, 2015.
\textsuperscript{702} European Commission, 2016c; London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex, 2019.
\textsuperscript{703} European Commission, 2016c; London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex, 2019.
\textsuperscript{704} OCF, 2019. Creditor survey.
\textsuperscript{705} London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex, 2019.
The possibility to establish first contact with the credit provider or to obtain information online seems to have been well-received by consumers. Bank websites emerged as the main source of information for consumers responding to the OPC for this study.\footnote{OPC (general).} However, in line with the findings of a 2016 FISMA study,\footnote{European Commission, 2016c.} feedback from consumers suggests that the most common approach is a hybrid, combining online research and offline purchase.\footnote{Consumer survey; OPC (general).} This may be due to the challenges that persist for traditional credit providers in establishing an entirely online process, given their legal obligations and requirements (see the section on obstacles below).

Along with the digitalisation of communication channels, the technological developments of the last decade have affected the type of consumer data available to credit providers and the way in which these data are used. Although traditional credit providers continue to use structured data, the growing interest in big data to reach consumers and to assess their creditworthiness based on alternative, non-structured data (e.g. using social media information) suggests that this is a growth area for the future. (See case study 6 for further discussion of the use of alternative data to perform credit checks.)

The demand for cross-border credit has remained largely stagnant over the last decade.\footnote{European Commission, 2011; European Commission, 2016b; OPC (general); consumer survey.} Traditionally, the consumers most likely to seek cross-border credit are commuters and expats. A third group of cross-border consumers has now emerged - those with thin credit profiles, whose inability to obtain credit from traditional providers sees them turn to companies with innovative scoring techniques.\footnote{European Commission, 2016c.} With the exception of these groups, consumers appear to prioritise their national markets for consumer credit, often due to an intrinsic trust in their own consumer credit providers and those with which they are familiar.\footnote{Eurofinas, 2009; European Commission, 2016b; London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex, 2019; Consumer survey.} The consumer survey of this evaluation showed that whereas consumer do look for loans in other Member States (29% did) ultimately very few of them actually go so far as concluding one. The mystery shopping exercise highlighted considerable practical obstacles for consumers to do so, which seemed to indicate that the difference between the willingness of consumers to look for loans in other Member State and the willingness to actually conclude one is also due to such obstacles (in addition to other barriers, such as language barriers and concerns around available remedies). The feedback from consultations also suggests that there may be a direct correlation between the credit amount and the consideration of offers in other Member States, as the percentage of those looking for cross-border options increased steadily (albeit slightly) as the amount increased.\footnote{Consumer survey; OPC (general).}

Recent changes in consumer behaviour suggest that digitalisation has had an impact on consumer approaches to financial retail products (including loans) towards cross-border operations. A 2015 study showed that consumers seeking to obtain a personal loan placed greater emphasis on factors like fast end-to-end processes or the actual conditions of the loan over the location of the branch.\footnote{ECRI, 2018a.} This is in line with the feedback provided by consumers for this study, where location of services was considered the least important factor in assessing the different options.\footnote{OPC (general).}

In the future, it can be expected that further developments (e.g. emergence of start-ups seeking to develop social networking platforms offering acquisition channels for banks, new digital methodologies helping consumers make financial decisions,
establishment of online forums and social networks) will contribute to the growth of demand for cross-border credit.\textsuperscript{715}

**Role and impact of the CCD**

The lack of significant change in the figures on cross-border consumer credit operations by traditional credit providers between 2008 and 2018 suggests that the CCD has had no noticeable impact on increasing cross-border access to credit. This finding is in line with the feedback from key stakeholders consulted for this study. With the exception of consumer associations (whose opinions were divided on whether the CCD has facilitated cross-border access to credit and resulted in increased competition at EU-level), all stakeholder groups agreed that the CCD has not triggered a significant increase in cross-border operations or EU-level competition.\textsuperscript{716} The CCD is seen by a great majority of stakeholders to have similarly had little to no impact in addressing cross-border problems, although national authorities were relatively positive about the impact of the CCD on the level of consumer protection in cross-border operations.\textsuperscript{717}

Insufficient harmonisation and uneven interpretation of consumer credit rules, together with a failure to harmonise legal disparities across EU Member States in areas that affect the provision of consumer credit (including licensing regimes), are seen as the main reasons underpinning the CCD’s failure to foster a cross-border market for consumer credit. External factors such as language barriers were also referenced by several stakeholders. Lastly, insufficient supervision of compliance by credit providers was highlighted. These challenges, alongside the specific barriers and obstacles slowing down the development of the cross-border market for credit, are explained in the following sub-section.

**Barriers to provision of, and access to, cross-border credit**

In spite of EU efforts to harmonise certain rules in the field of consumer credit, the evidence suggests that barriers remain, affecting both demand for, and offers of, consumer loans on a cross-border basis.

**Types of barriers affecting the development of the cross-border market for consumer loans**

The main categories of barriers preventing the cross-border market for consumer loans from further developing are:

- Lack of awareness among consumers about the possibility to obtain credit cross-border, resulting in a lack of demand for cross-border credit.
- Legal fragmentation in respect to elements directly linked to consumer credit (including those that are not directly covered by the CCD) and wider aspects that are relevant for the provision of consumer credit (e.g. redress mechanisms, insolvency rules, anti-money laundering, etc.). Legal fragmentation acts as an obstacle for both the demand for and the offer of cross-border credit, as it requires consumers and credit providers to become familiar with different regulatory frameworks.
- Operational barriers, such as the difficulties for credit providers to access credit information on foreign consumers and the geographical restrictions imposed by credit providers which prevent consumers from other Member States to effectively access credit cross-border.
- Natural obstacles, such as language and cultural barriers, which limit both the demand for and the offer of cross-border credit.

\textsuperscript{715} European Commission, 2016c.

\textsuperscript{716} Interviews of consumer associations, industry, and Member States; survey of creditors; OPC (specific).

\textsuperscript{717} Interviews of consumer associations, industry, and Member States; survey of creditors; OPC (specific); OPC (general).
Preference for the national market as consumer are generally satisfied with the national offer or prefer to purchase national products, resulting in a lack of incentives for credit providers to target consumers in other Member States. The way in which these obstacles affect the demand for and the offer of cross-border credit is explained below.

The numbers of consumers seeking or requesting credit in a Member State in which they do not reside remains low.\(^\text{718}\) This is often due to a lack of interest, as consumers are satisfied with the national offer (especially in large economies) or prefer to purchase products in their own country.\(^\text{719}\) However, the evidence collected for this study reveals that there are four other main barriers:

- lack of knowledge of cross-border offers of financial products;
- lack of knowledge of the legal framework applicable in other Member States, as well as confidence in redress mechanisms;
- geographical restrictions imposed by credit providers; and
- natural obstacles, such as language and cultural barriers.

Regarding the first of these, consumers often lack access to information on consumer loans in other Member States, as credit providers rarely target consumers in other countries.\(^\text{720}\) This is reflected in consumer feedback in this study, with respondents noting that the main reason they did not look for credit elsewhere is because they were not aware of the possibility.\(^\text{721}\)

Second, consumers usually lack knowledge of - and thus confidence in - the regulatory framework and redress mechanisms in other Member States. Consumers noted that this was a very common barrier, rating it as the second most important obstacle in both the consumer survey and the OPC.\(^\text{722}\) This obstacle was highlighted by the European Commission in 2015, which argued that it is often difficult for consumers to find an adequate redress mechanism in cross-border situations and that, although the Financial Dispute Resolution Network (FIN-NET) was established in 2001 to help consumers solve cross-border disputes out of court, the level of awareness of the network remains very low.\(^\text{723}\)

A third barrier concerns geographical restrictions imposed by credit providers. Traditional credit providers frequently limit access to their products to domestic consumers, often because of the difficulties they encounter in assessing the creditworthiness of foreign consumers (see below). These restrictions are applied both to offline and online purchases and may consist of, for instance, the requirement to provide a national ID or social security number, address, telephone number or tax declaration. The evidence gathered by the mystery shopping exercise for this study corroborates the feedback from consumers and consumer associations,\(^\text{724}\) as every attempt to carry out a cross-border operation was ended by the failure of the mystery shopper to provide a domestic address, telephone number or national tax declaration.\(^\text{725}\)

In the digital realm, geo-blocking techniques are used by credit providers to re-route consumers or prevent the conclusion of a transaction, effectively denying access to credit for cross-border consumers.\(^\text{726}\) In 2015, the European Commission echoed the

\(^\text{718}\) European Commission, 2016b; Consumer survey; OPC (general).
\(^\text{719}\) European Commission, 2016b; ECRI, 2018a; OPC (general); Interviews with Member States, consumer associations and industry representatives.
\(^\text{721}\) Consumer survey.
\(^\text{722}\) OPC (general); consumer survey.
\(^\text{724}\) Interviews of consumer associations; OPC (general).
\(^\text{725}\) The study team tried to obtain cross-border credit in five Member States (BE, DE, ES, IE, NL), with no success.
then recently adopted Digital Market Strategy and anticipated that actions seeking to avoid geo-blocking and other types of geographically-based discrimination would be taken. However, although a new Regulation on geo-blocking was adopted in 2018, retail financial services have been specifically excluded from its material scope for the time being.

Finally, language barriers have been frequently referenced as a reason why consumers tend to prefer domestic products. Consumer feedback for this study indicated that language hurdles are indeed one of the main reasons they do not use foreign credit providers.

Other obstacles identified are uncertainty about how foreign markets work and the high fees applicable to transactions in/to another Member State involving currency exchanges.

From the perspective of the offer, the low demand for cross-border credit results in a lack of incentives for credit providers, especially traditional providers. As a result, many credit providers do not feel that barriers are preventing them from attracting consumers beyond their own territory.

This study found, however, that even where credit providers wish to target consumers in other Member States, several natural and structural barriers prevent them from doing so.

Among the natural barriers, the sale and management of cross-border loans requires very specific skills that credit providers need to build if they wish to operate in another Member State, including language skills, and a good knowledge of the market (i.e. available products and consumption habits) and a regulatory framework in various fields. These national differences greatly affect the business approach that credit providers must adopt to enter a new market, both to ensure compliance with all legal requirements and to effectively develop their brand in that foreign market. These obstacles were noted by several key stakeholders and credit providers consulted in this study.

The legal uncertainty is exacerbated by the fragmentation of legislation affecting the provision of credit across the EU. In fact, members of the industry and other key stakeholders consulted noted that disparities in legislation on consumer credit and other related areas affecting the provision of credit are the main factors preventing full development of the consumer credit single market.

The fragmentation of consumer credit legislation is due, on one hand, to the uneven interpretation and implementation of CCD obligations (e.g. advertising rules) and, on the other hand, to insufficient harmonisation of related aspects that are not specifically covered by the CCD (e.g. further obligations on CWA, content of credit databases, interest rate caps). This was discussed in recent literature, which argued that the
ample room for manoeuvre left to Member States to deal with loans exempted from the CCD and the insufficient harmonisation of elements partially covered by the CCD have allowed for stricter regulations at national level that have ultimately hindered cross-border access to credit. This finding has been corroborated by the research conducted for this study.741

Legal fragmentation in other areas that affects the provision of credit appears to act as an important obstacle as well, as it creates risks for creditors. The most problematic rules appear to be:

- Redress mechanisms and insolvency rules: the difficulty in organising cross-border collection processes make credit providers wary of delayed or default payments. As explained in a 2016 study, litigation can be conducted in only one country and the judgment is not directly applicable across the EU. This, combined with differences in the redress mechanisms and insolvency rules across countries, creates substantial difficulty for creditors and consumers in cases of dispute.742

- Taxation systems: although the EU has sought to facilitate the functioning of a single market by ensuring a certain degree of harmonisation of indirect taxes (i.e. taxes on goods and services), comprehensive harmonisation of Member States' tax systems has not been deemed necessary. However, this study found that the differences in (direct) tax regimes across the EU is considered one of the main impediments to cross-border lending.743

- Anti-money laundering (AML) obligations: credit institutions are bound by customer identification requirements in the framework of EU-level and national anti-money laundering rules, which vary between countries.744 This is particularly important, as AML and Customer Due Diligence rules in some Member States can effectively restrict the possibility of carrying out the entire contract signature process online,745 which may explain the disparate consumer feedback in this study in relation to the possibility to contract credit entirely online.746

While an EU-wide passporting system747 has been implemented in a variety of sectors, including financial activities, non-bank credit providers (and credit intermediaries) cannot opt for EU passporting rights, meaning that they may need to obtain a licence in some Member States in which they would like to operate (even remotely).748 This is especially problematic in some cases, with one industry representative suggesting that some Member States may impose requirements that de facto restrict access to the national market for foreign entities, contravening the underlying principles of the internal market.749 Concerning online service providers, the E-Commerce Directive

741 ECRI, 2018a; Legal analysis.
742 European Commission 2016c; European Commission, 2015; Interviews of industry representatives; Survey of creditors.
743 ECRI, 2015.
744 Although a common EU framework has been in place since 1990, the latest Directive adopted in 2015 (Directive (EU) 2015/849 on preventing the use of the financial system for money laundering or terrorist financing), amended by Directive (EU) 2018/843 may impose further requirements on Member States. European Commission, 2015; ECRI, 2018a; Interviews of industry representatives.
745 A considerable majority of respondents to the consumer survey claimed that they were able to do so, while only a minority of consumers responses to the OPC indicated being able to contract the credit entirely online.
746 Furthermore, in order to create consistent supervisory practices across the euro area, the European Central Bank issued in 2019 a non-legally binding consolidated guide to assessments of licence applications, which promotes a common interpretation of the licensing criteria for credit institutions. Please see European Central Bank, 2019, Press release - 'ECB publishes consolidated Guide to assessments of licence applications' for more information.
747 The legal analysis suggests that at least 11 Member States require credit providers or credit intermediaries have implemented licensing systems (AT, DK, EE, FI, LT, LU, LV, RO, SE, SI, SK). European Commission, 2015; Interviews of industry representatives and Member States; Legal analysis.
748 The interviewee referred to challenges faced by foreign credit intermediaries in registering on the national register (managed by the Financial Security Authority), a requirement to operate in the country.
establishes the country of origin principle meaning that a provider is entitled to provide information society services across the Union, while being in principle subject only to the requirements applicable in the country of establishment. For example, crowdfunding platforms established in Belgium (and operating in another country) need to get a licence from the Financial Services and Markets Authority (FSMA), they fall under its supervision and need to respect a certain set of rules.\textsuperscript{750}

The other main obstacle relates to the challenges in cross-border exchange of consumer data. Several issues have been identified in relation to the availability of credit data for consumers from other Member States. Firstly, although Article 9 of the CCD establishes the right for credit providers to access credit databases in other Member States on a non-discriminatory basis, firms continue to face issues when trying to do so. This was noted by the European Commission in 2015 and appears to still hold true. Although only a few Member States reported different requirements for foreign providers, industry representatives specifically referenced the different requirements to access national databases as one of the main obstacles to accessing the information needed to conduct CWAs for foreign consumers.\textsuperscript{751} This may be explained by the fact that access to many databases are based on the principle of reciprocity (i.e. access is granted to entities on the condition that they provide data on their own customers). This proves difficult for credit providers in other Member States, as it means they would need to feed data into every database (both public and private) that they may eventually need to consult.\textsuperscript{752}

In addition to the difficulties in accessing databases, other issues obstructing the effective exchange of data across Member States have been highlighted. Chief among these are the differences in database coverage (i.e. the share of the adult population covered) and the nature of the data collected (negative vs positive).\textsuperscript{753} Further details on the functioning and the issues linked to the use of credit databases can be found in the answer to EQ5 (Section 3.1.5).

\textbf{Issues with cross-border access to credit}

Little evidence is available on the quality of cross-border credit. However, there are several indications that consumers who decide to obtain credit cross-border do not have comparatively worse experiences than those taking up credit in their own Member State. Firstly, the results of a 2013 survey conducted by London Economics concluded that the quality of cross-border credit is similar to that of credit provided domestically.\textsuperscript{754} Secondly, the feedback from consumers in this study suggests that the quality of the information is good, as consumers who reported having obtained or trying to obtain credit cross-border considered the information provided easy to understand.\textsuperscript{755} Lastly, the enforcement authorities and consumer associations consulted noted the low number of issues reported in relation to cross-border credit, which could be interpreted as an absence of major issues affecting consumers’ experiences of cross-border loans.\textsuperscript{756} However, it could simply be a consequence of the very limited cross-border market for consumer credit.

Despite the seemingly positive experiences of consumers with cross-border consumer loans, Member States have reported a number of issues directly related to the provision of credit cross-border. These chiefly concern credit providers from other Member States (and in some cases, third countries) that are either offering products or engaging in business practices that are restricted or banned in the Member State (e.g. provision of

\begin{itemize}
\item Financial Services and Markets Authority, 2018, Equity and Debt based Crowdfunding in Belgium
\item European Commission, 2015; Interviews of industry representatives and Member States.
\item BEUC, 2017.
\item BEUC, 2017; European Commission, 2015; Interviews of industry representatives.
\item London Economics, 2013.
\item Consumer Survey.
\item Interviews of enforcement authorities and consumer associations.
\end{itemize}
loans with interest rates above the national interest rate cap, advertising of loans in countries where it is prohibited).\textsuperscript{757} In all cases, action was taken to address the issues. It could be argued that the different levels of protection that Member States grant to consumers (with some going far beyond the requirements of the CCD by, for instance, imposing interest rate caps or establishing stricter requirements in advertising (e.g. warning messages or even banning advertising of credit entirely)) may lead to more disputes if the cross-border market for consumer credit eventually grows.

In terms of possible remedies for this situation, credit providers are more minded to suggest action to address the difficulties stemming from legal fragmentation. More detailed provisions in the CCD could potentially reduce the legal disparities that stem directly from uneven interpretation by significantly restricting Member State discretion in interpretation. In addition, further harmonisation of consumer credit rules that are not covered by the CCD would reduce the legal fragmentation of rules across the EU. These could potentially establish further obligations in relation to CWAs, or introduce a common interest rate cap. However, any action to achieve a higher degree of harmonisation should be carefully considered, as the gains in relation to the facilitation of cross-border credit could be easily outweighed by the burden placed on credit providers. Some industry representatives consulted called for the introduction of a proportionality principle, allowing better adaptation of the regulatory framework to the specific circumstances of the credit provided (i.e. amount, duration, risk).\textsuperscript{758}

Lastly, a number of industry representatives suggested that an EU-wide credit database would allow credit providers from all Member States to share/access information on their consumers. Prior to considering the establishment of any such database, however, the current data collected at Member State level would need to be mapped to understand the different data and coverage of the public and private databases in each Member State. A preliminary step could consist of the promotion of cross-border data-sharing agreements, linking credit providers in all Member States.\textsuperscript{759}

\textsuperscript{757} Interviews of enforcement authorities and Member States.
\textsuperscript{758} Interviews of industry representatives; speaker representing the industry at the CCD stakeholder event.
\textsuperscript{759} BEUC, 2017.
Case study 8: Thresholds and scope

Scope of application of the CCD

Article 2 of the CCD sets out its scope of application, complemented by the definitions in Article 3. In brief, the CCD applies to credit agreements between EUR 200 and EUR 75,000. Article 2(2) lists the exemptions, of which the relevant ones, as well as a few other types of credit, are discussed in this case study:

- Credit secured by a mortgage or another comparable security commonly used and those used to acquire or retain property rights in land;
- Leasing agreements not imposing an obligation to purchase the object; and
- Credit agreements in the form of an overdraft facility, where the credit must be repaid within one month.
- Credit agreements where the credit is granted free of interest and without any other charges and credit agreements that are to be repaid within three months and have minor costs; Linked credit, special purpose loans or product-tying;
- Revolving credit (credit lines);
- Cross-selling.

The list of exemptions in Article 2(2) is extensive and encompasses many widely used loans, most of which were included within the scope of the European Commission’s first proposal for a Directive concerning credit for consumers.

Scope of national transposing measures

Except for Cyprus and Greece, all Member States have adopted transposing measures that go beyond the requirements of the Directive. Some extend the scope of application of the CCD (or certain of its provisions) to consumer credit not covered by the Directive. Table 9 below presents an overview of the types of consumer credit to which these extended CCD provisions apply (partially or fully).

Table 9. Extension of the scope of the CCD to credit excluded from it

<table>
<thead>
<tr>
<th>Credit product</th>
<th>Member States in which the CCD applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below EUR 200</td>
<td>BE*, BG*, CZ, DK, EE, FI, HU, IT, LV, PT*, SK*</td>
</tr>
<tr>
<td>Above EUR 75,000</td>
<td>DE, DK, CZ, EE, ES*, FI, FR, HU, PT, RO</td>
</tr>
<tr>
<td>Leasing agreement</td>
<td>AT, EE*, HU, IT, FI, FR*, PT, UK</td>
</tr>
<tr>
<td>All overdraft facilities</td>
<td>AT, BE*, FI, PT, FR*</td>
</tr>
<tr>
<td>Revolving credit</td>
<td>FI, NL, FR*, IT</td>
</tr>
<tr>
<td>Mortgages</td>
<td>BG, CZ*, HR, HU, RO, SI, SK*</td>
</tr>
<tr>
<td>Zero-interest rate</td>
<td>BE*, UK*</td>
</tr>
<tr>
<td>Agreements with pawnshops</td>
<td>with BE*</td>
</tr>
</tbody>
</table>

* Only some provisions of the CCD apply

Source: ICF elaboration, developed from input from national legal experts and feedback from stakeholders.

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760 The MCD slightly the maximum threshold by extending the scope of the CCD to unsecured credit agreements the purpose of which is the renovation of a residential property involving a total amount of credit above EUR 75,000 (Article 46).
762 Legal analysis; Interviews of consumer associations, industry representatives and Member States.
Various articles of the CCD provide for regulatory choices that allow Member States to make specific exclusions to the Directive, namely:

- Article 2(5): Member States may decide to partially apply the CCD to credit agreements concluded by organisations established for the mutual benefit of their members;
- Article 2(6): Member States may decide to partially apply the CCD to credit agreements for arrangements in respect of deferred payment, to be agreed by the creditor and the consumer;
- Article 4(1): National legislation may determine that the APR must be included in advertisements for credit agreements that do not indicate an interest rate or any figures relating to the cost of credit to the consumer;
- Article 4(2)(c), Article 6(2) and Article 10(5)(f): Member States may establish that the APR does not need to be included in the information provided to consumers at advertising, pre-contractual and contractual stage for credit agreements in the form of overdraft facilities where the credit is to be repaid on demand or within three months;
- Article 10(1): Member States may establish rules on the validity of the conclusion of credit agreements;
- Article 14(2): Member States may apply the 14-day withdrawal period to linked credit agreements, even where national legislation in force prior to the CCD states otherwise; and
- Article 16(4): Member States may provide that creditors are entitled to compensation for early repayment if the amount of early repayment exceeds a threshold defined in national law (which cannot exceed EUR 10,000 within a period of 12 months (Article 16(4)(a)) or that they may claim a higher compensation, by exception, if they can provide that the loss suffered is higher than the amount of the normal compensation (Article 16(4)(b)).

Table 10 provides an overview of Member States’ use of these regulatory choices.

**Table 10. Member States’ use of regulatory choices provided in the CCD**

<table>
<thead>
<tr>
<th>Regulatory choice</th>
<th>Use by Member States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 2(5)</td>
<td>CY, IE, LT, LV, RO, UK</td>
</tr>
<tr>
<td>Article 2(6)</td>
<td>BE, CY, CZ, DE, DK, EL, ES, HR, IT, LT, LU, LV, MT, PL, PT, RO, SI, SK</td>
</tr>
<tr>
<td>Article 4(1)</td>
<td>CY, HU, SE, UK</td>
</tr>
<tr>
<td>Article 4(2)(c)</td>
<td>BG, DK, ES, IE, LU, MT, PL, UK</td>
</tr>
<tr>
<td>Article 6(2)</td>
<td>DE, DK, ES, HR, IE, LU, MT, PL, SK, UK</td>
</tr>
<tr>
<td>Article 10(1)</td>
<td>All Member States</td>
</tr>
<tr>
<td>Article 10(5)(f)</td>
<td>CZ, DE, DK, ES, IE, LU, MT, NL, PL, SK, UK</td>
</tr>
<tr>
<td>Article 14(2)</td>
<td>FR, RO, SI</td>
</tr>
<tr>
<td>Article 16(4)(a)</td>
<td>AT, CY, EL, FI, FR, HR, HU, IE, IT, LT, LU, MT, PL, SI, SK, UK</td>
</tr>
<tr>
<td>Article 16(4)(b)</td>
<td>BG, CY, DK, ES, LT, LU, MT, NL, UK</td>
</tr>
</tbody>
</table>

Source: ICF elaboration, developed from input from national legal experts.

**Problems and business practice challenges in consumer credit and extent to which they are addressed by the CCD**

In order to assess the adequacy of the scope of the CCD in relation to the current consumer credit market, it is necessary to analyse whether it addresses the main
problems and business practice challenges that consumers and providers of consumer credit are facing. Household debt in the EU has grown in recent decades from 39.3% of nominal GDP in 1997 to 50% in 2017. This increase is similarly reflected in changes in the level of consumer credit in the EU in recent years. After a long period of contraction, consumer credit has grown steadily since 2013 (see Section 2.2).

The growth of consumer credit – in both volume and value - is due to a combination of factors. Interest rates in the EU have fallen steadily in recent years, while unemployment rates have risen, creating an incentive for consumers to borrow for consumption. At the same time, credit providers have sought new revenue sources, while the digitalisation of the sector has led to the widespread online distribution of credit and the emergence of new business models (e.g. fintech companies, including peer-to-peer lending platforms).

These new trends have facilitated access to credit for consumers, but they have also brought new challenges and risks. A number of new products and practices have been identified that pose particular risks for consumers: high-cost credit (i.e. credit cards and STHC credit); revolving credit; overdraft facilities; the cross-selling of products; and new models for lending (i.e. peer-to-peer platforms).

**High-cost credit**

This is one of the most problematic credit products. High-cost credit refers to loans that result in excessive charges from a variety of sources (e.g. interest rates, administrative costs, penalties for missed or late payments, fees). The charges may be either excessive from the outset or increase over time, and they often send the consumer into a spiral of debt. Two examples of widely used high-cost credit are STHC credit (“payday loans”) and credit cards.

**STHC credit** refers to instalment loans for relatively small amounts that must be repaid over a short term, generally under one year. One of the most widely known are payday loans, which are STHC credit that must be repaid on the day an individual consumer is paid their wages (their payday).

STHC loans are offered in many EU Member States, although the extent to which they are used varies between countries. A 2019 study noted that payday loans are especially widespread in Lithuania and the UK, where 37% of low-income households have resorted to this type of credit. In contrast, the market of payday loans in Germany is very limited due to the wide availability of overdraft facilities.

Digitalisation has greatly impacted the STHC credit market, allowing for faster automated processes that enable consumers to access credit remotely, further enhancing their nature as the go-to product for fast and easy access to credit. Consequently, more credit providers are announcing and offering their services online, both via web and mobile platforms.

In some countries, such as France, STHC credit is also offered through peer-to-peer lending platforms. However, the extent to which this practice will spread in the future

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763 FSUG, 2019.
769 BEUC, 2019.
773 BEUC, 2019.
remains to be seen. A recent global survey analysing the impact of digitalisation of STHC credit found that most respondents do not consider that crowdfunding will eventually become a source of STHC credit, given that crowdfunding platforms generally facilitate longer-term credit operations.\textsuperscript{774}

If used properly, STHC credit may serve a purpose for consumers, as it is a quick and easy way to obtain emergency finance. However, the reality is that the group of consumers resorting to this type of loan are those in financial distress whose income is not enough to cover everyday expenses. Poor creditworthiness checks, together with the marketing strategy used by STHC providers (i.e. easy-to-access and quick credit), attract vulnerable consumers with little or no access to alternative credit products.\textsuperscript{775}

The high cost of the credit represents a risk in itself, particularly as most of the consumers of STHC credit are categorised as risky consumers, meaning that credit providers increase the interest rates to cover the risk of default, which, in turn, makes it more difficult for the consumer to repay. STHC credit also tends to become more expensive over time, worsening the consumer’s financial situation as he or she is forced to either use the rollover option or take up more credit to repay the initial debt.\textsuperscript{776} A report published in 2015 by the UK Competition and Markets Authority found that 75\% of payday loan consumers obtain more than one loan in a year, while a 2013 study in Ireland found that around one-quarter of moneylender customers surveyed were repaying more than one loan simultaneously.\textsuperscript{777}

These risks are further exacerbated by a widespread lack of transparency and insufficient disclosure of information to the consumer which, together with the low level of financial and digital literacy among consumers of this credit product, results in a lack of consumer awareness of the true cost of the credit. Significantly, the accessibility of this type of loan favours impulsive decisions (especially as typical payday loan marketing strategies tend to emphasise the benefits of obtaining a loan instantly), further heightening the risk of over-indebtedness.\textsuperscript{778} Another study pointed out that the biggest payday lender in the UK had a loss rate (denoting what part of revenues is taken by the losses) of 41\% and default rate of 9\%, with the company attaining a 27\% profit margin, as opposed to 16\%, 2\% and 35\% respectively for the average of credit unions.\textsuperscript{779} The risk lies in the fact that payday lender revenues remain high despite high default rates of its member, with could signal it still being a profitable business model. However, no other data is available and this figure should be used for anecdotal purposes only.

While there is limited data on payday loans overall, the Dutch market authority AFM estimated that in the Netherlands new rules and enforcement led to the number going down from 89,000 in 2011 to 1,480 in 2013, reducing the number of payday companies from 21 to 6.\textsuperscript{780} There is no data from later year, but it appears the market has stabilised at much lower levels from its 2011 peak.

STHC credit is not intrinsically excluded from the scope of application of the CCD, but is very likely to be excluded as the amount borrowed is typically lower than the minimum threshold of the Directive (EUR 200).\textsuperscript{781} Even in the cases that are covered, the CCD is considered ill-equipped to address the issues associated with these loans:\textsuperscript{782}

- although the CCD established the obligation to provide ‘sufficient information’ to consumers, it does not specifically state that credit providers must inform

\textsuperscript{774} FinCoNet, 2017.
\textsuperscript{775} European Parliament, 2018; European Commission, 2019; OECD, 2019.
\textsuperscript{776} European Parliament, 2018; EBA, 2019; FSUG, 2019; FinCoNet, 2017.
\textsuperscript{777} FinCoNet, 2017.
\textsuperscript{778} Attaité, M., 2015.
\textsuperscript{779} AFM [NL], 2014.
\textsuperscript{780} European Parliament, 2018; BEUC, 2019.
\textsuperscript{781} European Parliament, 2018.
consumers of the possible impact and risks of a significant increase in a variable rate;

- The lack of a general duty for credit providers to lend responsibly means that the EBA has no competence to establish guidelines in this respect; and
- the CCD established a common formula for calculating the APR but does not provide for a cap on the APR or interest rates.

At a national level, some Member States have taken action to avoid or minimise the impact of these issues. Along with extending CCD rules to credit of less than EUR 200, Up to 23 Member States have introduced interest rate caps in an attempt to limit the costs of any type of consumer credit, which have had a positive impact in terms ensuring a high level of consumer protection in particular for vulnerable consumers.783 Similarly, some Member States, such as Latvia, Lithuania and the UK, have adopted provisions that seek to ban credit rollovers or make them less frequent.784

**Credit cards** are the other main type of high-cost credit. A credit card is a type of non-instalment credit product that allows the consumer to make use of a credit reserve within an agreed limit and time period, without having to repay the outstanding amount in a fixed number of payments. The agreement may establish that the consumer needs to pay a percentage of the amount on a regular basis or on expiry of the contract, in which case only the interest is paid throughout the duration of the contract.785 Although they are not the same type of credit product, credit cards and revolving credit share some common characteristics and risks.

Although the evolution of the market share of credit cards varies significantly across Member States, the overall size of the credit card market in the EU increased slightly in the last decade, with 43% of Europeans having a credit card in 2016, three percentage points more than in 2011. In the same period, the share of Europeans with a personal loan fell from 13% in 2011 to 11% in 2016.786 Although the variation is not pronounced, the negative correlation may indicate a growing preference for credit cards over personal loans.

By contrast, the importance of revolving credit seems to be decreasing. In 2015, this type of credit was reported to have decreased significantly compared to the previous year across the EU,787 though more pronounced in some Member States. In France, for instance, following the adoption of the Lagarde law in 2010 (which regulates revolving credit), there was a marked shift towards overdraft facilities and leasing agreements.788 In spite of this decrease, revolving credit appears to be one of the main sources of concern for consumer associations in the consumer credit market.789

The flexibility of credit cards and revolving credit is valued by consumers because it allows consumers to defer payments and spread large expenses over several months. Ultimately, however, this flexibility can be detrimental for consumers, as they generally have continued access to credit if they make minimum payments on their debt. This practice is very likely to play to the disadvantage of consumers, since it rests on several behavioural biases likely to lead consumers to accumulate debt over a long period of time. These behavioural biases are:

- over-optimism: overestimating one’s ability to maintain a zero balance;
- myopia: overvaluing the short-term benefits of a credit transaction and neglecting the future impact; and

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783 FinCoNet, 2017; Legal analysis.
787 CACF, 2015.
788 Que Choisir [FR], 2019c.
789 BEUC, 2019; El Pais [ES], 2019; Speaker representing a consumer association at the CCD event.
cumulative cost neglect: dismissing the cumulative effect of a large number of small credit options.

Consumers may consequently end up in situations where they are making minimum repayments that simply cover the interest and fees, without ever reducing the debt (i.e. persistent debt). This is highly profitable for credit providers.

Another important issue is the fact that credit cards, like revolving credit, are rather expensive credit products. This is reflected in the EU-level average of interest rates, which in February 2018 amounted to 16.86%. But also in the differences between the interest rate for personal loans on the one hand and those for revolving credit and credit cards on the other hand. In Italy, for personal loans the interest rate was 16.51%, while the rate for revolving credit amounted to 24.12%. Similarly, in Spain, the average interest rate of revolving credit would be considered excessive if applied to instalment consumer credit. In cases of payment default, credit providers in many Member States significantly increase the interest rate, not only on the amount overdue but on the remaining credit.

The issue of unsolicited consumer credit also raises concerns among consumer associations and the Financial Services User Group argued that common practices such as sending credit cards to consumers who have not requested them, or increasing the limit of the card without it being explicitly requested (see also below) can nudge consumers to borrow more and spend beyond their means. While the extent of this problem could not be verified on the basis of hard data, such practices would go against the DMFSD.

The scope of application of the CCD does not specifically exclude credit cards or revolving loans, if the amount borrowed falls under its scope of application. Similarly, the limitations of the CCD to address the issues linked to STHC credit remain valid for credit cards and revolving credit, i.e. the lack of an obligation to lend responsibly and to disclose the potential effects of variable interest rates, as well as its inadequateness to tackle high interest rates.

Revolving credit is a line of credit where consumers pay a fee to a financial services provider to borrow money if and when needed, with the exact borrowing amount dependent on their specific monthly needs.

A 2014 London Economics study surveyed consumers and found that revolving credit constituted approximately 3.1% of loans. Of those consumers, 2.7% had tried to withdraw their credit, a figure that is higher than for most other types of credit (such as personal loans, credit cards, store cards, overdrafts, car loans, student loans) but lower than for payday loans (3.1%) and home collected credit (3.1%). About 67% of consumers were successful in withdrawing credit, while one-third were not. Around 31.4% of consumers tried to repay the revolving credit early, again higher than most forms of credit except payday loans (31.6%), of whom 85.2% were successful.

Although relatively few, the issues reported for revolving credit related chiefly to information and choice. Belgium noted the issue of offering consumers the choice between revolving credit or payment in instalments, rather than making the former the default option. Slovakia reported that it found many consumers are not aware of what

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


Usury rates are interest rates usually considerably above current market rates.

BEUC, 2019; El Pais [ES], 2019.

BEUC, 2019.

FSUG, 2019.

The sample size was small: 12 consumers.
is revolving credit, and how it could impact them.\textsuperscript{798} In the UK, Citizens Advice found that three-quarters of consumers with a credit line had seen their credit ceiling raised without their explicit request.\textsuperscript{799} This impacted 6 million consumers or 28% of credit card holders.

There are no figures at EU level for the share of consumers who had an increase in their credit ceiling without their consent/request, though if similar such a move would potentially impact a considerable number of consumers with a credit line, significantly raising the risk of further indebtedness. A 2016 Special Eurobarometer showed that about 43% of EU consumers had a credit card.\textsuperscript{800} If increased credit lines had impacted 28% of those consumers, that would impact 12% of all consumers.

In this scenario, it could have affected around 24 million consumers in 2018.

With credit line increases in the UK averaging EUR 1,500 (and over EUR 3,000 for 12% of consumers), it could be that even with a much lower average credit line in the EU of EUR 500 the total joint credit line increase would be EUR 12 billion. While only a part of the credit line increase could pose problems for consumers who could not afford this, the effects could – at EU-level – be substantial.

Although there are no data to suggest that the UK situation is mirrored in the rest of the EU, it is nevertheless clear that revolving credit can pose considerable risks for consumers and is significantly more problematic than linked credit (see above).

A 2011 consumer sweep showed problems with credit intermediaries in 11% of cases. These mostly related to revolving credit, though no further details or more recent data are available.\textsuperscript{801}

Some Member State regulators have acted to curb revolving credit, most notably in France, where consumers must be offered the choice between revolving credit and payment in instalments when sold products in shops.\textsuperscript{802} The Dutch enforcement authority, AFM, reported that revolving credit is becoming less common (in favour of non-revolving credit),\textsuperscript{803} though it is unclear if that is due to better enforcement of existing legislation or other factors. In May 2019, in conjunction with the AFM, the Dutch credit institutions association agreed stricter rules on revolving credit, including maximum withdrawals, more frequent CWAs (with credit refused where the outcome is negative), and a maximum revolving credit duration of 15 years (currently unlimited).\textsuperscript{804}

Authorised \textbf{overdraft facilities} are credit agreements that allow consumers to become overdrawn up to a certain limit at a set interest rate, effectively acting as pre-approved credit. Unauthorised overdraft facilities, on the other hand, are not pre-agreed and usually entail very high interest rates and additional fees for the consumer.

Although there is no EU-wide data on the extent to which overdraft facilities are used by consumers, national data from France and Germany suggest that they are increasingly used in some Member States as alternatives to payday loans and revolving credit.\textsuperscript{805} France has approximately 30 million users of overdraft facilities, with 60% of French people overrunning their overdraft authorisation during the year.\textsuperscript{806}

Like credit cards and revolving credit, one of the main advantages of overdraft facilities is that they constitute a useful tool to cover small and sudden financing needs. However, like credit cards, they are a very expensive credit product compared to instalment

\textsuperscript{798} BEUC, 2019, p. 9. \\
\textsuperscript{799} Citizens advise, 2017 \\
\textsuperscript{800} European Commission, 2016b. \\
\textsuperscript{801} European Commission, 2012. \\
\textsuperscript{802} BEUC, 2019, p. 10. \\
\textsuperscript{803} AFM, 2018 AFM, 2018. \\
\textsuperscript{804} VFN, 2018. \\
\textsuperscript{805} Que Choisir [FR], 2019c; Finance Watch, 2018 and 2019. \\
\textsuperscript{806} Que Choisir [FR], 2019c.
consumer credit, and in some cases even compared to payday loans.\textsuperscript{807} The use of overdraft facilities also entails similar risks to those linked to credit cards, namely over-optimism (i.e. the consumer wrongly assumes that he or she will not become overdrawn) and myopia (i.e. the consumer over-values the benefits of the present transaction while dismissing the impact on his or her financial situation). In addition, consumers risk misunderstanding the conditions applicable to the overdraft facility in terms of costs, limits, etc.

The extent to which the CCD covers overdraft facilities is somewhat ambiguous. While it covers authorised overdraft facilities that do not need to be repaid within one month, some ambiguities remain regarding those to be repaid within one month. Unauthorised overdrafts are only subject to a ‘light regime’ under Article 18 (i.e. overrunning), which imposes certain information duties in cases where a current account allows the consumer to overrun. As a result, some countries (e.g. France) have noted that credit providers are encouraging consumers to turn to types of products that are slightly less controlled.\textsuperscript{808}

Even in those cases where overdraft facilities fall under the scope of the CCD, the same observations apply as those outlined in relation to high-cost credit.

**Zero-interest rate loans** (i.e. loans with an interest rate of 0%) are commonly used in the EU, especially when financing the purchase of certain products, such as electronic devices. These loans are very often concluded via retailers, who act either as credit providers or credit intermediaries. They fall outside of the scope of the CCD (Article (2)(f)), but even if they may appear to be very advantageous credit products, they have the potential to be detrimental to the consumer. This is because despite the lack of interest, they generally foresee very high fees for late or missed payments, conditions of which the consumer is often unaware.\textsuperscript{809} For this reason, some countries (e.g. Germany) have decided to apply some CCD provisions (i.e. right of withdrawal) to all consumer credit, irrespective of whether an interest rate is charged.\textsuperscript{810}

**Leasing agreements** have seen rapid growth in the EU in recent years. In 2014 and 2015, a boost in the number of leasing agreements concluded in the EU - especially in the automotive sector - was responsible for an important part of the growth of the consumer credit market.\textsuperscript{811} In some Member States, the leasing market has grown significantly in the last decade. For instance, between 2008 and 2019, France saw the number of leasing transactions increase by 256\%.\textsuperscript{812} Similarly, stakeholders from Austria highlighted the need for the CCD to cover all leasing contracts, as they have become a major form of consumer credit in their Member State.

The CCD only covers leasing agreements in so far as these oblige the consumer to acquire the good(s) upon expiration of the contract, which means that most of the leasing agreements concluded are not bound by CCD obligations. Consumers entering into leasing agreements may therefore be exposed to risks that could be addressed if the CCD was extended to these agreements. One consumer organisation in France, for instance, noted that consumers often lack sufficient information to make an informed decision.\textsuperscript{813}

**Linked credit, or special purpose loans**, are credit agreements that are needed to buy a specific product or service.

There are no reliable data on the size of linked credit products (credit agreements that are needed to buy a specific product or service) in the EU. In 2017, outstanding

\begin{itemize}
\item $807$ BEUC, 2019.
\item $808$ Que Choisir [FR], 2019c.
\item $809$ House of Lords, 2006; EBA, 2019.
\item $810$ Finance Watch, 2018 and 2019; Legal analysis.
\item $811$ CACF, 2015.
\item $812$ Que Choisir [FR], 2019a.
\item $813$ Que Choisir [FR], 2019a
\end{itemize}
consumer credit in the EU was EUR 1.8 billion.\textsuperscript{814} Of this, new credit granted amounted to EUR 457 million, of which consumer credit was 70\% (personal consumption amounted to 47\%, while vehicle financing (for consumer use) was 23\% (EUR 105 million)).\textsuperscript{815} Although car finance is the largest type of such loans, linked credit is broader and can be expected to amount to at least EUR 450 million, or one-quarter of the EUR 1.8 billion in outstanding credit quoted above (vehicle finance makes up about 23\% of new credit, thus a similar share can be assumed for outstanding credit).

Article 15 of the CCD provides that where a consumer has exercised their right of withdrawal for a contract on supply of goods or services, they are no longer bound by the credit agreement. It also states that if the services or goods are partially or not provided, the consumer has the right to pursue remedies against the supplier or, if they did not obtain remedy, against the creditor. At least eight Member States\textsuperscript{816} have remedies in place where consumers withdraw from a linked credit agreement.\textsuperscript{817} France and Germany implemented Article 14(2) CCD (reduction of the period of withdrawal in linked credit agreements) and Article 14(6) (application of certain provisions where the contract (by law) had to be concluded through the service of a notary (and other specified circumstances are fulfilled)), respectively.

Several Member State authorities, enforcement authorities and consumer associations reported receiving complaints about the lack of clarity of the application of the right of withdrawal to linked credit agreements, although further data about the number of complaints, or details of specific cases are not available. The share of credit agreements affected is negligible.\textsuperscript{818} As stakeholders highlighted few issues with linked credit, there are no indications of significant numbers of consumer complaints, no relevant case law exists and the calculated figure shows a negligible share of loans affected, it can be assumed that consumer detriment/problems associated with linked credit agreements are likely to be insignificant.

\begin{itemize}
\item **Cross-selling**
\end{itemize}

Cross-selling or product tying is where an additional product is sold together with the loan, as either a mandatory or an optional element. Typically, a credit product is conditional on another product, as distinct from product bundling, where different products are offered together (as a package or bundle) to enable a lower cost for the consumer. These three forms of credit are discussed in detail below.

The most common types of product sold with credit (including STHC credit) are insurance policies (generally life insurance, car insurance or payment protection insurance (PPI)).\textsuperscript{819} This is a highly profitable practice for credit providers, who usually agree on remuneration packages with insurance companies and receive commissions for the sale of these products.\textsuperscript{820}

\textsuperscript{814} EBA, 2019.
\textsuperscript{815} EUROFINAS, 2017.
\textsuperscript{816} AT, CY, DE, LV, PL, PT, ES, UK.
\textsuperscript{817} European Parliament, 2012a.
\textsuperscript{818} As the right of withdrawal is exercised in only about 1\% of all credit agreements, and linked credit agreements make up at least 23\% of all new credit (see above) and are estimated to be probably below 50\%, the extent to which the right to withdrawal is exercised (if equally common for linked credit agreements as for other credit agreements) would represent 0.23-0.5\% of all credit agreements. The consumer survey carried out for this study showed that approximately 16\% of consumers had experienced problems with their consumer credit, with 41\% reporting a major problem (equivalent to 6.6\% of all consumers). Logically, therefore, 6.6\% of 0.23-0.5\% of all credit agreements are problematic, or a range of 0.015-0.0328\%. The problem of not being able to exercise the right to withdrawal for linked credit is, arguably, a major issue, and only those issues are assumed to be important in understanding the scale of the problem with linked credit.
\textsuperscript{819} European Parliament, 2018; FinCoNet, 2017.
\textsuperscript{820} FinCoNet, 2017; Finance Watch, 2018 and 2019.
Cross-selling is seen as a significant issue in the consumer credit sector, particularly because of the aggressive marketing practices that credit providers often use to mis-sell this type of product to consumers who do not need it, and who may even be unaware that they are purchasing it.\textsuperscript{821}

Cross-selling of PPI deserves special attention, given the many risks it poses for consumers. PPI is an insurance policy that enables consumers to insure the repayment of loans in cases of death, extended illness or other circumstances that prevent them from meeting their payment obligations. Several issues have been identified with the way that PPI is sold to consumers wishing to obtain credit:

- Credit providers sell them either as part of a whole package together with the credit (i.e. product bundling) or deceive consumers into thinking they are mandatory – or that not taking PPI can lead to the credit request being rejected - when in reality they are merely optional products. Examples of such deceitful practices were identified in several mystery shopper exercises, which revealed that some credit providers hide the optional nature of the product unless specifically asked, or pre-tick the insurance option in the contract.\textsuperscript{822}

- Many consumers are sold unsuitable insurance policies, with the largest cross-selling scandals relating to PPI. The remuneration packages negotiated between insurance companies and credit providers are based on volume of sales, which incentivises credit providers to prioritise sales over the consumers’ best interests. For example, in 2008, the UK found that one in three PPI consumers had been sold ‘worthless’ insurance that was unsuitable for them. Consumers are also deliberately misinformed about the specific conditions of the contract, with many believing that the coverage includes job-loss when in fact this is rarely the case.\textsuperscript{823}

- In line with the CCD provisions on the APR, the cost of non-mandatory products is not included in the APR. Therefore, insurance premiums are not generally reflected in the APR (even if they are presented to consumers as almost mandatory products) but may increase the cost of the credit significantly, as they can be relatively expensive (they tend to cover the commission that insurance companies pay to credit providers for selling the product).

The CCD deals with cross-selling only to a certain extent. It merely establishes that when a consumer is obliged to purchase another product together with the credit, the cost of that product must be taken into consideration in the calculation of the APR. It does not impose any type of restriction on this practice nor does it include an obligation to ensure the suitability of the product, instead leaving it to the Member States to regulate these issues.\textsuperscript{824}

Although the majority of EU countries have not taken any specific action to limit these irresponsible lending practices or to mitigate their impact on consumer welfare, some Member States have done so.\textsuperscript{825} Germany and France have put in place specific obligations in relation to the provision of pre-contractual information in an attempt to ensure that consumers are provided with a clear explanation of the specific additional costs they will face. In the UK, PPI cannot be sold until seven days after the signature of the credit agreement.\textsuperscript{826} In Portugal, tying of products is banned, with the government issuing guidelines for insurance companies in 2012, specifically addressing the design and marketing of PPI products.\textsuperscript{827}

\textsuperscript{821} EBA, 2016a; EBA, 2017; EBA, 2019.
\textsuperscript{822} Mystery shopping; BEUC, 2019.
\textsuperscript{823} European Parliament, 2018; Finance Watch, 2018 and 2019.
\textsuperscript{824} European Parliament, 2018.
\textsuperscript{825} FinCoNet, 2017; BEUC, 2019.
\textsuperscript{826} BEUC, 2019.
\textsuperscript{827} FinCoNet, 2017.
The stakeholder consultations carried out for this study point to several specific issues. One EU consumer association highlighted that these practices can be particularly misleading about the APR, as those costs (e.g. additional insurance) are not always clearly or explicitly considered and might go unnoticed by the consumer.

Consumer associations consider PPI problematic. The sector is considered highly profitable (some commissions paid by specific insurance companies to credit institutions for selling PPI together with a credit agreement could reach as much as 50% or more\textsuperscript{828}), bringing with it important risks for consumers. A study from the Belgian Financial Services and Markets Authority showed that between 2011 and 2015, insurers paid out a claim in only 0.24% of all contracts.\textsuperscript{829} The total collection of PPI reached EUR 65 million, of which 12% was used for paying claims, with over 50% going towards commissions, charges and fees. Several mis-selling scandals have been identified in the UK (2008), Ireland (2012) and Spain\textsuperscript{830}. The French enforcement authority carried out mystery shopping on cross-selling of insurance, highlighting issues with providers pre-ticking the insurance box in contract forms, ambiguous or misleading advertisements, and omission of certain information or provision of misleading information.\textsuperscript{831}

One government authority pointed out that the definition of linked credit leaves the ‘mentioning’ of the link (or tied product) to the creditors, creating an issue for consumers’ ability to exercise the right to withdrawal.\textsuperscript{832} One business representative consulted for this study argued that, in line with the MCD, a ban on tying consumer loans could alleviate some of the existing risks. In Germany the ‘link’ is not valid if the credit agreement is conditional on the consumer holding shares in a cooperative credit institution (relevant in view of the size of the sector of cooperative financial institutions). Business representatives suggested that this should be harmonised across the EU.

Looking at these types of credit products on the effectiveness, efficiency and relevance of the CCD, especially revolving credit and cross-selling practices have played a role in hampering the CCD from achieving the first objective on optimising consumer protection standards. The definitions or scope of the CCD do not fully cover for the drawbacks of cross-selling and revolving credit. In terms of overall costs and benefits, consumer detriment of the impact of these credit types on consumers could be substantial.

**Minimum and maximum thresholds established by the CCD**

Article 2(2)(c) limits the scope of application of the CCD to credit agreements involving a total amount of credit between EUR 200 and EUR 75,000 though with the entry into force of the MCD in 2014 the CCD was amended to include unsecured credit agreements the purpose of which is the renovation of a residential immovable property involving a total amount of credit above EUR 75,000 to ensure an equivalent level of protection to those consumers and to avoid any regulatory gap between the two Directives.

The extent to which these thresholds are adapted to current needs was widely discussed with stakeholders, with feedback suggesting that thresholds are one of the key elements limiting the effectiveness and relevance of the CCD in the current market of consumer credit.\textsuperscript{833} The above analysis of the products and practices that are most detrimental for consumers in relation to consumer credit confirms this view, with a significant share of the most problematic credit products (i.e. high-cost credit and revolving credit) falling outside the scope of the CCD precisely because of the lower threshold. However, stakeholders did not comment on the extent to which it could be expected for the CCD to address these types of products if they were included in its scope. Indeed, even if covered by the CCD these credit products could still have a very elevated APR even if

\textsuperscript{828} BaFin, 2017.  
\textsuperscript{829} FSMA, 2017.  
\textsuperscript{830} FSUG, 2019.  
\textsuperscript{831} Economie [FR], 2018.  
\textsuperscript{832} OPC (specific).  
\textsuperscript{833} Interviews of consumer associations, industry representatives and Member States.
fully compliant. It does not therefore automatically address the main problems especially for more vulnerable consumers.

The limitation of the scope of the CCD means that Member States have the freedom to regulate credit agreements above or below the thresholds. As the consumer credit market varies significantly across the EU, Member States have resorted to a wide variety of solutions – both in terms of consumer protection standards and enforcement of rules - to tackle the most pressing issues in their own territory. This has resulted in a very fragmented regulatory framework that has hindered development of the cross-border market\(^{834}\) and which may create incentives for credit providers to choose markets based on more lax regulatory frameworks.\(^{835}\)

To conclude, the study found that the scope of application of the CCD is generally considered inadequate to address some of the emerging and more common forms of consumer credit that are causing, or have the potential to cause, considerable consumer detriment.\(^{836}\) This view is largely shared by most stakeholders consulted for this study, especially among consumer organisations, Member States and enforcement authorities.\(^{837}\) Consumer organisations held a comparatively more negative view in relation to the adequacy of the CCD to address the current issues, while industry representatives were slightly more positive overall.

The exemptions established by Article 2 appear too extensive and overly complex, which fosters the circumvention of the rules by credit providers. In addition, some definitions included in Article 3 should be updated to better reflect the current market players and practices.

Stakeholders identify the minimum threshold as one of the key barriers preventing the CCD from tackling some of the issues linked to high-cost and revolving credit. The fact that these loans usually target more vulnerable people, and may equally lead to over-indebtedness in spite of the low amounts, has led many Member States to bring them within the scope of application of national legislative measures transposing the CCD (up to and including the elimination of payday loans).\(^{838}\) Revisions to the CCD by including loans below EUR 200 would not in itself address the problem outright. It is rather a combination of measures adopted by Member States (including interest rate caps and bans) that have specifically address the problem of the minimum threshold. That, therefore, relates instead to the scope of the CCD (caps) rather than thresholds as such.

The EESC argued that the minimum threshold does not take into account the differences in the average income across the EU.\(^{839}\) This is illustrated by Figure 26 below, which shows gross monthly earnings across the EU and the equivalent share of EUR 200 from those earnings. Those shows that in eight Member States 200 euro would be the equivalent of 20% of more of monthly income. This immediately shows the potential appeal for payday loans among vulnerable consumers, especially in countries where wages are relatively low. In 2017 Eurostat showed that 16.9% of Europeans are at risk of poverty and taking this group alone is equivalent to 78 million EU citizens. While loans of below EUR 200, in particular payday loans, are also common among those above the poverty line, it illustrates the number of EU citizens potentially at risk of loans that are not protected under the CCD. However, the exact scale of the problem could not be ascertained.

\(^{834}\) See case study 7 (Cross-border access to loans) for further details.
\(^{836}\) European Parliament, 2018; ECRI, 2015.
\(^{837}\) Interviews of consumer organisations, industry representatives, Member States and enforcement authorities; OPC (specific).
\(^{838}\) Interviews of consumer associations and enforcement authorities; OPC (specific); Speaker representing a consumer organisation at the CCD event.
\(^{839}\) As pointed out by the European Economic and Social Committee, EUR 200 corresponds to approximately 50% of the average monthly wage and 75% of the average monthly pension in some European countries.
Figure 25. Average monthly earnings and equivalent share of EUR 200 out of this total

Source: ICF elaboration of Eurostat data (Mean monthly earnings by sex, age and occupation - NACE Rev. 2, B-S excluding O [earn_ses14_21]):

Note: takes 200 euro as a share of total gross monthly earnings (for manual and non-manual workers)

The stakeholder consultation exercise suggests that there is an appetite to abolish (or at least lower) the minimum threshold of the CCD, especially among consumer organisations and Member States.\textsuperscript{840}

Although to a lesser extent, the maximum threshold is seen as irrelevant, which has become less of a problem following the 2014 amendment of the MCD covering renovation loans of above EUR 75,000. Stakeholders generally argued nonetheless that any exemptions from the CCD should be based on the nature, and not the amount, of the credit.\textsuperscript{841} However, there might still be specific types of consumer credit of above 75,000 that are not renovation loans and still fall outside the scope of the Directive. The scale of this problem could not, however, be ascertained.

Some stakeholders see the need to cover specific products currently exempted from the scope of application of the CCD, namely zero-interest loans,\textsuperscript{842} overdraft facilities,\textsuperscript{843} leasing agreements,\textsuperscript{844} and agreements with pawnshops.\textsuperscript{845} In relation to pawnshops, one consumer association pointed out that they should be bound by information requirements, as in many cases the fees applied are very high. It was also argued that the list of exemptions is too long and should be reduced to avoid any circumventions.\textsuperscript{846}

\textsuperscript{840} Interviews of consumer organisations, industry representatives, Member States and enforcement authorities; OPC (specific).

\textsuperscript{841} EESC, 2019; Interviews of Member States.

\textsuperscript{842} Interviews of consumer associations, industry representatives, Member States and enforcement authorities; Speaker representing a national enforcement authority at the CCD event.

\textsuperscript{843} Interviews of consumer associations and Member States; OPC (specific).

\textsuperscript{844} Interviews of consumer associations, industry representatives and Member States; OPC (specific).

\textsuperscript{845} Interviews of consumer organisations and Member States; OPC (specific).

\textsuperscript{846} Interviews of consumer organisations; Member States and enforcement authorities.
Clarifications of the definitions have also been suggested, particularly to ensure that the CCD covers the new market players that have emerged with the increase in digitalisation (e.g. peer-to-peer lending). The need for the CCD to reflect changes in the sector (in terms of both practices and players) is discussed extensively in the literature and by stakeholders across all groups.\(^{847}\) Aside from the risks and potential to be detrimental to the consumer, the uncertainty as to whether these platforms are bound by the same rules as traditional credit providers, and the differences in Member States’ regulation, appears to be one of the key obstacles to ensuring a level-playing field for all credit providers, regardless of their nature.

Further clarifications have been requested by the national authorities consulted, as current provisions provide considerable discretion for interpretation at a national level. This is particularly true of the following definitions: total amount of credit, total cost of the credit to consumer, linked credit agreement, free of charge, in good time, means of distant communication, consumer, goods-linked credits, and ancillary services.

**Case study 9: New markets for lending**

The consumer credit market has changed considerably since 2010, as a result of new markets and developments (see Section 2).

New markets are often driven by new market players, in particular financial technology (fintech) companies. Although not new - fintech companies have existed for as long as the sector itself - in the context of this study, they represent innovation in the banking sector. More specifically, their (full) digitalisation of processes for offering and granting consumer credit is viewed as particularly innovative.

The fintech market has expanded rapidly as a result of digitalisation. In the United States, fintech firms are responsible for 38% of unsecured personal loans (up from 5% in 2013), a higher share than banks since 2017.\(^{848}\) Although there are no consolidated data on the fintech market for credit in the EU, the trend is expected to be similarly upward in view of wider trends in digitalisation (notwithstanding expected regional variations). One study showed that between Q2 2016 and Q2 2018 the volume of fintech credit rose about threefold.\(^{849}\)

The fintech market has developed swiftly in the last decade and is expected to expand further in the coming years. With a current transaction value of EUR 682 billion in the EU, fintech is expected to grow 13.3% by 2022.\(^{850}\) Although this relatively new group of companies has not yet had a significant impact on the financial performance of traditional providers, it has already shaped the sector in many ways. One of the most important credit products provided by fintech companies is unsecured loans through peer-to-peer lending (P2PL), one of the main categories of crowdfunding.\(^{851}\) P2PL uses an electronic platform to match lenders and borrowers to provide unsecured loans. The total value of the P2PL market in Europe reached EUR 3,815.7 million in 2017.\(^{852}\)

While new markets for lending are not yet particularly common to consumers taking out credit, they are on the rise. This study’s consumer survey, for example, showed that 2% of consumers took out their loan through a platform of private individuals (such as P2P). Research carried out in 2015 found that approximately 20% of consumers both

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\(^{847}\) Interviews of consumer organisations, industry representatives and enforcement authorities; OPC (specific).

\(^{848}\) TransUnion, 2018.

\(^{849}\) BIS, 2018.


\(^{851}\) FinCoNet, 2017.

searched for and purchased personal loans online, even if 40% looked online for credit and then opted to purchase ‘offline’.

This demonstrates that although the financial sector is changing rapidly as a result of fintech, consumer credit still tends to be taken out through traditional means. However, the traditional consumer credit industry is expected to be significantly impacted by new developments. A 2017 PwC global fintech survey found that 89% of businesses considered their business at risk of losing revenue to fintechs, showing their potential impact on the entire sector. Similarly, partnering with fintechs is becoming more common (ranging from 36% in Denmark to 70% in Germany), with at least two-thirds of EU survey respondents believing that partnership will increase in the next three to five years. In a recent EY survey, for example, 50.9% of European banks indicated that they have chosen to cooperate with fintech companies to drive innovation in their businesses.

**Peer-to-peer lending**

The International Organisation of Securities Commission defines crowdfunding as ‘an umbrella term describing the use of small amounts of money obtained from a large number of individuals or organisations, to fund a project, a business or personal loan, and other needs through an online web-based platform’. The term encompasses different types of crowdfunding, among which the most relevant for this study is peer-to-peer lending.

Peer-to-peer lending is a relatively new practice, facilitated by the technological advances in the sector in recent decades. It consists of the use of an electronic platform to match lenders/investors with borrowers/issuers to provide unsecured loans, including consumer credit. These services are usually provided by start-up companies (i.e. new companies with heavily digitalised processes) and are thus more likely to be sold online than offline.

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

Peer-to-peer lending is not included in the list of exemptions in Article 2(2) of the CCD and is thus not explicitly excluded from its scope of application. However, this study found little clarity (either in the literature or among the stakeholders) on whether it is covered by the CCD or not. This is because the CCD has defined ‘creditor’ as ‘a person who grants or promises to grant credit in the course of his trade, business or profession’ (Article 3(b) CCD). Given that the lenders in peer-to-peer lending are usually private individuals, many stakeholders consider them to fall outside the scope of the CCD, an argument that is also reflected in recent studies. However, whether it would fall inside the scope would also depend on the potential role of the P2P platform.

**Size of the market**

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853 ECRI, 2018a.
859 ECRI, 2018a.
860 ECRI, 2018a.
861 European Parliament, 2018; Interviews of consumer associations, industry, Member States and enforcement authorities.
The first P2PL platform emerged in 2005.\textsuperscript{862} Although the current total is unknown, the sector is substantial, with P2PL comprising more than 50% of the alternative financing market, itself valued at EUR 7.7 billion in 2016 (up from EUR 1.1 billion in 2013). Consumer P2PL is responsible for 33% of the alternative financing market.\textsuperscript{863}

The biggest alternative financing markets are in the UK (EUR 2 billion), France (EUR 444 million), Germany (EUR 322 million) and the Netherlands (EUR 194 million), with others (Finland, Spain, Italy) experiencing significant booms.\textsuperscript{863}

Peer-to-peer lending platforms operate in many Member States,\textsuperscript{864} although they represent only a small part of the market for consumer credit in the EU. In 2017, the total amount of peer-to-peer lending in Europe was EUR 3,816 million.\textsuperscript{865} However, this is an increasingly used product and it is expected that these practices will develop, thanks to the ever-growing digitalisation of the sector. (See case study 10 for more discussion of peer-to-peer lending platforms.)

\textbf{Costs and benefits}

P2PL presents several benefits for consumers, including convenience, efficiency (time spent researching and acquiring a loan) and raising access to credit for those otherwise excluded from loans.\textsuperscript{866} The speed with which consumers can access information is also an important element. An EU industry representative consulted for this study highlighted that the developments of fintech companies go hand-in-hand with changes in consumer behaviour, with the latter expecting faster turnaround in contracting a loan (especially for smaller amounts) and a smoother, less burdensome experience.\textsuperscript{867} Analysis shows, however, that this may be at odds with maintaining high levels of consumer protection. In particular, elements such as providing information \textit{in good time} could become challenging in cases of quickly accessed online credit, or consumers’ behavioural biases could be open to exploitation in such business models.

P2PL involves several associated risks to both platforms/businesses and consumers. The former run higher cyber risks because of the digital nature of the process and smaller/newer creditors might not have the right standards in place (yet). There are also potential issues around IT compatibility and regulatory uncertainty.\textsuperscript{868} In addition, there are risks with new P2PL platforms that default or go bankrupt. A report by the French consumer association, UFC Que Choisir, showed a 120% increase in the number of platforms that defaulted over an 18-month period, with nearly one in 10 platforms offering consumer credit folding.\textsuperscript{869,870}

In 2016, the Financial Ombudsperson Service in the UK carried out a study into crowdfunding and P2PL. It found that consumer complaints about these platforms had risen significantly, with some consumers reporting having been unaware of the fact they were borrowing through a P2PL platform or being unsure about possible recourse in case of problems. While there are no comprehensive data on the scale of such problems, the simple fact that the sector has gained in size and importance can be expected to be reflected in issues reported by consumers.

Stakeholders expressed mixed views of the benefits and drawbacks of new markets and the CCD’s role in accommodating these changes. Ten Member States responding to this
study’s survey believe that the CCD is not equipped to deal with future trends, with one citing the changing digital landscape as one of the reasons. By contrast, two Member States considered the CCD to be able to deal with future trends (a further five did not know). Several stakeholders across all categories (national authorities, industry and consumers) noted that crowdfunding and/or P2PL should be covered under the CCD, while others merely pointed to the fact that these coming trends and changes should be duly considered.\textsuperscript{871}

The main issues highlighted for consumers regard the use of data in CWA and the extent to which these are carried out correctly and accurately. CWA do not pose the only risks for consumers, however. Other risk factors include certain marketing and advertising approaches, including for low interest rate or no interest rate loans that have high penalties. Other key provisions of the CCD also present certain risks do to a lesser degree.

**New markets and credit worthiness assessments**

There is increasing evidence of divergence in the types of CWA carried out by non-traditional credit providers. Some new lenders use innovative credit-scoring techniques based on social media information for potential customers or specifically for cross-border activity.\textsuperscript{872}

The EBA published in 2016 a Discussion Paper on innovative uses of consumer data by financial institutions\textsuperscript{873}, identifying a preliminary list of risks and potential benefits that the innovative uses of consumer data may bring for consumers, financial institutions and to the integrity of the financial sector, in general. Risks included:

- financial institutions may have in place automatic rules based on the information provided by consumers that can result in the usage of consumer data in a way that may be non-transparent and somewhat arbitrary (as consumers may not be aware of the factors that led to the decision),
- consumers may not understand information that is provided to them about the use of their data, financial institutions may interpret legal requirements for data collection (such as for anti-money-laundering purposes for instance) and collect more data than is legally required and potentially reuse it for other purposes,
- financial institutions may use consumer personal and financial data, irrespective of where such data was obtained, to make decisions that may result in detrimental treatment of consumers,
- consumer data stored by financial institutions may be accessed by third parties in an illegitimate way if, for instance, such data is hacked.

Another report by the EBA, the European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA) showed that certain P2P platforms use non-traditional sources to carry out CWA, as these data are more accessible to firms.\textsuperscript{874} Such information can include a person’s browsing history, log data, professional data, personal interests, financial and payment data, consumer complaints or queries, social network information, driving and location data, information from store cards/credit cards, etc. Such practices raise serious GDPR issues.

Firms such as FriendlyScore, CreditSafe and Big Data Scoring support banks and other creditors in improving quality and acceptance rates through alternative data (e.g. consumers digital footprint) analysis. Various parties, including BEUC\textsuperscript{875} and the FSUG,\textsuperscript{876} have expressed concerns about the types of information collected for verifying the creditworthiness of consumers and the impact this could have on vulnerable consumers.

\textsuperscript{871} Interviews and surveys of Member States, consumer associations and industry representatives.
\textsuperscript{872} European Commission, 2016c.
\textsuperscript{873} EBA, 2016b.
\textsuperscript{874} EBA, EIOPA, and ESMA, 2016.
\textsuperscript{875} BEUC, 2017.
\textsuperscript{876} FSUG, 2019.
consumers in particular and their access to credit. This is a double-edged sword, as certain new market players have also been deemed to grant loans too easily. In these cases, limited or no rigorous scrutiny of consumers’ ability to pay (creditworthiness) can in fact lead to higher risks of indebtedness, with vulnerable consumers accessing loans they cannot repay. Similarly, it can lead to unsolicited marketing and failure to respect responsible lending obligations (see case study 2). This highlights the existence of potential risks in consumers’ access to – and inability to access – credit.

**New markets’ regulatory landscape**

There is substantial discussion on whether peer-to-peer lending (P2PL) falls under the definition of ‘creditor’ in Article 3(b) of the CCD. A private individual offering P2PL services would not necessarily be considered a creditor. A 2018 journal article argued that as the lender is a private individual, P2PL cannot be considered consumer credit, thus foregoing considerable consumer protection granted under the CCD. In some countries (e.g. Denmark), the national legislator has explicitly placed private lenders under the obligations of consumer credit. This discussion culminated in Case C-311/15, TrustBuddy AB, where the Finnish Supreme Court brought the issue before the CJEU. The financial supervisory authority in Finland had earlier ruled it a banking activity, and thus likely a creditor. TrustBuddy, however, went bankrupt and no judgment followed.

The regulatory landscape at Member State level is rather patchy, with crowdfunding regulated in the UK (2014), Italy (2012), France (2014), Spain (2015), Belgium (2016), and Germany (2015), but not (yet) across all Member States. The 2018 European Commission proposal for crowdfunding service providers is an important milestone in the regulatory process of crowdfunding, even if only businesses and not consumers are in scope. Spain, France, UK and Portugal have a bespoke regulatory framework for lending-based crowdfunding, covering also Consumer-to-Business and Consumer-to-Consumer lending, while Belgium comprehensively regulates the licensing of Crowdfunding platforms and the use of financing and investment vehicles, and Germany covers mostly investment advice or reception and transmission of orders. Rules of different nature apply if lenders and/or borrowers fall into specific categories defined by national laws. For example, with the likely aim of promoting responsible lending, platforms are obliged to give risk warnings to consumers, rather than being explicitly required to assess their creditworthiness.

Austria (2009) and Denmark (2014) have each sanctioned a P2PL platform for failure to follow the rules in place. In Denmark, the regulator decided that P2PL platforms must register as banks. They should not be considered intermediaries but, rather, as traditional banks. This is one sign of how ‘new markets’ can gradually become part of traditional markets, both sector-driven (using new technologies for existing credit providers) and regulator-driven (new players becoming regulated).

Regarding EU-level effectiveness of the CCD in being able to respond to emerging trends, there are a number of risks of a two-tier system of credit providers operating in

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878 Busch, C. and Mak, V., 2016, pp. 181.
879 FCA, 2014.
880 Crowdfunding [IT].
881 ACPR, 2019.
882 BOE, 2015.
883 Loi organisant la reconnaissance et l'encadrement du crowdfunding et portant des dispositions diverses en matière de finances moniteur belge, 20 décembre 2016), Chambre doc. 54 2072.
884 Gesetz über Vermögensanlagen (Vermögensanlagengesetz - VermAnlG), 06.12.2011.
885 European Commission, 2018b.
886 European Commission, 2017c.
888 Jørgensen, T., 2018, p. 5.
the EU. These are traditional providers covered by the CCD, and certain new players where this is either not explicitly the case, debatable, or possibly not at all. This can undermine the extent to which the CCD is able to optimise the protection of consumers. New markets of lending can play an important role in boosting cross-border credit activity, though certain risks remain in the ability to protect consumers in this process if, as pointed out before, the regulatory landscape is not explicitly protecting consumers.
Case study 10: Credit intermediaries

The study has found little to no data on credit intermediaries and the extent to which there are any particular issues or problems associated with their functioning in the consumer credit market.

The size of the intermediary market is not known. A 2013 study mapped around 1,050 comparison websites in the EU, of which 17% (around 180) were active exclusively in the area of retail-finance.\textsuperscript{889}

Credit intermediaries can either be tied to a borrower or untied and independent, the former being defined clearly in the MCD but not in the CCD.

The demand for credit intermediary services is low. Eleven per cent of consumers surveyed for this study accessed credit through a comparison website or intermediary and only 1.5% of OPC respondents concluded an agreement through an intermediary. At the same time, based on this study’s estimate of the number of personal loans in the EU, the number contracted through intermediaries or comparison websites would hover between nearly 1.1 million (OPC figure) and 7.9 million (consumer survey), out of an estimated total of 71.7 million personal loans.\textsuperscript{890}

Consumer demand for credit has increased in recent years with the digitalisation of financial services and this trend is likely to continue as the barriers to comparing credit offers and accessing credit are lowered through further digitalisation. At the same time, a 2009 study\textsuperscript{891} suggested the entry into force of the CCD would have mixed impacts for intermediaries. On the one hand lower need for intermediaries due to improved comparability would bolster consumers in being able to do without intermediaries. On the other hand it could lead to higher demand for intermediaries because those same empowered consumers (there being a more level playing field) are more likely to take out loans and could be expected to use intermediaries more often as they feel confident enough they can represent their interests (and means consumers can avoid going through the trouble themselves). There are no indications of the extent to which either of these trends have eventuated and, if so, which is more prevalent.\textsuperscript{892}

Benefits and added value of credit intermediaries

The added value of credit intermediaries lies in their ability to provide guidance and explanations to consumers wishing to purchase consumer credit products, allowing consumers to benefit from their experience and ability to negotiate on their behalf, thereby saving time and trouble, increasing competition in the market due to their ability to scan the market, mitigating information dissymmetry between creditor and consumer and levelling the playing field and enhancing transparency, contract freedom and product choice.\textsuperscript{893}

These effects are argued to be even stronger in a cross-border context where consumers are typically even less prepared and at ease with credit offers.

A 2019 study demonstrates that while the potential is there it is unlikely that the MCD would incentivise consumers to use intermediaries in other Member States or intermediaries to operate in other jurisdictions\textsuperscript{894}, and it is very unlikely this would be any different from the CCD in view of its less elaborate provision on intermediaries.

Risks and problems associated with credit intermediaries

In terms of key risks and problems, these can be considered more profound with tied intermediaries as consumers might not be aware of the fact they are tied to a lender.

\textsuperscript{889} European Commission, 2013.
\textsuperscript{890} Europe Economics, 2013b.
\textsuperscript{891} Europe Economics, 2013b.
\textsuperscript{892} European Commission, 2013.
\textsuperscript{893} FLI, 2019.
\textsuperscript{894} FLI, 2019, p.13-15.
In addition, consumers could be caught between the final creditor and the credit intermediary acting on their behalf, which is particularly problematic in case there are complaints or disputes (such as receiving the SECCI form, APR, etc.). Some industry representatives pointed out that intermediaries do not have the means or capacity to provide the SECCI if creditors are unable to do so, though no data was found to back such claims.

The 2013 study quoted above showed that around 65% of consumers had experienced problems with credit intermediaries and, in 21% of cases, these concerned incorrect displaying of prices (of all sectors), and only 34% of comparison tools provided a complaint form.\textsuperscript{895} A 2016 sweep of price comparison websites showed that out of 352 websites, 235 (67%) were not displaying reliable prices.\textsuperscript{896} A 2011 consumer credit sweep showed that across the then EU-27, Norway and Iceland, only 30% of over 560 websites passed the sweep compliance test.\textsuperscript{897} Problems were found for 61% of financial institutions covered and for 87% of intermediary websites.\textsuperscript{898} Of all problems identified, 34% related to personal loans,\textsuperscript{899} 20% to lump sums, 18% to car finance, 13% to credit cards, 11% to revolving credit and 4% to others. Data is not sufficiently reliable to estimate the number of consumers affected.

A sweep by the German Cartel Office in April 2019 showed that most of the 16 price comparison portals in personal finance were not or partially independent, a majority working with one single affiliate network for banks, insurance and fintech companies.\textsuperscript{900} A June 2019 study of comparison websites in Germany by consumer advocates found several problems affecting consumers.\textsuperscript{901} On some websites not all borrowers or intermediaries would by default appear in the list, thereby not showing those with lower prices. In addition, the interest rate shown on screen was often the lowest rate possible and not attainable for many consumers once checked for creditworthiness, as well as the websites automatically adding insurance products just before confirming.

**Credit intermediaries and impact on effectiveness and relevance of the CCD**

Overall, regarding the impact of credit intermediaries on the effectiveness and relevance of the CCD, credit intermediaries can be very beneficial to consumers, thus supporting in the CCD achieving its first objective of improving consumer protection levels. However, in practice there are a number of obstacles. There are no strong indications that benefits are more prevalent than some of their key drawbacks.

In terms of the second objective of the CCD in promoting a single market for consumer credit, this is likely truer of the role of intermediaries within the national credit market and much less so in boosting cross-border activity of supply or demand for intermediaries. The increasing numbers of comparison websites and consumers purchasing or considering purchasing credit via comparison websites suggest a stronger role for intermediaries but the extent to which this is due to the Directive itself is uncertain. The digitalisation of financial services has driven online activity, which also benefits credit intermediaries but that as such cannot be attributed to the CCD on the basis of the available evidence. In terms of relevance, the existing definition of credit intermediary in the CCD is less extensive than in the MCD, and without a distinction between tied or untied intermediaries.

\begin{footnotesize}
\textsuperscript{895} European Commission, 2013.
\textsuperscript{896} Representation in United Kingdom, 2017.
\textsuperscript{897} European Commission, 2012.
\textsuperscript{898} The sweep points out that enforcement authorities do not consistently select the websites randomly, focusing at times on websites known to be problematic.
\textsuperscript{899} The definition of personal loans used from the European Commission is different from the one used for this evaluation, though all percentages quoted here refer to problems with 'consumer credit', the overall definition used in this evaluation.
\textsuperscript{900} Bundeskartellamt [DE], 2019.
\textsuperscript{901} Spiegel [DE], 2019.
\end{footnotesize}
### Annex 2 – Overview of documentation reviewed

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**Reports, studies and surveys**

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### Evaluation of Directive 2008/48/EC on credit agreements for consumers

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### Official positions

**Feedback on the European Commission’s Evaluation Roadmap of the Consumer Credit Directive**

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### Evaluation of Directive 2008/48/EC on credit agreements for consumers

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## Annex 3 – Overview of stakeholders consulted

Table 11. Overview of stakeholders consulted

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**National ministries and supervisory authorities (Total: 22)**

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Annex 4 – Consumer survey

N=3886, for the n of the sub questions, please refer to Table 12 at the end of the annex.

Legend:

EU – Unweighted EU average

EU* - Weighted EU average

n – Number of Respondents

Figure 26. Question 1a: Over the past 3 years, have you entered into a credit agreement?

Figure 27. Question 1b: What type of credit did you get?
Figure 28. Question 1c: What is the most recent loan/credit you took out?

- Personal loan: 39% (EU) vs. 36% (EU*)
- Loan for buying a car/motor: 25% (EU) vs. 23% (EU*)
- Consumption credit: 17% (EU) vs. 21% (EU*)
- Loan for a house renovation: 14% (EU) vs. 15% (EU*)
- Loan/credit for going on holiday: 2% (EU) vs. 2% (EU*)
- Student loan: 2% (EU) vs. 2% (EU*)
- Loan for a big event: 1% (EU) vs. 1% (EU*)

Figure 29. Question 2: With which of the following organisations did you enter into that credit agreement?

- With the bank where I was already a customer: 61% (EU) vs. 62% (EU*)
- With a bank for which I was not yet a customer: 20% (EU) vs. 18% (EU*)
- With a shop or other seller that is not a bank: 13% (EU) vs. 14% (EU*)
- Other: 4% (EU) vs. 4% (EU*)
- Loan through a platform of private individuals: 2% (EU) vs. 3% (EU*)

Figure 30. Question 3a: How did you enter into this credit agreement?

- Online: 36% (EU) vs. 32% (EU*)
- In person: 68% (EU) vs. 64% (EU*)
Figure 31. Question 3b: Were you able to conclude a credit agreement entirely online?

![Bar chart showing the percentage of consumers who were able to conclude a credit agreement entirely online. The chart compares EU and EU* regions.]

- Yes, and I also contracted it online: 76% (EU), 77% (EU*)
- Yes, but I contracted it on the premises of the credit institution: 16% (EU), 17% (EU*)
- No, because it was not possible to contract the credit online: 6% (EU), 5% (EU*)
- I don’t know: 2% (EU), 1% (EU*)

Figure 32. Question 4: Before entering into a credit agreement did you search and compare different offers?

![Bar chart showing the percentage of consumers who searched and compared different offers. The chart compares EU and EU* regions.]

- Yes: 65% (EU), 69% (EU*)
- No: 35% (EU), 31% (EU*)

Figure 33. Question 5: Through which channel did you find the credit?

![Bar chart showing the percentage of consumers who found the credit through various channels. The chart compares EU and EU* regions.]

- Through your bank: 42% (EU), 47% (EU*)
- Advertising on the Internet: 17% (EU), 17% (EU*)
- In the shop where I bought the product: 16% (EU), 16% (EU*)
- A broker or a comparison website: 11% (EU), 11% (EU*)
- Other: 4% (EU), 5% (EU*)
- TV/Radio: 4% (EU), 5% (EU*)
- Magazine/newspaper: 3% (EU), 2% (EU*)
- Billboard poster: 2% (EU), 1% (EU*)
Figure 34. Question 6a: Did you look for/request a credit from a bank or a credit institution located in another EU country than your country of residence?

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<tr>
<td>No</td>
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<td>71%</td>
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Figure 35. Question 6b: Why not?

- I didn’t think it was possible: EU 61%, EU* 58%
- I was unsure of my rights: EU 19%, EU* 23%
- I lacked the language skills: EU 12%, EU* 14%
- Other: EU 13%, EU* 11%
- I tried to contact credit institutions, but they did not respond to my request: EU 2%, EU* 2%

Figure 36. Question 6c: How easy was it to understand the credit offers from credit institutions in other EU countries?

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<td>28%</td>
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<td>Easy</td>
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<td>53%</td>
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<tr>
<td>Complicated</td>
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<tr>
<td>Very complicated</td>
<td>3%</td>
<td>2%</td>
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**Figure 37. Question 7:** When you were seeking to request a credit, were you given a simulation of your credit with the following information?

- Monthly instalments: 67% EU* 74% EU
- The total amount of the credit: 63% 67%
- The borrowing rates: 61% 87%
- The duration of the credit agreement: 59% 65%
- The type of credit: 55% 58%
- The Annual Percentage Rate of charge (APR): 51% 54%
- Other conditions of the credit agreement: 27% 35%
- Your rights as a consumer: 24% 26%
- I don’t remember: 4% 5%
- None of the above: 2% 2%

**Figure 38. Question 8:** Before signing the credit agreement, were you asked to pay a fee or a down payment?

- Yes: 75% EU 73% EU*
- No: 25% 27%
Figure 39. Question 9: Are you familiar with the annual percentage rate of charge (APR)?

Figure 40. Question 10a: Before signing your credit agreement, did the credit institution inform you (either in writing or orally) about the value of the APR?
Figure 41. Question 10Bb: On a scale from 1 to 5, how helpful did you find the APR when making the choice for the credit? With 5 being “very helpful” and 1 “very unhelpful”

![Bar chart showing responses to Question 10Bb]

Figure 42. Question 11: Are you familiar with the Standard European Consumer Credit Information form (SECCI)?

![Bar chart showing responses to Question 11]

Figure 43. Question 12: Were you aware of the existence of the SECCI before you requested your credit?

![Bar chart showing responses to Question 12]
Figure 44. Question 13: Did you receive a SECCI form before signing the credit agreement?

Figure 45. Question 14a: When did you receive the form?

Figure 46. Question 14b: On a scale from 1 to 5, how helpful did you find the SECCI when making the choice for the credit? 5 means "very helpful" and 1 means very unhelpful
Figure 47. Question 14c: Before contracting the credit, did the lender verify if you would be able to pay for the credit?

![Bar chart showing the proportion of consumers who were verified to be able to pay for the credit.]

- Yes: 78% (EU), 79% (EU*)
- No: 8% (EU), 10% (EU*)
- Don't know: 13% (EU), 11% (EU*)

Figure 48. Question 14d: How was this verified?

- I provided payslip(s): 55% (EU), 49% (EU*)
- I filled in questionnaires (paper or internet): 45% (EU), 43% (EU*)
- I provided account statements and/or proof of regular payments: 41% (EU), 44% (EU*)
- Other: 7% (EU), 8% (EU*)
- I don’t know / remember: 2% (EU), 4% (EU*)

Figure 49. Question 15a: Are you aware that (within a certain number of days) you have the right to withdraw from the credit contract without giving any reason?

![Bar chart showing the proportion of consumers who are aware of their withdrawal right.]

- Yes: 60% (EU), 72% (EU*)
- No: 40% (EU), 28% (EU*)
Figure 50. Question 15b: Before you contracted the credit, were you informed (either in writing or orally) of your right to withdraw from the contract?

Figure 51. Question 15c: Do you know within which deadline one can exercise the right to withdraw from the contract? In weeks

Figure 52. Question 15d: Do you know within which deadline one can exercise the right to withdraw from the contract? In months
Figure 53. Question 16a: Are you aware of a possibility to pay back your loan quicker than according to the initial monthly instalment plan?

Yes: 85% EU, 82% EU*
No: 15% EU, 18% EU*

Figure 54. Question 16b: Before contracting the credit, were you informed (either in writing or orally) of your right of early repayment?

Yes: 72% EU, 75% EU*
No: 15% EU, 15% EU*
I don’t remember: 12% EU, 10% EU*

Figure 55. Question 16c: Does your current loan have a penalty fee if you want to repay earlier than initially agreed?

Yes: 25% EU, 33% EU*
No: 51% EU, 46% EU*
I don’t know: 24% EU, 21% EU*
Figure 56. Question 17a: The advertising of the loan corresponded to the actual loan offer

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU*</td>
<td>21%</td>
<td>66%</td>
<td>12%</td>
</tr>
<tr>
<td>EU</td>
<td>17%</td>
<td>66%</td>
<td>15%</td>
</tr>
</tbody>
</table>

Figure 57. Question 17b: I was provided with all the relevant and necessary information I required before signing the contract

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU*</td>
<td>27%</td>
<td>63%</td>
<td>10%</td>
</tr>
<tr>
<td>EU</td>
<td>22%</td>
<td>66%</td>
<td>11%</td>
</tr>
</tbody>
</table>

Figure 58. Question 17c: The information that I was provided with before signing the contract was easy to understand

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU*</td>
<td>24%</td>
<td>61%</td>
<td>14%</td>
</tr>
<tr>
<td>EU</td>
<td>20%</td>
<td>64%</td>
<td>14%</td>
</tr>
</tbody>
</table>
Figure 59. Question 17d: I could easily compare different credit offers

Figure 60. Question 17e: I was clearly and openly informed of my rights (e.g. right to early repayment, right to withdrawal, etc.)

Figure 61. Question 17f: Before signing the contract, I felt fully confident with the idea of accepting the credit offer
Figure 62. Question 17g: The information I required was given on time

Figure 63. Question 17h: I felt pressured into making a quick decision and I was not given enough time to carefully ponder my options

Figure 64. Question 17i: I was informed of the use that the lender makes of my data
Figure 65. Question 17j: The lender made it difficult to exercise my right of early repayment

- **EU**: 10% Strongly agree, 21% Agree, 43% Disagree, 20% Strongly disagree
- **EU**: 6% Strongly agree, 21% Agree, 53% Disagree, 20% Strongly disagree

Figure 66. Question 17k: The lender made it difficult to exercise my right to withdraw from the contract

- **EU**: 9% Strongly agree, 22% Agree, 46% Disagree, 22% Strongly disagree
- **EU**: 6% Strongly agree, 18% Agree, 57% Disagree, 19% Strongly disagree

Figure 67. Question 18a: Have you experienced any problems with a lender or credit institution?

- Yes: 83% EU, 84% EU*
- No: 17% EU, 16% EU*
**Figure 68. Question 18b: Would you consider the problem(s) to be major or minor?**

![Chart showing the distribution of responses to the question about the severity of the problem(s).]

- **EU**: 39% Major, 46% Minor, 15% Both
- **EU**: 41% Major, 50% Minor, 10% Both

**Figure 69. Question 18c: Have you made a formal complaint as a result of any of the problem?**

![Chart showing the distribution of responses to the question about making a formal complaint.]

- Yes, to the lender/credit institution: 40% EU, 50% EU*
- Yes, to a third party such as ombudsman, consumer organisation, consumer protection agency: 17% EU, 23% EU*
- No: 44% EU, 26% EU*

**Figure 70. Question 18d: Was your issue resolved as a result of registering a formal complaint?**

![Chart showing the distribution of responses to the question about the resolution of the issue.]

- Yes, and I am satisfied with the result: 39% Yes, but I am not satisfied with the result: 40% No, it is still pending: 9% No, it was closed but it was not resolved: 12%
- EU: 45% Yes, but I am not satisfied with the result: 41% No, it is still pending: 8% No, it was closed but it was not resolved: 7%
Table 12. Number of responses for the sub-questions

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>n</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q. 5 (b) - Were you able to conclude a credit agreement entirely online?</td>
<td>1394</td>
</tr>
<tr>
<td>Q 8 (a) – Why not?</td>
<td>2870</td>
</tr>
<tr>
<td>Q 8 (b) - How easy was it to understand the credit offers from credit</td>
<td>1016</td>
</tr>
<tr>
<td>institutions in other EU countries?</td>
<td></td>
</tr>
<tr>
<td>Q 12 - Before signing your credit agreement, did the credit institution</td>
<td>3490</td>
</tr>
<tr>
<td>inform you (either in writing or orally) about the value of the APR?</td>
<td></td>
</tr>
<tr>
<td>Q 12 (a) (1) - On a scale from 1 to 5, how helpful did you find the APR</td>
<td>2572</td>
</tr>
<tr>
<td>when making the choice for the credit? With 5 being &quot;very helpful” and 1</td>
<td></td>
</tr>
<tr>
<td>&quot;very unhelpful”</td>
<td></td>
</tr>
<tr>
<td>Q 14 - Were you aware of the existence of the SECCI before you requested</td>
<td>1120</td>
</tr>
<tr>
<td>your credit?</td>
<td></td>
</tr>
<tr>
<td>Q15 - Did you receive a SECCI form before signing the credit agreement?</td>
<td>1115</td>
</tr>
<tr>
<td>Q 16 (a) - When did you receive the form?</td>
<td>754</td>
</tr>
<tr>
<td>Q 16 (b) - On a scale from 1 to 5, how helpful did you find the SECCI</td>
<td>754</td>
</tr>
<tr>
<td>when making the choice for the credit? 5 means “very helpful” and 1</td>
<td></td>
</tr>
<tr>
<td>means very unhelpful</td>
<td></td>
</tr>
<tr>
<td>Q 16 (d) - How was this verified?</td>
<td>3025</td>
</tr>
<tr>
<td>Q 17 (a) - Before you contracted the credit, were you informed (either in</td>
<td>2618</td>
</tr>
<tr>
<td>writing or orally) of your right to withdraw from the contract?</td>
<td></td>
</tr>
<tr>
<td>Q 17 (b) 1_1 - Do you know within which deadline one can exercise the right</td>
<td>962</td>
</tr>
<tr>
<td>to withdraw from the contract? In weeks</td>
<td></td>
</tr>
<tr>
<td>Q 17 (b) 2_1 - Do you know within which deadline one can exercise the right</td>
<td>793</td>
</tr>
<tr>
<td>to withdraw from the contract? In months</td>
<td></td>
</tr>
<tr>
<td>Q 18 (a) - Before contracting the credit, were you informed (either in</td>
<td>3267</td>
</tr>
<tr>
<td>writing or orally) of your right of early repayment?</td>
<td></td>
</tr>
<tr>
<td>Q 18 (b) - Does your current loan have a penalty fee if you want to repay</td>
<td></td>
</tr>
<tr>
<td>earlier than initially agreed?</td>
<td></td>
</tr>
</tbody>
</table>

Some respondents that replied "5 – very helpful" to q. 12 (a) did not reply to Q 15 which is why there is a discrepancy in the n between Q 14 and Q 15.
Annex 5 – Overview of legal analysis

Under Task 1, research was carried out in the EU-28 with the aim of mapping and assessing the transposition and practical implementation of the CCD.

Scope of national transposing measures

The legal analysis of both the transposition and the implementation of the CCD shows that the Directive triggered substantial reform of the consumer credit environment in most Member States. Irrespective of whether or not Member States have had to develop and set up an entire legal framework applicable to the credit market or simply amend their existing legislation, all countries have undergone significant changes to successfully transpose and implement the CCD.

As a full harmonisation Directive, the CCD was transposed (in due course or with delay, depending on the country) in all Member States with a view to achieving maximum harmonisation. As per the specificities of such Directives, Member States had to maintain or lay down in their national legislations, provisions that could not be more or less restrictive than those of the CCD in the fully harmonised areas.

In other words, as the principle of full harmonisation pertains to the whole Directive, Member States were left with little room for manoeuvre to transpose the EU instrument. Flexibility was nevertheless given to national lawmakers for nine optional provisions under Article 27(2) that offer the possibility for Member States to make use of particular regulatory choices. In addition, some provisions, while setting clear objectives, did not specify how these should be achieved. This lack of specifics opens the door to diverse interpretations, allowing Member States to freely implement those objectives.

On the basis of the research carried out at national level in the EU-28, it appears that national transposing measures have often gone beyond the requirements of the CCD, laying down additional elements to further protect consumers. Without altering the essence of the Directive, this pattern may be perceived by some as inappropriate transposition or ‘gold-plating’ practices.

Cyprus, Estonia and Greece appear to have opted for a rather literal transposition of the Directive, applying every single provision verbatim. Although the CCD is a full harmonisation Directive in respect to some provisions, the analysis showed that all Member States except Cyprus and Greece adopted transposing measures that go beyond the requirements of the Directive. Indeed, most Member States have included additional elements not harmonised by the CCD itself in their national transposing measures. First, several Member States have decided to transpose and apply CCD-
related transpositions to credit contracted in the form of mortgages,\textsuperscript{903} while some others have included provisions for financial leases and overdrafts.\textsuperscript{904} In addition, while not tackled by the CCD, Member States that are not part of the Eurozone have included specific provisions framing the use of credit provided in a foreign currency, such as the Swiss franc.\textsuperscript{905} Two others have used the opportunity of the CCD to recognise the legal validity of electronic signatures.\textsuperscript{906} France stands out as one of the Member States in which the CCD has led to the deepest reform, aimed at ensuring the highest level of consumer protection.

\textsuperscript{903} CZ, HU.
\textsuperscript{904} AT, BE, HU.
\textsuperscript{905} HR, HU.
\textsuperscript{906} ES, FR.
### Table 13. Overview of measures going beyond the CCD

<table>
<thead>
<tr>
<th>Article</th>
<th>Additional measures</th>
<th>No additional measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall CCD</td>
<td>AT, BE, BG, CZ, DK, DE, EE, ES, CY, EL</td>
<td>FI, FR, HR, HU, IE, IT, LV, LT, LU, MT, NL, PI, PT, RO, SI, SK, SE, UK</td>
</tr>
<tr>
<td>Article 4</td>
<td>Article 4, on standard information to be included in advertising, defines exactly the information that must be presented in credit ads, such as the borrowing rate, the APR, duration of the credit etc.</td>
<td></td>
</tr>
<tr>
<td>Articles 5 to 7</td>
<td>Articles 5 to 7 refer to pre-contractual information and practices that need to be presented to the consumer prior to contract signature. A list of information to be given to the consumer is included in the Article.</td>
<td>BE, BG, DE, ES, HU, IT, LV, LT, AT, CY, CZ, DK, EE, EL, FI, FR, MT, PT, SI, SK, SE, UK</td>
</tr>
<tr>
<td>Article 14</td>
<td>Article 14 defines the right to withdraw for 14 days after consumers conclude the contract. The right to withdrawal from linked credit agreements is also defined.</td>
<td>BE, BG, CZ, DK, DE, ES, FR, IT, AT, CY, EE, EL, FI, HR, HU, IE, LT, MT, PL, RO, SK, SE, UK</td>
</tr>
<tr>
<td>Article 16</td>
<td>The right of early repayment is defined in Article 16 of the CCD and allows consumer to pay back any amount of the credit at any time before the end of the</td>
<td>BE, CZ, DE, ES, IT, NL, PL, PT, AT, BG, CY, DK, EE, EL, FI, FR, HR, HU, IE, LV, LT, LU, MT, RO, UK</td>
</tr>
</tbody>
</table>
The conditions for compensation for creditors in cases of early repayment are laid out.

Chapter V, Article 19 and Annex I lay out the calculation of the APR. Annex I provides the formula for calculation of the APR.

Source: ICF elaboration
Information provided at advertising stage

Table 14. Overview of Member States in which transposing measures regulate areas that are not subject to harmonisation under the CCD

<table>
<thead>
<tr>
<th>Additional measures</th>
<th>No additional measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT, BE, BG, CZ, DK, DE, EE, ES, FI, FR, HR, CY, EL</td>
<td></td>
</tr>
<tr>
<td>HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, RO, SI, SK, SE, UK</td>
<td></td>
</tr>
</tbody>
</table>

Source: ICF elaboration

Article 4 of the CCD imposes an obligation on credit providers to provide standard information at advertising stage. As per this legal requirement, all credit advertisements containing any interest rate or number applicable to the cost of a financial agreement must include standard information. The latter must be provided in a clear, concise and prominent way by means of a representative example. Based on the national research and comparative analysis conducted as part of this evaluation study, Article 4 stands out as the provision that triggered most legal developments at national level, with 18 Member States using it to set out even stricter rules on the type of information to be provided at advertising stage.\(^907\) This translates into a twofold approach.

While many Member States impose stricter requirements about the presentation of the information provided in the advertisement, many also require additional substantial information to be displayed (such as clear information on the risk of indebtedness).

Several Member States have further defined rules on the presentation of the advertisement,\(^908\) for instance the type and size of the font to be used in the advertisement, as well as where exactly in the ad the information should appear. Some Member States also set up rules for visually impaired consumers, such as Belgium, whose Code of Economic Law requires the information to be audible.

In some Member States, the legislator decided that further informative elements should be mentioned at advertising stage. In Sweden for instance, the risk of indebtedness must be disclosed separately in the advertisement. In Slovenia, an explicit warning about possible risk of increase of the interest rate must be given in the advertisement. In Belgium and the Netherlands, the following statement must appear in credit advertisements, ‘Please note that borrowing money also costs money’. Similarly, the French legislation introduced the obligation for all ads (apart from radio ads) to include the following warning: ‘You are committed by a loan and obliged to pay it back. Check whether you have the financial capacity to repay a loan before committing’.\(^909\) France also requires any advertisement sent to consumers via post or email to clearly, precisely and visibly remind the consumer of their right to deny the use of their personal data for marketing purposes.\(^910\)

Article 4(1) gives Member States the legal possibility to choose whether or not to include standard information in the advertisement for credit agreements that do not indicate any interest rate. Cyprus, Hungary, Sweden and the UK have opted to use this possibility.

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\(^907\) BE, BG, DE, HR, HU, LU, LV, MT, PL, PT, SE, SI.
\(^908\) BE, BG, FR, LU, PT.
\(^909\) Article 312-5 French Consumer Code (*Code de la consommation*).
Case-law

Article 4(2)(c) provides Member States with the legal option to decide that, for credits in the form of an overdraft facility as covered by Article 2(3), only information on the borrowing rate is needed. Eight Member States used this legal option, thus the APR does not need to be provided in advertising for overdraft agreements.  

Few cases were identified as part of this legal research on the transposition and implementation of Article 4 at Member State level.

In 2014, a Swedish Court ruled in favour of the creditor - a large electronic retailer – that had marketed its consumer credit in the form of payment by 60 monthly instalments without interest. The Consumer Agency representing the consumer and plaintiff alleged that the marketing was aggressive, as it presented payment by instalments as particularly attractive, including displaying it in large red letters. The Consumer Agency argued that this was exacerbated by the long payment period (which would appeal to the most financially vulnerable consumers) and the short lifespan of electronic products (especially TVs and computers). The Court nevertheless held that the marketing was not directed against consumers in poor financial positions and that the lifespan of electronic products was not such that it precluded longer payment terms. When evaluating the marketing technique, the Court found that presenting an offer of payment by installations as something positive did not, in itself, qualify as poor marketing practice. As the credit terms were favourable for the consumer (no interest cost), there was nothing in the commercial that qualified as poor marketing practice.

In another recent Swedish case, the Consumer Ombudsperson brought an action against a bank for not properly disclosing its interest rates. The bank argued that it did not charge interest and instead charged only a 'lending rate' that was a percentage of the credit being provided. This was due to a religious prohibition on charging and paying interest. The bank argued that its freedom of religion meant it should not be forced to call the charges 'interest'. The Court held that a creditor can only charge the consumer for costs that are a result of the provisioning of credit, apart from the interest. Such costs are held to include necessary start-up costs, costs for the evaluation of risk and costs arising from the provisioning of information. Since there was no indication that the 'lending rate' could qualify as such a necessary cost, it was therefore held to be interest. By not calling the costs interest, the bank therefore breached the Consumer Credit Act and the Marketing Act.

France’s highest Commercial Court shed light on legal advertising techniques. In this case, the provider was advertising an easy way to acquire property without specifying any details about the form of credit this would require. The advertisement did not state that the actual credit would stem from the bank Crédit Agricole, nor did it specify any of the other information to be supplied to the consumer before the contract was concluded. The Court found that the provider had used illegal advertising and imposed a fine.

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911 BG, DK, IE, LU, MT, PL, ES, UK.
913 Patent and Market Court, case nr. PMT 5043-17, 30 June 2017.
914 France, (highest) Civil Court (Cour de Cassation), Commercial Chamber, 29 September 2015.
Pre-contractual information and use of the SECCI

Table 15. Overview of Member States where additional elements need to be provided at advertising stage

<table>
<thead>
<tr>
<th>Additional measures</th>
<th>No additional measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>BE, BG, CZ, DE, ES, FI, FR, HR, HU, IE, LV, AT, CY, DK, EE, EL, IT, PL, RO, SK LT, LU, MT, NL, PT, SI, SE, UK</td>
<td></td>
</tr>
</tbody>
</table>

Source: ICF elaboration

Articles 5 to 7 of the CCD refer to pre-contractual information and practices that must be presented to the consumer prior to contract signature. More prescriptive than the advertising provision, this information must be shared in good time with the consumer before they are bound by any credit agreement or offer, by means of the SECCI provided in Annex II of the CCD, containing 19 elements that must be adequately explained to the consumer.

10 Member States appear to have transposed this obligation by adopting more detailed measures. In Belgium, for instance, appropriate explanations of the advantages and disadvantages stemming from the contract must be provided. Similarly, Bulgarian legislation requires creditors to provide a benchmark on the interest rate. German creditors must give notice of alternative design options for selected clauses in pre-formulated contracts that benefit the consumer.

In Member States that are not part of the Eurozone, specific provisions have been set out related to credit agreements in their national currency. In Hungary, the national transposing measures contain a duty for creditors to inform consumers of the risks of borrowing in foreign currency. The consumer must acknowledge and accept the description of the risks deriving from fluctuations of the exchange rate. In Slovenia, the transposing laws specify that in cases where a credit repayment is ensured by a guarantor, the latter must also be provided with all of the pre-contractual information. The Slovak legislation forbids extra costs that may arise from information and negotiation of credit offers provided by phone, text messages, or any multimedia means.
Case-law

The provision of pre-contractual information is the legal obligation that has triggered most of the CCD-related case-law in the Member States.

An interesting case was that of the High Commercial Court in Croatia, which was the final judgment in a long series of court decisions on the collective protection of consumers in cases of CHF pegged loans. In the so-called Franak case, in 2014, the Zagreb Commercial Court rendered a first-instance judgment declaring that a contract clause providing for a currency clause in CHF was null, on the grounds of lack of transparency. In its first second-instance decision, the same Court reversed the first-instance decision. As a result, the claim of the consumer association in respect of the CHF currency clause was dismissed, on the basis that ‘the currency clause was sufficiently transparent’. In 2015, the Supreme Court upheld the second-instance decision. In 2016, the Constitutional Court of Croatia set aside the Supreme Court and High Commercial Court (HCC) decisions.916

On 14 June 2018, the HCC rendered its second second-instance decision, in which it completely reversed its previous position on the CHF currency clause, and upheld the first-instance decision, declaring the CHF currency clause null for lack of transparency. In its reasoning, the HCC stated that the banks had failed to provide the consumers with information regarding the CHF currency clause at pre-contractual stage.917

In 2017, in Hungary,918 a case relating to a foreign currency-based credit (CHF) for the acquisition of a car, the claimant argued that he was not explicitly informed of the risks of fluctuations in the exchange rate and therefore had no obligation to pay the difference (increase) resulting from this. The Court of Appeal (CoA) rejected the unfair nature of the contractual terms and held that the contractual term which stipulates that the consumer shall bear the risk of fluctuations in the exchange rate can be considered unfair contractual term only if a generally informed, reasonably observant and circumspect average consumer – having regard to the wording of the contract and to the information provided by the financial institution - could not understand the content of the contractual terms at the time of conclusion of the contract. The CoA also rejected the claimant’s argument that his obligation to pay increases in his repayment resulting from the change in the exchange rate was non-existent, following Case C/42-15 ECJ.919 The CoA held that the CJEU in this preliminary proceeding only interpreted certain provisions of the CCD. However, the CCD does not stipulate any information duty in respect of the risk resulting from fluctuations in the exchange rate in cases of a foreign currency-based credit. The invalidity of the loan agreement in this case was only assessed with regard to the fact that the borrowing rate was not specified in the contract itself (and violated § 16(1) No. 7 Transposing Act; Article 10(2) f) CCD). The CoA ruled that it was sufficiently clear.

From a more general perspective, Spain emphasised the importance of the legal obligation contained in Articles 5-7 of the Directive, stating that ‘the mere fact that the consumer had signed the contract did not imply that he had been provided with the pre-contractual information in good time’. Additionally, it considered the bank to have failed to assist the client by explaining the pre-contractual information and assessing whether the proposed contract was adapted to his needs and to his financial situation. As a result, the clause was declared to be abusive and therefore null and void.920

915 Franak case, June 2018.
916 High Commercial Court, judgment No 43 P2-6632/2017-10, 14 June 2018 (Croatia).
917 High Commercial Court, judgment No 43 P2-6632/2017-10, 14 June 2018 (Croatia).
918 Hungary, Court of Appeal of Szeged (Szegedi Itélőtábla) Pf. 20.494/2017/5.
919 Judgment of the Court (Third Chamber) of 9 November 2016, Home Credit Slovakia a.s. v Klára Bíróová, Request for a preliminary ruling from the Okresný súd Dunajska Streda.
Table 16. Overview of Member States where transposing measures go beyond the requirements of the CCD

<table>
<thead>
<tr>
<th>Additional measures</th>
<th>No additional measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>BE, BG, DE, ES, HU, IT, LV, LT, MT, PT, SI, AT, CY, CZ, DK, EE, EL, FI, FR, HR, IE, LU, SK, SE, UK</td>
<td>NL, RO</td>
</tr>
</tbody>
</table>

Source: ICF elaboration

Creditworthiness assessment

Article 8 of the CCD defines the ‘obligation to assess the creditworthiness of the consumer before granting a credit to the consumer’. The Article simply states that the creditor needs to assess ‘the consumer’s creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database’, without specifically defining the information to be checked or the conditions under which the creditor can deem the consumer to be creditworthy. The information to be checked and the decision-making process are defined at Member State level, giving considerable discretion on how to further detail creditworthiness. Thus, this provision, while imposing on creditors the obligation to assess the solvency of a borrower, does not provide any further detail on the practical implementation of this requirement.

The only source of data that the CCD defines for CWAs are the credit databases that exist in Member States and that store information on consumers’ existing credit and possible defaults. The credit databases - and the information contained therein – differ from Member State to Member State, being either public or private and containing positive and/or negative data (i.e. data on any credit taken by a person (positive data) or solely defaults on credit taken (negative data)). Access to credit databases is defined under Article 9 of the CCD, which aims to ensure access to credit databases cross-border and introduces an obligation for creditors to inform consumers about the consultation of a database, where the credit decision is negative.

The majority of Member States (16)\(^{921}\) have laid down further provisions about the CWA and access to databases, further defining how the CWA is to be conducted and imposing other obligations on creditors. Most Member States who went beyond the simple obligation of checking the solvency of a borrower have laid down the documents that consumers have to provide to assess their creditworthiness.\(^ {922}\) Spain, for example, provides an extensive list of criteria to be checked (namely income, employment, assets and the general financial situation of the consumer), while Poland creates the obligation for consumers to provide the necessary documents to the creditor. Another measure that goes beyond the CCD is applied by three Member States,\(^ {923}\) which obliges creditors to only approve the credit if the consumers are deemed creditworthy and if there are no reasonable doubts that the consumer can repay the credit. The Netherlands introduces this obligation for credits over EUR 1,000 only.

Finally, five Member States\(^ {924}\) imposed a range of other obligations on creditors with respect to CWA. The Consumer Codes of Hungary and Lithuania state that creditors cannot either terminate the credit agreement (HU) or apply penalties and charges for late payments (LT) if the CWA was not undertaken appropriately or indeed at all. In Italy, creditors must inform consumers before supplying databases with any negative credit data related to them. The Slovenian legislator decided that creditors must keep a

\(^{921}\) BE, CZ, DK, ES, FI, HU, IT, LV, LT, NL, PL, RO, SI, SK, SE, UK.

\(^{922}\) BE, DK, ES, FI, LV, PL, SK, UK.

\(^{923}\) CZ, NL, SE.

\(^{924}\) HU, IT, LT, NL, SI.
record of each CWA (on paper or another durable medium) for the duration of the credit agreement and for four years after the expiry of the credit agreement.

**Case-law**

Several cases related to CWA are worth highlighting. The first is from the Supreme Administrative Court in Sweden, where a major clothing retailer appealed the Consumer Agency’s warning for not performing sufficient CWA when providing credit to consumers purchasing their products. The retailer performed an assessment which relied on internal and public records and did not gather any information from the consumer themselves before allowing the credit. The Court ruled that it is not always necessary to gather information directly from the consumer. Instead the assessment had to be appropriate considering the circumstances, and, due to the small cost of the products for which the credit was given, the CWAs were deemed appropriate.

In a case before the Supreme Court of the Slovak Republic, the creditor provided consumer credit to a consumer without conducting a CWA. The Slovak Trade Inspection, on becoming aware that creditor had not performed a CWA, fined the creditor EUR 5,000 for breach of the Consumer Code, which was later upheld by the Supreme Court. In a case in Romania, the CWA of the consumer was merely for show, the correct pre-contractual information was not provided and the APR was set at seven times higher than the average credit. The Court ruled in favour of the consumer.

In 2018, a case on credit databases was decided in Italy, where the creditor had failed to inform the consumer prior to supplying a database with negative data about the consumer. This resulted in the data becoming invalid and having to be deleted from the database.

In a case referred to the CJEU, the Court found that Article 8(1) of the CCD on the obligation to perform a CWA does not preclude national rules that further lay out how the assessment is to be conducted, such as requiring the creditor to only grant credit if they reasonably believe that the consumer will be able to pay back the credit. A Belgian creditor had granted a consumer credit that the latter was later unable to repay.

<table>
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<th>Additional measures</th>
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<tr>
<td>BE, CZ, DK, ES, FI, HU, IT, LV, LT, NL, PL, AT, BG, CY, DE, EE, EL, FR, HR, IE, LU, MT, RO, SI, SK, SE, UK</td>
<td>PT</td>
</tr>
</tbody>
</table>

*Source: ICF elaboration*

**Right of withdrawal**

The right of withdrawal is defined in Article 14 of the CCD and grants a 14-day withdrawal period to the consumer beginning either after the day of the conclusion of

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926 Supreme Court of the Slovak Republic, 28.6.2016.

927 Romania, Decision no 324/2017 of Giurgiu County Court (Tribunalul Giurgiu).

928 Italy, Paola Court, order 9 March 2018 (Tribunale di Paola, ordinanza 9 marzo 2018).

929 Judgment of the Court (First Chamber) in case C-58/18, 6 June 2019, Request for a preliminary ruling under Article 267 TFEU from the Justice de Paix du canton de Visé (Magistrate of the Canton of Visé, Belgium), made by decision of 22 January 2018, received at the Court on 30 January 2018.
the credit agreement or from the day on which the consumer receives the contractual terms and conditions, if the consumer receives this information only after the conclusion of the credit agreement. Article 14 also contains a regulatory choice under Article 14(2), which refers to linked credit agreements, where Member States can also apply the 14-day period despite national legislation in force prior to the CCD stating otherwise. Article 14 further defines the details of the withdrawal in paragraphs (3) to (7). Article 15 of the CCD defines the right of withdrawal in the case of linked credit agreements, giving consumers the right to withdraw from linked credit agreements, as well as ensuring remedies for consumers where the goods and services covered in the linked credit agreement are not supplied or are otherwise unsatisfactory.

Only three Member States made use of the regulatory choice in Article 14(2), namely France, Romania and Slovenia. A more substantial number of Member States further specify the requirements of the CCD, however, with half laying down additional requirements.930 The additional provisions in relation to the right of withdrawal diverge substantially. In three Member States, creditors cannot impose sanctions for withdrawing or are obliged to refund any fees that consumers had to pay in relation to the credit. Three other Member States define more specific rules for the right of withdrawal from linked credit agreements, while two Member States do not apply the right of withdrawal to certain credits. In Bulgaria, the right of withdrawal does not apply to credit under EUR 200, while, in the Netherlands, it does not apply to ‘securities credit contracts’.934

Another interesting addition is the right of withdrawal for unlimited periods of time, which is the case in Slovakia and Germany, in the latter only where the consumer was not provided with all of the correct pre-contractual information. In Slovakia, the consumer can withdraw from the credit at any time, without any underlying conditions. Two cases were recently brought before the CJEU on the right of withdrawal (Case C-143/18935 and Case C-66/19,936 both of which were referred by the German courts) with the former judgement delivered on 11 September 2019. Case C-143/18 refers to the perpetual right of withdrawal that exists in Germany in cases where not all of the correct pre-contractual information was provided. Other choices that were made by Member States include Belgium’s obligation to return tangible movable property that was included in the credit agreement upon exercising the right of withdrawal, while, in the UK, the intention to withdraw from the credit can also be given orally.

Finally, the French legislation introduced the concept of ‘perfect contract’, whereby a credit agreement becomes ‘perfect’ once the borrower accepts the credit offer.937 In other words, the offer requires a double approval from the consumer to become valid. The procedure is then the following: 1) proposal for a credit agreement by the bank, 2) acceptance by the consumer, 3) validation of the offer by the bank within seven days. Only when these three steps have been properly completed - and provided that the

930 BE, BG, CZ, DK, DE, ES, IT, LT, MT, PL, RO, SK, SE, UK.
931 CZ, ES, SE.
932 LT, PL, SK.
933 BG, NL.
934 Dutch Civil Code; Article 7:57 Definitions: ‘securities credit contract’ means the contract under which: 1° a revolving (continuous) credit has been granted or promised to be granted against the provision of a pledge on a portfolio of negotiable securities, which credit encloses the right to draw down sums of money from the creditor at different moments to the extent that the outstanding account balance is not exceeded; 2° the consumer may perform credit transactions in respect of financial instruments; and 3° the creditor is involved in those credit transactions.
935 Request for a preliminary ruling from the Landgericht Bonn (Germany) lodged on 23 February 2018 — Antonio Romano, Lidia Romano v DSL Bank (Case C-143/18) (2018/C 182/10).
936 Request for a preliminary ruling from the Landgericht Saarbrücken (Germany) lodged on 29 January 2019 — JC v Kreissparkasse Saarlouis (Case C-66/19).
consumer does not retract from the contract within 14 days of signing the agreement - is the credit agreement deemed ‘perfect’ and thus, final.

Case-law

Very few cases seem to have been filed EU-wide on the right of withdrawal, indicating that not many problems were encountered in respect of this legal obligation. Two cases were identified in the course of this study.

In Romania, the Court found that a clause establishing an obligation for the consumer to return any amount accessed under a credit agreement at the latest on the 14th day of the withdrawal period violated the rights established by the Directive, as it deprived the consumer of their right to actually withdraw on the last day of the fourteen-day period.938

Similarly, Bulgaria’s Consumer Protection Commission considered that, under a linked credit agreement, the product provider and the creditor constitute a single entity. It stated that, according to Article 27(5)(2) of the Consumer Credit Act, the contract for the sale of the product financed with a consumer credit shall be terminated as the act’s condition is fulfilled, i.e. the consumer has exercised their right of withdrawal from the credit agreement.939

Table 18. Additional measures for the right of withdrawal, by Member State

<table>
<thead>
<tr>
<th>Additional measures</th>
<th>No additional measures</th>
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<tbody>
<tr>
<td>BE, BG, CZ, DK, DE, ES, FR, IT, LT, MT, PL, AT, CY, EE, EL, FI, HR, HU, IE, LV, LU, NL, RO, SK, SE, UK</td>
<td>AT, CY, EE, EL, FI, HR, HU, IE, LV, LU, NL, PT, SI</td>
</tr>
</tbody>
</table>

Source: ICF elaboration

Right of early repayment

The right of early repayment is defined in Article 16 of the CCD and allows consumer to pay back early any amount of the credit at any time. Here, the creditor is entitled to a ‘fair and objectively justified compensation’ for any costs related to the early repayment of the loan. This compensation cannot exceed 1% of the amount of the credit repaid early if the duration of credit is longer than one year, and only 0.5% if the credit duration is under one year. Compensation for early repayment does not apply in certain cases defined in Article 16(3). Paragraph 4 of Article 16 includes some regulatory choices about the compensation to which creditors are entitled, with Article 16(4)(a) granting the option to only oblige consumers to pay compensation if the amount of early repayment exceeds a threshold defined in national law, which cannot exceed EUR 10,000 within a period of 12 months. Article 16(4)(b) gives creditors the option to - exceptionally - claim higher compensation if they can prove that the loss suffered is higher than the amount of the normal compensation. Finally, paragraph 5 of Article 16 states that any compensation cannot be higher than the amount of interest the consumer would have had to pay ‘during the period between the early repayment and the agreed date of termination of the credit agreement’.

938 Romania, Decision no 4237/2014 of Giurgiu First Instance Court (Judecătoria Giurgiu).
Most Member States chose to partially apply Article 16(4), with 12 choosing to implement Article 16(4)(a) and not (b), thereby effectively eliminating any compensation due to the creditor in cases of early repayment, apart from cases where the amount paid back early exceeds the specific national threshold. Three Member States chose to only apply Article 16(4)(b) and not (a), thereby introducing the right for creditors to claim higher compensation. Finally, six Member States made use of both choices under Article 16(4).

Eleven Member States further specified the conditions for exercising the right of early repayment. Two Member States imposed an obligation for the consumer to inform the creditor about their intention to make an early repayment. In Belgium, the consumer must inform the creditor 10 days in advance of the repayment, and, in Portugal, 30 days in advance. In Spain and Italy, in cases of early repayment of linked credit agreements, the consumer is entitled to be refunded a part of the amount of the charges to be paid for the additional service based on the amount that is repaid early, such as insurance or other ancillary services. In cases of insurance, insurance companies have to pay the consumer the corresponding unpaid premium. Other obligations introduced in relation to the right of early repayment include, in Slovenia, that no compensation for early repayment has to be made if the credit agreement does not contain all the required information. In Slovakia, consumers have the right to request written information about the consequences of early repayment.

940 AT, EL, FI, FR, HR, HU, IE, IT, LV, RO, SI, SK.
941 DK, ES, NL.
942 CY, LT, LU, PL, UK.
943 BE, CZ, DE, ES, IT, NL, PL, PT, SI, SK, SE.
944 BE, PT.
Case-law

Although the case-law identified was limited, several interesting cases in Germany, Latvia and Romania are worth noting.

In Germany, the Federal High Court of Justice ruled in favour of the consumer in a case where a fee of 4% was not being reimbursed in the event of early repayment. The Court declared this clause void, as such practice constitutes the right of early repayment and the mandatory stipulations of the prepayment penalty.\(^{945}\)

In response to a creditor in Latvia, which challenged the constitutionality of the right of early repayment (on the ground that such right deprived creditors of assets, caused damage and therefore interfered with their rights of possession), the Constitutional Court held that the right of early repayment was prescribed by law, pursued a legitimate aim (consumer rights’ protection) and was proportionate. The challenge was ultimately dismissed.\(^{946}\)

In Romania, a more recent precedent found that a creditor was not entitled to any compensation for early repayment and held that - by imposing an early repayment commission on the consumer - the creditor discouraged the consumer from exercising their right of early repayment.\(^{947}\)

In case C-383/18 referred from a Polish Court, the creditors disputed that a commission that was paid in order to contract the credit was not related to the run time of the credit and therefore, had to be partly repaid to the consumers due to their early repayment of the credit. The Court ruled that the effectiveness of the consumer’s right to a reduction would be diminished if the reduction could be limited to only those costs that are dependent on the duration of the contract, meaning that the reduction should include all the costs imposed on the consumer.

<table>
<thead>
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<th>Additional measures</th>
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<tr>
<td>BE, CZ, DE, ES, IT, NL, PL, PT, SI, SK, SE</td>
<td>AT, BG, CY, DK, EE, EL, FI, FR, HR, HU, IE, LV, LT, LU, MT, RO, UK</td>
</tr>
</tbody>
</table>

Source: ICF elaboration

Calculation of the APR

Chapter V, Article 19 and Annex I of the CCD set forth the legal framework applicable for the calculation of the APR in credit offers. Article 19 works in conjunction with Annex I, Part I of the CCD and provides the list of assumptions to be used for the calculation of the APR, as well as the mathematical formula that Member States must use to calculate this rate.

\(^{945}\) Federal High Court of Justice (BGH), 16 February 2016 (Germany), according to (§§ 511, 500, 502 (1) BGB).

\(^{946}\) Latvia, Satversmes tiesas 2011.gada 8.aprīļa spriedums lietā Nr. 2010-49-03 (Judgment of the Constitutional Court of the Republic of Latvia No. 2010-49-03, delivered on 8 April 2011).

\(^{947}\) Romania, Decision no 13/2018 of Iaşi County Court (Tribunalul Iaşi).
The legal analysis shows that all countries have correctly transposed this requirement, with half going a little further in transposing the obligation, and laying down additional requirements to ensure greater consumer protection. Lawmakers in 22 Member States have ultimately used the opportunity to set caps on interest rates (though most of them after transposition in 2010). As such, national legislation not only frames the APR but also limits the maximum borrowing rates, an issue that falls outside the scope of CCD. In Lithuania, credit providers must ensure the fairness of the total cost of the credit, the latter being assessed against requirements set out in the national transposing measure.

Case-law

The provision on the calculation of the APR has led to numerous court cases across the EU, primarily related to high rates.

In a very recent case, the Danish Court ruled that a loan contract with an annual APR of 759.79% was lawful and did not violate the Danish general clause in the Danish Consumer Act. The loan was marketed under the label ‘Turbolån’ and was granted in 2016 as a ‘quick loan’. The credit agreement was highly criticised and Denmark has since moved to introduce interest rate. In Ireland, a case that involved an increase (by the bank) in the annual interest rate from 8.1% to 11.4% and delayed communication to the borrower was brought before the Financial Services and Pensions Ombudsperson. The bank requested a shortfall of EUR 11,088.12 approximately 17 months before the expiry of a 10-year EUR 40,000 loan, as a result of historic increases to applicable variable interest rates. The lender contended that a variable interest rate applied to the borrower’s loan while the borrower claimed otherwise. The lender also indicated the publication of the increase in the interest rate in a national newspaper, which it claimed was enough to notify the borrower of the increment. The Ombudsperson found that it is not sufficient to publish the increase of the interest rate in the newspaper and thus ruled that the borrower’s obligation should be reduced from EUR 11,088 to EUR 2,000, with no additional obligation on the borrower’s part to pay any amount above the original loan sum. The lender was also required to ensure that the arrangement did not affect the borrower’s credit rating.

In France, a CoA stressed the importance of indicating the interest rate of charge in a credit offer. In this case, the bank made a credit offer to a client without indicating the APR, despite the legal obligation to do so. The Court considered that this oversight should be penalised by the substitution of the contractual interest rate, at the statutory rate, which is generally much lower. The bank was already a serial offender in not indicating the APR.

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948 BG, CZ, EE, ES, FR, HR, HU, IT, LU, LV, NL, PL, PT, SI, SE.
949 BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, FR, IE, IT, LT, MT, NL, PT, SE, SI, SK, UK.
953 France, Court of Appeal of Bourges, 6 September 2018.
Table 20. Overview of Member States that have taken additional measures relating to the APR

<table>
<thead>
<tr>
<th>Additional measures</th>
<th>No additional measures</th>
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<tbody>
<tr>
<td>BG, CZ, DK, EE, ES, FI, FR, HR, HU, IE, IT, AT, BE, CY, DE, EL, IE, LU, MT, RO, UK</td>
<td>LV, LT, NL, PL, PT, SI, SK, SE</td>
</tr>
</tbody>
</table>

Source: ICF elaboration

Enforcement and sanctions

Enforcement bodies

Enforcement bodies across the Member States aim to ensure the correct application of the CCD and the protection of consumers from creditor misconduct.

Based on the information collected at national level from both the literature review and national experts’ input, it appears that the level of enforcement of the Directive, as well as the missions and powers assigned to supervisory authorities varies from one Member State to the next.

Generally, these authorities can impose fines and take legal action against natural or legal persons infringing the CCD. In most Member States, the enforcement authority is either the financial supervisory authority, the consumer protection body or the national bank. Often, the enforcement is ensured by the simultaneous involvement of these authorities.

While the powers and responsibilities with which these bodies are entrusted are generally very similar across Member States, the enforcement activities differ. Annual inspections are carried out in a couple of Member States, with random inspections taking place in others.

Table 2.8 below provides an overview of the key national authorities responsible for enforcement of the CCD.

Table 2.8. Overview of national authorities involved in the enforcement of the Directive.

<table>
<thead>
<tr>
<th>Financial supervisory authority</th>
<th>Consumer protection body</th>
<th>National bank</th>
<th>National ministry</th>
<th>Other enforcement bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Services and Markets Authority (BE)</td>
<td>Consumer Protection Service (CY)</td>
<td>Bank of Spain (ES)</td>
<td>Interministerial Committee for Credit and Savings and the Ministry of Economy and Finance (IT)</td>
<td>Consumer Protection and Technical Supervision Board (EE)</td>
</tr>
</tbody>
</table>

954 BE, RO.  
955 BG, FI, PL, PT, SK.
<table>
<thead>
<tr>
<th>Financial supervisory authority</th>
<th>Consumer protection body</th>
<th>National bank</th>
<th>National ministry</th>
<th>Other enforcement bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Trade Inspection Authority (CZ)</td>
<td>Consumer Ombuds person (DK)</td>
<td>Croatian National Bank (HR)</td>
<td>Consumer Rights Protection Centre (CRPC) of the Ministry of Economy (LV)</td>
<td>Spanish Data Protection Agency (ES)</td>
</tr>
<tr>
<td>Federal Financial Supervisory Authority (DE)</td>
<td>Finnish Competition and Consumer Authority (FI)</td>
<td>Hungarian National Bank (HU)</td>
<td>General Directorate for Competition, Consumption and Repression of Fraud (DGCCF), Ministry of Economy (FR)</td>
<td>Consumer Disputes Board and Regional State Administrative Agencies (FI)</td>
</tr>
<tr>
<td>Financial Supervision Authority (EE)</td>
<td>Consumer Ombuds person (FI)</td>
<td>Central Bank of Ireland (IE)</td>
<td></td>
<td>General Directorate for the Consumer (PT)</td>
</tr>
<tr>
<td>National Commission on Markets and Competition (ES)</td>
<td>Malta Competition and Consumer Affairs Authority (MT)</td>
<td>Bank of Italy (IT)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finnish Competition and Consumer Authority (FI)</td>
<td>Office of Competition and Consumer Protection (PL)</td>
<td>Bank of Lithuania (LT)</td>
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<td></td>
</tr>
<tr>
<td>Financial Markets Authority (FR)</td>
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<td></td>
</tr>
<tr>
<td>Croatian Financial Services Supervisory Authority (HR)</td>
<td>National Authority for Consumer Protection (RO)</td>
<td>Bank of Portugal (PT)</td>
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<td></td>
</tr>
<tr>
<td>Commission for the Surveillance of the Financial Sector (LU)</td>
<td>Swedish Consumer Agency (SE)</td>
<td>Bank of Slovenia (SI)</td>
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<tr>
<td>Financial Oversight Commission (PL)</td>
<td>Banking and Financial Ombuds person (IE)</td>
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<td></td>
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<tr>
<td>Market Inspectorate of the Republic of Slovenia (SI)</td>
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</table>
Financial supervisory authorities

A small majority of Member States have only one enforcement body responsible for compliance with the CCD, while almost half have appointed several bodies for ensuring correct implementation of the different aspects of the Directive. These bodies mostly take the form of financial supervisory authorities that are responsible for regulating, authorising and monitoring creditors and financial institutions on the financial market of the Member State in question.

In Germany, for example, the regulatory and supervisory authority is the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), which is charged with preserving the stability of the financial system and protecting the customers, insurance policy holders, members and beneficiaries of the persons that it supervises.

The BaFin ensures the stability of the institutions and companies it supervises in order to protect the integrity of the financial system. It also tracks grievances among supervised entities that can affect all consumers. These are mainly cases in which an institution or company has violated consumer protection legislation. Infringements must be quite severe in order for the BaFin to intervene and to clarify the underlying problem for the general benefit of consumers.

In Poland, several enforcement bodies exist, one being the Financial Oversight Commission (Komisja Nadzoru Finansowego). It is directly responsible for the supervision of the financial market, including consumer credit and other financial products offered by banks and credit unions. Its scope of competence does not embrace non-banking entities, especially so-called ‘loan institutions’ (‘loan firms’), which conclude small-sum loan agreements with consumers. The Commission can carry out controls and impose financial penalties for non-compliance with credit regulation. While it does not protect individual consumers’ interests, it can use information about individual infringements as a basis for initiating supervisory procedures or imposing sanctions.

In France, enforcement of Directive 2008/48 is a joint effort. The General Directorate for Competition, Consumption and Repression of Fraud (DGCCRF) of the Ministry of the Economy is responsible for ensuring the proper application and enforcement of the CCD. Its role is twofold, as it oversees the financial protection of consumers and their safety on the one hand, while the Competition, Consumer Affairs and Fraud Prevention Directorate of the same Ministry is tasked with verifying the fairness of commercial practices of professionals towards consumers.

The powers of the DGCCRF are now combined with those of the Prudential Supervisory Authority (Autorité de Contrôle Prudentiel et de Résolution - ACPR) for certain commercial practices specific to insurance organisations. The ACPR is charged with preserving the stability of the financial system and protecting the customers, insurance

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956 CZ, EE, EL, ES, FI, HR, IE, IT, PL, PT, SI, SE.

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policy holders, members and beneficiaries of the persons that it supervises. Within the ACPR is the delegation charged with the on-site inspection of credit institutions and investment firms, which undertakes checks for all members of the banking sector.

The DGCCRF conducts investigations and publishes reports. Its national investigation programme, national guidelines and activity reports, for example, are made public on an annual basis.

The Financial Markets Authority (Autorité des Marchés Financiers) is another body that is responsible for the supervision and regulation of credit institutions that offer consumer credit. Overall, the Authority is responsible for regulating participants and products in France’s financial markets by regulating, authorising, monitoring, and - where necessary - conducting investigations and issuing sanctions.

**Consumer protection bodies**

In other Member States, the enforcement body is a consumer protection body that also acts as an alternative dispute resolution recourse and that develops consumer protection strategies. Such bodies are also able to impose fines and take legal action, as well as initiating investigations to bring a charge against a creditor (DK). They may advise consumers on their rights and educate them on risks. In some Member States, consumer Ombudsmen further fulfil the role of a complaints mechanism for consumers.

In Denmark, the Consumer Ombudsperson (Forbrugerombudspersonen) is the relevant authority, tasked with ensuring that trade, business and public enterprises comply with the Danish Marketing Practices Act and the principles of fair marketing in general, including overseeing the marketing of consumer credit/loans. The Ombudsperson investigates specific complaints, as well as cases of wider public importance concerning marketing activities and payment instruments. The Ombudsperson does not settle individual disputes between consumers and traders as such, but can negotiate settlements on behalf of consumers. They are authorised by law to bring civil and criminal actions on behalf of complainants, but may also request the police to initiate an investigation and prosecution to bring a charge against a trader. The Ombudsperson has the authority to issue an interim injunction in situations where it is crucial to sustain a case against a trader, as awaiting a court order would undermine the whole purpose of bringing an action for injunction. Finally, the Ombudsperson may bring collective redress actions on behalf of groups of consumers.

In Romania, the National Authority for Consumer Protection (NACP) (Autoritatea Națională pentru Protectia Consumatorilor) is the relevant enforcement body, with its main competences being the development of consumer protection strategies, ensuring its correlation with its EU counterpart, ensuring harmonisation of national legislation with EU regulations in the field of consumer protection, and proposing draft consumer protection laws on various aspects, including financial services. The NACP has the power to carry out market surveillance activities for consumer products and services, enforce legal provisions on consumer protection (including financial services) and determine offences. It can also take action to limit the consequences of supplying and marketing products and services, including financial services, that are not in accordance with the legal provisions of the Authority’s activities, by applying administrative sanctions provided by the law.

**National banks**

The third most common type of enforcement body for the CCD is the national bank of the respective Member State, which typically has the power to oversee the activities of creditors and other regulatory and supervisory powers with the purpose of overseeing the financial market. They also provide licences to creditors, provide codes of conduct.

for creditors, and take enforcement measures, such as revoking creditors’ licences in infringement cases.

In Italy, the Bank of Italy is one of several enforcement bodies, the others being the Interministerial Committee for Credit and Savings and the Ministry of Economy and Finance. A Banking and Financial Ombudsperson also exists as an alternative dispute resolution mechanism. The Bank of Italy carries out its banking and financial supervisory powers with the aim of protecting the transparency and fairness of the transactions and services provided by banks, banking groups, financial firms and payment institutions. It plays an important role in protecting customers of banks and other financial intermediaries by exercising its powers of supervision over the transparency and fairness of intermediary-customer relations. The Bank of Italy makes sure that standards of transparency and fair treatment are met, by requiring intermediaries to produce documentation, conducting inspections of bank branches and head offices, and monitoring websites. It encourages intermediaries to comply with regulations through awareness campaigns and reminder letters.

Several Member States have, within a ministry, a dedicated enforcement body responsible for consumer credit and enforcing the correct application of the CCD. There are some outliers as well, for example special commissions, boards or agencies that are related to financial markets and consumer protection and that act as the enforcement bodies in some Member States.

An example of such an outlier body is the General Directorate for the Consumer (Direcção-Geral do Consumidor - DGC) in Portugal, which is responsible for the supervision, opening of procedures for offences and imposition of fines in matters of advertising. The DGC contributes to the development, definition and implementation of consumer protection policy in order to ensure a high level of protection, which includes assessing regulatory needs, issuing opinions on legislative initiatives, submitting legislative proposals or other similar measures, streamlining the transposition and implementation of European legislation, defending the rights and interests of consumers in their formulation and implementation, and monitoring and supervising commercial and institutional advertising.

**Sanctions**

Rules on the sanctions that are applicable in cases of non-compliance and infringements of the national laws transposing the CCD are necessary to ensure its enforcement.

Article 23 of the Directive requires Member States to set out effective, proportionate and dissuasive sanctions.

The research found that Member States apply two different forms of penalties: civil and administrative sanctions; or criminal. While all Member States apply administrative sanctions, some also implement other measures to uphold the law. In other words, administrative sanctions are the norm, while criminal penalties and - to a very limited extent, imprisonment - are foreseen by a few Member States.\(^95^9\)

Administrative sanctions exist in all Member States, usually taking the form of monetary fines. Different fines apply for breaches of the various provisions of the CCD, with higher fines for breaches of the advertising provisions for example. In most Member States, different fines are applicable for natural persons and legal persons, with higher fines typically applying to legal persons. The range of monetary fines for both natural and legal persons is very broad, ranging from EUR 26 (BE) to EUR 5,000,000 (NL, SE). The latter are the exception in terms of imposing fines of this scale, with the fines in most Member States not exceeding EUR 1 million. The second highest fines are imposed by Greece, where legal persons may have to pay up to EUR 1 millino for serious

\(^95^9\) AT, BE, DK, FI, FR, HU, IE, LV, LU, NL, PL, SE, UK.
infringements. In some Member States, the fines imposed on creditors are linked to their annual turnover. Cyprus and Hungary state that a fine cannot exceed 5% of the creditor’s annual income, while in Italy it is limited to 10%. In Greece, for example, fines for serious infringements were imposed twice so far, first in 2011, when a fine of EUR 20,000 was imposed on a creditor that had failed to include the standard information required in advertising, and second in 2013, when a bank was fined EUR 150,000 for failing to observe the information obligations in respect of overdraft credit agreements.

Member States can also take material measures to ensure the enforcement of the CCD. Examples of such measures are the temporary suspension of creditors in the case of repeated offences,960 or the complete suspension of business activities of the creditor in serious cases.961 Other measures include the annulation of contracts that are not compliant with the CCD (BE), reimbursement of consumers for amounts that were wrongly collected (IT), loss of the right to interest for the creditor (FR) or the suspension of advertising campaigns (RO), among others.

In Austria, Belgium, Denmark, Finland, France, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Poland, Slovenia and the UK, criminal penalties apply to breaches of the national transposition of the CCD. These range from monetary fines to imprisonment sentences of eight days to five years (LU, HU) and to other sanctions, such as community service (LV).

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960 BE, EL, ES, HU.
961 BE, FI, IT.
Annex 6 – Stakeholder consultation synopsis

Consultation strategy

The goal of the consultation strategy has been to ensure that, across a series of consultation activities, all relevant stakeholders were given an opportunity to express their views on the functioning of the Consumer Credit Directive. It allowed to collect information and feedback from these stakeholders on various aspects of the Consumer Credit Directive (hereinafter, the “Directive”, or “CCD”).

The primary stakeholders of the Directive are consumers and creditors across the EU. However, besides these two, other stakeholders are indirectly or potentially impacted, alongside actors in charge of implementing these provisions. Attention was also given to stakeholders possessing detailed know-how and to organisations or individuals having an interest on this subject.

As such, the following stakeholder categories were targeted as part of the consultation strategy:

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

The consultation strategy relied on a mix of methods and tools to ensure a comprehensive and representative collection of views and experience with the functioning of the Directive. The tools and methods used were complementary in that they allowed to reach out to all concerned stakeholders. They are outlined in the following section.

Consultation activities and tools

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

*Table 21. Summary interviews and surveys (planned and conducted)*

<table>
<thead>
<tr>
<th>Stakeholder category</th>
<th>Type of consultation</th>
<th>Consultations carried out</th>
<th>OPC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member States</td>
<td>Interview or survey and OPC</td>
<td>19</td>
<td>24</td>
</tr>
<tr>
<td>Enforcement bodies</td>
<td>Interview or survey and OPC</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>National and EU-level consumer</td>
<td>Interview or survey (national) and interview</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>associations</td>
<td>(EU) and OPC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National and EU-level industry</td>
<td>Interview or survey (national) and interview</td>
<td>33</td>
<td>37</td>
</tr>
<tr>
<td>representatives</td>
<td>(EU) and OPC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creditors/businesses</td>
<td>Creditor survey and OPC</td>
<td>51</td>
<td>35</td>
</tr>
</tbody>
</table>
The **OPC** ran from January 2019 until early April 2019. The public consultation questionnaire was tailored to two main categories of stakeholders, with a 1st section aimed at the general public (i.e. consumers), the 2nd section geared towards stakeholders who are involved in the implementation of the Directive or who have detailed knowledge of the functioning of the different elements of the Directive and their impact on the consumer credit market.

Replies could be made in all EU languages. To ensure publicity around the launch of the consultation, it was advertised through DG Justice and Consumers’ social network accounts. An email was also sent to the relevant expert groups of DG JUST representing consumer organisations\(^{962}\), financial services users\(^{963}\) and Member States’ national authorities responsible for the CCD\(^{964}\) to inform them of the launch of the OPC and invite them to disseminate the information to their respective audience.

The **survey and interviews** carried out by the evaluator lasted from February to May 2019 on the basis of targeted questionnaires. Specific follow-up consultations took place over the period June-August.

The consumer survey received 3,886 responses from the EU-28, though it was initially expected that the survey would gather 3,540 responses. Consumers were surveyed in 24 official languages. The results of the consumer survey were weighted according to the population size of the Member State.

The **online creditors’ survey** received responses from 51 financial service providers, also due to time constraints and reluctance of stakeholders to share relevant data. Around 600 creditors were contacted directly, others were reached via European and national representatives, such as national banking associations and other stakeholders who were in a position to contact their members. The final reach cannot be established but was approximately 900-1,000. In the course of the evaluation the study team has sought to collect data on credit provision from non-banks, though this posed considerable challenges. The creditor survey was also targeting non-banks (269 non-banks were contacted directly), but their response rate was very low compared to banks.

**Other consultations**

A full-day conference “Protecting consumers taking credit in the digital era” was organised by the European Commission and CEPS on Tuesday 18 June 2019. It covered

- The role of consumer credit in the economy;
- The scope of application of existing rules;
- The effectiveness of information disclosure; and
- The model of responsible lending in the digital era

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\(^{962}\) European Consumer Consultative Group. For more details: [https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=849&NewSearch=1](https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=849&NewSearch=1)

\(^{963}\) Financial Services User Group. For more details: [https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2594](https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2594)

The event gathered a wide range of 140 relevant stakeholders, such as EU and national high-level officials, senior practitioners, academics and research organisations, and representatives of consumer associations and banks.

The CCD event highlighted a number of different views, though the CCD is perceived as relevant and that consumers need a high level of protection. There was discussion on the scope of the CCD and elements currently not covered by the Directive. The provision of information, and the usefulness to consumers and burden on creditors, featured as another key element of discussion with there also being discussion on quality versus quantity of information provided.

Persistent issues noted include high fees, unjustified penalties, and incorrect or misleading calculations of interest rates.

The European Economic and Social Committee contributed to the evaluation of the CCD by way of an information report in July 2019. The report is based on consultations with civil society organisations (CSOs) and national institutions in order to understand how they experienced and observed the impact and the changes brought about by the CCD. Data was collected through fact-finding missions, a questionnaire, position papers and an extended study group.

The contractor of the evaluation also made use of the outcomes and position papers produced by relevant expert groups, most notably the Financial Services User Group (FSUG)

Other inputs were received by way of specific ad-hoc reports, data and contributions from consumer associations, industry representatives and researchers.

Feedback on the roadmap

Methodology and tools used to process the data

The methodology used for processing data are an anonymous survey of creditors and consumers, the data of which was processed and comprehensively analysed. The interviews and surveys were organised on the basis of specifically drafted semi-structured questionnaires (interviews) and an online questionnaire (survey), and stakeholders were selected based on their role and relevance to the evaluation, but consistently inviting stakeholder groups from all 28 EU Member States. The OPC was analysed separately and a separate report was published as a result.

Main stakeholder feedback

The results of the consultation activities were used according to the evaluation framework agreed at inception report level. For each of the evaluation questions, the evaluation framework clarified which of the consultation activities would be relevant for data collection.

Most stakeholders consider the CCD to be effective in ensuring better consumer protection. Barriers to full effectiveness related to:

- Lack of - or limitations to - enforcement;
- Lack of harmonised national rules;
- Limitations in the tools for comparing online offers;
- Restrictions to the scope of the CCD.

Open Public Consultation

- Almost all respondents had obtained credit in the Member State where they reside and had not tried to obtain credit in a different Member State

• Overall, a majority of respondents consider the CCD to be effective in relation to its main features, with the exception of the information provided to consumers in advertising.966

• Only half the respondents were aware that the lender needed to provide them with the Standard European Consumer Credit Information (SECCI) form in "good time" before the signature of the contract.

• A large majority of respondents were familiar with the APR and in the majority of cases, the creditworthiness of those requesting the credit was checked, while the right of early repayment has been used by around one fourth of the respondents.

• Respondents were overall very positive about the different provisions of the CCD, with the vast majority finding the provisions of the CCD somewhat beneficial or even very beneficial.

• A great majority of respondents assessed positively the relevance of the CCD, especially concerning the obligation to perform creditworthiness assessments, the rights of early repayment and withdrawal, and the

• The main benefits of the CCD highlighted by stakeholders are the higher standard of consumer protection – as a result of, for example, the prevention of over indebtedness - and the standardisation and harmonisation across Member States.

• Respondents in majority thought that benefits outweighed the costs.

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

• Issues mentioned across the different groups of stakeholders for further action included different rules across Member States currently preventing a level playing field for creditors located in different Member States, and perceived to hinder access to cross-border credit by some stakeholders; the scope of application of the CCD, especially to cover loans of less than EUR 200 and credit providers and intermediaries currently providing similar services (e.g. peer-to-peer lending, overdraft facilities, etc.); strengthening enforcement of the Directive to address non-compliance; streamlining rules and adapt them to developments in the consumer credit market linked to digitalisation; Broaden the scope of the CCD to cover peer-to-peer lending and crowdfunding.

**Targeted stakeholder consultations**

**Consumer associations** were most critical of creditworthiness assessment (CWA) and Annual Percentage Rate of charge (APR).

Their suggestions for improving CCD effectiveness mainly were to cap interest rates, removing the EUR 200 threshold to also cover lower credits and cover peer-to-peer lending. Tighter rules or banning were put forward on the provision of credits in spite of a negative CWA, revolving credit and selling of credit products to vulnerable consumers. Better enforcement, harmonising sanctions and clearer rules on advertising and pre-contractual information were also suggested as action points.

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

A majority of **national authorities** argued that the CCD has been effective in ensuring a high level of consumer protection both in general and in the long-term. While most provisions of the CCD were deemed effective, CWA generated some concerns. For their part, enforcement bodies noted that the CWA requirements are insufficiently clear and highlighted insufficient information on fees and the right of withdrawal.

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966 Responses of ‘Somewhat/very ineffective: 72% of businesses; 36% of consumer associations and 26% of public authorities.'
A number of respondents also praised the introduction of the CCD as it resolved issues thanks to new provisions/standards. Several respondents criticised the room given for Member State interpretation of CCD provisions.

**Effectiveness**

Consumer associations consider the APR a well-known tool, useful for comparison purposes. The majority of consumers surveyed are aware of the APR and its implications and have found it either helpful or very helpful when choosing their credit.

However, consumers struggle to understand how it is calculated and thus to understand the final cost and what it includes. Most associations argued that the way in which the APR is presented by some creditors prevents effective comparison. They pointed to advertising in which consumers are misled about the final price because optional costs are not included, or when ‘representative examples’ are calculated in an ‘optimistic’ way. Despite this, the obligation to provide a representative example is believed to facilitate consumer understanding of offers and allow for easier comparisons.

Industry representatives argued that the definition of the APR is confusing for both consumers and creditors. They pointed out that the formula is based on a yearly period, thus does not apply very well to short-term loans and can be difficult to interpret. Finally, the APR does not include default charges. Where a customer misses a payment and incurs a charge, the APR conveys no information on the true cost of that charge.

Enforcement bodies similarly agreed on the complexity of APR calculation for consumers. A majority of national authorities argued that the introduction of the APR has facilitated consumers’ understanding of the offers and allowed for easier comparisons. They did, however, agree that certain areas could be improved, in particular the exclusion of ancillary services and consumer understanding of what the APR includes. Most national authorities consulted also mentioned specific issues in their Member States with how the APR is being calculated.

Most consumer associations found that the right of withdrawal is nearly always or often respected in their Member State. A large majority of industry representatives agreed. National authorities and enforcement bodies reported few issues, with some noting that the right of withdrawal from linked credit agreements was unclear and therefore more likely to lead to problematic issues.

According to the majority of creditors, less than 1% of consumers make use of the right of withdrawal. This is confirmed by the fact that very few of the consumers that participated to the consumer survey had tried to withdraw from a contract within the 14-day period (3%). Most were aware of their right of withdrawal and were informed by the creditor before signing the credit contract, although less than half knew that the deadline for withdrawal was 14 days. The majority of consumers did not report any issues in exercising their right of withdrawal, although approximately one-third of those who tried to withdraw the contract indicated that the lender had made it difficult for them to withdraw from the contract.

Similarly, the majority of consumer associations found that the right of early repayment was always or very often respected by creditors in their Member State. According to several industry representatives, all aspects need to be considered when calculating the maximum level of early repayment fees, and they noted particular difficulties with re-financing. Several stakeholders argued that more proportionality is needed in early repayment fees, due to the large scope of the CCD. Enforcement bodies argued that undue fees were charged for early repayment, or that the fees charged were excessive. For national authorities, the right of early repayment was found to function well across Member States, apart from some issues with the correct calculation of the fees.

The consumer survey pointed out that around one-quarter of consumers had tried to repay their credit early, while 42% did not attempt early repayment and 31% did not
think it necessary. Consumers are highly aware of their right of early repayment, with most receiving relevant information before contracting the credit. In around one-third of cases, consumers indicated that their current loan had a penalty fee for repaying the loan earlier than agreed. However, close to half stated that there was no penalty fee. In the majority of cases, consumers did not encounter any difficulties when trying to exercise their right of early repayment. One-third, however, reported their lender making it difficult for them to repay the credit early.

Stakeholder opinions varied considerably on the functioning of the cross-border market and access to consumers. Opinions on whether the CCD has facilitated cross-border access to credit are divided. Some argue that it has indeed facilitated access, claiming that it allows for easier comparison of offers. Others disagree, stating that the consumer credit market remains markedly local and that the CCD has not managed to harmonise legal disparities. Further cross-border access to credit could be achieved by increasing consumer awareness of the possibility to obtain credit in another Member State.

According to consumer associations, the main obstacles to the functioning of the cross-border consumer credit market are language barriers, lack of harmonisation of insolvency/settlement rules, the requirements imposed by creditors (e.g. residence, documentation, employment) and the fact that the local offer is often sufficient. Industry representatives often argued that the cross-border market for consumer credit is not sufficiently developed. According to them, the adoption of the CCD did not trigger an increase of cross-border credit agreements and has failed to create a single market in the field of consumer credit. The fragmentation of legislation across the EU was blamed for preventing creditors from providing credit cross-border, with uneven implementation of the CCD and a lack of harmonisation of other rules relevant for creditors (e.g. fiscal and civil law, CWA rules, legal framework for debt recovery, and anti-money laundering obligations). Other important obstacles highlighted were difficulties in assessing the creditworthiness of foreign consumers (due to data access challenges), different consumption habits, lack of demand for cross-border credit, the need to acquire licences in every Member State, and language barriers.

The creditor survey similarly pointed to legal fragmentation across the EU as a key barrier, due to uneven interpretation and implementation of EU rules (e.g. CCD, anti-money laundering rules). It also noted the lack of harmonisation of related aspects, such as recovery procedures, and difficulties in assessing the creditworthiness of foreign customers. Other obstacles included language barriers, consumers’ preference for obtaining credit locally, socioeconomic differences that affect CWAs, and limitations to digitalisation processes.

Two enforcement authorities highlighted issues with the provision of credit online, although these were not exclusively related to credit providers established in another Member State (i.e. national or international credit providers were also implicated). Only three Member State authorities considered there to have been an increase in the number of cross-border operations (or increased appetite for them) since the adoption of the CCD. Language barriers and a lack of harmonisation (e.g. uneven interpretation of the provisions of the CCD and a lack of EU-level harmonisation of other relevant fields, including licensing regimes) were the main obstacles highlighted. A lack of incentives to provide credit cross-border (due to a low demand) was also mentioned. Although a small group of Member States reported issues linked to the provision of cross-border consumer credit (including in relation to advertising), there are indications that the CCD has – broadly - increased protection in cross-border trade.

The consumer survey pointed out that the majority of consumers do not look for credit abroad. People looking for higher credit amounts are more likely to consider credit providers in another Member State, although the percentage remains low.

Most consumer associations were doubtful that credit providers in their country consistently carry out creditworthiness assessment before concluding a credit
agreement. Although they believe that CWA is effective in providing consumers with the credit most appropriate for them and combating irresponsible lending and over-indebtedness, consumers are often dissatisfied with the way CWA is performed. Key issues are the lack of transparency in scoring systems and the data they are based on, the lack of both positive and negative databases, and their poor quality. In their opinion, the CCD would need to include more detail on how CWA should be performed and the data that should be used, as well as imposing an obligation to refuse credit to consumers scoring poorly.

Industry representatives had mixed views on the CWA. Roughly half of respondents did not see any issues with the need to perform CWA, and the majority did not consider the differences in approach between Member States to be an issue - in fact, they saw this flexibility as a positive element. Those that took issue with these differences mentioned difficulties in enforcing the provision, establishing jurisdiction in case of complaints, the purpose of databases in different Member States (i.e. the use of either ‘positive’ or ‘negative’ data), variation in the type of information used in such databases, and difficulties in accessing this information from other Member States. Some industry representatives argued that it is in the lenders’ best interests to conduct CWA based on comprehensive data, as this supports them to ensure responsible lending and safeguard the company’s financial interests and assets.

The majority of enforcement bodies identified issues with CWAs. They noted the lack of (or limited) compliance with the requirement to collect ‘sufficient information’ (including relying on publicly available information as opposed to information provided directly by the consumer) and the focus on assessing ability to repay ongoing costs rather than the total amount borrowed. According to them, the wording of the relevant CCD provision has created a lack of clarity with respect to CWA.

Nevertheless, some stakeholders pointed to the need to maintain a certain degree of flexibility in how a CWA should be performed. National authorities were evenly divided, with half arguing that the obligation to carry out a CWA is in itself effective in ensuring that consumers obtain appropriate credit. Those who disagreed highlighted as issue the different approaches to CWA, variation in wording used and the effectiveness of the underlying information.

Most of the creditors surveyed underlined that creditworthiness was checked by the lender and this was further confirmed by the consumer survey. Creditworthiness was checked mainly through income, professional status and household composition. More rarely, it was checked through outstanding household credits, household expenses and spouse’s income.

Consumer associations argue that the CCD has contributed to increasing competition in the consumer credit market at national, with a smaller majority observing an impact at EU level.

There were very limited views expressed on whether increased competition had led to improved consumer welfare, with only one noting lower prices. By contrast, another stakeholder mentioned an increase in aggressive marketing as a negative result for consumers. Overall, stakeholders highlighted several barriers to the functioning of the internal market and to competition at EU level that are considered beyond the reach of the CCD, such as how banks assess the risks of operating abroad, the costs of international credit distribution, access to credit databases and language barriers.

A small majority of industry stakeholders argued that the CCD has had no impact on competition at national level, while a much bigger majority believes that impact at EU level is positive. Most respondents argued that the CCD has not been effective in creating a single market for consumer credit, citing reasons such as different civil procedures and laws, language barriers, uneven interpretation of CCD provisions, different rules governing the marketing and sale of consumer credit, no demand for
cross-border credit and difficulties for creditors in gauging risk in operating with consumers abroad.

Few enforcement bodies expressed an opinion on this issue, but those that did argued that consumers' preferences to conclude credit agreements with local credit providers, combined with language difficulties, hinder the emergence of cross-border loans. The majority of national authorities believe that the CCD has been effective in providing a harmonised community framework, although others noted the wording of CCD provisions and the many regulatory differences between Member States as obstacles to that harmonisation.

A majority of respondents believe that the CCD has had an impact on the credit market, particularly in respect of increased competition, greater supervision and greater cost transparency.

The consumer survey showed that most respondents did not seek credit from a Member State other than their own, chiefly because they were unaware of the possibility, unaware of their rights or lacked the language skills. Of those that sought credit abroad, most said that it was easy to understand the credit offer.

Consumer associations stated that credit providers are generally providing the standard information required by the Directive. They identified several issues, however. For advertising, the main concerns are:

- In many cases, information, although displayed, is not provided in a clear, concise and prominent way.
- In some cases, standard information is missing (e.g. total amount to pay, amount of instalments, duration of the credit).
- In some cases, the information is presented in a misleading manner (including the representative examples).

Several consumer associations also pointed out that credit advertisements are increasingly targeted at vulnerable consumers, thus promoting overall consumption while neglecting the possible impact of such products.

- For pre-contractual information, the main issues are:
  - The information is provided too late in the process (e.g. together with the draft contract and very close to the moment of signature).
  - The information is not clear and concise enough to ensure that consumers understand the most relevant conditions of the credit agreement.

The adoption of the CCD is seen by consumer associations as having increased the amount of information provided in advertisements across the EU (especially the APR) and established the obligation to provide standard pre-contractual information through the Standard European Consumer Credit Information (SECCI), which did not exist in some countries. The requirements of the CCD have prompted some credit providers to stop providing figures in their advertisements (e.g. interest rates) in order to circumvent the duties imposed by the CCD.

The effectiveness of the relevant consumer protection obligations of the CCD is considered questionable, especially in relation to pre-contractual information. Even those who believe it has been effective agree that there is room for improvement. Consumer associations argued that there is a need to ensure clearer information, presented in a more-reader friendly way (including by focusing only on the most relevant information), and clearer explanations by the credit provider. Limiting advertisements of consumer credit is also seen as necessary by some consumer associations.

Industry stakeholders argued that credit providers generally comply with the requirements established by the CCD. However, many noted that advertising requirements are not adapted to some media channels (TV, radio, web banners, SMS,
mobile applications) and pre-contractual information requirements are similarly ill-suited to the digital era.

Excessive information is, according to them, provided at both advertising and pre-contractual stage, which does not allow consumers to identify and retain the key relevant aspects. They also claim that there is a high degree of duplication between pre-contractual and contractual information. Lack of harmonisation in credit advertising rules across the EU and lack of flexibility of the overall framework, imposing the same obligations on most consumer credit, regardless of the type and amount (and thus risk) were also flagged as issues.

The creditors’ survey revealed that around 70% of the respondents were provided the standard information required by the CCD at the advertisement stage. Over half of the creditors reported having increased the information provided to consumers in their advertising since 2008, namely the APR and total costs. Around 40% of the creditors reported facing obstacles in complying with the obligation to provide the standard information. The excessive amount of information and difficulties in tailoring it to certain media channels (e.g. TV, radio) were the main issues highlighted.

Enforcement authorities reported issues of compliance with the obligations to provide information, especially in advertising and marketing. The main issue relates to the failure to provide the standard information in a clear and prominent manner in advertisements, especially in the representative examples. Issues with the provision of pre-contractual information vary, with some enforcement bodies reporting that information is not provided in a timely manner, while others complain about the failure of credit providers to provide adequate explanations, or to provide such information at all.

Overall, national authorities held that credit providers are generally complying with their obligation to provide standard information at advertising and pre-contractual stage. However, many mentioned that key information is often not prominently displayed, resulting in misleading advertisements, especially in relation to fees and charges applied. Pre-contractual information is often not provided in a timely manner (i.e. it is provided with the draft contract or just before signing), which may also depend on the vagueness of the relevant provision, using the term ‘in good time’. Pre-contractual information is also, in their opinion, not sufficiently clear to ensure that consumers understand the key elements and conditions, especially in relation to fees and risks.

Opinions are divided on whether the provision of pre-contractual information is always the adequate tool to protect consumers. Many called for a reduction in the amount of information and more reader-friendly presentation. Some national authorities also called for stricter rules on targeted advertising.

In the consumer survey, respondents had a positive overall opinion about the information provided at the advertising and pre-contractual stage. They reported that advertisements mostly correspond to the offer and that the information provided before signing the contract is useful, timely and easy to understand, allowing them to compare different credit offers. However, awareness of the SECCI is low among consumers (33%). The majority of those who are aware of its existence were provided with the form before signing the contract, but in most cases, this was done either the day before or on the day of the signing. Nevertheless, SECCI is seen as a useful tool to inform their choice. There is a low level of satisfaction with the information provided in advertisements, with only one-quarter believing it to be sufficient.

Efficiency

Consumers associations generally argued that the costs generated by the CCD are proportionate to the benefits or that benefits outweighed costs, a view shared by national authorities. Both categories of stakeholders did not, however, express views on specific benefits or costs on each of the provisions. Industry stakeholders pointed to the fact that the implementation of the CCD implied additional costs (administrative burden,
compliance costs of elements such as information requirements, the right of withdrawal, the right of early repayment and the CWA) for them. Information requirements emerge as one of the main concerns in terms of costs and burden. Most industry stakeholders argued that the requirements have added substantial costs to advertisements (to the extent that some credit providers have stopped advertising on certain channels) to no effect, as they overloaded consumers with excessive information in certain sectors.

Over half of the creditors responding to the survey did not have an opinion on whether the costs outweigh the benefits of the CCD. Those with an opinion, however, tended to believe that the costs are greater than the benefits. To strike a better balance between the costs and the benefits, creditors suggested simplifying the rules on the provision of information and minimising legal disparities by ensuring a higher degree of harmonisation.

However, no evidence was provided as part of these consultations as to the extent of the costs incurred, or whether they were directly linked with the implementation of the Directive itself.

Consumer organisations’ opinions on whether the CCD should be simplified were divided. Some argued that a simplification of the legislation (particularly in relation to the provision of information) would enable consumers to better understand the information, as well as their rights. Others do not believe this is necessary and warn that any simplification should be careful not to lower consumer protection standards. Room for simplification was identified by most industry representatives interviewed. Examples related to further harmonisation of rules to avoid legal fragmentation across the EU and introducing a proportionality element allowing the level of detail of the information to be adapted to the potential risks of the credit product at hand. Most national authorities believe that the CCD has not created any unnecessary burden and that there is no need for further simplification of the legislation. However, of the (few) authorities that held the opposite view, several argued that the information duties create a burden on both creditors (who have to prepare and provide the information) and consumers (who are expected to read and fully understand the documents).

**Coherence**

Relatively few views were expressed by stakeholders in regard to coherence of the CCD with its provisions and objectives, and in regards to other legislation.

A few stakeholders pointed out that the different wording and standards in the CCD compared to other legislation, in particular the MCD. They pointed out that better alignment of the provisions could improve the implementation of both Directives, as it would improve legal clarity for Member States and credit providers and ensure a consistent approach to protection of consumers against over-indebtedness.

Respondents to the survey either agreed that the CWA was performed in accordance with data protection laws at EU and national level and that credit databases were used in accordance with EU and national level data protection legislation, or they did not know. Only one consumer association stated that the CWA and use of credit databases did not meet the legal requirements for data protection. They argued that adding of data to credit databases is not done in accordance with the GDPR and the equivalent transposition measure in that Member State.

The vast majority of industry representatives strongly agreed that credit databases were used in accordance with EU and national level data protection legislation. The overwhelming majority of industry representatives stated that the use of credit databases was fully in accordance with EU level and national data protection legislation, with only a few suggesting that it was only partially in accordance with the law.

Coherence issues were mentioned by several enforcement bodies. One pointed to risks with overrunning in overdrafts compared to revolving credit, arguing that overdrafts are subject to a light regime under the CCD, whereas revolving credit is not.
Relevance

Overall, consumer associations believe that the scope of application of the CCD is to be modified. They made particular mention of the CCD thresholds, especially the minimum one (200 EUR) as inadequate. Consumer associations also underlined the need to cover new market players (such as fintech companies, P2PL platforms etc.), leasing contracts, overdrafts and agreements with pawnshops. They frequently criticised exemptions, in particular some types of credit falling outside of the scope of the CCD (i.e. zero-interest loans and overdraft facilities). In addition, they argued that credit intermediaries should be bound by the same rules as credit providers, at least as far as pre-contractual information and data collection is concerned. Consumer associations pointed out that the CCD therefore only partially addresses current needs. In this regard, consumer associations pointed to the risks posed by new business practices and market players. They also noted the need to adapt to the changes in consumer behaviour, with consumers now acting more impulsively and prioritising valuing convenience and smooth processes.

The consumer survey showed that a majority of consumers enter into credit agreements with their own bank and in person. Around 70% of consumers reported comparing different offers before taking up credit and the share of consumers comparing increases proportionally with increases in the credit amount.

Feedback on the scope of application of the CCD is more positive among industry representatives than among other stakeholder groups. Most negative views stem from the belief that the thresholds should be abolished or broadened. Some industry representatives argued that the scope should be broadened to ensure that all consumer credit providers should be subject to the same rules, including the newly emerged players (e.g. P2PL, payday loan providers). Opinions of industry representatives on whether the CCD addresses current needs are divided, although there is overall consensus that it is not adapted to future challenges and needs. Industry representatives agree that the CCD is not adapted to the changes brought by digitalisation (e.g. emergence of new business practices and market players, changes in consumer behaviour, which values convenience and smooth processes over well-informed and rational decisions).

The only enforcement authorities to comment on the scope of application advocated for a broader scope to cover zero-interest rate loans, short-term credit and P2PL platforms and wider digital solutions, and potentially other credits that do not exist yet. Most national authorities believe that the scope of the CCD is not adapted to current needs, especially the minimum threshold. Issues were identified in relation to the cross-selling of a payment protection insurance (PPI), with consumers often nudged to purchase it when obtaining credit. PPIs can entail disguised high costs which are not included in the calculation of the APR.

One group of national authorities advocated for an overall revision of the scope to ensure that only justifiable exemptions apply. Some of the most problematic exemptions are leasing agreements, overdraft facilities and zero-interest credits. The majority of national authorities believe that the CCD addresses current but not future challenges. The main shortcomings highlighted relate to the developments in the market as a result of digitalisation (i.e. new market players, communication channels and consumer behaviour) and the need for clarification of certain terms and provisions in the Directive (e.g. rules on the APR). Other issues to address in the future concern the establishment of stricter rules on CWA and the APR.

Specifically in terms of definitions, consumer associations deemed the definitions of credit, credit agreement, credit intermediary and total amount of credit to be relevant. However, some associations believe that the definition of creditor and credit intermediary should be broadened to include entities not currently explicitly covered by the CCD. Similar to the consumer associations, most industry representatives consider the definitions to be relevant and sufficient. However, a small group pointed out that

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the definitions of creditor and credit intermediaries should be slightly modified or clarified to reflect alternative credit providers (e.g. P2PL) and other entities acting as creditors that fall outside the scope (e.g. credit consolidation companies that consolidate various types of credit).

For most national authorities, the definitions of creditor, credit agreement, credit intermediary and total amount of credit were argued to be relevant and adapted to current needs. A few national authorities also indicated that the definition of ‘total cost of the credit to the consumer’ does not clearly stipulate the charges that need to be taken into account. Further clarification of other terms were requested by individual national authorities, such as ‘linked credit agreement’, ‘free of charge’, ‘overdraft facility or overrunning’, ‘in good time’, ‘means of distant communication’, ‘consumer’, ‘goods-linked credit’, and ‘ancillary services’.

**EU added value**

Most consumer associations agreed that taking EU-level action has contributed to creating a level playing field among EU Member States as it harmonised rules for consumers and creditors, which, in turn, reduced the disparities between countries. Half of the respondents mentioned that their national requirements were more stringent than the those included in the CCD, including interest rate caps and stricter advertising and CWA rules. The results were nevertheless more positive than among other stakeholder groups. A lack of equally effective supervision was mentioned as one of the reasons behind the lack of harmony across the EU. Consumer representatives argued that there is a need to avoid (to the extent possible) certain actors being excluded from the scope of the CCD. They argued for closing loopholes, such as the exclusion of overdrafts from the scope of the CCD. Nearly all consumer associations agreed that, overall, there was added value in enacting EU-level legislation in the field of consumer credit. This added value was identified as stronger consumer protection, a varied credit offer and a (more) harmonised market. Industry representatives likewise generally agreed that there is added value in adopting legislation at EU level, citing harmonised procedures and rules, greater consumer protection, a possible increase in cross-border trade and more transparency for consumers.

A majority of industry stakeholders did not give an opinion on whether EU level legislation has helped to create a level playing field. Those that argued for the absence of a level playing field pointed to the lack of harmonisation in civil law, lack of a cross-border market, and room for interpretation in implementing the CCD. Several industry representatives argued that EU added value lies in applying the same rules and moving away from a silo-type approach differentiating between banks and non-banks. This would also enable the same conduct of business rules to be applied to all lenders and thus create a level-playing field.

Almost all enforcement bodies agreed that EU-level action contributes to a level playing field because companies are required to comply with the same basic requirements. Similarly, the majority of national authorities held that taking EU-level action contributed to creating a level playing field among EU Member States in the field of consumer credit either to a great or to some extent. The majority of respondents mentioned that their own Member State went beyond the requirements, rights and obligations laid down in the CCD by offering additional or more stringent consumer protection. Some Member State authorities argued that harmonisation of the requirement to check credit databases would be beneficial to achieving the CCD objectives. Harmonisation of basic CWA provisions was also mentioned. A small number of respondents identified better functioning of the internal market as an added value delivered by the CCD. The majority of enforcement bodies argued there is added value in enacting legislation in this area as it helps to provide redress to consumers who, ultimately, face similar issues across the EU. They went on to argue that harmonised rules foster competition and close legislative gaps in certain Member States.
Most national authorities agreed that there is added value in adopting EU-level legislation in the area of consumer credit, citing better consumer protection and improved competition.
Annex 7 – Approach to quantification

This annex provides a description of the approach followed to quantify the main benefits and costs to consumers, financial providers and public authorities that can be attributed to the CCD since its introduction in 2008.

Benefits

According to its two main objectives the CCD should bring the following benefits:

- Ensure a better protection of the EU consumers which in turn leads to a lower consumer detriment (possible due to a lower incidence rate of problems and a lower magnitude) and to an increase in demand for consumer credit;
- Enhancing a level playing field potentially leading to an increase in cross-border transaction of consumer credit.

Our research shows that the CDD had an impact on increasing consumer protection. On the other hand, the evaluation did not find hard evidence that changes in the demand or supply of consumer credit products can be directly attributed to CCD (including cross-border activities). Consequently, we have quantified the impact of the CCD on the reduction of consumer personal detriment only.

Reduction of personal detriment

Personal detriment refers to loss of welfare experienced by individuals due to problems that occur after the purchase and that were not expected (based on reasonable expectations). Personal detriment includes financial and non-financial losses (e.g., time losses, psychological detriment).

Due to various factors, the consumer detriment was reduced in most of the EU28 Member States since 2010. It is assumed, based on discussions with the team of internal experts, that 22.5% of that change was due to CCD (i.e., incremental effect of CCD). This is done by taking into account the key factors that have played a role in reducing consumer detriment since 2008 and considering their weight:

- Development and trends of the credit sector itself: 25%
- More stringent legislation in some MS, and improved enforcement (so government-induced): 15%
- Increase in sector compliance over time: 10%
- Increase in financial literacy among consumers: 5%
- Increase in consumer awareness of APR, SECCI and contractual terms in terms of consumer credit (as unchanged for 10 years now): 10%
- National-level campaigns in boosting consumer awareness: 5%
- Other legislation and other factors: 7.5%

There were no indications of the weight of the CCD in the reduction of personal detriment (the benefit). The results have been based on expert judgement, and considering the likely weight of different factors in the reduction of personal detriment. The figures for calculating personal detriment are based on the CIVIC study (see below) and are very robust. The estimate of the detriment that can be attributed to the CCD is, as indicated, based on deduction and in itself moderately robust. The first element in assessing the weight included listing the factors that played a role in reducing detriment. The second element was a qualitative assessment (narrative, description) and quantitative assessment (rating) of its importance. On this basis, the above percentages were derived by ranking these factors. The data is, nonetheless, moderately robust because there is a fairly high probability that a Directive in a policy area is never the only or deciding factor for attribution of change, and therefore the weighting would not be considered to exceed 30-40%. At the same time, the pace of changes in the sector (supply) and demand-driven changes have further reduced the unique role of the CCD. It was also derived to be unlikely for the value of the attribution to the CCD to be below 10-15% following the qualitative and quantitative assessment of the key elements.
above (and confirmed by stakeholder consultations, which led to the conclusion that the CCD has a non-negligible attribution, rated to be above 15-20% as a result). In any case, any attribution of 20% to 30% all generated positive consumer detriment. The initial consideration of a range of benefit of 20% to 30% show this. For the Final Report this was specified to be a conservative estimate of 22.5% (at the lower end of this range), consistently showing benefits to be similar to or outweigh costs across the entire range of 20-30%.

Below we describe the approach followed to calculate the variation in consumer detriment and the incremental effect of CCD (assuming beginning of 2010 as baseline) since its transposition.

Step 1. Estimate the average magnitude of consumer personal financial detriment per problem.

The estimation of the average magnitude of the consumer of personal financial detriment suffered by an individual due to a problem (i.e., magnitude of the financial detriment) considered the data reported in the CIVIC (2017) for the consumer detriment for “Loans, credit and credit cards” in the year 2017 for the following countries: UK, Poland, France and Italy.967 This was extrapolated for each of the other EU28 countries as described in Table 65.

Table 22. Magnitude of financial detriment

<table>
<thead>
<tr>
<th>Country</th>
<th>Magnitude (post-redress, C, prices 2017)</th>
<th>Used to estimate EU countries in the following regions</th>
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<td>Italy</td>
<td>187</td>
<td>Southern Europe</td>
</tr>
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<td>176</td>
<td>Eastern Europe</td>
</tr>
<tr>
<td>UK</td>
<td>144</td>
<td>Northern Europe</td>
</tr>
</tbody>
</table>

The magnitude of the financial detriment in the period 2010-2018 was adjusted based on the Consumer Markets Scoreboard data on "Extent of detriment suffered as a result of problems experienced with products/services or supplier/retailer"968 (see Table 66).

Table 23. Severity of consumer problems in the period 2010-2017 (scale 0-10, where 0 is low severity and 10 high severity)

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<tr>
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<tbody>
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<tr>
<td>Cyprus</td>
<td>10.94</td>
<td>10.09</td>
<td>9.32</td>
<td>8.60</td>
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<td>7.32</td>
<td>6.76</td>
<td>6.19</td>
<td>5.68</td>
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</table>

967 The main aim of CIVIC study’s was to develop a simple, consistent state-of-the-art methodology in order to identify, measure and quantify the incidence and magnitude of consumer detriment in any kind of consumer market. It focused on 6 markets (including the 'loans, credit and credit cards' market) and on 4 countries, ensuring very large sample sizes for both the face-to-face and the online surveys, resulting in an overall sample size of 16,000 respondents.

968 By assuming that the magnitude changed proportionally to the extent of detriment
### Table 24. Magnitude of financial detriment 2010-2018 (euros at prices 2017)

<table>
<thead>
<tr>
<th>Year</th>
<th>Austria</th>
<th>Belgium</th>
<th>Bulgaria</th>
<th>Croatia</th>
<th>Cyprus</th>
<th>Czech Republic</th>
<th>Denmark</th>
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</tbody>
</table>

*Source: extrapolation based on Consumer Markets Scoreboard*

*a linear regression was used to estimate the value for 2018, as the data for 2017 is the latest available*

The magnitude of the financial detriment for each EU MS is presented in Table 24.
<table>
<thead>
<tr>
<th></th>
<th>Estonia</th>
<th>Finland</th>
<th>France</th>
<th>Germany</th>
<th>Greece</th>
<th>Hungary</th>
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*Source: own calculations based on MMS and Civic (2017)*
Step 2. Estimate the average time loss per problem

The estimation of the time loss per problem (see Table 25) was done based on the data reported in CIVIC (2017). The number of hours for the period 2010-2018 was extrapolated using the data from Consumer Markets Scoreboard on “Extent of detriment suffered as a result of problems experienced with products/services or supplier/retailer”969.

The estimation of time losses and the monetisation of time losses (i.e., by using hourly earnings for monetising time losses) followed the methodology for measuring consumer detriment developed by CIVIC (2017) for DG JUST – “(…) a detailed step-by-step operational guidance to guide scientifically sound and resource efficient assessments of personal consumer detriment in markets across the EU”. The methodologies covers financial detriment, time loss and psychological detriment.

According to the CIVIC study, time losses for 2016 were estimated based on statements from consumers collected through surveys to consumers. In the CCD study, we extrapolated those time losses to other years based on the data on incidence rates of consumer complaints from the “markets scoreboards”. The underlying assumption was that time losses are proportional to the incidence rate of problems.

We are aware that there are alternative ways to monetise the “value of time” (e.g., using stated preferences”), all with limitations. The CIVIC study discusses those approaches and respective limitations thoroughly and ends up proposing the use of average earnings (highlighting that, for example, one limitation might be that people may value their leisure time and working time differently).

The reference to purchase should be replaced by “entering the consumer credit contract”.

Table 25. Time losses 2010-2018 (number of hours per problem)

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969 By assuming that the time losses changed proportionally to the extent of detriment.
We monetised the consumer detriment resulting from time losses using the mean hourly earnings for each country in 2010⁹⁷⁰ (see Table 26).

Table 26. Monetised time losses per country (milliom of euros, 2010 prices)

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⁹⁷⁰ Eurostat dataset: earn_ses_pub2s.
Step 3. Estimate rate of problems per purchase

The calculation of the problem rate was based on the Consumer Markets Scoreboard data on "Percentage of people who experienced at least one problem" for the period 2010-2017. The extrapolation for 2018 was done based on a linear regression. See results in Table 69.

Table 27. Rate of problems 2010-2018

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Step 4. Estimate the market penetration.

The number of purchases of consumer credit products was estimated based on the Eurobarometer data (2003, 2011, 2016) on the percentage of respondents that have purchased at least one loan, credit or credit card (see Table 28).

Table 28. Market penetration of consumer credit 2010-2018

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The total number of purchases of consumer credit per country was obtained by multiplying the market penetration by the population of each EU28 country.

**Step 5. Calculate the personal consumer detriment (financial and time loss) for the period 2010-2018**

To calculate the financial consumer detriment, we multiplied the rate of problems by the total number of purchases and by the magnitude of a problem for each country. The results are presented in Table 29.

### Table 29. Consumer financial detriment (million euros, 2010 prices)

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*February 2020*
To calculate the total cost with time losses we multiplied the monetised time losses per problem by the total number of problems (i.e., rate of problems by the total number of purchases) for each country (see Table 30).

Table 30. Total time losses (million euros, prices 2010)

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<td>2.69</td>
<td>2.26</td>
<td>1.50</td>
<td>0.89</td>
<td>0.53</td>
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<td>17.54</td>
<td>21.45</td>
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<td>16.89</td>
<td>15.43</td>
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<td>8.32</td>
<td>7.49</td>
<td>6.61</td>
<td>5.93</td>
</tr>
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</table>
Step 6. Calculate the net benefit of CCD in terms of personal consumer detriment.

The net benefit of CCD in a given year was considered to be 22.5% of the difference between the financial detriment on that year and the financial detriment at the baseline (beginning of 2010)\(^{971}\). See Table 31.

Table 31. Reduction of financial consumer detriment due to CCD 2011-2018 (million euros, prices 2017)

<table>
<thead>
<tr>
<th></th>
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<tr>
<td>Total EU28</td>
<td>80</td>
<td>102</td>
<td>205</td>
<td>216</td>
<td>258</td>
<td>322</td>
<td>382</td>
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</tr>
</tbody>
</table>

\(^{971}\) We assumed that the impact of CCD was zero if the consumer detriment increased (instead of decreasing). This is reasonable as evidence does show that the CCD did not have a negative impact in the consumer detriment.
The net benefits of CCD in terms of savings in time losses was considered to be 22.5% reduction of the total monetised time losses (i.e., monetised time losses per problem multiplied by the number of problems) in the period 2011-2018 (i.e., difference between the values for a given year and the baseline). See Table 32.

Table 32. Total savings in time losses (million euros, prices 2010)

<table>
<thead>
<tr>
<th>Country</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>NPV @4%</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
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<td>70</td>
<td>143</td>
<td>161</td>
<td>194</td>
<td>217</td>
<td>243</td>
<td>262</td>
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<td>61</td>
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<td>288</td>
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<td>4</td>
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<tr>
<td>Poland</td>
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<td>2</td>
<td>3</td>
<td>5</td>
<td>7</td>
<td>8</td>
<td>23</td>
</tr>
</tbody>
</table>
The total benefits of the CCD in terms of reduction of consumer detriment (financial and non-financial) are summarised in Table 33. The net present of the savings in consumer detriment due to the introduction of CCD are € 7.655 millions (prices of 2010).

Table 33. Net benefits of CCD 2011-2018 (million euros, prices 2010)

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>NPV @4%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer financial detriment</td>
<td>80</td>
<td>102</td>
<td>205</td>
<td>216</td>
<td>258</td>
<td>322</td>
<td>382</td>
<td>424</td>
<td>1,542</td>
</tr>
<tr>
<td>Time losses (monetised)</td>
<td>59</td>
<td>70</td>
<td>143</td>
<td>161</td>
<td>194</td>
<td>217</td>
<td>243</td>
<td>262</td>
<td>1,051</td>
</tr>
<tr>
<td><strong>Total EU28</strong></td>
<td>139</td>
<td>172</td>
<td>348</td>
<td>376</td>
<td>453</td>
<td>539</td>
<td>625</td>
<td>685</td>
<td>2,593</td>
</tr>
</tbody>
</table>

**Costs**

The costs of the CCD for providers and public administrators are related to compliance, monitoring and enforcement and can be subdivided into one-off costs and ongoing costs. The one-off costs relate to costs that credit providers and public administrators had when the CCD was implemented but that are not recurrent. Ongoing costs are cost that providers and public administrators have recurrently.

The methodology proposed to estimate the costs for providers and public administrators was based on the Economics, E(2007)\(^{972}\).

**Costs for public administrations**

The one-off costs of public administrations related to the implementation of the CCD were related to the need to transpose the Directive into national law. The methodology and assumptions to calculate the transposition costs are described in the Table 34.

Table 34. Approach to calculate one-off costs for public administrations

<table>
<thead>
<tr>
<th>Methodology</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit cost = No. of days per person X Average daily wages for</td>
<td>• 2 officials per Member</td>
</tr>
<tr>
<td>the public sector X No. of persons involved</td>
<td>State</td>
</tr>
</tbody>
</table>

Total cost = Unit cost X 28 Member States

- 5-10 days per month during 6 months
- Average daily wage for the public sector per country from Eurostat

The recurrent costs of public administrations related to the implementation of the CCD are related to the monitoring of compliance of credit providers with the Directive, reporting the EU and enforcing the Directive (e.g. sweeps, investigations). The methodology and assumptions followed to calculate these costs are summarised in the Table 35.

**Table 35. Approach to recurrent costs of public administrations**

<table>
<thead>
<tr>
<th>Recurrent cost</th>
<th>Methodology</th>
<th>Assumptions</th>
</tr>
</thead>
</table>
| Monitoring      | Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved Total cost = Unit cost X 28 Member States Total cost = Unit cost X 28 Member States | 1 official per MS  
1 to 2 days per official per month to monitor compliance (e.g. scanning websites of banks)  
Average daily wage for the public sector per country from Eurostat |
| Enforcement     | Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved Total cost = Unit cost X 28 Member States | 2 official per MS  
1 to 2 days per official per month  
Average daily wage for the public sector per country from Eurostat |
| Reporting       | Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved Total cost = Unit cost X 28 Member States | 1 official per MS  
2 to 3 days per official per year  
Average daily wage for the public sector per country from Eurostat |
| Maintaining database | Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved Total cost = Unit cost X 28 Member States | 1 official per MS  
1 to 2 days per month  
Average daily wage for the public sector per country from Eurostat |

**Costs for financial providers**

The one-off cost of credit providers related to the implementation of the CCD were considered to be the following:

- Time spent by legal department to familiarise with new legislative requirements (including time to understand the exemptions, concepts, etc.)

- Cost of updating/adapting internal IT systems to the following key requirements of the Directive:
  - Pre-contractual information/SECCI requirements
  - Credit worthiness assessment requirements
  - Calculation of the APR

- Internal communications/ initial staff training on the following key requirements of the Directive:
  - Advertisement requirements
  - Pre-contractual information/SECCI requirements
  - Calculation of the APR

- Updating website with required information and functionalities

- Time spent by legal department to adapt contractual documentation

The methodology and assumptions followed to calculate these costs are described in the Table 36. It is important to highlight that, similarly to the approached followed in the quantification of the benefits, some on-off costs of credit providers were adjusted considering what can be attributed to the implementation of the Directive (per key provision) and the level of compliance with the Directive (per key provision).

Table 36. Approach to one-off costs of credit providers

<table>
<thead>
<tr>
<th>One-off cost</th>
<th>Methodology</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Familiarisation with the Directive</td>
<td>Unit cost = No. of days per person X Average daily wages for the financial sector X No. of persons involved</td>
<td>• 2 staff member per credit institution would be involved in this exercise • S/he will devote 5 to 7 days</td>
</tr>
<tr>
<td>Cost of updating/adapting IT systems to pre-contractual information requirements</td>
<td>Unit cost X No. of credit institutions Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that adapted their systems to this requirement</td>
<td>• €10,000 to €15,000 per institution • Number of financial institutions form ECB • Values for attribution and compliance estimated based on expert judgment</td>
</tr>
<tr>
<td>Cost of updating/adapting IT systems to Credit worthiness assessment requirements</td>
<td>Unit cost = Average cost of updating/adapting one IT system Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that</td>
<td>• €10,000 to €15,000 per institution • Number of financial institutions form ECB • Values for attribution and compliance estimated based on expert judgment</td>
</tr>
<tr>
<td>Cost of updating/adapting IT systems to Calculation of the APR</td>
<td>Unit cost = Average cost of updating/adapting one IT system</td>
<td>Total cost = Unit cost × Number of Financial Institutions × Share of Financial Institutions that adapted their systems to this requirement</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Cost of updating/adapting IT systems to Calculation of the APR</strong></td>
<td><strong>Unit cost = Average cost of updating/adapting one IT system</strong></td>
<td><strong>Total cost = Unit cost × Number of Financial Institutions × Share of Financial Institutions that adapted their systems to this requirement</strong></td>
</tr>
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</tr>
<tr>
<td><strong>Staff training on pre-contractual information</strong></td>
<td><strong>Unit cost = No. of people involved × No. of days per person × Average daily wages for the financial sector</strong></td>
<td><strong>Total cost = Unit cost × Number of Financial Institutions × Share of Financial Institutions that needed to adapt to this requirement</strong></td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Staff training on Advertisement requirements</strong></td>
<td><strong>Unit cost = No. of people involved × No. of days per person × Average daily wages for the financial sector</strong></td>
<td><strong>Total cost = Unit cost × Number of Financial Institutions × Share of Financial Institutions that needed to adapt to this requirement</strong></td>
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</table>
### Staff training on Calculation of the APR

Unit cost = No. of people involved X No. of days per person X Average daily wages for the financial sector

Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that needed to adapt to this requirement

- 0.075 to 0.125 days per person
- All front office employees will have to spend some time on familiarising themselves with new requirements – assumed to be 20% of workforce
- Average daily wage for the financial sector per country from Eurostat
- Number of financial institutions form ECB
- Values for attribution and compliance estimated based on expert judgment

### Updating the website

Unit cost = Average cost of updating website

Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that adapted their websites

- Unit cost = € 400 to €600 per bank
- Number of financial institutions form ECB
- Values for attribution and compliance estimated based on expert judgment

### Updating contractual documentation

Unit cost = No. of people involved X No. of days per person X Average daily wages for the financial sector

Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that needed to adapt to this requirement

- member of the legal team per bank
- 1 to 2 day per person
- Average daily wage for the financial sector per country from Eurostat
- Number of financial institutions form ECB
- Values for attribution and compliance estimated based on expert judgment

The recurrent costs of the financial providers related to the need to comply with the CCD depend on their level of compliance with the Directive and their need to adjust their operations to the Directive (which in some cases was not necessary as the credit providers were already operating in line with the key requirements of the Directive). See Table 37 for a description of the approach followed to calculate these costs.
Table 37. Approach to calculate recurrent costs of financial providers

<table>
<thead>
<tr>
<th>Recurrent cost</th>
<th>Methodology</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance with advertisement requirements</td>
<td>Unit cost = Extra cost of advertisement x number of advertisements per year</td>
<td>• Extra cost per advertisement = €5 - €10</td>
</tr>
<tr>
<td></td>
<td>Total costs = Unit cost x Number of credit institutions</td>
<td>• Number of advertisements per year = 365</td>
</tr>
<tr>
<td>Compliance with Pre-contractual information/SECCI requirements</td>
<td>Unit cost = No. of days per person X Average daily wages for the financial sector X No. of persons involved</td>
<td>• 1 member of the front desk</td>
</tr>
<tr>
<td></td>
<td>Total cost = Unit cost x No. of credit requests X percentage of credit request done in person</td>
<td>• 0.1 hours per person</td>
</tr>
<tr>
<td>Compliance with credit worthiness assessment requirements</td>
<td>Unit costs = No. of days per person X Average daily wages for the financial sector X No. of persons involved (the unit cost depends on the level of burden)</td>
<td>• For 15% of the credit request a creditworthiness was not done before CCD and due to CCD this was reduced to 10%</td>
</tr>
<tr>
<td></td>
<td>Total cost = Unit cost X No. of credit requests for which a credit worthiness would not been done in the absence of CCD</td>
<td>• 1 staff member</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.05-0.10 days per request in countries depending on their level of burden</td>
</tr>
</tbody>
</table>

Consumers affected

Table 38. Overview of the number of consumers affected

<table>
<thead>
<tr>
<th>Provision</th>
<th>Consumers affected in given year 2010-2018</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Types of credit</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Linked credit</strong>: number of consumers affected</td>
<td>Up to 20 thousand</td>
<td>Based on 1% of consumers exercising their right of withdrawal, maximum 50% of new agreements being linked credit, 16% of those consumers reporting problems, of which 41% are major problems</td>
</tr>
</tbody>
</table>
### Evaluation of Directive 2008/48/EC on credit agreements for consumers

#### Revolving credit:
Number of consumers affected facing problems with their credit card in terms of unrequested extensions of the credit line

- **Up to 25 million**
- Based on estimated 44% share of consumers with a credit card (2018), 12% share of consumers with problems.

#### Credit intermediaries:
Estimated number of consumers experiencing problems with credit intermediaries

- **Between 600,000 and 4.3 million**
- Based on share of consumers taking out a loan through a credit intermediary at 11% (ICF survey) and 1.5% (OPC survey), and a problem incidence rate of 65% (2013 Commission study).

#### Understanding credit offers and information provision

<table>
<thead>
<tr>
<th>Understanding of credit offers</th>
<th>11.4 million</th>
<th>Based on share of consumers marking understanding as complicated or very complicated in ICF survey (19%).</th>
</tr>
</thead>
<tbody>
<tr>
<td>APR: number of consumers where credit institution did not inform consumer of the value of the APR</td>
<td>Up to 6 million</td>
<td>Based on 10% of consumers not having been informed.</td>
</tr>
<tr>
<td>APR: consumers who have not heard about the APR</td>
<td>Up to 5.4 million</td>
<td>Based on ICF survey</td>
</tr>
<tr>
<td>APR: estimated number of consumers who have heard about the APR but do not know the annual rate of charge</td>
<td>Up to 19 million</td>
<td>Based on ICF survey</td>
</tr>
</tbody>
</table>

#### Right of withdrawal:
Consumers unaware of the right to withdraw

- **Between 17 and 24 million**
- Based on between 28% and 40% of consumers reporting not aware of this right based on ICF survey.

#### Right of early repayment:
Consumers unaware of the right to repay early

- **Between 9 and 11 million**
- Based on between 12% and 15% of consumers reporting not aware of this right based on ICF survey.

#### SECCI: number of consumers that did not receive SECCI

- **Up to 11 million**
- Based on 18% of consumers reporting not having been provided with SECCI.

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973 Eurobarometer 443 figures at 43%, indexed for 2018.

974 Based on UK figures and extrapolated for the EU.

975 ICF survey, Q10a.

976 ICF survey, Q13.
**SECCI:** number of consumers that found SECCI unhelpful or very unhelpful  
Up to 3 million  
Based on share of consumers finding SECCI unhelpful (4%) or very unhelpful (1%) based on ICF survey

**Understanding offer:** estimated number of consumers that disagreed or strongly disagreed with understanding the offer  
Up to 9 million  
Based on ICF consumer survey with 15% that disagreed or strongly disagreed that offer was easy to understand.

**Key rights**

**Down payments:** consumers asked to pay a down payment  
Up to 16 million  
Based on share of consumers asked to pay a down payment (27%) in ICF survey.

**Right of withdrawal:** estimated number of consumers facing difficulty in exercising the right  
Up to 238,000  
Based on 1% of consumers exercising their right of withdrawal, and 56.5% being unsuccessful, of which a subset was aware of the correct timeframe.

**Right of early repayment:** estimated number of consumers facing difficulty in exercising the right  
Up to 2.5 million  
Based on 25% seeking to repay early, 14% that were not successful.

**Cross-selling:** estimated number of consumers affected by lender trying to sell additional products  
Up to 25 million  
Based on 42% of consumers whom indicated this been asked them in writing or orally when purchasing a loan. Note: low sample size.

**Creditworthiness assessment:** consumers whose ability to pay was not verified  
Up to 6 million  
Based on 10% of consumers who indicated that their ability to pay was not verified in ICF survey.

**Advertisement:** share of consumers that considered advertisement not to match actual offer  
Between 8 and 11 million  
Based on weighted and unweighted share of 14% and 18% of consumers that considered advertisement not to match loan offer, ICF survey.

**Consumer perceptions: elements not part of the credit offer**

**Monthly instalments**  
Up to 20 million  
Based on shares indicated in ICF survey.

**Total amount of credit**  
Up to 22 million  
Based on shares indicated in ICF survey.

**Borrowing rates**  
Up to 23 million  
Based on shares indicated in ICF survey.

**Duration of credit agreement**  
Up to 25 million  
Based on shares indicated in ICF survey.

---

<table>
<thead>
<tr>
<th>Type of credit</th>
<th>Up to 27 million</th>
<th>Based on shares indicated in ICF survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>APR</td>
<td>Up to 29 million</td>
<td>Based on shares indicated in ICF survey</td>
</tr>
<tr>
<td>Other conditions set</td>
<td>Up to 43 million</td>
<td>Based on shares indicated in ICF survey</td>
</tr>
<tr>
<td>Rights as a consumer</td>
<td>Up to 45 million</td>
<td>Based on shares indicated in ICF survey</td>
</tr>
<tr>
<td><strong>None of the above</strong></td>
<td>Up to 59 million</td>
<td>Based on shares indicated in ICF survey</td>
</tr>
</tbody>
</table>
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