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EACB position on the proposal for a directive of the European Parliament and of the Council on consumer credits

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The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,050 locally operating banks and 58,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 214 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 85 million members and 749,000 employees and have a total average market share of about 20%.

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Introduction and General Comments

Europe's co-operative banks serve 214 million customers, who are mainly consumers, retailers, SMEs and communities. This makes them drivers of local and social growth, and major contributors to financial and economic stability by merit of their anti-cyclical behaviour. The main service provided to the retail markets by co-operative banks is the provision of credit – the biggest market share being in consumer loans and mortgage loans.

The EACB (the European Association of Co-operative Banks), which represents Europe's cooperative banks towards the European regulator, has carefully reviewed with its Members the proposal for the review of Consumer Credit Directive (CCD) published in June 2021 by the European Commission. Whilst it compliments the Commission on the careful stakeholder consultation processes undertaken to review the CCD and observes that the new proposal put forward reflects some of the input provided, the EACB would like to draw the attention of the co-legislators to a number of concerns it has identified with the new proposal.

Our overall observations regarding the proposal are the following:

- Scope: The EACB supports the extension of the scope to include new market players and crowdfunding services to reinforce the level playing field and consumer protection standards. However, we express strong reservations against the expansion of the scope to include credits such as those of short-term and low-value nature. Imposing the proposed requirements (on e.g., information requirements and creditworthiness assessment) would lead to either increased costs to consumers or disappearance of such credit services, as they would be economically unsustainable or impossible to provide.
- Pre-contractual information: Consumers demand clear and simple information. This is not reflected by the proposed additional information requirements as the proposal - with the additional Standard European Consumer Credit Overview form - leads to no less than a four-layered information obligation. Such information overload will increase the cost of credit and confuse the client without increasing the quality of the information. It is essential that the providing of pre-contractual information one day before the conclusion of the contract is not made compulsory.
- Creditworthiness assessment: The proposal should refrain from adding further requirements with regard to the creditworthiness assessment, that is of the interest of both consumer and creditor. Creditors are also already obliged to avoid negative effects of an improper creditworthiness assessment as per regulatory, risk management and civil obligations.
- The proposed caps on interest rates, APRC (Annual Percentage Rate of Charge) and the total costs of the credit to the consumer project an obligation for Member States to conduct price interventions. Such obligation is not justified. It should be left to Member State discretion if and when caps are necessary and for what kind of product or business. A blanket obligation at EU level severly infringes on credit institutions' ability to comply with risk-based lending obligations prescribed by prudential regulation.

A more detailed list of observations can be found in the next section.

Detailed feedback to the Commission Proposal

Scope and subject matter – Articles 1 and 2

Inclusion of low-value and short-term credits, short-term overdrafts, and deferred debit cards into the scope would lead to disproportional requirements, additional costs, and exclusion

Although the EACB members are in favour of good consumer protection standards, they must express strong reservations against the proposal to extend the scope to credits of value below €200 and of short-term length. They are concerned that the additional requirements increase the cost base of offering those credits in such a way as to make the activity economically unsustainable, and in some cases impossible. This could result in withdrawal of the service or, alternatively, the increase of the price of low value and short-term lending for consumers.

In an environment where the loan is provided in combination with the purchase of a product, the length of the payment process will increase. Consumers may be uncomfortable as confidential information may need to be exchanged in a commercial environment.

In any case, the access to regulated and supervised low value credit for those consumers that need it to smoothen expenditures and ease personal budgets will become more difficult.

Finally, from the perspective of the lender, the additional obligations resulting from the proposed scope extension seem disproportionate in comparison with the risk. Especially as formalism would increase for all loans by the proposal.

The limited application of the old CCD to short-term overdrafts has proven its worth as the administrative and documentary burden on both parties has been adapted to the nature of transaction without any apparent problems. The newly proposed extension of scope would work to the detriment of consumers, as creditworthiness is inappropriate to assess in these circumstances, and this proposal would limit consumer sales in the Covid-19 economic recovery.

The EACB is therefore of the view that the exemptions previously included in the CCD, for those credits of less value of €200 and those credits (e.g., those relating to deferred credit cards) with less than three months of length, should be maintained.

If the extension of scope would be maintained, the EACB would see different courses of action as follows:

- The formalism regarding pre-contractual information and the creditworthiness assessment should be significantly lightened for credits below €200 and credits to be repaid within three months for proportionality considerations, or
- It should be left to the discretion of the Member States to set the thresholds related to amount and duration in accordance with the principle of subsidiarity.

If the extension of the scope to credits of value of less than €200 is maintained, the text should be strengthened to ensure a real level playing field. If the core principle "same business, same rules, same supervision, same sanctions" is not applied, there would be a major risk of deterioration in consumer protection. Consumers discouraged by the burdensome processes applied by regulated lenders will be pushed towards less regulated alternative lenders.

To react to the new market players and forms of financing, and to related risks to consumers, the scope of the CCD should include a clause to safeguard consumer rights: *"Articles 1 to 10, 12 to*

23, 26 to 33, 37 and 39 to 50 shall also apply to credits or services within the meaning of this directive delivered by a creditor outside the meaning of this directive.

EACB supports the extension of the scope to cover new market players

The EACB supports the extension of the scope to include the new market players and crowdfunding credit services. This reinforces the level playing field and the level of consumer protection for consumer credit regardless of the nature of the lending party. It is essential that this extension will be applied in practice on the principle of "same business, same rules, same supervision, same sanctions", so that a real level playing field is implemented. Otherwise, the practices of unregulated actors, already denounced by Finance Watch would risk developing exponentially, to the detriment of regulated credit institutions and finance companies, and above all, to the detriment of consumers.

Clarification regarding the proposed inclusion of hiring and leasing to the scope

Finally, in its impact assessment (SWD (2021) 170 final), the Commission seems to focus more on hire purchase agreements (a common type of leasing agreement which envisages but does not require the purchase of the good) rather than carrying out a comprehensive study on the individual effects of all different types of leasing agreements. Due to a deficient impact assessment, and in accordance with the principle of proportionality, hiring and leasing agreements which do not involve an obligation for the consumer to purchase the leased asset should not be included in the scope of the CCD. Also, hiring and leasing agreements which do not involve a right or even a possibility for the consumer to purchase the leased asset (and where the leased asset should therefore in any case be returned to the lessor) should be excluded from the scope.

Forbearance

Article 2(6) should also apply if the option of forbearance was granted without this being provided in the original loan agreement. Secondly, in general not all provisions of the CCD should apply to forbearance of a granted credit (e.g., exemption of article 2(2)(g)). This would also benefit consumers as banks are more likely to grant forbearance due to lower expenses.

Non-discrimination – article 6

The EACB understands the Commission's motive for this article and welcomes the efforts to combat discrimination. However, the implementation of this article is problematic as regards the residence status of consumers. Indeed, from the lenders' perspective, the non-residence of a prospective borrower needs to be assessed in terms of risk. Debt recovery for example may become a lot more complicated in the case of a non-resident consumer. Consideration must also be given to article 6 of the Rome I Regulation which may lead to the application of foreign law under certain conditions.

Also, it may well be part of the business model of creditors to only be active in certain regions or countries. This is the case of several cooperative banks. This article could constitute a significant interference with the business choices of such creditors. To be clear, no credit institution should be obliged to develop an activity in a region or country in which it chooses not to, nor should there be an obligation to conclude a contract for credit institutions when there are objective reasons not to.

Moreover, other horizontal texts already aim at fighting against discrimination and any duplication should be avoided. A reference by recital 25 (to the EU Charter of Fundamental Rights) of the Commission proposal is sufficient to combat discrimination.

For above reasons, we propose that article 6 is removed or the consideration of the residence of the credit applicant should not be seen as a discrimination.

Information requirements

Standard information when advertising – article 8

The EACB welcomes the technology neutrality of the proposal. The CCD should not impose formats as this will require constant revision to adapt to technological developments.

The EACB also supports the simplification of the rules for mediums that do not allow visual display for advertising content (e.g., radio advertising). This facilitation points in the right direction by providing consumers with only the essential content and thus avoiding an information overload.

However, the proposal does not simplify the requirements and strive towards clarity of advertising to protect consumers. Sufficient degree of visuality is not necessarily ensured for every medium. Different to the advertising mediums used when the CCD was originally drafted, mobile phones and other devices have displays of different sizes, which does not enable all consumers to review the standard information *"at a glance"* as per recital 29. The requirements for also visual advertising should be therefore streamlined by simplifying them to allow the information to be comparable to the consumer.

Additionally, to provide a better chance for the consumer to review the advertisement, the usual practice of one-click access (e.g., "find out more") should be allowed to include some of the required information, with the advertisement focusing on to the most essential pieces of information (e.g., total amount due.).

General Information – article 9

The obligation to provide general information is taken over from the Mortgage Credit Directive (MCD), leading to a four-layered information obligation:

1) general information,
2) pre-contractual information (Standard Europen Consumer Credit Information form (SECCI),
3) (also new) standard European Consumer Credit Overview form (SECCO) and
4) draft credit agreement.

Though well intended, it is not clear why this four-layered information obligation is necessary. The EACB members see a clear risk of consumers being confused and losing track of *the why*, *the what*, and *the when* of the information they receive.

In any case, it would be necessary to foresee in the CCD, as in the MCD, that the general information can also be provided electronically (e.g., via the internet page).

Precontractual information requirements – article 10

Consumers demand clear and simple information relating to the basic features of the contract (type of credit, duration, APRC etc.). The proposed additional obligations and adding SECCO to SECCI in this context do not contribute towards this aim, but rather flood the consumer with even more information.

Information overload confuses clients and leads to an overproduction of material, making the loan more expensive without increasing quality of information or reducing overindebtedness. Recent

events (e.g., pandemic, floods) show that consumers are dependent on fast and smooth help and increasingly rely on digital signatures.

The introduction of the additional Standard European Consumer Credit Overview (SECCO) form duplicates the information that is included in the SECCI form with both of these forms also looking to facilitate comparison of alternative credit offers. The reasoning for a document allowing an overview of the information may be understood but adding another document without removing some other obligations does not make the process more consumer friendly.

We therefore propose to maintain only the SECCI as it stands. If it is not possible, we propose that, in any case, only a single document will be provided to the consumer. For example, only a shorter version of SECCI, or only a SECCO, with four additional categories of information (right of withdrawal, early repayment, alternative redress, benefit or not of a personalised offer on the basis of automated processing) were to be provided. This would allow to provide the consumer with a single standardised form containing the key features of the credit.

On top of that, the proposed article 10(1) on the obligation to provide the Standard European Consumer Credit Information form (SECCI) a day prior the consumer is bound by the contract is problematic. This is especially the case at the point of sale, where the purchase may be dependent on a consumer credit being provided. In addition, the added value of the aforementioned obligation, and the requirement to provide a reminder in case the SECCI is not provided a day prior the consumer is bound by the contract remains unclear as the consumer is already informed of the right to withdraw in general and pre-contractual information. Hence, the proposal risks creating confusion and increases costs for lender. It is essential to maintain the provisions as formulated in the current Consumer Credit Directive and maintain the obligation to provide SECCI in good time, instead of a day prior as in the review proposal.

Further, we understand that articles 10(3)(r) and 11(2)(l) should be referring to article 19(4) instead of article 19(2).

Information to be included in credit agreements – article 21

Consumers must be informed of the essential contractual contents of the credit agreement in a clear manner. The draft directive places more extensive demands on the content. The consumer is not necessarily better protected by this increased scope of the document but is certainly overwhelmed. In particular, the information requirements for the smallest amounts of credit require a disproportional amount of page numbers, which is not understandable to the consumer, or communicable for the credit institution. In this respect, the mandatory information to be included in the contract should be simplified or streamlined in order to ensure that consumers have the best possible understanding of their rights and obligations.

On a separate note, with regards to the contact details of the consumer, we believe the e-mail address of the consumer should be optional as not every customer might necessarily want to provide this information and it is not necessarily required as long as postal address and telephone number are available as contact details.

The proposal creates a conflict recognising the need for comparability and clarity of precontractual information, but at the same time it increases the amount of information to be included in the agreements.

Information regarding the modification of the credit agreement – article 22

The EACB considers that as the contract cannot be changed without the consumer's consent, the provision is not necessary.

Tying and bundling practices – article 14

It appears that the proposed rules on tying and bundling practices have been influenced by the MCD. Apart from the question, why they are necessary in the CCD context, the EACB requests the following discrepancies to be addressed:

- According to the MCD, the Member States *shall allow* bundling practices. The CCD proposal should use a similar wording to this instead of providing that Member States *may allow* bundling practices. The proposal should therefore state: "Member States shall allow bundling practices but shall prohibit tying practices."
- The corresponding MCD article also refers to family members and close relatives and retirement in the context of certain bundling practices (article 12(2) MCD). This is absent in the CCD proposal and ought to be added.

Ban on unsolicited credit sales – article 17

It is not clear why this horizontal provision is necessary to be introduced especially in light of the comprehensive information obligations and protective provisions of the CCD. This proposed article is vague per its nature and is not precise enough to stipulate what exactly is banned.

In any case, it should be ensured that the article will not restrict the creditors' ability to advertise and market their services and that commercial offers can be made to consumers.

Accordingly, we propose the following wording for article 17: "Without prejudice to commercial offers, Members States shall prohibit any sale of credit to consumers, without their prior request and explicit agreement.

Creditworthiness – article 18

Creditworthiness assessment is in the interest of both parties to the lending process. For the lender, it is of its interest to assess that the borrower is able to repay the loan. For the borrower, it protects against overindebtedness. We nevertheless argue against the additional requirements that have been added for the creditworthiness check as lenders are already obliged for regulatory, risk management, and civil reasons to do everything possible to avoid the negative effects of an improper creditworthiness check. More in general, it is essential that creditors can maintain discretion in the way they assess clients. It should also be noted that the risk for the lender is too high. All risks that may arise in this context (loan default, over-indebtedness, liability issues, recourse claims, litigation risks, etc.) should not be passed on to the lender.

Proportionality must be applied in accordance with the amount, the duration and the nature of the credit when imposing formalities.

Furthermore, as a general observation, article 18 speaks of "consumer" in singular. It should be clarified, as in the EBA guidelines on loan origination and monitoring (p. 99), that in case there are joint borrowers, the creditworthiness is to be assessed on the basis of joint repayment capacity.

Upper limits and ratios

Recital 46 of the proposal envisages ceilings in the form of rigid upper limits for the credit amounts depending on loan-to-value and loan-to-income ratios. This impairs the economic freedom of action of the consumer and makes access to finance more difficult for consumers who have

sufficient ability to repay but do not respect LTI[1]. Here, it must be remembered that it is of benefit of the banks to have the loans repaid in full, and they assess the creditworthiness accordingly to follow their NPL management and prudential obligations.

Adaptations as per the MCD

The provisions on creditworthiness assessment are largely adapted to those of the MCD. This leads to some stricter regulations, which should be questioned. For example, as in the MCD, the conclusion of a credit agreement would be prohibited in case of a negative creditworthiness assessment. Some exceptions, which are difficult to define, are provided for in the directive. However, the granting of credit after sufficient warning and against the provision of (third-party) collateral would for example be prohibited. This is not necessary in the CCD, which does not revolve around residential real estate as collateral. For (already warned and sufficiently informed) credit applicants it is a considerable restriction of their freedom of choice.

Proposed right to obtain explanation on the credit worthiness assessment – article 18(6)(b)

While we generally support the right of the consumer to request and obtain information as regards the creditworthiness assessment and the factors leading to the decision on creditworthiness, we believe that the requirements as proposed under Art. 18(6)(b) are excessive and of limited value for the consumers. The underlying logic of e.g., credit scoring models is rather complex and from the proposed wording it is not clear to what level of detail banks should provide the respective information. Consequently, this will open doors for legal disputes where consumers could start challenging the explanation, similar to the proposed right to contest the assessment and decision on creditworthiness. We therefore suggest to limit the requirement to "*request and obtain from the creditor or the provider of the crowdfunding credit services an explanation of the factors taken into consideration for the assessment of creditworthiness*"

Proposed right to contest – article 18(6)(c)

Cooperative banks have a concern with the proposal granting the consumer the right to *contest the creditworthiness assessment*. Such a possibility undermines the creditor's discretion in assessing the creditworthiness and avoiding situations of over-indebtedness. Article 18(6)(c) should therefore be amended to allow the consumer to *express his or her point of view*.

Moreover, GDPR already provides for similar requirements. They are not specific to consumer credits.

Proportionality

Strengthening the scope of the creditworthiness assessment under proposed article 18(2) may be useful in the context of purchase of real estate that is of a relatively high cost. However, such strengthening does not appear appropriate or proportional when assessing creditworthiness under consumer credit process, in particular for low-value and short-term credits. A review of sources beyond the consumer's information is not necessary.

The cooperative banks propose that proportionality is taken into account.

In addition, we advocate for the presentation of lighter regimes, in particular for small-value or short-term credits if these loans were to be maintained in the proposed scope, which we oppose.

[1] For instance 33% LTI is different if you earn 6000 € per month than 1500 € per month

Databases – article 19

The EACB welcomes article 19 in its current form. The proposal should not aim to harmonise credit databases in the Member States as the frameworks in place are sufficient and well balanced. The system does not need to be harmonised since market players are given the right of access to the credit databases available to domestic players and the cross-border credit for consumers is of very low demand due to those demands being met at national levels and reasons related to language and proximity of lenders.

Form of the credit agreement – article 20

The EACB considers that the directive has attained a sufficient level of consumer protection in the context of this article which should be fully harmonised. There should be no possibility for the Member States to provide or maintain stricter formal requirements, especially since banking transactions are operated differently than previously following the digital developments. Therefore, the EACB proposes the following sentence to be added to article 20(2):" *"In particular, national rules are not in conformity with Union law if they require one or all of the contracting parties to comply with additional formal requirements in order for the credit agreement to be valid, such as the consumer's and/or the creditor's personal signature on the credit agreement."*

Right of withdrawal – article 26

Article 26(1) of the proposal provides that the withdrawal period does not begin until all the terms and conditions of the contracts and information are received. This leads to a risk of the lenders that may provide unintentionally incomplete information, thus giving rise to infinitive revocation rights. The start of the withdrawal period should be directly linked to the receipt of the information that states the right to a withdrawal. To avoid a de facto unlimited right of withdrawal, it would be appropriate to ensure legal certainty and provide in the article, similarly to other EU legislative acts (e.g., article 6(3) Timeshare Directive), that "*'The right of withdrawal shall expire no later than one year and 14 days after the conclusion of the credit agreement or the agreement for the provision of crowdfunding credit services*."

Early repayment – article 29

The EACB does not oppose this article in principle but considers that certain clarifications are necessary.

It should be specified, when calculating the reduction that only recurring costs should be reimbursed to consumers for the portion not accrued, excluding in any case opening or handling fees, taxes and costs paid to third parties (e.g., intermediation and insurance costs) as the consumer may claim these from the third parties, and which the bank neither collects for itself.

Caps on interest rates, APRC and the total cost of the credit to the consumer – article 31

The proposal that "*Members States shall introduce caps on one or more of the following […]*" has several issues from the EACB perspective. To start with, it would constitute an obligation for Member States to intervene even if there is no reason do so. Furthermore, the proposed caps stand in a severe conflict with the fundamental right of freedom to conduct a business as enshrined in article 16 of EU Charter of Fundamental Rights. Price intervention should only be used where exceptional circumstances so justify and if no other measures to correct the circumstances are available. The EACB does not believe this to be the case (different possibilities exist under e.g., criminal, supervisory, national civil law). Moreover, it is entirely undetermined how these caps should be set (fixed or variable thresholds). Additionally, such an intervention

would essentially limit credit institutions' ability to comply with risk-based lending approach prescribed in the relevant prudential regulation and ensure that their pricing frameworks reflect their credit risk appetite.

Finally, as an example, the proposed caps on interest rates and credit costs would severely hinder the provision of overdraft facilities. Overdraft facilities are flexible by their nature, allowing customers to cover their short-term needs. If member states would introduce caps on interest rates and credit costs, creditors would have to bear a major part of the costs associated with overdraft facilities by themselves. Hence, from the creditor's perspective the provision of overdraft facilities would become unprofitable, and they would not be provided any longer.

In light of these severe reservations article 31 should be removed.

Conduct of business obligations and requirements for staff – articles 32 and 33

These articles have been influenced by the MCD, but it is questionable to have these requirements in the context of the CCD, that does not involve the special situation of residential mortgage loans. The proposed article is disproportional considering that the context of the CCD involves smaller and unsecured credits with smaller risks to consumers. If these articles were to be introduced, the CCD should prescribe that these knowledge and competence requirements should be proportional considering the credits regulated by the CCD and under no circumstances should those requirements correspond to the knowledge and competence requirements prescribed in the MCD.

Debt advisory services – article 36

The EACB welcomes this article but asks for clarity regarding the fact that advisory services are of general interest, and therefore should be organised by Member States independently of the creditors to not impose a liability risk on the creditors and create conflicts of interest. Provisions on these services should remain principle based to allow each state to maintain a system tailored to the consumers of each market.

Admission, registration, and supervision of non-credit institutions – article 37

The EACB supports this proposed article which contributes toward ensuring a level playing field and supervision of all actors to avoid irresponsible lending practices.

However, these provisions should be reinforced by introducing, at least, a degree of oversight by the European Commission on the efficiency of the measures taken.

Indeed, consumers discouraged by the burdensome processes applied by regulated lenders will be pushed towards less regulated alternative lenders.

Out-of-court dispute resolution, penalties and competent authorities – articles 40, 41 and 44

The EACB considers that the expansion of competences of the NCAs and drastic increase of penalties is unnecessary as consumer credit disputes can already be dealt with efficiently in civil proceedings. We propose to delete article 44 paragraph 2.

Transposition – Article 48

Under Article 48 of the proposal, the national provisions necessary to transpose the amended directive are to be adopted within 24 months of the *"adoption of the directive"*. This wording on transposition deadline does not refer to publication in the EU Official Journal, that is usually the

case, but to the specific "adoption" of the Directive. In the absence of a clear definition of the date of adoption, for reasons of legal certainty, the date of publication in the Official Journal of the EU should therefore be taken into account.

Conclusion

EACB Members value legislative stability, especially in the sector of consumer credit, and call for caution when evaluating possible legislative amendments to the CCD. Further consideration should also be given to the principles of subsidiarity and proportionality.

We believe that the legislative action should be limited to include the new market players of consumer credits to the scope of the CCD and to simplify information requirements.

Contact:

The EACB trusts that its comments will be taken into account.

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