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FINAL

## EACB response to the European Commission's online questionnaire on the evaluation of the Consumer Credit Directive (CCD)

8 April 2019

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# Open Public Consultation on the Evaluation of Directive 2008/48/EC (Consumer Credit Directive - CCD)

Fields marked with \* are mandatory.

## Introduction

The development of a deeper and fairer single market is one of the European Commission's key priorities. As part of this objective, the European Commission is working on facilitating consumers' access to good quality financial services offered outside their Member State. Regarding consumer credit in particular, the of the European Parliament and of the Council of Directive 2008/48/EC 23 April 2008 on credit agreements for consumers ("The Directive") has been adopted to encourage cross-border credit agreements while ensuring high protection standards for consumers.

With the 2016 Consumer Finance Action Plan, the Commission set out different actions to improve the consumer experience in the field of financial services. It also announced that it would work to facilitate cross-border access to consumer credit and explore ways to achieve common standards for creditworthiness assessment and credit data registers.

The Directive guarantees consumers the right to withdraw from the credit contract within 14 days, the right to early repayment of the credit, and imposes on credit providers an obligation to perform a creditworthiness assessment prior to the conclusion of the agreement. It also ensures that all consumers across the European Union receive standard, easily comparable pre-contractual information regarding the main features of credit offers.

Since 2008, several other EU pieces of legislations have been adopted in the field of mortgages, data protection, anti-money laundering and payment services and which are also relevant for the provision of consumer credit.

Ten years after its adoption, the European Commission is launching a second Evaluation to assess whether the Directive is still fit for purpose given all the market developments that have occurred since 2008. A first Evaluation, carried out in 2014, highlighted the need to improve the compliance of credit providers with the obligations stemming from the Directive so that consumers can make effective use of their rights.

This public consultation is an opportunity for consumers, professionals in the field of credit, national authorities and any other stakeholder interested to interact with the European Commission by giving opinions on the functioning of the Directive.

The results of this consultation will help the European Commission assess the coherence, effectiveness, efficiency, relevance and EU added value of the Directive.

The consultation consists of short questionnaires, one for general public (Part I) and another (Part II) for other stakeholders (associations, authorities, credit providers etc.).

You may answer the open questions in this questionnaire in any of the 24 official EU-languages.



Opinions gathered through the open public consultation will directly feed into the evaluation, by providing useful elements to answer the evaluation questions. A summary of all consultation activities, including a specific one for the open public consultation, will be included in the Staff Working Document that will be produced to summarise the findings of the evaluation.

## Part II. Questionnaire for other stakeholders

### Questions on relevance

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

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

	Totally agree	Somewhat agree	Somewhat disagree	Totally disagree	Do not know
Digitalisation (integration of technology in financial services leading to an increased use of smartphones, internet and on-line tools)	X				
Profiling of consumers based on personal data		X			
New market players (such as crowdfunding platforms or SMS-loans providers)		X			
Caps on interest rates			X		
Competition at national level		X			
Competition on a cross-border basis			X		

Please mention, if any, other developments which you consider important:

Competition at national level was already high before the introduction of the Consumer Credit Directive (CCD). Since then competition has increased not only coming from new players into credit activities in the national markets but also from the well-established and traditional players, also due to the advent of digitisation.

Different considerations should be made with regard to cross-border competition. Among EACB members' customers there is very low demand for cross-border operations (see also our answer to question 13).

Talking about competition in general, it is crucial to ensure fair competition and a level playing field between market participants engaging in similar activities. If new market players act as providers of financial services and financial products on the market, and in this specific case provide credit agreements, the same regulatory and supervisory requirements as credit institutions should be applied to them based on the principle of same products, same risks, same rules and same supervision.

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



	Totally relevant	Somewhat relevant	Somewhat irrelevant	Totally irrelevant	Do not know
Scope (loans between EUR 200 and 75 000)	X				
Information to be included in advertising		X			
Pre-contractual information		X			
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)	X				
Standard European Consumer Credit Information – SECCI		X			
Right of withdrawal	X				
Right of early repayment	X				
Creditworthiness assessment	X				

Please specify:

Scope: EACB members believe that the current scope of the CCD, including its material scope, is sufficient and proportionate. It remains relevant and fulfils its functions. Once again and linked to this, we would like to reiterate the importance that all market players engaging in similar activities, and in this specific case provide credit agreements, should be subject to the same rules and level of scrutiny based on the principle of same products, same risks, same rules and same supervision.

Information to be included in advertising, pre-contractual information and SECCI: EACB members believe that they are still relevant. We indicate ‘somewhat relevant’ as, should the Commission’s evaluation process suggest that the CCD be revised, we believe that they could be adapted to the digital environment, which will also facilitate the Consumer Credit Directive’s cross-border objective (for a more detailed answer, please read the attached position paper to this questionnaire).

Information comes from different areas of knowledge (bank financing, insurance...) and the vocabulary used is not always accessible. Moreover, over-exposing consumers to an excess of information creates the opposite effect of having consumers discouraged or not reading the relevant information for them to be able to make a decision.

APR: EACB members believe that the APR is very relevant as it gives consumers a better idea of the price they pay to borrow money. It represents an important piece of the puzzle, together with the right of withdrawal and early repayment as well as the information to be provided to consumers at the different stage of their onboarding journey, to the overall picture/CCD objective of having a better and high level of consumer protection in the EU.

Right of withdrawal and early repayment: See comments for the APR.

Creditworthiness Assessment: EACB members strongly believe that creditworthiness assessment as currently required by the CCD fits the CCD objectives and responds to the Directive’s minimum harmonisation objective.

We find the obligation to perform creditworthiness assessments beneficial for both the lender and the borrower (preventing over-indebtedness).



We would like to stress that creditworthiness assessment is part of the credit granting process, which is a key activity for banking institutions. It forms part of lenders' core expertise and would not benefit from further harmonisation. Co-operative banks strongly oppose the idea of any further standardisation of the creditworthiness assessment that goes beyond what already prescribed by the CCD (for a more detailed reasoning, please read the attached position paper to this questionnaire).

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

at most 1 choice(s)

Yes	
No	X
Don't know	

If you answered "yes", please specify:

.....

Questions on effectiveness

The evaluation criterion of effectiveness considers how successful EU action has been in achieving or progressing towards its objectives, in this case: - creating a single market for consumer credit while ensuring a high level of consumer protection and - achieving a level playing field for consumer credit across the EU and enhancing cross-border credit.

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

	Very effective	Somewhat effective	Somewhat ineffective	Totally ineffective	Do not know
Information to be included in advertising			x		
Pre-contractual information			x		
Standard European consumer credit information form - SECCI			x		
Contractual information			x		
Right of withdrawal	X				
Right of early repayment	X				
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)	X				
Creditworthiness assessment	X				

Please specify:

[Information to be included in advertising, pre-contractual information, SECCI, contractual information:](#)



Should the Commission's evaluation process suggest that the CCD be revised, the provisions of the CCD regarding the information requirements might be advantageously be refitted as they make it difficult to adjust the offering of consumer credit to the need of the digital society. This is why we indicated that the information requirements listed in the CCD have been somewhat ineffective.

Compared to 2008 when the CCD was published, new and more modern communication channels with customers have emerged, making compliance with the standard information listed in Art. 4, 5, 6 and 10 more challenging. Digitisation is an element that would facilitate cross-border activities and have a positive impact on both the borrower and lender. We believe the 2008 requirements could be simplified, streamlined and adapted to better reflect current expectations of consumer experience in a digital environment, if the European Commission decides to review the CCD. Although it is very difficult to predict the evolution of technologies and/or consumers' expectations (for a more detailed answer, please read the attached position paper to this questionnaire).

Information comes from different areas of knowledge (bank financing, insurance...) and the vocabulary used is not always accessible. Moreover, over-exposing consumers to an excess of information create the opposite effect of discouraging consumers in reading the relevant information and making their choices (the so called 'consumer fatigue').

Right of withdrawal, right of early repayment, APR, creditworthiness assessment:

We believe that the abovementioned topics have been 'very effective' as they represent important pieces of the CCD puzzle of having a better and high level of consumer protection in the EU. Concerning creditworthiness assessment in particular, please look at our answer to question 2 and to the position paper.

#### Questions on efficiency

When deciding to introduce a sector-specific regulation, the EU faces the challenge of balancing the potential benefits of such a regulation against the potential costs of such a regulation. For the Directive, these costs include direct costs incurred by the credit providers (compliance and administrative costs), national authorities (enforcement costs) as well as other businesses involved in the distribution and granting of consumer credit.

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

	Very costly	Somewhat costly	Not costly	Do not know
Information to be included in advertising	X			
Pre-contractual information	X			
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)		X		
Standard European consumer credit information form - SECCI	X			
Contractual information	X			



Right of withdrawal		X		
Right of early repayment		X		
Creditworthiness assessment		X		

Please specify:

As a general comment, EACB members believe that the CCD increased costs for banks, mainly related to IT, compliance and staff training.

Information to be included in advertising, pre-contractual information, SECCI and contractual information:

Banks have supported significant high costs of upgrading and maintaining information systems as well as high production costs. In particular, we would like to stress that the introduction and implementation of SECCI was very expensive for banks; its introduction required huge changes and modifications in the systems in order to get right information for every single product. In principle, model specifications for pre-contractual information are useful. The problem is that the sample must be adapted to the variety of products, which is very costly and error-prone.

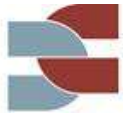
APR: Before the CCD came into force, there was already an APR. The considerable implementation effort was caused by the new assumptions for the calculation contained in the calculation formula, which were in themselves difficult to understand.

Right of withdrawal, right of early repayment and creditworthiness assessment: we indicated somewhat costly as the CCD provisions implied adaptation and revision of the documentation of the existing rights of withdrawal and early repayment. Creditworthiness assessment existed before the CCD; however, with the introduction of the CCD, existing processes had to be reviewed and adapted to the CCD requirements.

In addition and finally, electronic signature should be simplified as the digital signing of contracts is still burdensome and costly.

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

	Very beneficial	Somewhat beneficial	Not beneficial	Do not know
Information to be included in advertising			X	
Pre-contractual information		X		
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)	X			
Standard European consumer credit information form - SECCI		X		
Contractual information		X		
Right of withdrawal		X		
Right of early repayment		X		
Creditworthiness assessment		X		



**Please specify:**

As a general comment, EACB members believe that in principle, the harmonisation of the information given to consumers is a good principle that goes in the direction of a higher level consumer protection. However, should the Commission's evaluation process suggest that the CCD be revised, we also believe that the information to be provided to consumers could be simplified, streamlined and adapted to the digital environment and consumers' needs depending on the stage of the credit granting process. Overload and duplication of information has the opposite effect of discouraging consumers in making their choices (the so called 'consumer fatigue').

Information to be included in advertising: In some Member States, banks find it difficult to include all the standard information in advertising required by Art. 4 of the CCD. To the point that more and more lenders do advertising without indicating interest rate or any figures relating to the cost of the credit.

Having all this information is also not satisfactory from the consumer side as it is difficult for them to make comparisons.

EACB members believe that having all this information is not beneficial for banks nor for prospective customers as it is difficult for them to make comparisons and collect all the necessary information they need at a glance to make a decision. It would be good for example to only include essential figures like the APR.

Pre-contractual information and SECCI: As said in our general comments, the EACB welcomes the harmonisation principle with regard to the relevant information to be provided to consumers introduced by the CCD. However, should the Commission's evaluation process suggest that the CCD be revised, the information requirements could be simplified, streamlined and adapted to the different digital channels, taking also into consideration the different stages of the consumer's on-boarding trying to avoid duplication of information.

Right of withdrawal and right of early repayment: EACB members find these rights beneficial for consumers. However and with regard to the right of withdrawal, we would like to report that in some Member States, due to gold-plating, this right is often abused in case of linked contracts (see detailed comments in the attached position paper).

Creditworthiness assessment: Please look at our answer to question 2 and to the specific part dedicated to this topic in the attached position paper.

**Question 7.** Overall, do the benefits of the Directive outweigh its costs?  
at most 1 choice(s)

Yes	X
No	
Don't know	

**Please specify:**

In principle, EACB members believe that the CCD has had the benefit of helping ensure better consumer protection and achieve a level playing field for some key aspects of credit agreements in some Member States; notably the right of withdrawal, early repayment, the APR and creditworthiness assessment.





The CCD has also had the benefit of ensuring better legal clarity.

However, the implementation costs should not be underestimated (see also our answer to question 5). Finally, Member States' gold-plating practices have created fragmentation in the European market, thus undermining the CCD's objectives to develop cross-border credit in Europe. In some Member States, national measures added to the CCD provisions during the transposition process have disrupted the consumer credit market by reducing the production of some products, which severely impacted institutions' turnover.

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

at most 1 choice(s)

Yes	X
No	

If yes, please specify:

EACB members – as said in many of the answers to the previous questions – believe that, should the Commission's evaluation process suggest that the CCD be revised, simplification and reduction of costs could be achieved in the information requirements to be provided to consumers, whether in advertising, pre-contractual or contractual information, trying to avoid duplication of information (please also look at the general and specific comments reported in the attached position paper).

We would also like to bring your attention to the topic of banks' compensation in case of early repayment of the credit by the consumer. In particular, the compensation cap for the institution of 1% of the amount of credit repaid early, according to Article 16(2) of the CCD, is not sufficient to cover all the costs incurred by the bank. We believe banks should be allowed to recuperate all the costs incurred – without the precondition that Member States make use of the national discretion of Article 16(4)(b) CCD. This approach seems appropriate as institutions have to hedge the credit risks with non-current financial instruments and – contrary to consumers – do not have the legal option to withdraw credit at any time due to consumer protection reasons.

#### Questions on coherence

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

**Question 9.** To what extent is the Directive coherent with other EU legislation:

	Very coherent	Somewhat coherent	Somewhat incoherent	Very incoherent	Do not know
Mortgage Credit Directive (MCD)	X				
Unfair Commercial Practices Directive (UCPD)	X				
Payment Services Directive (PSD2)		X			
General Data Protection Regulation (GDPR)	X				
Unfair Contract Terms Directive (UCTD)	X				



Distance Marketing of Financial Services Directive (DMFSD)		X			
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Please specify and/or mention other pieces of EU legislation interacting with the Directive:

As a general comment, the CCD is coherent with other relevant EU frameworks. However, EACB members would also like to stress that it is important to maintain differentiation between different products.

PSD2 and the Payment Accounts Directive (PAD) do not make use of the same definitions as the CCD. Instead, different terminologies have been implemented, which led to legal uncertainty.

DMFSD: we indicated somewhat coherent because, should the Commission's evaluation process suggest that the DMSFD be revised, as well as the current CCD, it could be adapted to the digital era.

In addition, we would like to mention the following pieces of legislation:

- The Benchmark Regulation requires information that cannot be effectively implemented in credit agreements.
- Anti-Money Laundering legislation. The KYC requirements as implemented in some Member States added some information requirements to those provided for by the CCD

We would also like to highlight that attention should be given to the upcoming European Banking Authority's (EBA) draft guidelines on banks' loan origination, addressing issues such as transparency and borrower affordability assessment, in order to avoid divergences between the EBA guidelines and the CCD provisions.

Potential difficulties could also emerge in applying the upcoming Directive on the accessibility requirements for products and services (the so called 'European Accessibility Act') in digital provision of consumer credit in a 'barrier free mode', especially on smartphones.

**Question 10.** Are you are aware of any contradictions/overlaps/inconsistencies/missing links between the Directive and other national legislation in the Member States? If so, which ones?  
at most 1 choice(s)

Yes	X
No	

If yes, please specify:

We would like to stress that in some Member States and for some aspects, national authorities have gone too far in detailing aspects of the credit granting process. Member States' gold-plating practices have created fragmentation in the European market, thus undermining one of the CCD objectives to develop cross-border credit activity in Europe.

It would also be interesting to look at the findings of the Expert Group on Regulatory Obstacles to Financial Innovation set up by the European Commission, as one of its main tasks is to consider current regulatory obstacles and gaps with respect to the interaction of financial innovation with the existing financial services acquis.

Questions on EU added value



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

**Question 11.** In your view, what is the added-value delivered by the CCD and its implementation, over and above what could reasonably have been expected from national legislation in the Member States alone?  
 at most 1 choice(s)

Better consumer protection	X
Better functioning of the internal market	
Legal clarity	
Help addressing cross-border problems	

Other (please specify):

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

	Fully agree	Somewhat agree	Somewhat disagree	Fully disagree	Do not know
Information in advertising	X				
Pre-contractual information	X				
Standard European consumer credit information form - SECCI	X				
Contractual information	X				
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)	X				
Right of withdrawal	X				
Right of early repayment	X				
Creditworthiness assessment			X		

Please specify:

EACB members agree with maintaining regulated the above-mentioned aspects.

As said in some answers to this questionnaire and as highlighted in the attached position paper, should the Commission's evaluation process suggest that the CCD be revised, some CCD provisions (i.e. the information requirements) could be simplified, streamlined and adapted to the digital environment and consumers' needs depending on the stage of the credit granting process. Overload and duplication of information have the opposite effect of discouraging consumers in making their choices (the so called 'consumer fatigue').

With regard to creditworthiness assessment, we would like to stress that creditworthiness assessment is part of the credit granting process, which is a key activity for banking institutions. It forms part of lenders' core expertise and would not benefit from further harmonisation. Co-operative banks strongly oppose the idea of any further standardisation of the creditworthiness assessment that goes beyond what already prescribed by the CCD (for a more detailed reasoning, please read the attached position paper to this questionnaire).



## Other questions

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

We would like to raise two main points that should be read as background to the public consultation questions:

1. Cross-border activity: EACB members believe that three factors should be taken into consideration when assessing the level of cross-border activity:
  - a) The gold-plating issue and other main barriers: for some of the CCD provisions, Member States' gold-plating practices have created fragmentation in the European market, thus undermining the development of cross-border credit activity in Europe. This concerns, in particular, the information requirements and the right of withdrawal.

In addition, EACB members believe that other main barriers are: different civil laws, language, taxation, the consumer's need for a close relationship with the financial institution in order to trust it and the lack of harmonisation of debt recovery proceedings. Many Member States also confirmed this when answering the Commission's questionnaire about cross-border provision of retail financial products at the beginning of 2018 (see page 3 at the following link: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=17486>).
  - b) Should the Commission's evaluation process suggest that the CCD be revised, EACB members would like to stress that the provisions regarding advertising, pre-contractual and contractual information (Articles 4, 5, 6 and 10) could be adapted, streamlined and simplified (see our position paper attached to this questionnaire as well as some remarks given in some previous answers).
  - c) Acknowledge that among EACB members' customers there is a very low demand for cross-border operations.

This is also confirmed by a series of Eurobarometer surveys (i.e. 373 and 446) as well as in the Commission's 2017 Consumer Financial Services Action Plan, which states that 'many consumers are satisfied with their domestic providers'.

We recognise that the percentage of respondents who have not purchased any products and services mentioned in the Eurobarometer surveys has decreased (from 94% in 2012 to 92% in 2016), giving evidence that there has been a minor change. Comparing the 2016 and 2012 data related to personal loans, the situation remained stable (see page 7 Eurobarometer surveys 446). The CCD being applicable since May 2010 and looking once again at the data given by the Eurobarometer surveys, we do not think that it has become more common for consumers to take up cross-border consumer credits since 2010 and the CCD does not seem to have played a role in this. What has changed is the use of digital tools to get information and access retail financial products, with younger generations more likely to buy one of their financial services and products in another Member State (as stated in the Eurobarometer surveys 446, page 7). It might be that in the future more young consumers will be inclined to embrace the option to a cross-border personal loan.

This would indicate that customer behaviour is changing and that no additional legal impetus is necessary specifically targeting increase in cross border activity.
2. Level playing field: if start-up companies act as providers of financial services and financial products on the market, and in this specific case provide credit agreements, they should be subject to the same regulatory and supervisory requirements as credit institutions. This also applies in particular to consumer protection. This ensures a level playing field and avoids distortions of competition between the various



providers. If simplifications and facilitation are provided in this area, they must be strictly risk-oriented and equally applicable to all providers.

In our view, it is absolutely essential to ensure fair competition and an equivalent level playing field between all market participants. In this context, the principle of 'same products, same risks, same rules and same supervision' should apply – especially with regard to the concept of open banking, which allows third parties to offer financial services.

**Contact:**

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

For further information or questions on this paper, please contact:

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