



Brussels, 8 April 2019  
FINAL

## EACB Position Paper on the European Commission's public consultation on the evaluation of the Consumer Credit Directive (CCD)

8 April 2019

The **European Association of Co-operative Banks** ([EACB](http://www.eacb.coop)) 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 2,914 locally operating banks and 53,000 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 209 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 81 million members and 719,000 employees and have a total average market share of about 20%.

For further details, please visit [www.eacb.coop](http://www.eacb.coop)

**The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU**

**EACB AISBL** – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19  
[www.eacb.coop](http://www.eacb.coop) • e-mail : [secretariat@eacb.coop](mailto:secretariat@eacb.coop)



## Introduction

The European Associations of Co-operative Banks (EACB) welcomes the opportunity to provide its additional input to the Commission's online questionnaire on the evaluation of the Consumer Credit Directive (CCD).

The aim of this paper, which should be read in conjunction with the EACB response to the Commission's online questionnaire relating to Part II of the public consultation on the evaluation of the CCD, is to highlight, and in some cases complement, some of the answers given on the key topics addressed in the public consultation.

In this paper we will focus our attention on the following topics:

- Information to be provided to consumers in the advertising, pre-contractual and contractual phases in the customer on-boarding journey;
- Creditworthiness assessment and access to credit databases; and
- Rights of withdrawal and early repayment and calculation of the Annual Percentage Rate of charge.

This paper also includes comments regarding Part I of the public consultation.

## PART II of the public consultation - General comment

EACB members believe that the adoption of the CCD has had the benefit of putting in place better consumer protection and legal clarity in some Member States. It has fulfilled its purpose of ensuring a high standard of consumer protection at EU level, with a European formula to calculate the Annual Percentage Rate of charge (APR) and strong rights, such as the right of withdrawal and the right of early repayment.

We would like to stress that Member States' gold-plating practices have created fragmentation in the European market, thus undermining one of the CCD objectives to develop cross-border credit in Europe. This concerns in particular, the information requirements and the right of withdrawal.

The CCD implementation was costly and a re-run of a similarly costly exercise should be avoided, especially considering the fact that overall, the Directive has served its purpose.

Should the Commission's evaluation process suggest that the CCD be revised, co-operative banks would ask that the revision be strictly focused on addressing the following points:

- The provisions of the CCD regarding advertising, pre-contractual and contractual information (Articles 4, 5, 6 and 10) make it difficult to adjust the offering of consumer credit to the need of the digital society and the demands for more convenience from customers. Indeed, the requirements are difficult to adjust to, in particular to the different digital channels, especially the mobile channel – avoiding moving from mobile to PC – to allow a seamless customer journey (see section dedicated to specific comments).
- The provisions of the CCD regarding advertising, pre-contractual and contractual information (Articles 4, 5, 6 and 10) could also benefit from a general simplification. The information requirements could advantageously be streamlined. Moreover, these may be simplified according to real consumers' needs and in order to avoid duplication in the advertising, pre-contractual or contractual phases of the customer's on-boarding journey (see section dedicated to specific comments).



Finally, and notably, co-operative banks strongly oppose the idea of any further standardisation of creditworthiness assessment that goes beyond what already prescribed by the CCD. Creditworthiness assessment is the expression of each credit institution's own expertise and risk appetite. Common indicators would not take into consideration the local economic background and would exclude some people facing difficulties from access to credit (for a more detailed elaboration on this matter, please see page 4).

## **PART II of the public consultation - Specific comments**

### **Information to be provided to consumers in the advertising, pre-contractual and contractual phases**

#### *Advertising (Article 4)*

With regard to the information to be provided to consumers in the advertising phase, in some Member States, banks find it difficult to include all the standard information required by Art. 4 of the CCD. More and more lenders do advertising without indicating interest rate or any figures relating to the cost of the credit, in particular in some channels (TV, radio, etc.). Should the Commission's evaluation process suggest that the CCD be revised, it would be good for example to only include essential figures like the APR. It is also not satisfactory from the consumer side as it is difficult to make comparisons. Furthermore, gold-plating practices have the effect of lowering the opportunities for consumers to accurately compare credits' main characteristics from one Member State to the other. Such practices bring forth an additional hindrance to the seamless provision of cross-border consumer credits.

Moreover and 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 difficult.

Banks find it difficult to adapt all the standard advertising information in a digital format to allow prospective customers to collect all necessary information at a glance. The fact that all the standard information needs to be included – especially in some Member States as the standard list has been broadened – represents an obstacle for banks to have an agile and more direct impact towards existing or potential customers. Providing all the standard information represents considerable workload for banks without necessarily achieving its purpose and is often simply impractical. Should the Commission's evaluation process suggest that the CCD be revised, we believe the 2008 information requirements in advertising could be adapted to the digital era, simplified and streamlined to better reflect current expectations of consumer experience in a digital environment.

#### *Pre-contractual information (Articles 5 and 6)*

Our remarks on pre-contractual information mirror those relating to the advertising phase.

Should the Commission's evaluation process suggest that the CCD be revised, co-operative banks believe that information in the Standard European Consumer Credit Information (SECCI) could be rationalised and adapted to digital communications.

The information could also be simplified and shortened, avoiding any duplication with the offer.



As things now stand, consumers receive exactly the same information at different stages, with the result of an overload of information on the consumer's side. The same information is always found out from the contract and terms and conditions.

Moreover, it should also be taken into consideration that if SECCI is given in the early phase of the offering process, the information is quite static as it might expire soon depending on the changes a consumer wants to make to the contract (e.g. amount, interest rate, repayment schedule, collateral).

We believe that in the customer on-boarding journey it is important to take into due account the kind of information a consumer really needs to have at each stage of her/his on-boarding, avoiding any over-exposure and duplication of information. In our view, the most important parts for consumers are APR and the right to withdrawal or right of early repayment.

With regard to the 'durable medium' as defined in Art. 3(m), we would like to report that as a consequence of Member States' over-transposition, the 'durable medium' has been further detailed. We believe this instrument should not be further specified by Member States. A bank should be free to choose whatever type of durable medium, taking into consideration consumers' needs and the bank's own cost-benefit analysis.

### **Creditworthiness assessment and access to credit databases**

#### *Creditworthiness assessment (Art. 8)*

Co-operative banks are aware of the different Member State approaches towards the information considered for creditworthiness assessment. We believe that such different approaches do not prevent the Directive from achieving a high level of consumer protection, enabling the free cross-border movement of credit offers and remedying distortions of competition among creditors.

In accordance with a recent ruling of the European Court of Justice: *'[T]he wording of Article 8(1) of Directive 2008/48, read in the light of recital 26 in its preamble, affords the creditor a margin of discretion for the purposes of determining whether or not the information at its disposal is sufficient to demonstrate the consumer's creditworthiness and whether it must check that information against other evidence.'*<sup>1</sup>

Creditworthiness assessment is part of the credit granting process, which is a key activity for banking institutions. It is a proven expertise that helps manage risks (defaulted loans, reputation, fraud, etc.). Credit granting rules aim at preserving financial markets' integrity, preventing reputational risk and ensuring loyalty towards customers.

Risk and credit granting policies should remain a prerogative of each credit institution, as a factor of its commercial policies. The credit granting process is the expression of each credit institution's own expertise and risk appetite. It should be noted that, according to the relevant case law of the ECJ, the creditworthiness check in the sense of the CCD has a consumer-protecting character. The lender is therefore obliged to do everything possible to avoid the negative sanctions of an improper credit assessment, not only for supervisory reasons but also for civil law reasons.

Standardising the assessment of risk profiles would block the market without taking into consideration the peculiarities of each Member States, which may have an influence on the

<sup>1</sup> CA Consumer Finance SA v Ingrid Bakkaus and others (C-449/13) [2014] EU:C:2014:2464, para. 36.



creditworthiness assessment process (e.g. social security system, amounts, economic growth, growth prospects job markets, etc.). Common indicators would not take into consideration the economic and cultural background: same indicators will not mean the same for all countries (e.g. savings habits, national rates of divorces, cost of education for children).

Differences in income (employment contract, payslips model, national minimum wage, etc.), taxation (withheld at source or not) and social assistance between Member States make uniform rules of creditworthiness assessment impossible in the EU.

Moreover, common standards for creditworthiness assessment would not be based on the most flexible or severe risk policy but would set an average, which would exclude some people from access to credit. For example, smaller borrowers financed by more specialised institutions or borrowers with atypical profiles in reason of irregular income. A local lender who knows its clients very well should still be able to grant a loan to consumers experiencing difficulties if the bank has confidence in them. Each loan is specific and those with the lowest/irregular revenues are not necessarily the worst payers.

A single rule for the whole EU, far from facilitating cross-border credit, would 'only' limit credit to the national level of each Member State. In addition, it may happen that there would be a legal risk of not being able to deny credit if the European criteria are met.

An effective creditworthiness assessment can't be based on a mechanically applied criterion, but on the knowledge of the borrower and on the ability to take into account the specificities of their situation. This knowledge inherent to the banker's job can't be standardised.

#### *Access to credit databases (Art. 9)*

In the credit granting process, access to accurate and up-to-date data on the personal and financial situation of a consumer is key. Creditworthiness assessment is based on a mix of data obtained from consumer-provided information, the credit institution's internal data and national registers/credit databases.

We are aware of the huge differences between Member States. Some credit databases are publicly held, some privately, some have both, some have only positive data, some others only negative data.

We believe that it should be up to credit institutions to decide whether to access and use the databases.

The real brakes for credit to non-residents are rather related to the difficulty of reading the information provided (language, format, currency, etc.), the gold-plating issue and other main barriers: different civil laws, language and culture. Access to a credit database (whose effectiveness in combating over-indebtedness has been proved to be very limited) does not give knowledge of local laws and local practices which are essential in creditworthiness assessment.

#### **Rights of withdrawal and early repayment and the calculation of the Annual Percentage Rate of charge**

The rights of withdrawal and early repayment, respectively Articles 14 and 16 are understood and well-perceived by consumers. The same applies to the APR (Art. 19). Thanks to these provisions,



consumer protection has been harmonised at European level. EACB members are not aware of issues related to them.

We would only like to report that due to national over-transposition, in Germany there is a peculiar situation whereby the right of withdrawal is often abused. This happens especially in the case of linked credit agreements. The credit agreement is revoked in order to be able to reverse the other contract, thus creating a never ending right to escape connected contracts.

## **Part I of the public consultation - comments**

EACB members find that some answers in Part I of the public consultation, which is directed to consumers, may be leading.

Please find below a few examples:

- Questions 11 and 12 on the information to be included in advertising. With regard to question 11, one of the choices suggests that the information provided may not be sufficient. Under Question 12 relating to the explanations on the different types of credits available, the first two choices suggest that the lender has an obligation to provide advice, which does not correspond to the provisions of the CCD.
- Question 14 on the timing of the delivery of the SECCI. The first choice seems to imply that it must be submitted well before the signature of the contract, whereas the CCD provides that it must be submitted in 'good time'. The second choice seems to call into question the possibility of handing it over at the time of the offer, whereas once again the CCD requires the creditor to provide the consumer with the information in good time and before the consumer is bound by any credit agreement or offer.
- EACB members are concerned about the formulation of Questions 19, 20 and 21 on creditworthiness assessment. We strongly believe that creditworthiness assessments is part of the credit granting process, which is a key activity for banking institutions and the expression of each credit institution's own expertise and risk appetite (see also the specific comment in the creditworthiness assessment session of this paper, page 4).

### **Contact:**

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

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

- Ms Marieke van Berkel, Head of Department ([marieke.vanberkel@eachb.coop](mailto:marieke.vanberkel@eachb.coop))
- Ms Chiara Dell'Oro, Senior Adviser, Retail Banking and Consumer Policy ([chiara.delloro@eachb.coop](mailto:chiara.delloro@eachb.coop))