

The European Commission's Proposal For a New Consumer Credit Directive: Will This Create a Harmonized European Consumer Credit Market?



[Financial Institutions](#), [Banking](#)

Jul 27, 2021

On June 30, the European Commission (EC) issued a proposal for a [new Consumer Credit Directive](#) ('the Proposal'). The Proposal follows the Inception Impact Assessment (IIA) on the revision of the Consumer Credit Directive (CCD – [Directive 2008/48/EC](#)), which aims to ensure a higher level of protection for European consumers, which, in the opinion of the EC, the CCD has only partially achieved due to the fragmentation of the market and the legal uncertainty caused by the imprecise wording of some of its provisions.

When comparing the Proposal to the CCD, there are some key changes:

- The scope is extended to cover **loans below EUR 200, crowdfunding credit services, overdraft facilities and leasing agreements.**
- Two new terms are defined, namely “**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 those other products or services – and “**profiling**” – any form of automated processing of personal data as defined in the [GDPR](#).
- **Two more elements must be included in the pre-contractual information**, namely an indication that the price was personalized on the basis of automated processing, including profiling, and the possibility for the client to have recourse to an out-of-court complaint and redress mechanism and the methods for having access to it.
- The Proposal takes into account **the possibility that the credit agreement references a benchmark.** In that case, the name of that benchmark, the name of its administrator and its potential implications on the consumer must be provided to the consumer.
- With regard to **adequate explanations creditors and credit intermediaries have to provide to the consumer**, these must contain the essential characteristics of the credit agreement, the specific effects that the credit agreement may have on the

consumer (including the consequences of payment default or late payment by the consumer), where ancillary services are bundled with a credit agreement, whether each component of the bundle can be terminated separately and the implications for the consumer of such termination.

- There is a **specific provision with regard to tying and bundling practices**: bundling practices may be allowed but tying practices must be prohibited. Member states may allow tying practices if the creditor may demonstrate to the competent authority that the tied products or categories of product offered result in a clear benefit to the consumers when taking into account the availability and the prices of the relevant products offered on the market.
- There is also a specific provision on the **inferred agreement for the purchase of ancillary services**, which specifies that creditors cannot infer the consent of the consumer with specific regard to the purchase of ancillary services from the default options, including **pre-ticked boxes**.
- As for **unsolicited credit sales**, EU member states must prohibit any sale of credit to consumers without their prior request and explicit agreement.
- There are new obligations with regard to **the assessment of the creditworthiness of the consumer**, including, when the creditworthiness assessment involves the use of profiling or other automated processing of personal data, that member states must ensure that the consumer has the right to: 1. **request and obtain human intervention on the part of the creditor to review the decision**; 2. request and obtain from the creditor a clear explanation of the assessment of creditworthiness, including on the logic and risks involved in the automated processing of personal data, as well as its significance and effects on the decision; 3. contest the assessment of the creditworthiness and the decision.
- **Member states must introduce caps on one or more of the following elements**:
 - **interest rates applicable to credit agreements**;
 - **the annual percentage rate of charge**;
 - **the total cost of the credit to the consumer**.
- **Member states may also introduce additional caps for revolving credit facilities**.
- In terms of **arrears and forbearance measures**, creditors must have adequate policies and procedures in order to exercise reasonable forbearance before enforcement proceedings are initiated. Such reasonable forbearance consists in: a total or partial refinancing of a credit agreement; a modification of the existing terms and conditions of a credit agreement, including extending the term of the credit agreement; changing the type of the credit agreement; deferring payment of all or part of the instalment repayment for a period; changing the interest rate; offering a payment holiday; partial repayments; currency conversions; partial forgiveness and debt consolidation. Moreover, member states may require that, if the creditor has defined charges due to the default, those charges do not exceed what is necessary to compensate the creditor for costs it has incurred as a result of the default. **Creditors can, if allowed by member states, impose additional charges on the consumer in the event of default. In such a case, member states must introduce a cap on those charges.**

Is the Proposal going to ensure a harmonized legal framework for a European consumer credit market? When looking at its level of harmonization, it appears that member states cannot retain or introduce in their national law provisions that conflict with those laid down in the Directive, unless provided otherwise in the Directive, but can at the same time take autonomous decisions on a number of issues, including the introduction of caps. This may introduce further fragmentation in the European consumer credit market, should member states opt for diverging approaches.

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