



## **Supplementary paper to Open Public Consultation on the Evaluation of the Consumer Credit Directive (2008/48/EC)**

### About the FLA

The Finance & Leasing Association is the leading trade body for the [asset](#), [consumer](#) and [motor finance](#) sectors in the UK. Our members include banks, subsidiaries of banks and building societies, the finance arms of leading retailers and manufacturing companies, and a range of independent firms.

In 2018, members of the Finance & Leasing Association (FLA) provided €152.7 billion (£137 billion) of new finance to UK businesses and households, €51 billion (£45.8 billion) of which helped consumers and businesses buy new and used cars, including over 91% of private new car registrations.

€116.2 billion (£104.2 billion) was in the form of consumer credit, accounting for over a third of all new consumer credit written in the UK. €36.3 billion (£32.6 billion) of finance was provided to businesses and the public sector to support investment in new equipment, representing over a third of UK investment in machinery, equipment and purchased software in the UK last year.

We are listed on the EU Transparency Register (02389833548-89).

### Summary

We have elaborated on a number of issues raised in the consultation. Foremost amongst them is the need for the CCD to reflect the evolution of the consumer credit market since the 2008 Directive. In particular, consumers increasingly take out credit online and therefore demand that the credit application process is convenient and easy to navigate. The review must ensure that the new environment is made more streamlined and consumer-friendly.

We would also strongly caution against a prescriptive approach to creditworthiness assessment procedures which would prevent lenders having the flexibility to use their commercial judgment to assess the borrower's ability to repay and likely mean some customers would be excluded from credit.

### Impact of developments

#### *Digitalisation*

Today lenders increasingly interact with their customers online. The extent of this will vary according to the type of product. For example, if someone buys a car on finance, they will generally have discussed finance in person with the dealership. On the other

hand, a credit card application and the ongoing relationship is often managed predominantly online.

The principle challenge is that the CCD is tailored to borrowing undertaken in a pre-internet world. It can take customers between 30 to 150 swipes to review the SECCI on a smartphone or tablet and the level of prescription mandated by the Directive means that lenders are unable to improve this experience for customers. Of course, this has a bearing on their propensity to read and understand terms and conditions and the key features of the product.

Likewise, advertising via social media and the radio is more commonplace than a decade ago. Compliance with the Directive has become increasingly challenging. The review must find ways to simplify the process, allowing firms more flexibility to make it more consumer-friendly. We support the campaign by Radiocentre to remove the requirement for the standard information to be included in radio advertisements.

### *Rate caps*

Price restrictions in the consumer credit markets vary across the EU and have been introduced to tackle specific market issues or for wider political reasons. In 2014, rate caps were introduced in the UK payday lending market followed by for rent-to-own (RTO) products in 2019.

We believe that competition is the most efficient driver to keep costs low for consumers. One of the drawbacks of caps is that it reduces access to credit, which was one of the conclusions drawn by the European Commission in its 2011 study on interest rate restrictions. The FCA too acknowledged in its analysis of the merits of an RTO cap that around 5% of customers would lose access to such a product under a cap, half of whom would be unlikely to get a loan elsewhere.

The Commission study also found that caps reduced the range of products available on the market and tended to raise prices for consumers to nearer the level of the cap. This was the experience in the UK with the imposition by the Office of Fair Trading of a cap on default charges in 2006. It is also worth emphasising that the credit markets are not uniform and so it does not follow that a price restriction applied to one type of product could be applied to another one in the same way.

### *Competition*

Our response to the questionnaire states that the CCD has not had any material impact on national competition because the UK was and remains one of the competitive European credit markets. This competition has delivered wide consumer choice and reduced prices for UK borrowers.

With regard to cross-border competition, it remains the case that firms set up in other Member States via subsidiaries because of the different legal frameworks, debt recovery mechanisms and cultural approaches to consumer credit. These issues go beyond the scope of the CCD.

### Relevance of provisions

It is worth stressing that over the last decade consumer behaviour and expectations have changed substantially. The pervading thinking that consumers do not have sufficient information to make rational decisions is outdated. The modern consumer values prompt decision-making and information delivered in a frictionless manner. They will not read reams of information particularly when delivered online, so the challenge is to ensure they are presented with critical information necessary to take out a loan, for example, the total cost (including default charges) and the length of the contract. The SECCI and pre-contractual information therefore need to be revised and simplified to enable lenders to engage with their customers in the way the latter would expect. Similarly internet advertising must be made more consumer-friendly via the use of hyperlinks, for example.

Many of the other main features of the CCD were already established in the UK before 2008 and remain relevant today however this was less likely to have been the case in newer Member States with less developed credit markets.

The concept of a creditworthiness assessment is a critical feature of the credit-granting process. We would strongly caution against regulatory prescription which would prevent lenders having the flexibility to use their commercial judgment to assess the borrower's ability to repay, including the size and duration of the loan. A more rigid formulaic approach is likely to exclude some types of customer.

#### Effectiveness of provisions

As argued above, consumers suffer from "information overload", including duplication, which has hindered the effectiveness of the Directive. For example, the relative brevity and flexibility of the CCD's overdraft information requirements make these more effective and easier to understand than the SECCI.

Although the APR calculation represents a logical means to enable comparability between credit products, it is less relevant to today's credit market. Customers have limited understanding of it and in practice two different products can have the same APR even where the cost to a customer is different. As the range of credit products has increased, so the value of an APR as a comparison tool has diminished.

The effectiveness of the creditworthiness assessment provisions depends on the relative maturity of the credit market and how they has been implemented by local regulators. The Financial Conduct Authority in the UK has recently updated its creditworthiness requirements without the need for prescription and recognising the diverse range of products now available to consumers.

#### Simplification/cost reduction

From our perspective, the principle focus of the CCD review should be to streamline the information and advertising requirements to meet consumers' expectations and needs in an online environment. This should by necessity include flexibility to allow regulators and lenders to respond more quickly to market developments and update rules/practices more easily. We would caution against rigid formats which include repetition of information and that are not read by consumers.

The more prescriptive the nature of legislation (e.g. via specified formats), the more it costs firms to update their business systems – even small changes, for example, to documentation are very costly. Costs may rise further if regulators do not take care to future proof the framework to reflect innovation and the advent of new technologies. Added to this is the cost of employing staff to ensure regulatory compliance.

### Contradictions with national rules

We believe the CCD is coherent with other EU legislation. Although we do not consider there to be any inconsistencies in UK law with the CCD, the fact that the UK, along with other Member States, has gold-plated the Directive (e.g. to extend the scope to certain credit products) means that inconsistencies exist between national markets in how some of the main elements of the Directive are applied. This has been aimed both at future protecting consumers and delivering business efficiencies (to ensure consistency of regulation between similar products).

### Future regulation

We would argue that the Directive has likely been of more value to less developed credit markets where some of the principal features did not exist before 2008 whereas the UK already included many of these. In any event, it is likely that national regulation would over time have evolved in this direction.

It is sensible to retain the key features of the Directive, albeit with more streamlined, less prescriptive information requirements. We would resist further moves to standardise creditworthiness assessment procedures across the EU, because national markets differ considerably in terms of the data collected to this end, but also because it would remove lenders' and regulators' ability to update their approach more quickly and efficiently in a fast-moving environment.

We would stress to the Commission the importance of stakeholder engagement should a legislative proposal be taken forward as a result of the review. Whatever form Brexit takes, the FLA intends to continue to work closely with the European Institutions because regulatory alignment with the UK is highly probable.

**5 April 2019**