Position Paper: Consumer Credit Directive Review & draft Imco

Contact: Zoé Delhaye

Introduction

In the context of the Consumer Credit Directive review, the Professional Credit Union would like to pass on to the competent authorities its position regarding the modifications that risk having a significant impact on the sector.

The **main objective** of this review is to establish "*a harmonised EU framework for consumer credit, to facilitate the emergence of a smoothly functioning **internal market** in consumer credit and provide a high level of **consumer protection** in order to ensure consumer confidence".*

The European Commission has made several observations:

- The objectives of the 2008 directive remain relevant. Nevertheless, this directive has been only '**partially effective**' owing to its imprecise formulation (shortcomings related to the scope, definitions and terms that are sometimes unclear), its application and enforcement in Member States, information obligations not adapted to digital media and its lack of clarity concerning creditworthiness assessments.
- The internal market is impeded by **national differences** leading to **distortions of competition** and restricting the supply of **cross-border credit** which is set to increase following digitalisation.
- The credit market has evolved with the emergence of **new products and new players**, particularly in the digital environment.
- The **Covid-19** crisis and the associated measures have had a major impact on the credit market and on **the most vulnerable consumers**.

With a view to adopting a **constructive approach**, the sector will include an alternative to the most important problematic elements that will be in line with the objective of the Directive and the observations mentioned above.

In addition, and with the aim of presenting a position paper following the chronology of the legislative procedure, the comments relating to the IMCO draft will be added to this document in **green**.

Union Professionnelle du Crédit
Boulevard du Roi Albert II 19 - 1210 Bruxelles
http://www.upc-bvk.be | T + 32 2 507 68 11 | F + 32 2 888 68 11

Contents

1. Priority elements

A. Scope

Pursuant to Article 2 of the aforementioned Directive, the scope has been expanded in particular to include:

- credit facilities of less than EUR 200

- overdraft facilities repayable within a month
- credit facilities that have to be repaid within three months subject to only minor charges.

The formalism of consumer credit is cumbersome and complex for this type of credit, for which the average funding basket involves small amounts and in particular e-commerce purchases. Extending the scope risks cutting off access to credit for these emerging financing methods. It would be advisable to maintain a happy medium between creditworthiness assessment, verification, formalism and accessibility of credit facilities limited in time and amounts without a high risk for consumers. It would be more advisable to provide for a procedure proportional to the risk of the product, which is not the case if these credit facilities are included in the CCD.

Moreover, eliminating these exceptions for credit facilities of less than EUR 200 and credit facilities with insignificant costs repayable in three months impacts severely on these new digital solutions which have proved particularly useful during the health crisis in an exclusively remote context.

In Belgium, micro-credit facilities or credit facilities of less than 60 days are subject to provisions that set ceilings on the amount of charges. Although these credit facilities are not governed by the CCD, they are governed by common law via legislation such as Book VI of the Code of Economic Law, contract law and civil law, PSD 2 etc.

Submitting micro-credit facilities to a more restrictive scope leads to a risk of impeding the supply of cross-border credit as it would limit the scope of action of creditors beyond the border, with restrictions related to status or specific regulations. This additional formalism could lead to the disappearance of this type of credit from the market.

These credit facilities limited in amount and time with insignificant charges are only considered here from the point of view of over-indebtedness, whereas no credit risk is demonstrated. This vision focusing solely on the credit risk completely overlooks any social dimension of these credit facilities as well as their economic added value. The usefulness of this type of financing for household consumption and the economy has been fully demonstrated during the crisis when most relations involve distance. These micro-credit facilities have a real social dimension and eliminating them means excluding a large consumer group from access to credit in a society where digitalisation is gaining considerable ground.

Proposal: A specific system protecting consumers and ensuring the development of the products referred to above, which have proved to be economically useful, could be put in place without these types of credit being included in the CCD:

- ✓ Provision could be made to set a ceiling for monthly charges as in Belgian law pursuant to Article VII.3, §2, 3° of the Code of Economic Law (limited to EUR 4.17 per month + indexation).
- ✓ Consumer information to guarantee transparency.

- ✓ Implementation of a specific system in the event of default with a view to limiting the amount of the charges.

We invite you to read the position paper "Deferred debit cards (DDC) and overdrafts of less than one month - Arguments justifying their exclusion from the Consumer Credit Directive (CCD) review – French banking Federation, (FBF), *Union professionnelle belge pour le Crédit (UPC)* and *Bundesverband Deutscher Banker (BdB)* positions".

We also note that an amendment has been introduced in the IMCO draft to extend the scope to any form of leasing with or without a purchase option.

It should be pointed out that rental without a purchase option, which is a simple rental, is governed in Belgium by the provisions of ordinary law (Civil Code, as well as the provisions of Book VI of the Code of Economic Law). Concerning rental with an option to purchase, this already falls under the rules on consumer credit under Book VII of the CEL.

Inclusion in the scope of the CCD seems overabundant and undesirable.

B. Pre-contractual information

Article 10 provides for the supply of pre-contractual information in two forms:

- *the "Standard European Consumer Credit Information" form*
- *a new form: the "Standard European Consumer Credit Overview"*

Provision deadline: at least one day before the consumer is bound by a contract. If pre-contractual information is provided less than one day before the consumer is bound by a contract (...) intermediaries or service providers must remind consumers, one day after the contract is concluded, of the possibility of withdrawing from the credit agreement (...).

As regards the additional documents to be provided to the client, it is hard to understand how these additional administrative formalities can be combined with the Commission's objectives such as simplification, improving the quality of information and the transparency of pre-contractual information. Currently, before signing the credit agreement, consumers receive: the SECCI, the general terms and conditions governing the credit agreement and any possible card, information about insurance policies and the associated general terms and conditions. The information on the form duplicates that already contained in the SECCI. While consumer habits are tending towards greater immediacy via digitalisation, it is difficult to reconcile the inclusion of an additional document without altering the objectives set out above.

Proposal: As regards the Standard European form, the sector argues in favour of deleting this provision.

Were the standard form to be maintained, however, the sector argues in favour of its inclusion at the top of the SECCI (for example on the first page) in the form of a summary of the main characteristics of the credit. This will provide the client with information in a single document, ensuring clarity and understanding.

As regards the one 'day' deadline for the provision of the information, in addition to not being defined in a manner that enables a common interpretation by all, this decreases the flexibility of credit distribution arrangements by failing to take account of the specific features of the various channels. More precisely, this provision deadline cannot be applied in the context of online commerce when the customer wishes to acquire the item immediately or when a special offer is available only for a limited time (e.g. Black Friday). The same issue arises with credit through an agency: credit agreements concluded via a broker or a linked agent. Competition will inevitably lead these creditors to provide the pre-contractual information and the credit agreement offer simultaneously and to systematically send information on the right of withdrawal after the contract has been concluded, without the consumer being informed of all the consequences that this right of withdrawal entails, in particular when the credit agreement is concluded to finance the purchase of goods or services on line.

Proposal: In order to guarantee greater transparency for consumers, it seems preferable to drop the provision deadline and the transmission of information on the withdrawal deadline.

Another solution could be to integrate the information on the right of withdrawal in the SECCI inset summarising the main characteristics of the credit.

Alternatively, the initial proposal may be retained provided that it is possible to issue the pre-contractual information on the same day and that the consumer is aware of the withdrawal period. This key information could be highlighted in the consumer information documents.

C. Linked credit

In accordance with Article 3, §21 of the Directive, two conditions must be met in order for a credit agreement to be linked. These conditions are **cumulative**:

(21)'linked credit agreement' means a credit agreement or crowdfunding credit services where

(a)the credit or services in question serve exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, and

(b)those.two.agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself or herself finances the credit for the consumer or, if it is financed by a third party, where the creditor or provider of crowdfunding credit services use the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement or of the agreement for the provision of crowdfunding credit

services, **or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement or in the crowdfunding credit services**;

The commercial unit shall be deemed to exist in three scenarios:

- When the seller finances the consumer credit himself;
- When the creditor calls upon the services of the seller in connection with the conclusion or preparation of the credit agreement;
- When a particular item is specifically mentioned in the credit agreement.

As in the current text and the 2008 version of the Directive, this third scenario poses real difficulties as regards practical interpretation. This scenario does not in any way illustrate the concept of a commercial unit (in the economic sense of the term) and duplicates the first cumulative condition referred to in point a).

Moreover, this scenario leads to the consequences of linked credit being attached to all loans mentioning the financing of an item of property. This gives rise to systematic solidarity and shared responsibility between the creditor and the seller, tending to render the creditor de facto the guarantor of every purchase financed by credit. Economically, this cannot be the intended objective.

This would mean that when a credit agreement is concluded with a creditor or bank and the agreement stipulates that the credit is intended for the purchase of a car, the creditor or bank would systematically share liability with the supplier, with whom there is no link. If a dispute arises, the creditor will be called upon to suspend or even - in the worst case - to cancel the credit without any recourse against the seller.

In Belgium, the penalties linked to reclassification have severe consequences (notwithstanding possible criminal penalties linked to the lack of the particulars required in the contract pursuant to Article VII.78 of the Code of Economic Law): in some cases pending before the courts, in addition to the cancellation of the contract, the order was given to refund the amounts already paid by the borrowers to the creditor while retaining the item of property.

This case law and the consequences resulting from the third scenario under b) will inevitably curb cross-border credit, whereas this is precisely one of the objectives of the directive in question.

In addition, and upon reading recital 14 , this leaves an option for the Member States: *"Furthermore, Member States could also apply this Directive to linked credit fall falling within the definition of a linked credit agreement in this Directive. Thus, the provisions of this Directive on linked credit agreements could be applied to credit agreements that serve only partially to finance a contract for the supply of goods or the provision of services."*

Consequently, if the Member States were to exercise this option and given the problems raised by the third scenario under b), this could lead the sector to ceasing the financing of certain more at-risk markets such as solar panels and second-hand cars. The linked credit classification is also extended here to credit provided to enable the purchase of goods and services and the granting of cash reserves to consumers. This is unacceptable from an economic point of view and harms access to cross-border credit.

It is therefore proposed to replace the word "or" by "and" before the text “where the specific goods or the provision of a specific service are explicitly specified in the credit agreement or in the crowdfunding credit services”. Thus, the definition of "commercial unit" is rightly limited to :

“where the supplier or service provider himself or herself finances the credit for the consumer or,

if it is financed by a third party, where the creditor or provider of crowdfunding credit services use the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement or of the agreement for the provision of crowdfunding credit services”, and cumulatively ““where the specific goods or the provision of a specific service are explicitly specified in the credit agreement or in the crowdfunding credit services”.

Considering amendment 26 of the IMCO draft on Article 3, §1, (21): “*the creditor or provider of crowdfunding services promotes the sale of goods or services, or the provider of goods or services uses the services of the creditor or provider of crowdfunding services in connection with the conclusion or preparation of the agreement for the provision of specific goods or services, or the credit agreement or the crowdfunding credit services are explicitly specified in the agreement for the provision of specific goods or services*.”
This new version is **not acceptable**:
In this new draft, articulation between the different **cumulative** conditions **(a and b and under conditions of b)** of the definition raises questions and misunderstandings.

This new condition undermines the **principle of relativity of agreements** (art. 1165 of the Belgian Civil Code) insofar as the lender **is not a party** to the sales agreement between the consumer and the seller. It is not economically acceptable because it would be sufficient for the contract of sale to mention the existence of credit to create systematic liability by the lender. For all the reasons already mentioned above, this situation would be a source of significant litigation.

Proposal:

Modification of the article 3, (21) :

(21)‘linked credit agreement’ means a credit agreement or crowdfunding credit services where

(a)the credit or services in question serve exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, and

(b)those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself or herself finances the credit for the consumer or, if it is financed by a third party, where the

creditor or provider of crowdfunding credit services use the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement or of the agreement for the provision of crowdfunding credit services, ~~or~~ **and** where the specific goods or the provision of a specific service are explicitly specified in the credit agreement or in the crowdfunding credit services;

d. Transposition

The Directive is scheduled to be transposed within 24 months of adoption, with additional periods of six and 18 months (SME), depending on the size of the company.

Depending on the date of transposition in each Member State, these differences do not seem likely to promote the objectives of harmonisation of the legislation, cross-border credit facilities and the competitiveness of offers. On the contrary, this risks creating unfair competition between credit intermediaries, who often operate as SMEs, who would have 18 months to comply, whereas creditors would have to be ready within six months.

Proposal: The sector argues in favour of a single period for all types of companies.

e. Creditworthiness assessment

As regards creditworthiness assessments, these are mentioned in recitals 46 and 47 of the Directive and in the EBA Guidelines on granting and monitoring credit facilities, which shed necessary light on the implementation of the rules on creditworthiness assessments. In Belgium, the measures drawn up as part of the existing regulations already comply with the guidelines and meet the objectives sought by the European regulator. Nevertheless, one element seems to be missing, and this concerns the implementation of the proportionality principle in the various creditworthiness assessment measures.

In addition, a wide-ranging application of the proportionality principle seems to be necessary by taking into account criteria for the implementation of the duty of assessment: the size, nature and complexity of the credit facility. This principle is laid down in the EBA guidelines and could be echoed in the Directive.

The sector argues in favour of a pragmatic and proportionate approach, bearing in mind the economic model and the nature of the credit products on offer. More specifically, the Directive establishes a principle of verification of the declarations made by consumers on the basis of probative sources. The sector is in favour of the information provided by the borrowers in some cases being sufficient for the purpose of the creditworthiness assessment. In France, for example, this is also applied to credit transactions of less than EUR 3,000 concluded at the place of sale or via distance sale. In other words,

depending on the specific circumstances, the creditor can either simply rely on the information provided by the consumer or deem it necessary to obtain confirmation of this information by means of documentary evidence which may or may not come from the consumer himself. These elements are also linked to the principle of data minimisation referred to in the Directive.

In the proposed amendments, the obligation to obtain information on any foreseeable changes significantly increases the liability of the lenders, leading to the risk of considering that any default by the consumer is due to the fact that the lender has not verified the information provided or sufficiently investigated during the completion of the file, whereas most incidents of non-payment are due to misfortune (loss of employment, divorce, etc.).

More explicitly, the consumer must provide accurate information to the lender and the lender must define the data relevant and necessary for the analysis according to the complexity, amount and type of product.

These new provisions will contribute to a significant reduction in credits in order to limit the liability of lenders in the event of consumer default. Customers with more difficult access to finance are likely to turn to **alternative or hidden sources of finance**, which is not economically desirable and inadequate in the light of the objectives pursued by the European regulator.

As regards the ratios mentioned in recital 47 of the Directive and leaving it up to the Member States to be able to issue further guidance on additional criteria and on the methods to be applied for the assessment of a consumer's creditworthiness and in particular to be able, for example, to set limits on loan-to-value or loan-to-income ratios. Leaving such options to the initiative of each Member State risks hindering the harmonisation of the legislation criterion and having significant consequences for cross-border credit, bearing in mind certain more restrictive national legislative systems. Consequently, such an option does not seem to be in line with the objective sought by the European regulator either.

These various aspects run the risk of impacting on the scoring, automation and digitalisation of processes - all of which are processes currently on the increase.

Concerning amendments no. 8 and 64 of the IMCO draft concerning the sole use of economic data provided by consumers in the context of the creditworthiness assessment, we emphasise that creditworthiness assessments are not based exclusively on this type of information and require a mixed approach: collection and analysis of customer data combined with a "risk-based approach". The same is true in the context of automated digital processing.

This provision tends towards a case-by-case analysis that inevitably challenges the scoring techniques representing all the know-how of lenders and historically proven.

Regarding the type of data collected and processed, it should be noted that lenders have sound practices and already minimise the selection of data, for example, health data or data from social media are not taken into account.

Proposal: The principle of proportionality and the pragmatic approach must be stressed, in particular as regards the verification of declarations from consumers.

Deletion of the option given to the Member States to set ratios.

D. Right of withdrawal

Considering amendments 42 and 91 of the IMCO draft on the **systematization of information relating to the right of withdrawal** after the conclusion of the contract and the possibility of invoking this right for a **period of 3 years**:

- Systematizing the information on the right of withdrawal after the conclusion of the contract does not seem to constitute an added value since it already appears in other documents given to the consumer (example: SECCI, contract, an advisor's speech).
- Currently, the withdrawal period ends at the end of the 14-day period to allow for the **exercise of the right of cancellation or early repayment**. Therefore, it seems unnecessary to double the period of cancellation or the right to early repayment of a right of withdrawal, the consequences of which would be potentially the same given the use of the credit currently. Moreover, this provision does not take into account the **actual duration of the credit**. Various questions arise: could the right of withdrawal of a credit that has already been repaid be invoked? What about the consequences when the credit agreement finances a contract of sale (linked and assigned credit)? Since the right of withdrawal implies a mechanism for the lapse of the contract, it generates significant impacts on the customer's **legal and economic situation** and raises questions as to the fate of the assets acquired by means of credit financing.

At the very least, this 3-year appeal period must be applied only if the consumer has not been informed, which would seem to be limited in the future if the information on the withdrawal period is the subject of a key point highlighted in the SECCI.

E. Automated processing

Considering amendments no. 7 and 63 imposing mandatory prior consent to the implementation of automated processing, we emphasise that the data protection regulation in Article 14g already regulates the matter extensively by protecting the consumer via a system of prior information. Lenders have already complied with these obligations. Other regulations are also being drafted

(Artificial Intelligence Directive). It is therefore essential that any overlap or contradiction between the applicable laws is avoided.

Proposal: Removal of compulsory consent and maintenance of the **rules applicable by the GDPR** with regard to automated processing.

F. Lender's database - customer refusal

Considering amendments 11, 14 and 75-77 of the IMCO draft on informing the customer in the event of a change in the lender's databases as well as the introduction of the "right to credit" with the possibility for the consumer to appeal against the refusal decision:

Regarding internal databases:

The consumer already has the rights of access, deletion and rectification under the GDPR. Therefore, it cannot be envisaged that the lender would systematically inform the customer as it would complicate the procedure since changes can be regular depending on the updating of the files or the information received.

Moreover, with regard to external databases, this requirement cannot be accepted as lenders are not responsible for processing these databases (the information is the responsibility of the supplier).

Regarding the lender's decision to refuse following a creditworthiness assessment:

While it is conceivable that the consumer be given the right to know the decision and the databases consulted, it seems unacceptable to provide the level of detail requested in the new provisions.

In most cases, any re-examination of the application by the same lender results in the same decisions or confirms them, since the processing is based on the same data and consultation of the same databases.

This would call into question the lenders' ability to assess and advise. This data dissemination would inevitably open up the debate on healthy competition between institutions since it requires the disclosure of awarding models. In the same way, if these elements are made "public", they will feed fraudsters by providing them with the adequate explanations to obtain a reverse decision. This requirement is dangerous and calls into question the lender's discretion as well as their own risk policy.

Finally, the GDPR already sufficiently regulates the use of data in this type of processing and secures it.

Proposal: Maintain the existing procedure for informing the consumer of the databases consulted in the event of a refusal.

G. R Review of creditworthiness during life (credit opening)

Considering amendment 79 of the IMCO draft on the comprehensive review of the customer's creditworthiness every two years and whether a new creditworthiness assessment, as defined in Article 18, should be carried out:

This measure does not take into account the management and monitoring of loans currently set up by lenders in order to limit defaults. This point is also the subject of ongoing developments in the institutions following the implementation of the EBA Guidelines for granting and monitoring loans, the first measures of which will enter into force in June 2024 (credit risk monitoring).

Moreover, this provision entails an extremely penalising administrative burden given the volume of appropriations. Such a review would require being able to contact each customer and to carry out a comprehensive assessment of their situation.

Concerning the measures to be taken at the end of the review, changes to the timetable cannot be the appropriate measure and is not allowed in certain legislation (inviolability of the contract under Belgian law). The measure taken must be variable and adapted to the situation at the time of the review.

Proposal: Annual review on the basis of consultation with the *Centrale des crédits aux particuliers*. Lenders' discretion in deciding on the consequences/actions to be taken as a result of the review.

H. D Definition of the cost of credit (APR)

Considering amendments 23 and 93 relating to:

- Change to the definition of APR, deletion of the reference to "costs known to the lender";
- Inclusion of the costs of ancillary services in the APR definition even if they are optional.

Costs known to the lender:

For the costs mentioned in the aforementioned amendments to be claimed from the consumer, they must be determined and contracted from the outset of the credit agreement. This point contributes to the legal certainty of the conventions. This new model of determining the cost of credit would create unacceptable legal and economic uncertainty.

Inclusion of ancillary costs:

Taking into account an insurance premium for the calculation of the APR when the remaining balance of the insurance contract is optional, leads to an erroneous mention of the APR and no longer gives the APR its function as an effective tool for measuring the cost of credit.

Specifically, lenders will have to include the premium of optional insurance in the APR without knowing the exact amount of the premium if the consumer ultimately chooses to use another insurance.

The economic impacts must not be overlooked. This inclusion would lead to a further drop in lending rates for lenders (inclusion in the APR mechanically lowering the lenders' pure interest rate) and a further loss of profits, without compensation when the consumer does not choose the insurance.

Other side effects can be envisaged: systematic imposition of ASRD coverage or cessation of their marketing and tightening of the lenders' conditions for granting leading to certain populations being excluded from access to credit.

Proposal: Exclusion of the entirety of these new provisions.

I. Advertising

Considering amendments 30 and 34-35 of the IMCO draft on:

- At the end of personalised marketing actions and profiling;
- The systematic addition of figures illustrating the cost of credit to the elements on penalties and collection costs.

If these provisions aim to avoid appealing to people in difficulty, it should be noted that our law already contains binding provisions and numerous rules prohibiting targeting consumers whose situation has deteriorated or encouraging the use of credit in certain situations. Consequently, consumer protection seems sufficiently developed (example of the list of prohibitions contained in the provisions of Article VII 65 of the Code of Economic Law on consumer credit in Belgium).

Moreover, advertising is not intended to give all the indications on the non-performance of the contract or its operation. This would require the same information as in the SECCI. These elements are also not related to the development of digital advertising. It is more useful for both the advertiser and the consumer to allow only key information to be provided in the advertising phase, combined with the obligation to inform the consumer of where they can find additional information about the product, for example by including a hyper link to the website with the pre-contractual information (SECCI).

Simplified information in the case of sales by voice telephony

Considering amendment 54 of the inherent IMCO draft providing for the deletion of the related exception for the provision of simplified information on sales by voice telephony:

The derogation already exists in general for remote financial contracts and also applies to insurance (provisions of Book VI of the Code of Economic Law in Belgium). This point cannot be accepted as it would therefore create an exclusion only for consumer credit.

These sales techniques by voice telephony are strictly supervised: the consumer benefits from all the terms of the offer delivered immediately after the communication in addition to the essential elements given during the telephone conversation; the consumer will only be bound when they have

understood all the terms and conditions of the offer, signed the contract and sent it to the lender (and not at the time of the request by telephone).

The telephone channel is also widely popular with consumers who do not use digital channels, so limiting or complicating their use would reduce access to credit for this category of the population.

In practice, the existing provision is safe for the consumer because during the communication, the consumer's attention is drawn to the essential elements of the contract and their rights. Then, the complete offer is sent to the customer allowing them to easily study it before proceeding with subscription. Consequently, the consumer receives the information several times and has time (20 days in Belgium) to return the signed offer and an additional 14 days after the conclusion to withdraw. This process seems to be largely satisfactory in terms of consumer protection.

Proposal: Maintenance of the exception for the delivery of simplified information for sales by telephone and correlatively the delivery of complete contractual conditions immediately afterwards.

2. Additional elements

1. Advisory services

The 'advisory services' concept provided for in Article 16 seems vague and requires clarification of the concept itself and the players concerned.

In our opinion, there is a difference between the duty of personalised advice inherent in any credit provision activity (i.e. collection investigation, information, proposal of a suitable offer) and in advisory services. In fact, 'advisory services' should be limited to independently analysing the offers on the market. If this service concept involves examining all the offers to make a proposal to the borrower, it would seem that this service is rather the prerogative of brokers.

2. Renegotiation measure

Article 25 on 'arrears and renegotiation measures' comprises various concepts which should be clarified in order to have a clear distinction:

- Refinancing / Consolidation
- Extension of the term / Deferral of payment / Repayment holiday
- Partial rebate / Partial reimbursement

In addition, the first paragraph of this article mentions the '**obligation**' for creditors to have reasonable renegotiation measures before the implementation procedure, while the third paragraph refers to an

'**authorisation**' for the creditor to be able to apply these measures! Does the Member State have an obligation to provide for measures and is it up to the creditor to **be able to** apply them or not?

3. Digitalisation

Despite the observation by the Commission that the credit market has evolved further through the emergence of new products and new players, in particular in the digital environment, **digitalisation** is not taken sufficiently into account, although this is one of the objectives of the European Commission. Let us mention, for example, the lack of a concrete rule governing distance contract proposals and distance marketing.

We feel it is essential to take into account the **prevalence** of the digital distribution of financial services, to guarantee a supply of relevant information that is adapted to the various channels of communication and distribution in order to guarantee a customer experience that offers consumers an informed choice.

In addition, the sector argues in favour of clarification of the various **types of electronic signatures** (qualified, advanced etc.).

4. Ancillary services

First of all, Article 12 states that creditors and/or credit intermediaries must provide adequate explanations regarding credit agreements and any **ancillary services**.

By means of an example, let us consider an outstanding balance insurance contract as an ancillary service. This product is not sold by the creditor or by the credit intermediary but by insurance intermediaries (moreover, the intermediaries with whom creditors collaborate often act as both credit intermediaries and insurance intermediaries). Consequently, the responsibility for providing adequate explanations regarding the insurance contract does not lie with the creditor and/or the credit intermediary. In addition to this **confusion of roles and responsibilities**, ancillary services are already governed **by their own regulations**. In the example mentioned above regarding the outstanding balance insurance contract, these contracts and the sale of these contracts are already governed by the law on insurance and by the legislation on intermediation in insurance.

Moreover, Article 15 states that the consent of the consumer for purchases of ancillary services may not be inferred by means of default options, with pre-ticked boxes being considered default options.

In a context of digitalisation, we believe it is important to stress that the signing by the consumer of a request form indicating the consumer's choices as regards ancillary services is sufficient to consider his consent to be free and informed. In other words, an additional box to be ticked cannot be required here.

Considering amendment 66 of the IMCO draft on ancillary services, the wording of the provision is confusing: the credit product cannot be considered as an ancillary service because it is the main contract.

5. Personalised offers on the basis of automated processing

The **GDPR** already governs automated individual decision-making, including profiling and the information to be provided when personal data are not obtained from the data subject, and particularly as regards automatic profiling (Article 14(2)(g).

We therefore believe that this Directive should not go beyond the existing rules and regulate afresh aspects already covered by the GDPR. This is why Article 13 of this proposal should be deleted as the GDPR already includes the obligation to inform the client of automated processing. Creating an additional regulation on the same issue risks **creating different interpretations** and dual monitoring of the same issues.

In addition, some marketing campaigns are based on profiling. The communication of this additional information to the consumer is not in line with the Commission's objective to reduce the information overload for clients.

6. Modification of the definition of credit intermediary

The expansion of the definition of credit intermediary[1] in the Directive (Article 6) risks eliminating the **business provider** category and harming certain existing partnerships.

7. Overdraft facilities

Article 24 introduces provisions to ensure that consumers are kept regularly informed of certain characteristics of their overdraft facility. Consequently, it would seem that the one-month overdraft facilities currently following a simplified procedure in terms of contracts and SECCI would be subject to a more restrictive administrative process.

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[1] *'credit intermediary' means a natural or legal person who is not acting as a creditor or notary and not merely introducing, either directly or indirectly, a consumer to a creditor, and who, in the course of his or her trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:*
(a) presents or offers credit agreements to consumers;
(b) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to in point (a); or
(c) concludes credit agreements with consumers on behalf of the creditor.

With a view to promoting **administrative simplification**, the sector does not seem inclined to follow more complex formalism for this type of product.
