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EFA Position Paper on the Consumer Credit Directive review

Introduction

The European Fintech Association (EFA) welcomes the European Commission's (Commission) proposal for a review of the Consumer Credit Directive (CCD), in particular the objectives to bring the legislation up to date with the habits of consumers who spend online, better protect consumers and strengthen the Single Market in consumer credit across the EU. Regulation is key for creating a safe and well-functioning retail financial services market for both consumers and merchants. It is also crucial that the European regulatory framework is proportional, well calibrated and can enable the emergence and scaling up of European FinTechs.

High-Level EFA messages:

- EFA welcomes the extension of the **scope** of the CCD but regulation should be **proportional to the value, length of term** (including whether it 'revolves' or not) and **cost of the loan**.
- EFA welcomes the updates to the CCD aiming at ensuring that **marketing and advertising communications are fair, clear, and not misleading**, and cap the amount that creditors can charge consumers.
- The CCD should **prioritise financial inclusion and consumer welfare**. This means it should encourage **competition and innovation** in the consumer credit market, thus ensuring consumers can access innovative, interest free credit (such as 'buy now, pay later') as an alternative to short-term high-cost credit. The CCD should not make it harder for consumers to always choose the cheapest, most sustainable form of credit.
- **Pre-contractual and disclosure requirements** as well as **creditworthiness assessments should be proportionate and consumer-outcomes focused**, encouraging the use of 'best in class' technological solutions and customer communications without prescribing fixed solutions that will date.
- The CCD must be **technologically neutral** so that the development of new, data-driven credit assessment methods is encouraged.

Harmonisation across the EU

The EFA supports harmonisation and deepening of the EU Single Market in consumer credit. This will help European consumers to shop with confidence across country borders without worrying about how their money would be refunded if the product they have purchased is not as expected. This in turn will assist retailers – particularly small businesses that do not have the same level of brand recognition and consumer trust as large corporates – to build their online customer base and trade across Europe.

However, there are currently important differences between Member State regulatory regimes, as more stringent local adaptations of the CCD restrict the growth and scaling of cross-border services within the EU, as well as the entry of new providers. The inefficiencies lead to increased costs, poorer experience for consumers as well as additional administrative burdens for merchants. Better harmonisation is needed for the distribution of consumer credit agreements and necessary documentation throughout the relationship, notably reflecting the rise of digital distribution channels.

Tecnology-neutrality

A more holistic approach to assessing a consumer's financial health is needed to ensure good consumer outcomes. The EU has done much to promote the growth of 'Open Banking' through, for example, the Payment Services Directive. Tools such as Open Banking offer the potential for improving affordability assessments as it allows lenders to access and track key metrics on suitability and vulnerability in real time. Given the pace of digital transformation, it is very important that the CCD is technologically neutral so that the development of new, data-driven credit assessment methods is encouraged.

Scope and Proportionality of the CCD

EFA supports extending the scope of the CCD to cover credits below €200 as this will ensure short term, high-cost credit is regulated. However, the Commission's current proposals would put innovative, interest free, sustainable credit such as 'buy now pay later' (BNPL) under the same regulatory burden as high-value, high-cost and long-term credit. Taking out an interest-bearing loan of €20,000 over several years to buy a car should not be treated in the same regulatory manner as a small interest-free loan of €100 to buy a pair of shoes over a fixed period of no more than two months. This could lead to unintended consequences with consumers choosing more expensive and less sustainable forms of short-term credit if it is easier to access.

Consumers should be able to decide which payment method is cheaper, more trustworthy and gives them better control. This means that BNPL should not be subject to stricter regulation at the checkout than substitute consumer payment options.

While BNPL should not avoid regulation, the requirements for short-term, interest-free credits within the CCD should be **proportional to the value, length of term and cost of the loan**. A new **definition** could be introduced to carve out such credit types from non-applicable or disproportionate measures within the CCD.

Furthermore, the EFA would like to highlight several areas within the revised CCD proposal where we believe further proportionality could be introduced:

- **Pre-Contractual and Disclosure Requirements**

The CCD includes obligations on providers to disclose certain information about a product at the point of agreement and to do so within a certain time period e.g. up to 24 hours prior to the agreement coming into effect. This is not a practical approach to the realities of online shopping and e-commerce, and actually risks confusing the consumer with more paperwork than they expected. If BNPL products are treated as a one-off loan, this would require the provision of voluminous pre-contractual disclosures every time a customer makes a transaction, at least 24 hours prior to the start of the agreement.

Pre-contractual information must be simple and transparent, presented in a way that makes sense to consumers and allow them to compare between different forms of payment/credit to make an informed decision. This information should cover:

- the total cost of credit to the consumer;
- when customers are required to pay; and
- the consequences of not paying on time including interest, fees, penalty charges and any potential impact on a consumer's credit rating.

The majority of the provisions in the mandatory Standard European Consumer Credit Information (SECCI) form are not relevant to interest free products and are not adapted to the reality of consumers increasingly shopping online.

- **Creditworthiness Assesment**

The proposal prescribes measures to assess the consumer's ability to repay the credit, taking into account the consumer's interest and based on information on the consumer's income and expenses as well as other financial and economic circumstances. Such creditworthiness requirements are not proportionate to the level of risk BNPL poses. Full income and expenditure assessments should not be necessary for consumers looking to purchase low value, everyday items like clothes on short term interest free credit. This process would significantly hinder consumers looking to transact in an online environment particularly.

For many years traditional credit providers have relied on credit reference agencies (CRAs) to support affordability assessment. Traditional credit checks carried out by CRAs mean only those with established credit history can apply for a BNPL product.

There is an important balance to be struck between ensuring that BNPL products do not result in customers taking on too much debt, while allowing safe low-limit products to be easily accessible to consumers. Legislation should aim to encourage flexible and innovative solutions for granting credit by setting affordability assessment requirements proportionate to the value, length of term and cost of the loan. This helps promote financial inclusion and financial literacy, without exposing consumers to expensive and harmful products.

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