

Ecommerce Europe's position on Consumer Credits

Ecommerce Europe welcomes the opportunity to provide feedback on the [European Commission's proposal](#) to repeal Directive 2008/48/EC on Consumer Credit Agreements.

The European Commission published on 30 June 2021 its proposal for a Directive on Consumer Credits repealing the 2008 Consumer Credit Directive. This review, stemming from an [evaluation of the current rules](#), and new development brought up by the COVID-19 crisis, aims at extending and updating consumer credit rules in the EU.

The topic of consumer credit has become increasingly relevant in the e-commerce sector as new players and evolving consumer demand for these solutions continue to shape the sector. The proposed new rules, and particularly changes to the scope of the existing directive, would therefore have a clear impact on the sector.

Ecommerce Europe recognises that the evolution of the consumer credit market warrants a review of EU rules **to ensure consumer protection and trust**, but also **to address the risk of fragmentation of the European market as Member States further legislate on this issue**. Certain national initiatives could indeed today threaten the ability for merchants to offer these services cross-border, and could place some webshop at a disadvantage on the European market. It is also crucial to ensure that the current EU rules are implemented and enforced across all EU member states before proposing additional requirements on consumer credits.

The European Union should strive for a transparent and competitive market for consumer credits, in order to ensure that these solutions remain cost-efficient for online merchants and consumers. Future consumer credit rules should remain proportional and risk-oriented to ensure that new requirements do not go beyond what is necessary.

Ecommerce Europe believes that certain aspects of the proposal fail to take into consideration current trends and innovation in consumer care and financial technology. Ecommerce Europe does however welcome the introduction of measures for financial education to be promoted by Member States to improve consumers' financial knowledge and allow for an inclusive development of these products and services.

To ensure that new technologies and solutions can be leveraged to offer businesses and consumers secure, trustworthy, convenient and cost-efficient solutions, the new Directive must be future-proof and foster competition in the consumer credit market.

Regarding the scope, the proposal includes an extension of the rules to the following services previously exempted:

1. Consumer credit agreements below the amount of EUR 200.
2. Credit agreements where the credit is granted free of interest and without any other charges;
3. Credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable.

Ecommerce Europe believes that extending the scope of the existing directive to those three use-cases would negatively impact online merchants' ability, but also willingness, to provide these services to their consumers. The additional administrative burden and costs would put retailers in a position to either stop providing these services, or possibly apply charges or collect interests to cover additional costs.

E-shops currently offering these services do not do so as their core activities, but simply to facilitate the sales of goods and services. In practice, the trader himself merely provides deferred payment to his consumers without interest or, where applicable, with minimal charges, simply allowing a consumer to pay for the purchase through an agreed number of instalments of an agreed amount.

The extension of the scope to three above-mentioned use-cases would mean that these low-risk payment services offered free of interest or with none or only insignificant charges payable, would expose short term, interest free credit to the same regulatory burden as high value, long term credit. It would not be proportional to the level of risk posed by these products and would ultimately reduce the choice available to customers and merchants. This would also impact merchants by making it more difficult to offer these services as part of their payment offering to their consumers, especially in the case of smaller companies with limited resources and low margins. It is crucial to take into account the potential costs for merchants, and the impact that the increasing demand for consumer credits could have if the rules were to restrict the above-mentioned use-cases.

These changes carry the risks of undue complications and administrative burdens that are not justified by the complexity of the products offered. Limiting the availability of these products would be particularly detrimental to lower-income households, who often use this payment method as it allows them to afford their purchases and to have better control over their expenses over defined period of time, and could force them to rely on more costly forms of lending - that are suboptimal given their limited financial means.

Additionally, Ecommerce Europe believes that consumer information requirements should be proportionate and should not over-burden consumers with information that could lead to confusion. The proposal's information requirements would be burdensome for both companies and consumers, which could have an impact on consumers' ability to make informed decisions when it comes to low-risks credits. While we welcome the European Commission's ambition to ensure that the pre-contractual information is accessible on all devices, we remain concerned that that proposal does not state clearly enough the need for technology neutrality that would allow for a clear and simple display of information for all channels. **The ambition of the revision of consumer credit rules should therefore be to ensure fair access to affordable credit solutions in Europe.**

Ecommerce Europe strongly believes that a proportionate regime would be the best way forward to regulate the above-mentioned services that would be brought in the scope under the current proposal. Ecommerce Europe therefore calls for co-legislators to consider options that would exempt low risks products from the scope of the revision. One example of such low-risk product would include instalment payments offered directly by the merchant himself, where the credit is granted free of interest directly by the retailer himself and without any other charges or other penalties different than those that exist for the cash payments.

Ecommerce Europe would like to highlight another point of concern in the proposal. The Commission seems to imply that the Directive would apply to all deferred payments, although it does not define what a "deferred payment" is. It is not uncommon in e-commerce that a trader will ask the consumer to pay after delivery, for instance, 14 days from delivery of the parcel (without any extra charges) where the consumer will be sure to keep the product and not exercise anymore his right of withdrawal. In our opinion, this deferred payment has nothing to do with consumer credit, therefore it would be unreasonable to include it in the scope of application of the new Directive. Thus, we ask policymakers to clarify that any "deferred payment" which is offered free of interest and without any charges, as such will not be qualified as a consumer credit agreement and ensure that only "deferred payments that clearly have the characteristics of consumer credit, would be considered as consumer credit.

Ecommerce Europe would also like to stress the potential impact of the obligation to assess the creditworthiness of the consumers, especially for the products described above. These requirements could severely impact consumer experience, going beyond what consumers are willing and comfortable sharing with third parties to access these products. Finally, creditworthiness assessment – if based on consumers' income and expenses – could also represent a barrier to the growth of new FinTech solutions. We would therefore encourage co-legislator to either limit the assessment of creditworthiness to Article 19 (by deleting Article 18) or agree on a proportional approach to this assessment for products carrying limited risks and costs for consumers.

Finally, as expressed above, harmonisation of consumer credit rules in the EU is critical. We would therefore strongly argue against the broad mandate given to Member States in Article 31 with regards to regulating caps on interest rates, annual percentage rate of charge and total cost of credit. Diverging national

consumer credit rules could represent an additional layer of administrative and financial burdens on companies providing services in Europe.

Additionally, the draft requirements for Member States to set caps on the interest rate, the APR, or the cost of consumer credit could cause serious market disruption, given the existence of distinct credit products with different interest rates. For instance, the average interest rate of a mortgage loan is much lower than that of personal credit, due to the different risks that each product contends with. On top of this, some financial entities are not covered by Member States' banking regulations and are instead financed through their own resources. Their higher financial and operational costs may not be covered if a maximum rate is established. Thus, setting a maximum rate lower than the total of these costs would imply the loss of competition in the market.

More generally, we call on the co-legislators to ensure that the Directive sets clear definition of key concepts, especially when defining the scope of the legislation, and that the Directive do not overlap with existing piece of legislations such as the General Data Protection Regulation.

Ecommerce Europe is eager to further engage with the co-legislators to find balanced solutions that would uphold a high level of consumer protection without jeopardising the ability of merchants to propose a wide range of payment solutions and services to their consumers.