

Ecommerce Europe's updated position on Consumer Credits Agreements

Ecommerce Europe would like to provide further 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 e-shops 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.

Key Recommendations

1. Address the issue of proportionality of the scope by exempting deferred payments and defining low-risks, interest and charges free credit agreements;
2. Adjust accordingly, if needed, provisions on consumer information, creditworthiness assessment (CWA), and registration and supervision of non-credit institutions;
3. Ensure the simplification of consumer and pre-contractual information for credit agreements;
4. Duly consider the potential impact of CWA provisions on consumer privacy and experience and the impact on merchants' ability to offer credit agreements.

Scope

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 a blanket extension of 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.

Merchants 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 its 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 expose low-risk payment services offered free of interest or with no or only insignificant charges payable to the same regulatory burden as credits with high-interest rates and charges. 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.

Our concern regarding the proportionality is that the new blanket extension would mean that cases such as deferred payments would *de facto* be in the scope. It is not uncommon in e-commerce that a trader will offer the consumer to pay after delivery, for instance, 14 days from the delivery of the parcel (without any extra charges) when the consumer will be sure to keep the product and not exercise anymore his right of withdrawal. Use-cases such as deferred payments which are offered free of interest, should not be qualified as consumer credit. We therefore encourage policymakers to define these low-risk use-cases. The amendment proposed in the Council of the EU Presidency's compromise text of 10 December 2021 to Article 3, excluding from the definition of 'credit agreement' deferred payment of an invoice whereby the trader gives its consumer time to pay the invoice, free of interest and charges (beyond possible charges applying according to member states' law if the consumer is in default) is a step in the right direction but can be further complemented.

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 without any other charges or other penalties different than those that exist for the cash payments.

Consumer information

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.**

Specifically, the new information requirements proposed by the European Commission fail to address the objective of facilitating consumers' understanding of credit products. Under the current proposal, the existing Standard European Consumer Credit Information (SECCI) would have to be complemented by the Standard European Consumer Credit Overview (SECCO) as well as additional information requirements. The combined display of both the SECCI and the SECCO would not bring any added-value to the consumers and would not be adapted to new shopping and payment channels (e.g. mobile commerce). We would therefore suggest streamlining information requirements through a single concise document covering key components.

Credit-worthiness assessment

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 impact consumer experience, going beyond what consumers are willing and comfortable sharing with third parties to purchase products such as furniture, electronics or other products that could be offered through low-value, low-risks and short-term credit agreements. It would also be important to consider what could be the impact on consumers if low-risks products were to be included in requirements for creditworthiness assessment. This could both limit consumers' access to flexible solutions to manage payments in case of emergency (e.g., replacement of necessary appliance) and could eventually impact consumers' credit rating, which means that at a given time, short-term, low-value credits could hinder their ability to access more affordable credit in the future.

We are notably concerned about the lack of precision of Article 18 (2) of the proposal, providing that *"assessment of creditworthiness shall be carried out on the basis of relevant and accurate information on the consumer's income and expenses and other financial and economic circumstances which is necessary and proportionate such as evidence of income or other sources of repayment, information on financial assets and liabilities, or information on other financial commitments."* Even if only applying when "necessary and proportionate", requesting detailed evidence as outlined in the article would have a clear impact on consumers and businesses. Not only would this imply disclosing critical financial and personal data, but also disproportionately impact payment transactions by possibly having to loop in Account Information Services Providers (AISPs) as defined in the Payment Services Directive 2 (PSD2) in the approval of a transaction if it includes a credit agreement.

Discussion on credit-worthiness assessment should take place in the wider context of the evolution of the European payment market and innovation with data analysis and machine learning in the field of credit assessment and fraud detection. The growth of Open banking and Open finance could create new opportunities to improve creditworthiness assessment with up-to-date, accurate data that would limit the impact on the consumer experience while protecting personal and sensitive consumer data. This proposal should however carefully consider the ongoing challenges with the implementation of the PSD2. These provisions should not create a situation in which online merchants would have to rely on the involvement of AISPs to access consumers' account information in order to offer credit agreements.

We would therefore encourage co-legislators to amend Article 18 on the obligation to assess the creditworthiness of the consumers in order to ensure proportionality.

Caps on interest rates, APR and total cost of credit

Ecommerce Europe recognises the need to protect customers from unproportionate APRs. However, the draft requirements for Member States to set caps on the interest rate, the APR, or the cost of consumer credit could cause potential 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 could imply the loss of competition in the market.

Admission, registration and supervision of non-credit institutions

Article 37 of the proposal stipulates that non-credit institutions should be subjected to an adequate admission process and to registration and supervision arrangements set up by an independent competent authority. We would like to highlight some concerns as of the scope and clarity of the article. We would welcome the definition of "credit", which is included in the definition of "creditor" but never defined itself (only credit agreement is defined, which can be considered broader than the definition of credit).

Regarding the scope, we would like co-legislators to take into account the risk that registration and supervision would create significant burden on merchants who do not provide credit agreement as their core activities, but simply to facilitate the sales of goods and services, often merely providing deferred payment to its consumers without interest. This would represent a time-consuming (considering the application, the monitoring of compliance, the regular submitting of data to the competent authorities) but also in certain member states a costly (actual cost of registration and possible periodic fees) process for merchants.

Coherence with other EU legislations

Finally, 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**. It is also very important that the **discussions on this proposal are aligned with the discussion on other proposals such as the AI Act**.

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.