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REGULATORY SCRUTINY BOARD OPINION

Proposal for a Directive of the European Parliament and of the Council
on consumer credits

{COM(2021) 347}
{SWD(2021) 170}
{SWD(2021) 171}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Review of the Consumer Credit Directive

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The EU adopted the current Consumer Credit Directive in 2008. The Directive obliges lenders to disclose key information to potential borrowers. Lenders must also assess borrowers' creditworthiness. Borrowers have a cooling-off period during which they can back out of a loan for any reason. The Directive also provides borrowers with rights to repay loans early.

The legislation requires a review every five years. An evaluation concluded that the Directive has been successful in ensuring some harmonisation and a minimum degree of consumer protection. The evaluation found a number of limitations and shortcomings. These are partly due to its diverse application and enforcement in Member States and to the development of overall credit supply and demand. This impact assessment supports a revision of this Directive. This aims to tackle the shortcomings identified by the evaluation.

(B) Summary of findings

The Board notes that the report has been substantially redrafted. The cross-border element has been further elaborated and the internal market aspect developed. The simplification potential is better addressed across the board.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not sufficiently establish the EU value added of the options. It is not clear why consumers cannot be sufficiently protected by national legislation.

(2) The report does not sufficiently justify the composition of the preferred option and does not sufficiently analyse its overall impacts and proportionality.

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

(1) As most Member States have enhanced the level of consumer protection by adopting measures that go beyond the Directive's current requirements, the report should better demonstrate the necessity for EU action. It should show that national legislation cannot sufficiently protect consumers when the number and type of cross-border providers of consumer credit is increasing or is likely to increase.

(2) The report should better explain some of the expected impacts. It should provide reasonable justification for the assumed effectiveness of individual measures, thus clarifying its upward revision since the previous submission.

(3) The analysis of the options should discuss the extension of the scope of the Directive to pawn shops and the removal of the upper threshold. The conclusion not to include these measures in the final option for subsidiarity reasons should be based on this analysis.

(4) The report should better justify the composition of the preferred option. In particular, it should consistently explain why it adds individual measures from other options to the preferred option. In addition, the report should analyse the overall impact of the final combination of measures in the preferred option. It should explain why a full pass on of the costs for business to the consumers is not expected. It should demonstrate the proportionality of the preferred option, given its high costs compared to its benefits. The report could include the final preferred option as an additional option to increase the logical flow of the analysis.

(5) The annex on procedural information (Annex 1) should indicate how it has integrated the recommendations from the Board's first opinion.

The Board notes the estimated costs and benefits of the preferred options in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG may proceed with the initiative.

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact Assessment on a proposal to revise Directive 2008/48/EC on Credit Agreements for Consumers
Reference number	PLAN/2020/6978
Submitted to RSB on	26 March 2021
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

Overview of benefits (direct benefits only include benefits that could be generated as a result of a given measure implemented banks – and not by non-bank lenders) over the period 2021-2030. [1]

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount (qualified when unquantified)***	***Comments***
Direct benefits		
Better coverage of unregulated products by removing the minimum and maximum thresholds (**2.1**)	EUR 276.18 million (M)	Figures drawn from ICF supporting study estimates Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses)
Better coverage of unregulated products by including some of the currently excluded loans within its scope of application (**2.2**)	EUR 759.51 M	Figures drawn from ICF supporting study estimates. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Improving legal clarity by providing a more detailed definition of some key terms related to obligations contained in the Directive (**2.3/2.7**)	EUR 241.66 M	Figures drawn from ICF supporting study estimates. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Improving transparency and consumer understanding through a right to receive an explanation on how and on what basis a decision on creditworthiness was reached (**3a.15**)	EUR 138.09 M	Figures drawn from ICF supporting study estimates. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Regular assessment from the Commission of the financial education/digital literacy initiatives implemented in Member States, identification of best practices, and publication of the findings (**3a.17**)	EUR 34.52 M	Figures drawn from ICF supporting study estimates. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Increased awareness of consumers through an obligation upon credit providers to inform them whether advisory services are or can be provided (**3a.7**)	EUR 20.71 M	Figures drawn from ICF supporting study estimates. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Prohibition of product tying practices (**3a.9**)	EUR 138.09 M	Figures drawn from ICF supporting study estimates. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Prohibit unsolicited sale of	EUR 172.62 M	Figures drawn from ICF

[1] Some of the benefits have the same value because the benefit of each measure was calculated based on the assumed increase in the Directive's effectiveness in reducing consumers' financial detriment and monetised time losses attributed to the measure. In some cases, the assumed increase is the same for different measures.

credit (**3b.6**)		supporting study estimates. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Improve the effectiveness of information disclosed in advertising by reducing the amount of information to be provided to consumers focusing on key information, when provided through certain channels (radio only) (**2.4**)	EUR 138.09 M	Figures drawn from ICF supporting study estimates. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
	After the initial (limited) costs to adapt to the Directive, compliance costs to advertise consumer credit would be reduced thanks to simplified information requirements, which could in turn lead to higher investment in advertising via radio broadcasts, hence in increased revenues for them. EUR 14 M	Figures drawn from ICF supporting study estimates. Beneficiaries: advertisers and radios.
Present key pre-contractual information in a more prominent way (without reducing the amount of information provided to consumers at pre-contractual stage) (**2.5**)	EUR 69.05 M	Figures drawn from ICF supporting study estimates. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Obligation upon Member States to set interest rate/APR caps, without specific rules or guidelines on how these should be calculated.	Caps are likely to result in a reduction of consumers who end up in debt spirals.	ICF supporting study. Beneficiaries: consumers (reduction in consumers' financial detriment and monetised time losses).
Indirect benefits		
Obligation upon Member States to provide – directly or indirectly – debt advice services for over-indebted or otherwise vulnerable consumers.	Per EUR 1 spent debt advice will provide between EUR 1.4 – 5.3 in terms of equivalent benefits, mainly referring to the social costs of over-indebtedness avoided.	Extrapolation from the First Interim Report by VVA and CEPS on provision of actions to extend the availability and improve the quality of debt-advice services for European households (first task of a project to be completed in 2021). Beneficiaries: society.

Overview of costs (only including costs generated as a result of a given measure implemented banks – and not by non-bank lenders, in thousands of EUR) over the period 2021-2030.

II. Overview of costs – Preferred option							
Measure		*Citizens/Consumers*		*Businesses*		*Administrations*	
		One-off	*Recurrent*	*One-off*	*Recurrent*	*One-off*	*Recurrent*
2.1	Direct costs	-	-	23488	122696	15	167
	Indirect costs	Not available					
2.2	Direct costs	-	-	83081	667812	66	584
	Indirect costs	Not available					
2.3/ 2.7	Direct costs	-	-	70464	318623	54	500
	Indirect costs	Not available					
2.4	Direct costs	-	-	8235	-	20	73
	Indirect costs	Not available					
2.5	Direct costs	-	-	9065	-	22	73
	Indirect costs	Not available					
3a.15	Direct costs	-	-	21275	69957	23	67
	Indirect costs	Not available					
3a.17	Direct costs	-	-	-	-	48	957
	Indirect costs	Not available					
3a.7	Direct costs	-	-	6732	-	18	83
	Indirect costs	Not available					
3a.9	Direct costs	-	-	24495	-	32	167
	Indirect costs	Not available					
3b.6	Direct costs	-	-	37489	None	46	331
	Indirect costs	Not available					

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Brussels,
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Opinion

Title: Impact assessment / Review of the Consumer Credit Directive (2008/48/EC)

Overall opinion: NEGATIVE

(A) Policy context

The EU adopted the current Consumer Credit Directive in 2008. The Directive obliges lenders to disclose key information to potential borrowers. Lenders must also assess borrowers' creditworthiness. Borrowers have a cooling-off period during which they can back out of a loan for any reason. The Directive also provides borrowers with rights to repay loans early.

The legislation requires a review every five years. An evaluation concluded that the Directive has been successful in ensuring some harmonisation and a minimum degree of consumer protection. The evaluation found a number of limitations and shortcomings. These are partly due to its diverse application and enforcement in Member States and to the development of overall credit supply and demand. This impact assessment supports a revision of this Directive. This aims to tackle the shortcomings identified by the evaluation.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

(1) Given the low levels of cross-border consumer credits, the report does not convincingly demonstrate why the EU should intervene. It does not sufficiently analyse how the market may evolve and which new credit products may need to be considered.

(2) The report does not demonstrate the proportionality of the preferred option. It has high costs and includes measures that have substantial negative net benefits.

(3) The report does not sufficiently address the simplification potential of all policy options and does not quantify potential cost reductions.

(C) What to improve

(1) The report should analyse with more granularity the expected evolution of the consumer credit market. It should identify the risks associated with new types of credit (e.g. peer-to-peer lending) or credit providers (e.g. internet platforms). For each of these, it should demonstrate that EU intervention could be needed and justified. The report should demonstrate the cross-border potential of types of credit that it considers adding to the scope of the Directive (e.g. pawn shops). It should more clearly indicate why the EU should create a harmonised market for types of loans that are considered risky for vulnerable consumers.

(2) Given current low levels of cross-border consumer credits, the report should provide a clear rationale for the internal market dimension of the Directive. It needs to demonstrate more convincingly the respect of the principle of subsidiarity, as it is not clear that the EU is better placed than Member States to act in the absence of a developing single consumer credit market.

(3) The intervention logic should be updated if its hypotheses conflict with the outcomes of the impact analysis. It should consider if the evidence base of the evaluation preceding the impact assessment might have changed. For example, the impact analysis shows that removing credit thresholds for the Directive does not protect consumers.

(4) The report should critically review the benefit estimates. Before applying scoring schemes and weighting of aggregate costs and benefits, the impact analysis should check the plausibility of what the different measures contribute. For example, the report should analyse in a more nuanced way to what extent credit providers could pass on their higher costs to consumers.

(5) The multi-criteria analysis should better balance the weights of costs and benefits in the efficiency analysis and in its overall comparison of options. It should discuss how the sensitivity analysis affects the ranking of options.

(6) The report should better justify the composition of the preferred option. In particular, it should give reasons for adding measures with strong negative net benefits to the preferred option, and for not adding a measure with strong positive net benefits. The report should explain the proportionality of the preferred option, given its high costs compared to its benefits. The report should present a clear summary assessment of the costs and benefits of the various combinations of options in the comparison section.

(7) The report does not sufficiently develop the scope for simplification and cost reduction. In line with the REFIT Platform opinion, the report should better integrate the potential for simplification of advertisement obligations, without harming the consumer protection objective.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board’s findings and resubmit it for a final RSB opinion.

Full title	Impact Assessment on a proposal to revise Directive 2008/48/EC on Credit Agreements for Consumers

Reference number	PLAN/2020/6978
Submitted to RSB on	6 January 2021
Date of RSB meeting	3 February 2021