

*Non-paper of the Dutch Ministry of Finance and the Dutch Authority for the
Financial Markets (AFM) on the review of the CCD*

Introduction

With this non-paper, the Netherlands recognizes the importance of an European framework for consumer credit and wishes to reflect upon the possible solutions put forward by the Commission in the inception impact assessment for the Consumer Credit Directive (CCD) review. We share the ambition to reinforce, streamline and modernise consumer credit rules to ensure they are future-proof, better protect consumers, and deliver a level playing field for creditors.

The CCD contributed to consumer protection across the EU. Nevertheless, the Netherlands believes that the CCD should be updated. Improvements can be made with regard to the scope of the CCD, which is inadequate for small loans, and the provisions on assessing creditworthiness. Furthermore, we should benefit from the latest insights from behavioural sciences to improve creditors' information disclosure and so-called online 'decision environment'. In its current form, the CCD does not optimally serve the interests of neither consumers nor creditors, which leads to the introduction of additional regulation by Member States (MS). This has contributed to the development of divergent legislation among MS. For instance, the Netherlands aims for a higher level of consumer protection through national legislation beyond provisions in the CCD (e.g. an interest rate cap) and self-regulation. As a consequence of national (legislative) initiatives, the level playing field for creditors operating across the EU is undermined. Creditors from MS with less stringent consumer protection rules can provide loans to consumers in MS with more stringent rules, which can be harmful for consumers. In this regard, the CCD does not provide a good basis for effective supervision and enforcement of the consumer credit market. In our view, consumer protection needs to be enhanced at EU level to encourage responsible cross-border lending.

Developing and implementing further non-regulatory measures to promote responsible lending can be beneficial for consumers and creditors. However, without legislative action, this might lead to an even more fragmented consumer credit framework. It is therefore that we prefer to enhance the minimal standards for consumer protection by amending the CCD with (1) targeted action, and (2) comprehensive revision. Nonetheless, we believe that MS should retain the competence to set even higher standards in national legislation. Enhanced provisions in the CCD could be further developed through guidelines and possibly self-regulation. This paper contains the principal view of the Netherlands on the policy options (below in *italic*) as presented in the inception impact assessment.

1. Targeted legislative action

1.1. *Extending the scope of the CCD to cover credits below € 200 and to some types of credit currently outside of its scope of application.* In our view, the CCD should provide a high level of protection to consumers and a level playing field for creditors. To this end, the extension of the directive's scope to credits under € 200 may be a useful step. Alternatively, MS should retain the competence to extend the CCD's provision to smaller credits. We do not see the necessity of including new operators, such as peer-to-peer lending platforms, in scope of the CCD.

In the Netherlands, we have observed increased demand and supply of private leasing. Private lease is excluded from the scope of the CCD as well as from Dutch legislation on consumer credit. A study on the size of the private lease market, legal framework and potential risks for consumers will start this year. We can share the study's main findings in the second quarter of next year.

1.2. *Modifying the definition of key terms.* In our opinion, it should be made clear what the definition of the term 'total cost of the credit to the consumer' exactly entails and which costs need to be taken into account in order to calculate it. This is necessary to ensure that it is not possible to offer loans to consumers (from another country) under conditions that are different from the consumer's country of residence. For instance, in the Netherlands there is case-law that non-performing charges related to the contract and costs for urgent transfer of the credit have to be included in the total costs of the credit, whilst this does not follow from the CCD.

1.3 *Considering behavioural and cognitive biases of consumers.* Generally, information provision appears to reach a small group of consumers. Applying behavioural insights, simplifying information and presenting it in a more attractive manner might increase the number of consumers reading the information. All consumers should be provided with information in a simple format. The language used should be easy to understand and information-overload should be avoided. Furthermore, it should be assessed and established which information is required as a minimum and which

information is more supplementary (must know, should know, nice to know). The CCD should allow opportunities resulting from technological advances to be used to improve information provision (for instance through online (application) formats using figures and images and by layering information).

Additionally, recent insights from behavioural sciences should be taken into account to improve creditors' online 'decision environment' (choice architecture). Several studies concluded that the design of information and standard options, which are presented to consumers, can negatively affect their decision-making process and do not enable them to take well-informed decisions. Therefore, the Netherlands is in favour of an open standard (principle) in the CCD that prevents these decision environments (and creditors) from steering consumers towards loans with higher principals and longer maturities. The default option presented to consumers should be in the interest of the consumer. In addition, it should be clear to consumers that they purchase a 'credit' and the costs of credit should be presented clearly and comprehensively.

1.4 *Adopting creditworthiness assessment standards and common principles.* In order to increase consumer protection and minimise defaults in the interest of both consumers and creditors, we are in favour to include general standards and principles for the creditworthiness assessment (CWA) in the CCD. An EU-wide CWA would prevent consumers who are not creditworthy in a MS with a stringent CWA, to obtain credit in other MS with no or less stringent rules. This will also contribute to a level playing field for creditors. The recent EBA guidelines on loan origination and monitoring could be an inspiration for the standards and principles.

1.5 *Adopting measures related to the content and access to credit databases.* In order to facilitate CWA at the EU level, it is necessary to ensure that access to credit databases is possible in accordance with the rules of the GDPR.

2 Comprehensive revision of the Directive

2.1 *Adopting caps on interest rates.* In the Netherlands, the interest rate is capped at 14 percent per year. To enhance consumer protection and ensure consumers are able to take out loans with reasonable interest rates during the COVID-19 crisis, this cap is temporarily lowered to 10 percent. Currently, we are conducting a study to assess whether the cap could be permanently lowered. As the introduction of the interest rate cap has significantly contributed to consumer protection in the Netherlands, we are in favour of requiring each MS to introduce an appropriate cap. In our view, the CCD could also adopt an interest rate cap, with the option for MS to set a stricter cap.

2.2 *Adopting financial education.* We are very positive about financial education, as it can be beneficial to (vulnerable) consumers. However, we would oppose regulating financial education in the CCD. We favour a centralised approach to financial education, instead of fragmented regulation in various EU legislative acts. In our view, the coordination of financial education initiatives in MS should take place at EU-level by collecting and sharing good practices, initiating research and providing assistance on request.

2.3 *Adopting debt advice services to low-scoring debtors.* We are not in favour of establishing this obligation in the CCD. We rather argue that it is important that the CWA is well established and accurate, so over-indebtedness can be avoided in the first place. Introducing product oversight and governance (POG) requirements in EU legislation could be an alternative solution. In the Netherlands, such requirements are embedded in law. Dutch law forbids that certain financial products are offered to specific customer groups for whom the product is not suitable. Through POG in combination with the CWA, low-scoring debtors will not end up with unsuitable credit.

2.4 *Adopting debt assistance for over-indebted or otherwise vulnerable consumers.* We are not in favour of establishing this obligation in the CCD. We agree that debt assistance could be valuable for over-indebted or otherwise vulnerable consumers, but, in our view, the CCD is not the right place to regulate debt services. This could be regulated in national law.

2.5 *Including provisions in the CCD to respond to the needs of debtors and creditors in situations of profound external economic shocks.* We are not convinced whether provisions catering to the needs of consumers and creditors in exceptional situations such as COVID-19 should be included in the CCD. This is because it will be difficult to construe a general provision that is suitable to all exceptional situations. Moreover, at this moment, we are not sure whether this kind of provisions are necessary since the CCD did not prevent creditors in the Netherlands to facilitate payment moratoria for consumers during this crisis. We opt for further research on the usefulness and necessity of such provisions prior to amending the CCD.