



NOTE

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Response by the Danish government to the public consultation for the Evaluation of the Consumer Credit Directive

General remarks

The Danish government welcomes and supports the evaluation of the Consumer Credit Directive (CCD). In general, Denmark supports the Better Regulation and REFIT agenda. It is important to have an ongoing focus on ensuring effective consumer protection as well as reaping the potential benefits of the regulation in EU.

We welcome the thorough scrutiny of the CCD.. We further believe this would support the Commission's intentions towards Better Regulation as described in the Principles on Better Regulation.

The following remarks encompass the Danish position on the questions asked in the public consultation of the CCD.

- *Reducing burdens and activating consumers*

It is important that the CCD strikes a reasonable balance between the interest of consumers and the creditors. The fundamental rights for the consumers should be ensured while creditors should not be imposed unnecessary burdens.

The development in behavioral insights has demonstrated that the massive amount of information provided to the consumer might be counter-productive. Many studies confirm that a large amount of information may overwhelm and frustrate consumers, causing them simply to skip reading the information. This is in contrast to the intentions behind the pre-contractual information requirements. Modern consumer legislation should pay attention to the development of behavioural insights and minimize burdens on companies, e.g. by giving the consumer essential information, presented in a simple manner. Furthermore, the information must be presented at the right time during the purchase making it useful for the consumer to compare credits and make the right choice.

The Danish government acknowledges and welcomes the Commission's existing work on behavioral insights and recommends additional testing of the information requirements in the CCD on consumer behavior.

- *Digitalization*

The environment in which consumers act has changed because of digitization and new technologies. New business models challenge the traditional concept of creditors and consumers.. The CCD is based on earlier generation technology and this causes friction for both creditors and consumers. Technology is playing an increasingly important role in the interaction between creditors and consumers and consumers often search for credits online. Therefore, it is important that the CCD reflects this and supports new digital solutions that empower the consumers to compare credits and prices from different providers.

Moreover, the access to big data and the ability to apply big data when profiling consumers has changed and improved the methods used by the creditors to assess their customers, but the need to know the customer remains in our opinion unchanged. The future regulation must ensure that the application of new technologies and the use of data are regulated appropriately and balanced for the benefit of the market, meaning both consumers and creditors.

- *Information requirements*

Creditors are obliged to comply with a large number of information requirements in advertisements, pre-contractual phase and in the credit agreement. This can be burdensome to both the creditors and the consumers, who are expected to read and understand extensive contractual information in a purchase situation. There is a need to evaluate all information requirements in the CCD in order to ensure that consumers are provided with essential and beneficial information, presented in a simple manner and at the right time in the purchase situation.

The Danish government urges the Commission to look at the information requirements in the CCD with the use of behavioral insights in order to present the relevant information at the right time and in the right context for the consumers and thereby ensure effectiveness of the information requirements. In this regards, focus on digitalization is essential in order to ensure that creditors can provide information, e.g. pre-contractual information, to consumers in a sensible way that fits different devices and media.

Issues related to information requirements are similar in other areas of consumer regulation. Therefore, any amendments in the CCD should be streamlined in other regulations to the furthest extent possible where relevant, e.g. in the Distance Marketing of Financial Services Directive and the Mortgage Credit Directive. This, in order to remove unnecessary burdens and to ensure greater coherence in the regulation.

Specific remarks

- *Cross-border activity*

The aim of the CCD is to encourage and generate cross-border demand from the consumers as well as cross-border supply and competition among creditors. The lack of knowledge of credits in other Member States, the language barriers, the legal barriers, the lack of transparent complaint schemes may be some of the reasons that make consumers hesitate to demand cross-border financial services.

On the providers' side, the lack of data, legal uncertainty and language barriers inhibit cross-border activities. The Danish government also suspects that EU-regulation is implemented differently in Member States causing legal uncertainty and in practice creates double regimes.

- *The scope of the CCD*

The CCD does not apply to credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75.000. Because of the threshold on EUR 200, it has been necessary to introduce national legislation in order to secure consumer protection especially on "payday loans".

The Danish government finds that the CCD should apply to all credits less than EUR 200 in order to ensure that creditors always are obliged to assess the consumer's creditworthiness and thereby only offer these types of credits to consumers that in reality cannot afford it.

The Danish stakeholders argue that all creditors no matter the amount of the credit should be within the scope of the CCD.

- *Standard information to be included in advertising*

The purpose of the standard information in advertising is to ensure that consumers understand the different financial characteristics of the credit in their initial comparison of credit from different providers. Given the recent insights from behavioral studies that have shown that extensive information requirements are not always beneficial for consumers and the fact the format of digital advertisement channels has restrictions in space, it is relevant to consider if a reduction of information is beneficial for consumers.

In 2018 the Danish Competition and Consumer Authority has conducted a behavioral study to investigate how a simplification of the information requirements in advertisement of consumer credits affects consumers. The study was only concerned with advertisement of consumer credits, not information requirements at contractual levels.

In summary, the study found that consumers benefit from a simplification of the information requirements for consumer credit marketing material:

- Consumers' ability to remember financial information is significantly enhanced with a simplified disclosure in TV media.
- The ability to recall information depends on the run time of the advertisement.
- Increasing the visual saliency of financial information has a positive effect on consumers' ability to recall important information.
- Consumers were to a large extent able to identify the better of two offers in a scenario with current as well as simplified disclosure. Yet, the simplified disclosure significantly reduced decision time and effort needed to complete the choice task.
- The choice experiment indicates that consumers use the annual percentage rate (APR) when choosing installment plans, but fail to recognize that in cases of purchase on credit, where creditors specify a higher price for the product and appear with a lower APR, it may be a misleading comparison parameter.
- The perceived attractiveness of personal loan offers was not affected by the simplified disclosure.

On that basis, the Danish government suggest that the information requirements in Article 4, regarding standard information to be included in advertising, should be simplified.

Reduction of the key information presented in advertising will make the initial comparison of credits across providers easier for consumers. This will also improve the competition between creditors.

The Danish government encourages the Commission to look further at how the information can be structured and presented in the light of the digitalization and use of different media for advertising.

The Danish stakeholders argue that it is important to consider how the information is provided and how the consumers understand the information - with the use of behavioral insight. The existing information requirements are too comprehensive, which causes consumers often not to read and understand the information provided. In addition, the requirements do not take into account the media used in the marketing. On these grounds, creditors often choose to advertise without indicating any figures in order to avoid complying with the information requirements in Article 4.

- *Obligation to assess the creditworthiness of the consumer*

Pursuant to Article 8 in CCD, the creditor has an obligation to assess the consumer's creditworthiness based on "sufficient information".

However, the consumer credit directive does not contain any requirements for what “sufficient information” is.

The Danish Consumer Ombudsman has since the beginning of 2018 been examining nine credit providers’ procedure in respect of the creditworthiness assessment. Some of the issues the Danish Consumer Ombudsman sees are the following:

- Some of the credit providers have been assessing the consumers’ ability to pay the ongoing costs in respect of the loan, and not whether the consumer is able to repay the credit amount
- Some of the credit providers do not take the consumers existing debt into account in their creditworthiness assessment of the consumer
- Some of the credit providers do not base the creditworthiness assessment on the consumer’s individual expenses but on statistical expenses

The Danish government suspects that this is not only a Danish issue. For that reason, the Danish government finds that more specific criteria needs to be laid down, and that all creditors should be obliged to assess adequately the creditworthiness of the consumer. Identical requirements in EU in this regard are essential in order to improve competition between creditors (level playing field) and at the same time deterring European consumers from credit agreements they cannot afford.

The Danish stakeholders argue that it is fundamental that the provisions about creditworthiness assessment are at a high standard ensuring a complete assessment. By comparison, the requirements to the creditworthiness assessment is much higher in the Mortgage Credit Directive. Furthermore, some Danish stakeholders argue that infringements should be punished.

- *Standard European consumer credit information (Annex II)*

The Standard European consumer credit information in annex II of the CCD, intends to enable consumers to compare credits and prices. Never the less, this tool is too complicated and detailed and some of the information provided in the standardized information sheet are not relevant in all Member States.

Furthermore, as mentioned above insights from behavioral studies have shown that extensive information requirements are not always beneficial for consumers and the fact the format of digital advertisement channels has restrictions in space, it is relevant to consider if a reduction of information is beneficial for consumers.

The Danish Banker Association argues that the standardized information sheet has no benefits for neither creditors nor consumers. The sheet needs to be simplified containing only key information that is relevant for the consumers and makes it possible to compare credit offers from different creditors. In addition, the digitalization entail that consumers often search for credits online and therefore, the sheet is not applied as intended for.