

1. september 2020

Response by the Danish government to the roadmap for the review of the Consumer Credit Directive (2008/48EC)

The Danish government welcomes the review of the Consumer Credit Directive (CCD). In general, we support 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 the EU.

We find that it is important that the directive continues to secure a high level of consumer protection for consumers taking loans, for example by taking new developments and other types of credits into consideration. In this regard, the Danish government welcomes initiatives aimed at reinforcing, streamlining and modernising consumer credit rules to ensure that they are future-proof and protect consumers better than is the case today.

Protecting consumers from indebtedness

We find that the Commission should examine whether targeted legislative action could be a way forward including:

- extending the scope of the Directive to credits below EUR 200 and for other types of credit that are currently outside of its scope;
- simplified rules to ensure better-structured, well-timed pre-contractual information, in line with the findings of behavioural insights, and;
- harmonising standards and introducing common principles and rules for assessing creditworthiness.

We also find that the Commission should examine how to adopt initiatives corresponding with the new Danish legislation in regard to pay day loans aiming to strengthen consumer protection by:

- Banning all consumer credits with APR of more than 35 percent, that are not related to a mortgage credit;
- impose a ceiling on the total cost of 100 percent;
- limiting the ability of loan providers to market their products, and;
- ensuring consumer protection through the conclusion of private credit agreements.

With a cap on APR there are a clear limit on what a fair credit agreement is, and a ceiling on the total cost of 100 percent sets an effective limit on how much a consumer can be asked to pay for a loan. These initiatives should furthermore be enforceable for private credit agreements.

The prohibitions on advertising of consumer credit can be justified in the interests of protecting consumers, to stop the massive advertising of expensive consumer credit (pay-day loans) that we face primarily online, on TV and in public, and could contribute to the fact that fewer consumers will end up in over-indebtedness.

Modernizing and updating the rules to secure consumer protection

Adjusting the scope of the CCD

In Denmark, we have seen that pay day loans have trapped many, particularly young and underprivileged people, in unmanageable debt. Today, the CCD does not apply to credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75.000. As a result, the CCD does not apply to many "pay day loans". It has therefore been necessary to introduce national legislation in Denmark in order to secure consumer protection especially on "pay day loans". We strongly urge the Commission to adjusting the scope and thresholds of the CCD as it could contribute to better protection of consumers e.g. by committing creditors to assess the consumer's creditworthiness also on "pay day loans".

Affecting loan behaviour through new digital solutions

The environment in which consumers act has changed because of digitization and new technologies. The CCD is based on earlier generation technology but new business models challenge the traditional concept of creditors and consumers. Consumers often search for credits online and technology is playing an increasingly important role in the interaction between consumers and creditors. Therefore, it is important that the CCD reflects this and supports new digital solutions that empower 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. However, the principle of the "need to know" the customer remains in our opinion unchanged. Future regulation should ensure that the application of new technologies and the use of data is regulated appropriately to the benefit of consumers. The fundamental rights of consumers should be ensured. Furthermore, it is important to incentivize creditors to develop new digital solutions for the benefit of consumers.

Updating information requirements in order for the consumer to understand and act upon the information

Today, the pre-contractual phase and the credit agreements are characterized by a large number of information requirements. This can be burdensome to 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 not only provided with essential and beneficial information, but also that the information is presented in such a simple manner and at the right time in the purchase situation that the consumer can take in the information and actually use the information.

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 regard, a stronger 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 making the information more easily accessible for consumers.

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

Obligation to assess the creditworthiness of the consumer

Pursuant to Article 8 in the 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 explicit guidelines for what "sufficient information" is.

Since the beginning of 2018, the Danish Consumer Ombudsman has been examining nine credit providers' procedures in respect of the creditworthiness assessment. The Danish Consumer Ombudsman has among others identified the following issues:

- 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.

We believe 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 protect European consumers from credit agreements they cannot afford. .

Moreover, Article 8 in the CCD states that "*member states whose legislation requires creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database may retain this requirement*".

The Danish Authorities interpret this as a hindrance to establishing a database and requirements to use such a database in the assessment of creditworthiness. However, with better insights into consumer behavior and increased digitization there might be potential to introduce innovative, easy-to-use-and-access databases that can increase consumer protection. For instance, the Danish Gambling Authority has established a database of self-excluded persons (aimed at consumers with a gambling problem) that providers of gambling services are required to consult before accepting a customer. Such a database might be relevant to consumers who want to exclude themselves from taking loans.

Clarifying the rules on early repayment

According to article 16 (1) of the CCD, the consumer shall be entitled at any time to discharge fully or partially the obligations under a credit agreement. In such cases, the consumer shall be entitled to a reduction in the total cost of the credit.

The provision has been interpreted by the ECJ in its ruling in C- 383/18. According to the ECJ this provision must be interpreted as meaning that the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer. According to the ECJ, the right of a reduction of the total cost of the credit cannot be restricted solely to costs explicitly connected with the duration of the credit. It is therefore the interpretation that the consumer is also entitled to a proportionate reduction of costs related to the setting up of the consumer credit.

We find that this interpretation gives rise to uncertainty and a range of questions for the consumer. We encourage the Commission to clarify that the right of reduction of the total cost of the credit only relates to the costs expressly connected with the duration of the contract, eg. the interest. The

Danish Government fears that the interpretation of the ECJ might lead to higher interest rates in general in order to cover the cost related to the initiation of the credit agreement.

Evidence base, data collection and “better regulation” instruments

The development in behavioural insights has demonstrated that the massive amount of information provided to the consumer might be counterproductive, especially if the timing and presentation during the purchase situation is not taken into account. Several studies confirm that a large amount of information may overwhelm and frustrate consumers, causing them simply to skip reading the information. Modern consumer legislation should pay attention to the development of behavioural insights, 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 situation making it useful for the consumer to compare credits and make the right choice.

We acknowledge and welcome the Commission’s existing work on behavioral insights and recommend additional testing of the effects of information requirements in the CCD on consumer behavior.

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.

Below is a summary of the results of the behavioral study by the Danish Competition and Consumer Authority:

- 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. Furthermore, we suggest that the information requirements could be met by using layered information.

Reduction of the key information presented in advertising can make the initial comparison of credits across providers easier for consumers. This can also improve the competition between creditors. We encourage the Commission to further examine how the information can be structured and presented in the light of the digitalization and use of different media for advertising.

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. Nevertheless, we find that this tool is too complicated and detailed for consumers and some of the information provided in the standardized information sheet are not relevant in all Member States.

As mentioned above, insights from behavioral studies have shown that extensive information requirements are not always beneficial for consumers. Moreover, the format of digital advertisement channels imposes restrictions in space for this information. As such, it is relevant to consider if a reduction of information is beneficial for consumers.