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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the implementation of Directive 2008/48/EC on credit agreements for consumers

{SEC(2020) 371 final} - {SWD(2020) 254 final} - {SWD(2020) 255 final}

Directive 2008/48/EC – Report to the co-legislators (in line with Art 27(2) CCD)

1. Introduction

Directive 2008/48/EC on credit agreements for consumers (Consumer Credit Directive – 'Directive')[1] harmonises certain aspects of the laws, regulations and administrative provisions of the Member States concerning credit agreements for consumers. It pursues two main objectives:

(i) to improve consumer protection thus boosting consumer confidence, and
(ii) to foster the emergence of a well-functioning internal market for consumer credit offered across borders by ensuring a level-playing field for consumer credit providers across Member States.

The Directive does not aim to encourage consumers to take more credit, but rather to provide them with all necessary information to reflect and compare offers before taking a credit and to give them rights in case they change their mind. It covers consumer credit between EUR 200 and EUR 75 000, such as loans granted for personal consumption, overdrafts and credit cards, as well as unsecured loans above EUR 75 000 the purpose of which is the renovation of a residential immovable property. The Directive does not apply to certain specific types of consumer credit (e.g. certain interest-free credits, certain leasing agreements).

The Directive entered into force in June 2008 and Member States had until 11 June 2010 to transpose it. By now, there are no pending infringement procedures against Member States for non-transposition of the Directive[2].

The Directive triggered substantial reforms of the consumer credit environment in most Member States. Member States had to either develop and set up an entirely new legal framework applicable to the credit market or amend their existing legislation. Insofar as the Directive established harmonised provisions, Member States could not maintain or introduce in their national law provisions diverging from those laid down in the Directive. However, discretionary flexibility was given to Member States to make use of particular regulatory choices in nine optional provisions[3]. In addition, some provisions of the Directive set clear objectives but do not clearly specify the result to be achieved. This gave Member States some additional discretion in the implementation of the Directive.

Article 27(2) of the Directive requires the Commission to monitor the way in which the regulatory choices of Member States affect the internal market and consumers[4]. Moreover,

[1] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ L 133, 22.5.2008, p. 66–92
[2] Upon the expiry of the transposition deadline, the Commission initiated infringement proceedings against 20 Member States. However, the Member States had eventually adopted and communicated their transposition measures and thus all cases were closed soon after.
[3] Specified in Article 27(2) of the Directive and addressed further below in Section 3.
[4] Article 27(2) of the Directive furthermore requires that the Commission undertakes a regular review of the thresholds and percentages laid down in the legislation and corresponding annexes. See Section 4 below for more information.

the Commission underlined in the 2017 'Consumer Financial Services Action Plan'[5] the importance of a (i) deeper and safer single market for consumer credit[6] as well as of (ii) better creditworthiness assessment[7]. The Commission's REFIT Platform opinion recommended in 2019 to assess the relevance, effectiveness and efficiency of the requirements for the standard information to be included in advertising.

Against this background, the Commission decided to carry out a full-fledged evaluation of the Directive to assess its effectiveness, efficiency, coherence, relevance, and EU added value[8]. The evaluation was carried out in line with Better Regulation principles, including an Open Public Consultation between January and April 2019 and other stakeholder consultation activities.

This report presents the key results of the evaluation and the lessons learnt from the application of the Directive over the past 10 years, including the considerations required under Article 27(2) of the Directive[9]. It draws on the results of a comprehensive evaluation document prepared by the Commission services[10] and published simultaneously with this report.

2. Key outcomes of the evaluation

2.1 Overall result

The overall finding of the evaluation is that the Directive has been **partially effective** in ensuring high standards of consumer protection and fostering the development of a single market for credit, and that its **objectives are still relevant** in the context of a regulatory landscape showing significant fragmentation across the EU.

Effectiveness

A high level of consumer protection and the emergence of a well-functioning internal market have both been partially achieved. The most effective provisions in the Directive relate to the provisions on the rights of withdrawal and early repayment and the provision regulating the Annual Percentage Rate of Charge. On the other hand, provisions regarding the creditworthiness assessments and credit databases have not been fully effective. The reasons

[5] Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, Consumer Financial Services Action Plan: Better Products, More Choice, COM/2017/0139 final

[6] Action 7 – Deeper Single Market for consumer credit: the Commission will explore ways of facilitating access to loans across borders whilst ensuring a high level of consumer protection. In this context, the Commission will also consider ways of addressing in a more efficient manner consumer over-indebtedness linked to credit activities.

[7] Action 9 - Better creditworthiness assessments: the Commission will seek to introduce common creditworthiness assessment standards and principles for lending to consumers and work to develop a minimum set of data to be exchanged between credit registers in cross-border creditworthiness assessments.

[8] See here: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1844-Evaluation-of-the-Consumer-Credit-Directive

[9] Article 27(2) of the Directive provides that the Commission shall monitor the effect of the existence of the regulatory choices referred to in Article 2(5), 2(6), 4(1), 4(2)(c), 6(2), 10(1), 10(5)(f), 14(2) and 16(4) of the Directive.

[10] SWD(2020)254.

why the Directive has been only partially effective stem both from the Directive itself (for instance, imprecise wording of particular articles) and from external factors, such as the practical application and enforcement in the Member States[11] and from aspects of the consumer credit market not covered by the Directive.

Efficiency

The entry into force of the Directive has led to a number of initial and on-going costs (for instance, staff training and initial set up costs for private companies; monitoring, compliance and enforcement costs for public authorities). However, the main finding is that the principal benefit of the Directive, namely the reduction in consumer detriment, outweighs the costs.

Coherence

The Directive is generally coherent with and complementary to other EU-level consumer policy and legislation. While there are no major inconsistencies with other relevant EU-level legislation, further alignment or synergies with such legislation may help improve legal clarity for consumers and creditors. One such instance concerns the creditworthiness assessment and the possible need for the Directive to align itself better with the Mortgage Credit Directive and General Data Protection Regulation respectively.

Relevance

The two main objectives of the Directive, namely achieving higher consumer protection standards and the emergence of a cross-border market, remain relevant. However, in order to sustain its relevance in the short and medium term, the Directive may need to cover the new emerging consumer habits and emerging market developments brought by digitalisation. This does not require changing the objectives themselves, but possibly an adaptation of some of the Directive's provisions.

EU added value

The Directive's added value lies in the creation of a high level of consumer protection across the EU and in the reduction of fragmentation of the EU regulatory framework through the introduction of certain harmonization articles (for instance, standardised information formats), thereby increasing consumer protection and reducing the barriers to the provision of cross border credit.

2.2 Key developments of the credit market affecting the Directive

The effectiveness, efficiency, coherence, relevance and added value of the Directive have been affected by several trends in the credit market over the past 10 years:

Digitalisation

Digitalisation has profoundly changed the decision-making process and overall habits of consumers. This is also affecting the lending sector that is progressively getting digitalised

[11] Discussed below Section 2.4.

with an increasing number of consumer credit contracts negotiated and/or concluded online. The trend towards more digitalisation is expected to continue[12].

Digitalisation also brought with it new market players offering credit agreements in different forms, such as credits by platforms or peer-to-peer lending. This has generated a debate about whether or not new market players do and should fall within the scope of the Directive and whether the current definition of 'creditor' as laid down in the Directive is sufficient. Digitalisation has also put into question the suitability of the current articles on pre-contractual information for a paperless environment navigated by digital tools such as mobile phones and tablets.

New Products

New products have appeared on the consumer credit market, as a result of innovation or by adaptation from the corporate finance sector – e.g. short-term high-cost credit, revolving credit, or peer-to-peer lending.

Some of these new products currently do not fall within the scope of the Directive. At the same time, some of them pose particular risks for consumers as charges related to them may be either very high from the outset or increase rapidly over time, thus bearing the risk of sending the consumer into a spiral of debt.

Consumer preferences

Over the past ten years, the consumers' decision-making processes to take up credit have changed not only as a result of digitalisation but also due to the transformation of consumption habits. The public consultation in 2019[13] has shown that consumers place more emphasis on smoother and faster process of obtaining the credit rather than the location or identity of the creditor.

2.3 Areas where the Directive had particularly positive impact

Notwithstanding the above challenges, the evaluation has shown that the Directive has improved consumer protection and internal market integration in a number of areas:

Right of withdrawal and early repayments

The consumer enjoys a period of 14 calendar days in which he can withdraw from the credit agreement without giving a reason. In addition, the early repayment clause entitles the consumer to fully or partially repay, at any time, the outstanding debt under a credit agreement.

There is consensus among consumers, consumer organisations, Member State officials and creditors that the right of withdrawal and the right of early repayment are effective and

[12] A study showed that between Q2 2016 and Q2 2018 the volume of fintech credit rose about threefold, while another found that the fintech market is expected to grow 13.3% by 2022, from a 2018 transaction value of EUR 682 billion.

[13] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1844-Evaluation-of-the-Consumer-Credit-Directive

generally working well[14]. They are seen as offering high levels of protection to consumers and also show good levels of compliance by creditors[15].

Annual Percentage Rate of Charge

The Annual Percentage Rate of Charge expresses the total cost of the credit to the consumer as an annual percentage of the total amount of credit. Although the provision on the Annual Percentage Rate of Charge existed already in the previous legislation on consumer credit, the Directive entirely harmonised the calculation of the Annual Percentage Rate of Charge by providing a coherent formula for its calculation across all Member States. The Directive thus provides for a common and comparable tool of high effectiveness and value added for consumers[16].

Pre-contractual information: The Standard European Consumer Credit Information form

The Directive obliges the creditor to provide to the consumer, in good time before he is bound by any credit agreement or offer, with the information needed to compare different offers and take an informed decision whether to conclude a credit agreement. Such information is provided by means of the Standard European Consumer Credit Information form which includes key details such as type of credit, Annual Percentage Rate of Charge, number and frequency of payments, and total amount owed.

Overall, stakeholders acknowledge that the Standard European Consumer Credit Information form has had a positive impact on consumer protection by providing them with information in an easily understandable and well-structured format[17]. In addition, compliance among credit providers with the provision on pre-contractual information is generally high.

2.4 Shortcomings of the Directive

The evaluation has pointed to a number of challenges which have emerged in the course of the Directive's application. They result from shortcomings of the Directive as well as from the trends in the credit environment, and have partially hampered achieving its objectives:

Scope

The exclusions from Directive's scope defined in its Article 2 are significant and encompass certain widely used loans as well as loans that are documented to more easily lead to consumer detriment under certain circumstances, such as zero-interest loans, payday loans,

[14] Overall, consumers are well-informed about both rights, with 72% of consumers aware of the right to withdraw, and 82% of the right to repay early

[15] Relatively few consumers experienced problems in exercising their right of withdrawal, with slightly more facing issues with early repayment

[16] 90% of the individuals who replied to the Open Public Consultation considered the Annual Percentage Rate of Charge somewhat or very important in their decision.

[17] Nearly two-thirds of the organisations responding to the Open Public Consultation considered the Standard European Consumer Credit Information form to be effective. While the majority of responding public authorities (74%) and consumer associations (65%) clearly stated that the Standard European Consumer Credit Information form was effective in protecting consumers, for industry representatives this was just over half (56%)

leasing agreements that do not impose an obligation to purchase, or agreements with pawnshops.

Furthermore, the Directive does not cover the entire process of credit granting of which many aspects are only partially harmonised or not at all harmonised across the EU (e.g. the content of credit databases). This represents an important barrier to the creation of a real internal market for consumer credit.

Definitions and unclear terms

Most of Directive's definitions are still relevant to the current market situation. However, there is a growing level of uncertainty about new forms of lending that have appeared online. Article 2(2) of the Directive does not explicitly mention such new forms of lending - there is no reference, for instance, to peer-to-peer lending[18] amongst the exclusions for the scope (Article 2(2)), meaning that the Directive should in principle cover peer to peer lending. However, the definition of 'creditor' uses the words 'in the course of his trade, business or profession' which might not fit with the concept of peer-to-peer lending.

Legal uncertainty is also resulting from imprecise wording of some provisions of the Directive such as those on standard information to be included in advertising, on pre-contractual information and on creditworthiness assessment which employ terms such as 'sufficient information' and 'in good time' without further specification.

Information obligations and channels of communication

While there is no doubt that the harmonized Standard European Consumer Credit Information form in the detailed table-format set out in Annex II of the Directive seems to work well in a paper context, the format and length of the form does not suit modern mobile digital technology used by many consumers. Thus, the aim of the Standard European Consumer Credit Information form of providing useful pre-contractual information leads to obligatory disclosure of information difficult for the consumer to access and comprehend in an online environment, thus defeating its original purpose.

Another transparency-related issue that has surfaced over the course of the past decade concerns advertisements for consumer credit aired on television and radio. The provisions of Article 4 of the Directive[19] lead to important information being either shown for a very limited amount of time or spoken very quickly, not giving consumers enough time to process and recall it. This indicates the practical difficulty involved in making the current Article 4 of the Directive consistently effective across all media types.

Creditworthiness assessment and credit databases

Article 8 of the Directive provides for an 'obligation to assess the creditworthiness of the consumer before granting a credit to the consumer'. The Article states that the creditor needs

[18] Peer-to-peer lending consists of the use of an electronic platform to match lenders/investors with borrowers/issuers to provide unsecured loans, including consumer credit

[19] Article 4 requires that standard information is provided in a clear, concise and prominent way and lists a number of required information items, including the borrowing rate, the total amount of credit and the annual percentage rate of charge.

to assess 'the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database', without specifically defining the information to be checked or the conditions under which the creditor can deem the consumer to be creditworthy. The information to be checked and the decision-making process are defined at Member State level, giving considerable discretion to Member States to further regulate the details of the creditworthiness assessment.

A majority of Member States[20] have laid down further provisions about the creditworthiness assessment and access to databases, further defining how the creditworthiness assessment is to be conducted and imposing other obligations on creditors. Most Member States that went beyond the simple obligation of checking the solvency of a borrower have laid down the documents that consumers have to provide to assess their creditworthiness.[21]

The only source of data that the Directive defines for creditworthiness assessment are the credit databases that exist in Member States and that store information on consumers' existing credit and possible defaults. Article 9 of the Directive, concerning database access, imposes the obligation for each Member State to ensure access for creditors from other Member States to databases used in that Member State. However, the Directive is silent on how such access is to be granted, resulting in different access requirements set by the individual Member States. Moreover, the credit databases – and the information contained therein – differ from Member State to Member State, being either public or private and containing positive data (i.e. data on any credit taken by a person) or negative data (i.e. solely data on defaults on credit taken) or both.

The differences in the content of each respective Member State's database make the creditor's task harder in cross-border operations.

In addition to the differences in the way Member States operationalized the generic requirements of Articles 8 and 9, some Member States[22] imposed a range of other obligations on creditors with respect to creditworthiness assessment, such as rules that prohibit the creditors from terminating the credit agreement or from imposing penalties and charges for late payments in case the creditworthiness assessment was not correctly done.

As a result, the current provisions of the Directive have led to a fragmented situation with respect to creditworthiness assessment rules as well as database interoperability which hamper better functioning of the internal market for consumer credit.

Enforcement of the Directive

Article 23 of the Directive establishes that Member States are to lay down rules on penalties applicable to infringements of the national provisions transposing the Directive and that such penalties must be effective, proportionate and dissuasive.

[20] BE, CZ, DK, ES, FI, HU, IT, LV, LT, NL, PL, RO, SI, SK, SE, UK.
[21] BE, DK, ES, FI, LV, PL, SK, UK.
[22] HU, IT, LT, NL, SI.

In doing so, Member States have generally established civil and administrative sanctions for infringements of the national provisions transposing the Directive; however, some Member States, provide, in addition to civil and administrative sanctions, the possibility to issue criminal sanctions. The result has been that there is considerable disparity in the types and levels of sanctions used by national authorities when enforcing the Directive. In addition, while a small majority of Member States have only one enforcement body responsible for compliance of the Directive, a large number of Member States have appointed several bodies to ensure correct implementation of the different aspects of the Directive; in some Member States, the competent authority depends on the type of the credit provider, namely whether it is a bank or a non-bank lender [23]. Having multiple competent authorities with varying sanctioning powers and competent authorities depending on the type of operator has had an impact on the level-playing field between the competitive position of different categories of providers and the consistency of enforcement.

3. Member States' use of regulatory choices provided for by the Directive

The shortcomings of the Directive highlighted above have been further exacerbated by the results of the regulatory choices made by Member States on certain elements of the Directive. While the Directive required the development of a specific harmonized legal framework to protect consumers, which did not exist in numerous Member States at the time of its introduction, flexibility was given to national lawmakers for nine optional provisions, offering the possibility for Member States to make use of particular regulatory choices.

Regulatory choices referred to in Article 27(2) of the Directive

According to Article 2(5) of the Directive, Member States may decide to partially apply the Directive to credit agreements concluded by organisations established for the mutual benefit of their members[24]. This flexibility was used by some Member States[25].

According to Article 2(6) of the Directive, Member States may decide to apply only certain articles of the Directive in a situation where the consumer is already in default of the initial credit agreement and the creditor and the consumer both agree on the deferred payment or repayment method. This possibility has been used by a majority[26] of Member States.

According to the second paragraph of Article 4(1) of the Directive, national legislation may determine that the Annual Percentage Rate of Charge must be included in advertisements for credit agreements that do not indicate an interest rate or any figures relating to the cost of

[23] For instance, the creditworthiness assessment requirements stemming from the Directive are generally enforced by the consumer authority (for all creditors in BE, EE, EL, FR, IS, LV, PL; for non-bank lenders in DK, SE, SI and regional ES authorities), the financial supervisory authority (for all creditors in EE, FR, NL, PL, UK and for bank lenders in DK, SE) or the national central bank (for all lenders in CY, CZ, ES, HU, IE, IT, LT, PT, RO, SK and for bank lenders in ES, SI).

[24] Full list of qualifying criteria is provided in Article 2(5) of the Directive.

25 CY, IE, LT, LV, RO, UK

26 BE, CY, CZ, DE, DK, EL, ES, HR, IT, LT, LU, LV, MT, PL, PT, RO, SI, SK

credit to the consumer. Only a limited number of Member States[27] have made use of the flexibility laid down in Article 4(1) of the Directive.

According to Article 4(2)(c) and Article 10(5)(f) of the Directive, respectively, Member States may establish that the Annual Rate of Percentage of Charge does not need to be included in the information provided to consumers at the *advertising stage* and *contractual stage* for credit agreements in the form of overdraft facilities where the credit is to be repaid on demand or within three months. A good number of Member States have exercised the possibility provided by Article 10(5)(f) [28], while a slightly lower number of Member States made use of the option provided by Article 4(2)(c) [29].

The flexibility provided by Article 6(2) of the Directive allowing Member States to exclude the Annual Percentage Rate of Charge from the *pre-contractual information* in case of specific credit agreements covered by Article 2(3) (overdraft facilities where the credit is to be repaid on demand or within three months) was opted for by a number[30] of Member States.

According to the second paragraph of Article 10(1) of the Directive, Member States may establish rules regarding the validity of the conclusion of credit agreements which are in conformity with European Union law. All Member States have opted to include additional rules regarding the validity of the conclusion of credit agreements.

Article 14(2) of the Directive concerns the right of withdrawal in linked credit agreements. It establishes that in a situation where the national legislation at the time of entry into force of the Directive already provided that funds cannot be made available to the consumers before the expiry of a specific period, Member States could exceptionally provide that the period of 14 calendar day provided for in Article 14(1) of the Directive for the right of withdrawal could be reduced to this specific period at the explicit request of the consumer. Article 14(2) of the Directive has been scarcely used by Member States[31] since its applications is quite specific.

Article 16 of the Directive concerns early repayment by the consumer of his obligations under a credit agreement and the creditor's possibility to be compensated. Article 16(4) of the Directive establishes that Member States may provide that creditors are entitled to compensation for early repayment only if the amount of early repayment exceeds a threshold defined in national law (which cannot exceed EUR 10,000 within a period of 12 months (Article 16(4)(a)) and that they may claim a higher compensation, by exception, if they can provide that the loss suffered is higher than the amount of the normal compensation (Article 16(4)(b)). A large number of Member States[32] have in fact established a threshold

27 CY, HU, SE, UK

[28] The Member States that have opted not to include the Annual Rate of Percentage of Charge at the contractual stage are: CZ, DE, DK, ES, IE, LU, MT, NL, PL, SK, UK

[29] The Member States that have opted not to include the Annual Rate of Percentage of Charge at the advertising stage are: BG, DK, ES, IE, LU, MT, PL, UK

[30] DE, DK, ES, HR, IE, LU, MT, PL, SK, UK

[31] FR, RO, SI

[32] AT, CY, EL, FI, FR, HR, HU, IE, IT, LT, LU, MT, PL, SI, SK, UK

beyond which the creditor can claim compensation (Article 16(4)(a)). With regard to Article 16(4)(b) of the Directive, a number of Member States[33] have opted to legislate also in the circumstance where the creditor can prove that he has suffered a loss due to the early repayment which exceeds the thresholds set by Article 16(2) of the Directive[34].

Other regulatory choices by Member States, notably on scope

Some Member States went beyond the Directive in areas not covered by it and where the full harmonisation rule of the Directive does not apply. The limitation of the scope of the Directive has pushed Member States to broaden the scope of their respective legislation in order to capture more types of credit agreements. With the exception of two Member States[35], all Member States have adopted measures that go beyond the requirements of the Directive. Some extend the scope of application of the Directive (or certain of its provisions) to consumer credit not covered or not entirely covered by the Directive, either below EUR 200,[36] above EUR 75,000[37] or to leasing agreements,[38] overdraft facilities,[39] revolving credit,[40] mortgages,[41] zero-interest rate credit[42] and agreements with pawnshops.[43]

Moreover, some provisions of the Directive, while setting clear objectives, did not specify the exact result to be achieved, remaining somewhat ambiguous (for instance, the article on creditworthiness assessment, discussed above).

Effects of regulatory choices

The combined effect of the regulatory choices in areas established by the Directive or where made necessary by the lack of specification in the Directive, has resulted in a fragmented regulatory framework in a number of aspects of consumer credit. This leads to a different scope of consumer protection and also affects the integrity of the internal market for consumer credit insofar as they pose boundaries to cross-border operations of creditors.

4. Thresholds and percentage rates

Article 27(2) of the Directive obliges the Commission, every five years, to review the thresholds laid down in the legislation and the percentages used to calculate the compensation payable in the event of early payment.

Thresholds laid down in this Directive and its annexes

[33] BG, CY, DK, ES, LT, LU, MT, NL, UK
[34] See Table 3 on page 38 of the Evaluation Study which provides an overview of the implementation of the Directive:https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/credit/consumer-credit_en
[35] CY, EL
[36] BE, BG, CZ, DK, EE, FI, HU, IT, LV, PT, SK.
[37] DE, DK, CZ, EE, ES, FI, FR, HU, PT, RO.
[38] AT, EE, HU, IT, FI, FR, PT, UK.
[39] AT, BE, FI, PT, FR.
[40] FI, NL, FR, IT.
[41] BG, CZ, HR, HU, RO, SI, SK.
[42] BE, UK.
[43] BE.

As mentioned above, Article 2(2)(c) of the Directive provides that credit agreements less than EUR 200 or more than EUR 75 000[44] fall outside its scope. There seems to be a general agreement[45] that these thresholds are affecting the effectiveness and relevance of the Directive. High-risk credit agreements, which often cause consumer detriment, are often lower than EUR 200 and thus not covered by the Directive. To remedy this, a large number of Member States[46] have decided in the transposition of the Directive to extend the scope to credit agreements lower than EUR 200.

While the upper threshold of EUR 75 000 seems to pose less of a risk from consumer protection or internal market perspective, a number of Member States[47] have extended the scope of the Directive (or some of its provisions) also to credit agreements above EUR 75 000.

The thresholds were fixed at the time of the adoption of Directive, hence in 2008. They therefore reflect the economic circumstances of that time. If considered at present-time price levels, using the standard GDP deflator, the corresponding values for the lower and upper limits would be approximately EUR 235 and EUR 87 380 respectively[48].

In the light of the above, the planned review of the Directive could consider whether it would be justified to adjust or abolish the thresholds[49].

The Directive contains another threshold, laid down in Part II (*Additional assumptions for the calculations of the annual percentage rate of charge*) of Annex I. The Annex, in paragraph h of Part II, provides that in case the parties to the credit agreement have not agreed on its ceiling, the assumed ceiling for the calculation of the annual percentage rate of charge will be set at EUR 1 500. Annex I has been the subject of a legislative amendment[50] which aimed at modernising the assumptions used to calculate the Annual Percentage Rate of Charge. However, the ceiling has not been amended, and from the analyses carried out during Directive's evaluation in 2019 no relevant evidence calling for its amendment has been identified.

Percentages used to calculate the compensation payable in the event of early repayment

[44] The Directive applies also to unsecured credit agreements above EUR 75 000 the purpose of which is the renovation of a residential immovable property.

[45] According to stakeholder consultations carried out in 2019, over 90% of consumer associations argued that the current thresholds are no longer adequate, with 80% of Member State authorities agreeing. Among the credit providers, 30% considered the scope inadequate, with the lower limit cited as a particular problem.

[46] BE, BG, CZ, DK, EE, FI, HU, IT, LV, PT, SK.

[47] DE, DK, CZ, EE, ES, FI, FR, HU, PT, RO

[48] Using the GDP deflator as available the GDP deflator from https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=teina110&plugin=1, EUR 200 in 2008 economics corresponds to approximately EUR 235 in 2020 economics. Similarly, EUR 75 000 in 2008 corresponds to approximately EUR 87 380.

[49] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12465-Consumer-Credit-Agreement-review-of-EU-rules

[50] Commission Directive 2011/90/EU of 14 November 2011 amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions for the calculation of the annual percentage rate of charge

The Directive also lays down thresholds in Article 16; they concern the compensation to which creditors are entitled to in the event of early repayment. The threshold foreseen is of 1% of the amount repaid early, which is reduced to 0.5% if the period of time between the early repayment and the agreed termination of the credit agreement does not exceed one year. Neither the Directive Report of 2014[51] nor the recent study have identified any issues with regard to this threshold and as such it is still considered relevant to the needs of the consumer credit market.

5. Conclusions and way forward

The main finding of the Directive's evaluation is that its two objectives, namely ensuring high standards of consumer protection and fostering the development of a single market for credit, have been partially achieved and remain relevant. The rights of withdrawal and early repayment and the introduction of standardised information formats, have contributed to the provision of a standard EU-wide level of consumer protection, thereby reducing consumer detriment, increasing consumer protection and providing a level-playing field between providers EU-wide.

On the other hand, the rapid digitalisation and product innovation as well as changes in consumer preferences over the past decade pose challenges to the legal framework for consumer credit based on the Directive. While rigid prescriptions of formats for information disclosure ensured ten years ago improved transparency during the pre-contractual stages, then taking place in paper format, they are not necessarily maximizing consumer benefit today in an increasingly digital environment, and in situations where consumers prefer a fast and smooth credit-granting process. The increasingly digital environment has in turn motivated the development of new products, some of which may present new risks for which the Directive does not offer effective protection.

These facts point to the possible need of the review of certain provisions of the Directive, particularly on the scope and the credit-granting process (including the pre-contractual information and creditworthiness assessment). Such a review could also be a suitable opportunity to consider remedies for other shortcomings, such as improving the definitions.

Finally, while most thresholds and percentages in the Directive do not seem to require amendments, there appears to be broad agreement among stakeholders that the EUR 200-EUR 75 000 threshold related to the scope of application of the Directive could be revisited.

The Commission will include these considerations in the revision of Directive that was already announced for the second quarter of 2021 in the revised 2020 Commission Work Programme, adopted on 28 May 2020[52].

[51] Report from the Commission to the European Parliament and the Council, on the implementation of Directive 2008/48/EC on credit agreements for consumers, Brussels, 14.5.2014. COM(2014) 259 final

[52] Available here: https://ec.europa.eu/info/sites/info/files/cwp-2020-adjusted-annexes_en.pdf