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EXECUTIVE SUMMARY OF THE EVALUATION

on Directive 2008/48/EC

on credit agreement for consumers

{COM(2020) 963 final} - {SEC(2020) 371 final} - {SWD(2020) 254 final}

This Staff Working Document presents the main findings of the evaluation of Directive 2008/48/EC on Credit Agreements for Consumers ('the Directive'). The Directive aims at achieving two main objectives, namely to improve consumer protection and to foster the emergence of a well-functioning internal market for consumer credit. It applies to consumer credit between EUR 200 and EUR 75,000, such as loans granted for personal consumption, overdrafts and credit cards, but does not apply to some specific types of consumer credit (e.g. some interest-free credits, certain leasing agreements).

The evaluation, launched in June 2018 in response to the 2017 REFIT Platform opinion on Article 4 of the Directive, examined in line with the EU Better Regulation rules whether the Directive has achieved its objectives and remains fit for purpose. It assessed the impact and the achievements of the Directive on the performance of the internal market for consumer credit and on consumer protection across the EU. It draws conclusions for the future, taking also into account the developments since the adoption of the Directive in 2008.

A study was contracted from an external consultant to support the evaluation, including the legal analysis, literature review, targeted stakeholder consultations, mystery shopping and a quantification exercise. Other consultation activities took place in parallel: ad hoc meetings with Member States, with industry and consumer representatives, and with the Financial Services User Group, as well as an Open Public Consultation which ran between January and April 2019. Moreover, a full-day conference on "Protecting consumers taking credit in the digital era: Can we do better?" was organised in June 2019 on the interim findings of the evaluation.

The main results of the evaluation can be summarised as follows:

- The Directive's objectives of ensuring a high level of consumer protection and facilitating the emergence of a well-functioning internal market have been partially achieved. As regards the first objective, the introduction of the Directive has enabled the development of a specific legal framework to protect consumers concluding a credit agreement, which is key to ensure consumer confidence. However, several Member States have complemented the Directive's provisions with additional elements in the national legislation. Concerning the second objective, the cross-border market for consumer credit has not increased since the application of the Directive and remains very limited. The Directive played a positive role in ensuring a level-playing field between providers, but stakeholders agree that it did not trigger a significant rise in EU level competition. There are barriers hampering both the provision and the purchasing of financial products across borders, including a low level of harmonisation of the regulatory framework. The resulting fragmentation prevents easy cross-border access to credit. However, consumer interest in such credit options seems to be increasing with digitalisation, which can foster awareness among consumers about credit offers available in other Member States.
- The Directive has worked particularly well in practice when it comes to its provisions on the right of withdrawal and the right to early repayment. The evaluation found that a majority of consumers are aware of both rights, with the right of withdrawal far less frequently used than the right of early repayment. A recurring issue with the right of withdrawal relates to a lack of clarity on its application to linked credit agreements. The provisions on the Annual Percentage Rate of Charge have also worked well, providing a coherent formula and a comprehensive comparison tool across all Member States.

- Certain shortcomings prevent the Directive from addressing all of the current and anticipated future needs and challenges for consumers and credit providers, particularly in relation to issues linked to digitalisation and responsible lending. For instance, the current scope of the Directive does not ensure consumer protection in relation to certain credit products falling below the threshold of EUR 200. Furthermore, new operators have emerged (e.g. non-banks, peer-to-peer lending platforms) and new products have been introduced in the market (e.g. short-term high-cost loans), especially online, leading to new challenges for effective consumer protection. Some of these new products induce consumers to take unsuitable financial commitments, which more often lead to over-indebtedness. Many Member States have extended the scope of application of the Directive to consumer credit not covered by it. This may lead to increased consumer protection in some Member States, but it also creates a differentiated regulatory landscape across the EU.
- Vague or unclear wording of certain provisions, together with different approaches between Member States in areas regulated by the Directive only generically (such as creditworthiness assessment) have led to diverse application across Member States. This raises concerns notably as regards the use of alternative data in the creditworthiness assessment and as regards the granting of loans in case of a negative creditworthiness assessment. In this aspect, the Directive's provision on access to credit databases has had limited impact on fostering the emergence of a level playing field cross-border. The lack of standardisation in the data to be collected and reported limits the accessibility of information about consumers across Member States' borders. These elements hinder the effectiveness of the creditworthiness assessment provisions, especially for more vulnerable consumers and in the light of the expected increase in the digitalisation of the consumer credit market.
- Digitalisation also reveals weaknesses in the Directive's provisions concerning advertising and pre-contractual information disclosure. Although the Directive has in general brought beneficial effects regarding the provision of pre-contractual and advertising information, there are several requirements that do not seem suited for digital devices, which are more and more used nowadays by consumers for searching and even concluding credit contracts. The amount and complexity of the information provided in the Standardized European Consumer Credit Information (SECCI) form reduces its effectiveness when accessed on small digital tools.
- On a cost-benefit analysis, the benefits of applying the Directive - especially in terms of reduction in consumer detriment - outweigh the costs. The evaluation clearly shows the continued relevance of the objective to achieve higher consumer protection standards. The Directive is generally coherent and complementary with other EU-level consumer policy and legislation. The evaluation shows a clear added value of the Directive, primarily in its contribution to increasing consumer protection. Some room for further alignment or synergies with other relevant EU pieces of legislation was identified. For example, a greater alignment with the Mortgage Credit Directive might foster more legal clarity and ensure a consistent approach in protecting consumers against over-indebtedness.

In conclusion, this evaluation has demonstrated that the Consumer Credit Directive is still largely fit for purpose, but that further efforts are needed to harvest its full potential benefits for the promotion of the EU internal market for consumer credit and for effective consumer protection EU-wide. The limitations and shortcomings identified in the evaluation stem partly from the Directive itself (vague or insufficiently specific provisions; certain credits or parts of

the credit process not covered) and partly from the practical application of the Directive in the Member States and its enforcement. These evaluation results will feed into the review of the Directive, which was included among the REFIT initiatives of the Commission Work Programme.