

Statement regarding the draft Consumer Credit Directive

The Association of German Debt Capital Platforms generally welcomes further development of the legal basis for consumer loans in Europe as well as the strengthening and further enhancement of consumer protection in the EU – provided however, that the interests of the consumers as well as the creditors or the provider of crowdfunding services and lending platforms are both taken into account and appropriately balanced with each other. Furthermore, the Association of German Debt Capital Platforms is particularly advocating further digitalization of the European consumer credit market and currently sees a huge gap between digitalization of the consumer goods market on the one hand and the consumer credit market on the other hand.

With regard to the draft Consumer Credit Directive (“**CCD**”), we note the following:

- The new draft CCD has been adjusted in various regards to the stricter standard of the Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive; “**MCD**”). For instance, standards introduced with a view to the specific risks for consumers in the scope of the MCD (e.g., information obligations, timing of pre-contractual information, creditworthiness assessment, bundling prohibition etc.) are now to be applied to the CCD, while already existing more effective and more practicable standards from other consumer legislation (e.g., the consumer’s post-contractual right of withdrawal) were not taken into account.
 - o In particular of the ECJ decision issued on 9 September 2021, C-33/20, C-155/20 and C-187/20, which leads to “eternal rights of withdrawal” in Germany and now puts the entire back book of almost every German consumer bank at risk. Such tsunami effects endanger legal certainty and the ability of creditors or providers of crowdfunding services and lending platforms to properly do business.
 - o The creditworthiness assessment should not be adjusted to the MCD as the products that the MCD and the CCD regulate are not comparable and the creditworthiness assessment should be based on the principle of proportionality, i.e., the assessment effort should relate to the value, complexity and risk of the product and the consumer.

We therefore ask that the interests of consumers and creditors are better balanced in the new draft CCD (in particular adjusting the standard to the MCD is not justified) and strongly support that the new draft CCD introduces an absolute time limit for the right of withdrawal of one year and 14 days.

- The new draft CCD contains many new provisions on pre-contractual information and imposes numerous additional information obligations on the lender, including requirements on the timing of providing such information, so that the Association of German Debt Capital Platforms sees

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the consumers getting lost in a flood of information that they cannot handle or process any longer. Higher organizational costs and expenses will just add to the total cost of the credit to the consumer without providing any other benefits to the consumers. We therefore ask to take a more pragmatic approach and consider reducing information to the consumers to the essential terms of the product/loan agreement as information flooding has traditionally led to less transparency and cost increases for consumers.

- Regarding timing of pre-contractual information, we believe that such time delay does not cater to the consumers' needs in the 21st century. Such requirement would impede point of sale business and instant loans which modern banks and in particular fintech companies stand for and in which they have found their market niche. We ask that such concrete timing requirements be removed from the new draft CCD.
- The Association of German Debt Capital Platforms strongly believes in the further digitalization of the European consumer market, including the consumer credit market. From our point of view, however, the new draft CCD does not address this megatrend properly. We therefore propose that provisions on e-signature and form requirements (or rather lack thereof) as well as KYC requirements (e.g., by bank account login) be included in the new draft CCD. We believe that such requirements fostering digitalization would also advance the European Single Market with regard to consumer credits.
- The introduction of caps on (effective) interest rates and/or total cost of the credit to the consumer from our point of view encroaches constitutionally guaranteed legal positions of creditors or the provider of crowdfunding services and lending platforms and should be removed. Potential deficiencies and abuses in individual markets, if any, should be addressed locally by national governments.
- From our point of view, the inclusion of providers of crowdfunding services and lending platforms was not entirely successful as there are different business concepts among different Member States and in Germany, for example, lending platforms always work together with traditional banks (fronting bank model). The new draft CCD, from our perspective, fails to address such different business models and provides for confusion as to rights and obligations of creditors (i.e., banks) vis-à-vis providers of crowdfunding services and lending platforms. We therefore ask that such different business models should be taken into account in the new draft CCD.

Annex: Detailed analysis of the individual provisions of the new draft CCD

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PREAMBLE

(35) (...) The costs payable in respect of those ancillary services, in particular insurance premiums, should be included in the total cost of the credit. (...)

This sentence should be deleted without replacement, as it suggests that the costs of insurance premiums are to be included in the total cost of the credit in each and every case. However, this is not the case and even more so, it is not taken up in this way in the actual body/text of the directive. Insurance premiums are only to be included in the total cost of the credit to the consumer where, in addition, the conclusion of a contract regarding such ancillary services is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed (cf. Article 3(5)).

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<p>(39) Despite the pre-contractual information to be provided, the consumer may still need additional assistance in order to decide which credit agreement or crowdfunding credit services, within the range of products proposed, are the most appropriate for his or her needs and financial situation. Therefore, Member States should ensure that creditors and, where applicable, credit intermediaries and providers of crowdfunding credit services provide such assistance in relation to the credit products which they offer to the consumer, by providing adequate explanations about the relevant information including in particular the essential characteristics of the products proposed to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his or her economic situation. Creditors and, where applicable, credit intermediaries and providers of crowdfunding credit services should adapt the way in which such explanations are given to the circumstances in which the credit is offered and the consumer's need for assistance, taking into account the consumer's knowledge and experience of credit and the nature of individual credit products. (...)</p>	<p>This preamble should be revised as it is not clear with regard to Article 10 and Article 11 of the body/ actual text of the Directive what additional information would have to be provided to the borrower beyond the requirements of these two Articles. Such a requirement would also defeat the purpose of the standard form, which is to enable the creditor or lending platforms to be sure that all legal information requirements have been met.</p> <p>A further tightening of the individual duties to provide information and advice through case-by-case, not conclusively specified requirements appears impracticable especially in the context of the increasing online credit business and also leads to unacceptable legal uncertainties regarding the fulfilment of the duties to provide information and advice to consumers. In particular, it is to be feared that a further dilution of the legal requirements could lead to "over-information" of consumers, which in turn would not be conducive to the goal of promoting adequate, clear and transparent information to consumers.</p>
<p>(46) (...) Member States should be able to issue additional guidance on additional criteria and methods to assess a consumer's creditworthiness, for example by setting limits on loan-to-value or loan-to-income ratios.</p>	<p>The half sentence "by, for example, setting upper limits for the relationship between loan amount and property value or loan amount and income" should be deleted without replacement. Such a requirement goes beyond the scope of competence of the Directive and is also no longer taken up in the body/actual text of the Directive. Moreover, a rigid regulation at EU level disregards regional circumstances, in particular the requirements for consumers' ability to service debt in the light of regional differences between Member States as well as within individual Member States.</p>

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Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

<p>4. 'crowdfunding credit services' means services provided by a crowdfunding platform to facilitate the granting of consumer credit;</p>	<p>"Crowdfunding" is a term that does not mean anything in relation to many fintech companies. The correct term should be crowdlending.</p>
<p>5. 'total cost of the credit to the consumer' means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement or crowdfunding credit services and which are known to the creditor, in the case of credit agreements, or to the crowdfunding credit services provider, in the case of crowdfunding credit services, except for notarial costs; costs in respect of ancillary services relating to the credit agreement or crowdfunding credit services are also included in the total cost of the credit to the consumer where, in addition, the conclusion of a contract regarding such ancillary services is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;</p>	<p>We would like to reiterate once again that three-party relationships are to be excluded from the definition of the total cost of the credit when it comes to early repayment by the consumer. The ECJ did not consider three-party relationships in its Lexitor ruling.</p>
<p>22. 'early repayment' means the full or partial discharge of the consumer's obligations under a credit agreement or crowdfunding credit services;</p>	<p>"initiated by the consumer" should be inserted after "in part". The Directive always regulates the consumer's right to early repayment, not other cases of termination.</p>

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Article 6

Non-discrimination

Member States shall ensure that the conditions to be fulfilled for being granted a credit do not discriminate against consumers legally resident in the Union on ground of their nationality or place of residence or on any ground as referred to in Article 21 of the Charter of Fundamental Rights of the European Union, when those consumers request, conclude or hold a credit agreement or crowdfunding credit services within the Union.

In our view, the words "or their place of residence" should be deleted without replacement. A ban on discrimination on basis of citizenship is entirely sufficient to implement the intention of the EU legislator not to discriminate on basis of different countries. However, it cannot be the intention of the legislator to force individual companies to expand into other EU countries. In addition, country-specific and regional characteristics must always be taken into account when granting loans, for example in the context of assessing consumers' ability to service debt. However, those market participants within the EU that serve geographically limited markets may often lack the expertise for the market and its conditions in other EU Member States, for example with regard to the valuation of collateral or objects to be provided as collateral. It cannot be in the interest of the Directive to "force" market participants who do not have such expertise to expand their business activities into other EU countries. In addition, enforcement in other EU countries, which is currently only used in exceptional cases (e.g. in the case of a borrower moving to another EU country after conclusion of the contract), could make it more difficult to enforce claims against defaulting debtors and thus increase enforcement costs unfairly to the detriment of market participants.

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Article 10

Pre-contractual information

(1) Member States shall require that the creditor and, where applicable, the credit intermediary or the provider of crowdfunding credit services provide the consumer with the pre-contractual information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement or crowdfunding credit services on the basis of the credit terms and conditions offered by the creditor or by the provider of crowdfunding credit services and, where applicable, the preferences expressed and information supplied by the consumer. Such pre-contractual information shall be provided to the consumer at least one day before he or she is bound by any credit agreement or offer, or by any agreement or offer for the provision of crowdfunding credit services.

In case the pre-contractual information referred to in the first subparagraph is provided less than one day before the consumer is bound by the credit agreement or offer, or by any agreement or offer for the provision of crowdfunding credit services, Member States shall require that the creditor and, where applicable, the credit intermediary or the provider of crowdfunding credit services send a reminder, on paper or on another durable medium, to the consumer of the possibility to withdraw from the credit agreement or crowdfunding credit services and of the procedure to follow for withdrawing, in

The obligation to transmit pre-contractual information one day before the conclusion of the contract prevents fully digital offers in which credit applications are digitally signed as part of the video identification process. This measure also prevents instant loans, which will, in particular, affect the business of fintech companies negatively.

The regulation also appears to us to be neither necessary nor appropriate to fulfil the intended purpose. Already today, the consumer is sufficiently protected by their right to withdraw from the loan contract. In case of regret, the customer is already free to withdraw from the loan contract (which has become unwelcome in the meantime) 14 days after the conclusion of the contract without giving reasons. The intended protective purpose of the provision in the left-hand column seems to us to be sufficiently and more effectively covered hereby. Furthermore, the artificial delay in the disbursement of the loan caused by the obligatory lead time for the pre-contractual information is often not in the interest of the customer. Depending on the working day of the consumer's credit request (e.g. in the run-up to public holidays or weekends), the disbursement of the loan may be delayed by several days, especially in the traditional bank branch business.

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<p>accordance with Article 26. That reminder shall be provided to the consumer, at the latest, one day after the conclusion of the credit agreement, of the agreement for the provision of crowdfunding credit services, or the acceptance of the credit offer.</p>	
<p><i>Article 17</i></p> <p>Ban on unsolicited credit sales</p>	
<p>Member States shall prohibit any sale of credit to consumers, without their prior request and explicit agreement.</p>	<p>The "and" in this sentence should be replaced by an "or" to clarify that individualised advertising and targeted mailings with offers for existing customers are not covered by this regulation.</p>
<p><i>Article 18</i></p> <p>Obligation to assess the creditworthiness of the consumer</p>	
<p>(4) Member States shall ensure that the creditor or the provider of crowdfunding credit services only makes the credit available to the consumer where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement or the agreement for the provision of crowdfunding credit services are likely to be met in the manner required under that agreement.</p> <p>Notwithstanding the first subparagraphs, where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement or the agreement for the</p>	<p>In our opinion, the standard for general consumer loans should not be adjusted. This newly introduced standard has so far only been applied to real estate consumer loan agreements. In the case of general consumer loan agreements, it has sufficed until now that "no substantial doubts" about the creditworthiness of the consumer existed (cf. Sections 505a para. 1 BGB, 18a para. 1 German Banking Act).</p>

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<p>provision of crowdfunding credit services are not likely to be met in the manner required under that agreement, the creditor or the provider of crowdfunding credit services may exceptionally make credit available to the consumer in specific and well justified circumstances.</p>	
<p>(6) Where the creditworthiness assessment involves the use of profiling or other automated processing of personal data, Member States shall ensure that the consumer has the right to:</p> <ul style="list-style-type: none"> a) request and obtain human intervention on the part of the creditor or the provider of crowdfunding credit services to review the decision; b) request and obtain from the creditor or the provider of crowdfunding credit services a clear explanation of the assessment of creditworthiness, including on the logic and risks involved in the automated processing of personal data as well as its significance and effects on the decision; c) express his or her point of view and contest the assessment of the creditworthiness and the decision. 	<p>Regarding litera b, it should be clarified that the consumer's right to information ends where more detailed information would interfere with the creditor's IP right with regard to their automated data processing.</p> <p>Point c should be revised. If a creditworthiness assessment involves the automated processing of personal data, which is often the case, it should be made clear what the consequence of a challenge by the consumer would be. It must be clear that the creditor cannot be obliged to grant credit to the borrower if they have not found them creditworthy on the basis of the challenged creditworthiness assessment. Rather, the provision should read: "to challenge the creditworthiness assessment and request a new decision".</p>

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Article 29

Early repayment

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| <p>(1) Member States shall ensure that the consumer is at any time entitled to early repayment. In such cases, the consumer shall be entitled to a reduction in the total cost of the credit, consisting of the interest and the costs for the remaining duration of the contract. When calculating that reduction, all the costs imposed on the consumer by the creditor shall be taken into consideration.</p> | <p>We interpret the provision here as meaning that costs of third parties, such as the credit intermediary, are not to be included in the total cost of the credit to the consumer when calculating the reduction. In our view, this is correct. But see comment above on the definition of total cost of credit to the consumer.</p> |
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Article 31

Caps on interest rates, annual percentage rate of charge and the total cost of the credit to the consumer

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| <p>(1) Member States shall introduce caps on one or more of the following:</p> <ul style="list-style-type: none"> a) interest rates applicable to credit agreements or to crowdfunding credit services; b) the annual percentage rate of charge; c) the total cost of the credit to the consumer. | <p>Article 31 should be deleted without replacement. The introduction of caps for the (effective) interest rate or the total cost of the credit to the consumer is not a suitable means of protecting consumers individually from insufficient ability to service debt. There are creditworthiness assessment rules for that. Moreover, caps unnecessarily restrict discretion or leeway for lenders, so that a market segment of less but still creditworthy borrowers (near prime) could no longer be served and the corresponding consumers would be completely excluded from access to the financial market.</p> |
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