Second Statement regarding the draft Consumer Credit Directive

The German Digital Lending Association (*Verband deutscher Kreditplattformen e.V. – VdK,* "**DLA"**) 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 providers of crowdfunding services and marketplace lenders or platforms are both taken into account and appropriately balanced with each other.

In October 2021 we already provided our first statement in relation to the draft Consumer Credit Directive 2021/0171 (COD) ("**CCD**") proposed by the European Commission ("**COM**") on 30 June 2021. Since then, the European Parliament ("**EP**") and the Council of the European Union ("**Council**") have issued their positions to amend the COM proposal.

While some of the points we raised in our initial statement have been resolved by the EP and Council, other points have remained unchanged. Even new points were raised by one or both organs that impose additional burden on the consumer credit industry. While the General Approach of the Council[1] from our point of view reflects feedback from the market and appears to have addressed concerns of the industry, the Draft EP Legislative Resolution[2] seems particularly onerous, for consumers as well as creditors. Accordingly, our second statement contains both old as well as new points and takes the positions of all three organs into account.

Most importantly, the DLA wants to reiterate that it is strongly advocating further digitalisation of the European consumer credit market. The DLA currently sees a huge gap between digitalisation of the consumer goods market on the one hand and the consumer credit market

[1] General Approach of the European Council for a directive of the European Parliament and of the European Council on consumer credits of dated 9 June 2022 (Ref. 10053/22).
[2] Draft European Parliament Legislative Resolution on the proposal for a directive of the European Parliament and of the Council on consumer credits dated 5 September 2022.

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on the other hand. Furthermore, the draft resolution of the European Parliament contains various new provisions that impede further digitalization or even suggest taking a step back from new technologies. Such provisions comprise, inter alia, various regulations on data protection where it is unclear whether the EP intends to introduce a new data protection regime for consumer credits or the influx of provisions around the provision of precontractual information, be it on timing or the content of such information.

The DLA, however, strongly believes in the further digitalisation of the European consumer market, including the consumer credit market. While we already pointed that out in our first statement from October 2021 that the CCD proposal does not address this megatrend properly, the EP draft resolution text even counteracts such trend.

We once again want to emphasize and propose that provisions on the use of e-signature and form requirements (or rather lack thereof) as well as KYC requirements (e.g., by bank account login) should be included in a final CCD text. We believe that such requirements fostering digitalisation would also advance the European Single Market with regard to consumer credits. At the same time, we regret that the respective legislative acts often hamper a proper transposition into national law leading to deficiencies.

In more detail, we note the following:

- 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 providers of crowdfunding services and marketplace lenders or platforms and should be removed. Potential deficiencies and abuses in individual markets, if any, should be addressed locally by national governments, while we consider static caps neither necessary nor appropriate to address such risks on a case-by-cases basis. Furthermore, 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. In particular, creditors and credit intermediaries that focus on financial inclusion and thus contribute to an important ESG goal would be negatively affected.

- In particular the draft EP draft resolution, contains many new provisions on pre-contractual information and impose numerous additional information obligations on the lender, including requirements on the timing of providing such information, so that the DLA

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sees 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.** Also, many of the newly introduced provisions on precontractual information lead to uncertainty as to the precise nature of the provisions so that creditors will face the risk of non-compliance with such provisions which may only be clarified by decisions of the European Court of Justice ("**ECJ**") at a later point in time and put creditors' back book at risk.

- Regarding timing of pre-contractual information, we believe that such time delay does not cater to the consumers' needs in the 21st century in a supposedly digital EU consumer market. **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 additional timing requirements be removed from the new draft CCD.

- The draft proposal for a new 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**") while disregarding that also the MCD is currently under review. 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, in particular:

    - 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.

    - The concept of an eternal right of withdrawal should be abolished and the right of withdrawal should have an absolute time limit. We strongly support the introduction of a time limit of one year and 14 calendar days proposed by the EP and Council. ECJ decisions such as issued on 9 September 2021, C-33/20, C-155/20 and C-187/20, which lead to "eternal rights of withdrawal" in Germany, should not interfere with the business practices of bona fide creditors and put their entire back book

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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. In the long run, they will also increase the cost of funding and thus the total cost of the credit to the consumers.

We therefore ask that the interests of consumers and creditors are better balanced in the final CCD text and strongly support that it instead introduces balanced positions. In particular, we petition that already existing, more effective and more practicable standards from other consumer legislation (e.g., the consumer's post-contractual right of withdrawal vs. cooling off period for example) are adequately taken into account and that consumer protection should take into account the needs of digitally oriented and self-determined consumers that are "normally informed and reasonably observant and circumspect average consumers".

- It is not entirely clear to the DLA, why data protection provisions that are already exhaustively governed in regulation (EU) 2016/679 ("**GDPR**") shall now be included in the CCD according to the EP draft resolution. If the provisions are intended to further raise the standard of data protection, we see no reason why creditors or credit intermediaries should be treated more strictly than all other traders or creditors outside the scope of the CCD processing the same or at least similar personal data or applying automated processing of personal or inferred data. Such higher standards should therefore be addressed in the GDPR only. Also, different and more stakeholders should participate in any such proposed revision of the GDPR and the CCD is definitely not the right forum for that.

- In our view, the inclusion of providers of crowdfunding services and marketplace lenders or platforms is not feasible and such inclusion was not entirely achieved successfully in the EP draft resolution. There are different business concepts among different Member States and in Germany, for example, marketplace lenders or platforms always have to cooperate with CRR regulated banks for the granting of loans ("fronting bank model"). The EP draft resolution, from our perspective, fails to address such different business models and provides for heavy confusion as to rights and obligations of creditors (i.e., banks) vis-à-vis providers of crowdfunding services and marketplace lenders and paves the way for court proceedings. **Furthermore, the draft resolution ignores that vulnerable investors participate on the other side of the marketplace/platform, especially private investors (consumers), who need to be protected as well. The one-sided protection of consumers on the borrower side is legally**

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inconsistent and a cause for concern in terms of consumer policy. The far better legislative act for ideally addressing the needs of both private investors and private borrowers would be the revision of the ECSPR. We therefore firmly support the Council's approach to exclude providers of crowdlending credit services from the scope of the CCD.

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

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1.	**Applicability of the CCD to Crowdlending Providers**			
a)	Preamble (1)	"Directive 2008/48/EC of the European Parliament and of the Council lays down rules at Union level concerning consumer credit agreements and crowdfunding credit services for consumers."	EP	The provisions listed in the left-hand columns are only examples of provisions in the draft resolution the EP which relate to, and extend the responsibilities and obligations under the CCD, to crowdfunding credit service providers.

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b)	Preamble (16)	"Crowdfunding is increasingly a form of finance available to consumers, typically for small expenses or investments. Regulation (EU) 2020/1503 of the European Parliament and of the Council excludes from its scope crowdfunding services, including those facilitating the granting of credit, that are provided to consumers as defined in Directive 2008/48/EC. In this context, this Directive aims to complement Regulation (EU) 2020/1503 by remedying this exclusion by bringing legal clarity on the applicable legal regime for crowdfunding services when a consumer seeks to take out a credit through a provider of crowdfunding credit services other than those falling within the scope of Regulation (EU) 2020/1503."	EP	While the Council has excluded providers of crowdfunding credit services completely from the scope, the EP intends to maintain the applicability of the revised CCD to crowdfunding credit services. In our view, the inclusion of providers of crowdfunding services and lending platforms is not feasible and such inclusion was not achieved successfully in the current drafts. "Crowdfunding" is not the correct term in relation to many fintech companies, especially those operating in the (wider) environment of the CCD. In our view, the correct term would be "crowdlending". There are different business concepts across different Member States. In Germany, for example, lending platforms necessarily either operate under a banking license themselves or they cooperate with traditional banks ("fronting bank model"). Thus, their businesses and trading activities are already covered and
c)	Preamble (18)	"Some provisions of this Directive should moreover apply to providers of crowdfunding credit services, acting in such capacity and not as creditors or credit intermediaries, where they facilitate the granting of credit between, on the one side, persons granting consumer credit	EP	

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		outside of the course of their trade, business or profession, and on the other side, consumers. In this context, the provider of crowdfunding credit services should comply with certain rules and obligations of this Directive including the obligation to carry out a creditworthiness assessment and the rules on pre-contractual information. […]"		adequately regulated by the CCD – where applicable, indirectly via the respective fronting bank. Although the draft proposal expressly clarifies that the provisions of the CCD shall only apply "*where those services are not provided by a creditor or by a credit intermediary*" (cf. Article 2 para. (1), 2nd subparagraph of the draft resolution of the E P), regulating all the multiple business models in the same way can lead to legal uncertainty with regard to the responsibilities and obligations of lending platforms across the European Union ("**EU**") and even within the different Member States, unjustified differences in their regulatory treatment and, thus, an uneven playing field for lending platforms across the EU. We therefore firmly support the Council's approach to exclude providers of crowdlending credit services from the scope of the CCD.
d)	Article 2(1), 2nd subparagraph	"Articles 1, 2 and 3, Articles 5 to 10, Articles 12 to 23, Articles 26 to 33, Articles 35, 36 and 37 and Articles 39 to 50 shall also apply to crowdfunding credit services where those services are not provided by a creditor or by a credit intermediary."	EP	

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2.	**Tightening of the Requirements for Pre-contractual Information**			
a)	Preamble (7)	"[…] Practices such as the sale of small-value credits and long-term leases have experienced unprecedented growth in recent years, which in some cases has led to unfair commercial practices, and, as a consequence, consumers have been facing a deterioration in their financial situation, or even problematic debt. This could have been avoided if such practices had been more effectively regulated and if contractual information had been provided in a more transparent, comprehensive and timely manner."	EP	The EP has added the following sentences to Preamble (7) stating that "*unfair commercial practices which led to consumers facing a deterioration in their financial situation, or even in problematic debt […] could have been avoided if such practices were more effectively regulated and if contractual information were provided in a more transparent, comprehensive and timely manner*". In our view, the standard of regulation and the information requirements for consumer credit lenders are already very high under the existing CCD, which has been transposed into national law in the different Member States. The EP does not further specify, and it is unclear to us, how it comes to the conclusion that an *additional* tightening of the information obligations beyond the already existing very high standard would have avoided a deterioration of the financial situation for consumers. We therefore propose not to include this sentence in the final draft CCD.

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b)	Preamble (30)	"In order to be able to make their decisions in full knowledge of the facts, consumers should receive adequate pre-contractual information, for careful consideration at their own leisure and convenience, **in good time before the conclusion of the credit agreement**[3], including information on the conditions and cost of the credit and on their obligations, as well as adequate explanations thereof, **ensuring that the consumer has sufficient time to read and understand the pre-contractual information and to make an informed decision**. These rules should be without prejudice to Council Directive 93/13/EEC."	Council[4]	While we appreciate that both the Council and the EP have deleted the strict time requirement from the draft CCD, according to which the (pre-contractual) information would have had to be provided "*at least one pay prior to the conclusion of the credit agreement*", both have retained a time element ("*in good time before*" versus "*in due time […] prior to*"). In our view, both proposals leave too much room for interpretation. While one court may decide that a certain time requirement must be applied (e.g., "twelve hours", "one day"), a different court may take the view that it is already sufficient if the consumer can decide for himself/herself whether and how much time he/she would like to spend on the review of the documents. This would contradict the purpose
	Ibidem	"In order to be able to make their decisions in full knowledge of the facts, consumers should receive adequate information, […] **in due time, and in any case prior to the conclusion** of the	EP	

[3] Emphasis in this column by the author.
[4] [Draft proposal of the European Council for a directive of the European Parliament and of the European Council on consumer credits of [●]].

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		credit agreement or of the agreement for the provision of crowdfunding credit services […].”		of the CCD to further harmonise consumer protection standards within the Union. In addition, the obligation to adhere to a “cooling-off period” between the provision of the pre-contractual information and the conclusion of the credit contract prevents, or at least impedes, fully digital processes in which credit applications are digitally signed (for example as part of the video identification process) and also KYC requirements are fulfilled digitally. This measure also prevents instant credits, which will, in particular, affect the business of many fintech companies negatively and in general completely contradicts the digitalization agenda of the EU. Furthermore, by artificially interrupting the online application process with a “cooling-off period”, it is to be expected that the customer experience will be negatively affected. Flowing processes with seamless transitions (e.g., to third-party service providers such as providers
	Article 10(1), 1st subparagraph	“Member States shall require that the creditor and, where applicable, the credit intermediary 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 on the basis of the credit terms and conditions offered by the creditor and, where applicable, the preferences expressed and information supplied by the consumer. Such pre-contractual information shall be provided to the consumer **in good time before he or she is bound by any credit agreement or offer**.”	Council	
	Ibidem	“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 clear and understandable pre-contractual information […] **in due time and in any event before he or she is bound by any credit agreement or offer**, or	EP	

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		by any agreement or offer for the provision of crowdfunding credit services, including where distance means of communication are used."		of KYC/QES processes) will be significantly impaired and made more difficult, if not impossible.
	Preamble (32)	"In case pre-contractual information is provided less than one day before the consumer is bound by any credit agreement or agreement for the provision of crowdfunding credit services, the creditor and, where applicable, the credit intermediary or providers of crowdfunding credit services should remind consumers, one to seven days after conclusion of the contract, of the possibility to withdraw from the credit agreement."	EP	Artificially delaying online credit processes due to a mandatory "cooling-off period" for pre-contractual information will furthermore often not be in the interest of the customer, as this can lead to significant delays in the disbursement of the credit. Depending on the working day of the consumer's credit application (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. By stipulating a "cooling-off period", the CCD would put the focus on uninformed and erratic consumers as opposed to consumers who are interested in simple, fast and digital order processes. In our opinion, a "cooling-off period" does not correspond to the simple and modern online application processes of online service providers which are desired by consumers. As stated above, it also
	Article 10(1), 2nd subparagraph	"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	EP	

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		any other durable medium chosen by the consumer, 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 accordance with Article 26. That reminder shall be provided to the consumer, **between one and seven days** after the conclusion of the credit agreement, of the agreement for the provision of crowdfunding credit services, or the acceptance of the credit offer."		undermines the endeavours of the Member States to foster digitalisation in the EU as well as the global competitiveness of financial services providers from the EU. The regulation also appears to us to be neither necessary nor appropriate to fulfil the intended purpose. Already today, consumers are sufficiently protected by their right to withdraw from the credit contract. In case of regret, the customer is already free to withdraw from the credit 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. Therefore, in our view, creditors should have fulfilled all information requirements if: • they have provided the pre-contractual information to the consumer on a durable
	Ibidem	"[…] 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 any other durable medium chosen by the consumer, 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 accordance with Article 26. That reminder shall be provided to the consumer, **between one and seven days** after the conclusion of the credit	EP	

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		agreement, of the agreement for the provision of crowdfunding credit services, or the acceptance of the credit offer."		medium at any time before (including "immediately before") the consumer makes his/her contractual declaration; • the credit application process allows the borrower to freely decide for himself whether and how much time he/she would like to spend for the review of the contract (e.g., no "countdown" or warning about a potential change of the underlying conditions after X hours, etc.); and • the borrower can return to the offer at any time within a reasonable time period without having to start the application process again (e.g., via an individualised URL). From our point of view, consumers should then have all the necessary information to be able to make a decision on the conclusion of the credit contract.

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				For this reason, we also see no need for an additional reminder on the withdrawal right, which may also lead to “over-information” of consumers and, just because of such over-information, to uncertainty on their part.
c)	Preamble (39)	“Despite the pre-contractual information to be provided, the consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, are the most appropriate for his or her needs and financial situation. Therefore, Member States should ensure that before the conclusion of a credit agreement creditors and, where applicable, credit intermediaries 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	Council	This preamble should be revised as it is not clear with regard to Articles 10 and 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. 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

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		intermediaries 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. Such explanations should not in itself constitute a personal recommendation."		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. Therefore, we suggest deleting this Preamble (39) in its entirety or at least limiting it to an adequate and practicable level (e.g., by a reference to the SECCI, which should generally be sufficient to fulfil the pre-contractual obligations – especially in view of the intended changes under the draft CCD).
	Ibidem	"[…] 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 **in an easily understandable manner before the signing of the agreement** […]."	EP	
d)	Article 3(1), point (13)	"'pre-contractual information' means the information that the consumer needs to be able to compare **and understand** different credit offers and take an informed decision on whether to conclude the credit agreement or the	EP	While formulations such as "*provide the consumer with the clear and understandable pre-contractual information*" (cf. Article 10 of the draft proposal of the EP) seem to focus on what is generally comprehensible to consumers, the

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		agreement for the provision of crowdfunding credit services;"		proposed formulation "*the consumer needs to be able to compare and understand*" implies that the creditor owes the individual consumer "successful" information by giving him/her the information that the latter personally needs to be able to understand the information. However, the creditor can only be required to provide the information in a manner that can be expected to be comprehensible to the average consumer ("normally informed and reasonably observant and circumspect average consumer" as stated by the ECJ on 11.09.2019 in case C 143/18) – whether it is also understandable to the individual consumer in the specific case is usually beyond its control, especially in the context of the increasing online credit business. We therefore propose to clarify that the information only needs to be provided in a way that is generally "understandable" to consumers. The precise manner in which the pre-contractual information is provided as well

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				as any further specifications in this regard should be *conclusively* defined in the CCD.
e)	Article 8(2), 1st subparagraph, point (fa)	["The standard information […] shall specify in a clear, concise and prominent way […]:"] "(fa) a prominent, clearly visible warning to make consumers aware that borrowing costs money, using the words "Caution! Borrowing money costs money"."	EP	In our view, this warning is merely stating the obvious. While consumers already need to be informed concisely about the costs of consumer credit offerings in a prominent way (e.g., in representative examples in advertising, in the SECCI and in the credit contract itself), this warning is, in our opinion, likely to confuse and cause uncertainty among consumers without serving any additional informational purpose. Such warning is furthermore not included in any other EU Directive or Regulation that deals with consumer goods and services, which could all provide for a warning "Caution! Buying goods or services costs money".
f)	Article 10(3), 1st subparagraph, point (na)	"a warning and explanation regarding the legal and financial consequences of non-compliance with the other commitments linked to the specific credit agreement or crowdfunding credit services;"	EP	The proposed additions are too generic. It is fully unclear what "*legal and financial consequences*" means in this context and what scope of information the European Parliament would expect from creditors (for example:

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	Article 12(1), point (a)	"the information referred to in Article 10, 11 and 38, with particular emphasis on explaining the legal and financial consequences that may result from improper performance of contractual obligations;"	EP	information on the general risk of over-indebtedness; possibility of selling receivables to a debt collection agency; notification of credit termination to a credit bureau; etc.?). The information requirements for creditors have been constantly expanded by European or national regulations as well as by case law over the past years. By additionally extending the information requirements of creditors in such a generic way, the European Parliament imposes even more uncertainty on creditors about their information obligations. As a result, creditors may not be able to provide all information required to the consumers which will only be retroactively established by courts and lead to negative impacts on creditors' back books. The proposed wording should therefore be deleted in its entirety.
3.	**Form of Notifications, Declarations and Credit Agreement**			
	Article 10(1), 2nd subparagraph	"[…] Member States shall require that the creditor and, where applicable, the credit intermediary or the provider of crowdfunding	EP	The EP proposes in several provisions (non-exhaustive list in the left-hand columns; for example, please also refer to Articles 22 and

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		credit services send a reminder, on paper or on **any other durable medium chosen by the consumer**, 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 accordance with Article 26. […]"		23) that the actual form of notifications by or to the creditor as well as the form of the credit agreement should be left to the consumer's choice (e.g., "*on paper or on any other durable medium chosen by the consumer*"). While we appreciate that consumers should generally have the option to use several media to submit their declarations and notifications to the creditor (e.g., in order to exercise the right to withdraw), the specific communication channels should be at the sole discretion of the creditor. The definition of 'durable medium' proposed by the EP is intentionally very broad ("*means any instrument, including paper and interoperable, portable and machine-readable digital versions of documents, which enables the consumer to store information addressed personally to him or her in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored*") and includes, inter alia, electronic PDF
	Article 10(2)	"The pre-contractual information referred to in paragraph 1 shall be provided on paper or on **any other** durable medium **chosen by the consumer** by means of the Standard European Consumer Credit Information form set out in Annex I. […]"	EP	
	Article 26(3), 1st subparagraph, point (a)	"[If the consumer exercises the right of withdrawal, he or she shall take the following measures:] (a) notify either the creditor or the provider of crowdfunding credit services in accordance with the information given by the creditor or by the provider of crowdfunding credit services pursuant to Article 21(1), point (p), on paper or on **any other durable medium**	EP	

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		chosen by the consumer within the deadline set out in paragraph 1;"		files stored on USB sticks, facsimile, or even electronic files that were downloaded from a website. This means that if the form of declaration/ notification was left to the consumer's choice, consumers could, for example, submit any declarations in electronic form stored on USB sticks or CD-ROMs, which could only be accessed with certain devices; in this case, the declarations/ notifications would be transmitted on a "durable medium", but often outside the usual communication channels and regular interfaces to CRM systems of the creditor, thereby making it more challenging to match customer communications to certain customer data sets and significantly increasing the burden on creditors (including prevention of IT, Cyber Security and data protection risks). Unless the underlying agreements with the consumer provide otherwise, the creditor should furthermore always be free to choose an accepted and common medium for its own
	Article 20(1)	"Member States shall require that credit agreements or agreements for the provision of crowdfunding credit services are **drawn up on paper or on any other durable medium chosen by the consumer** and that all the contracting parties are provided with a copy of the credit agreement or of the agreement for the provision of crowdfunding credit services. Any modification of credit agreements or agreements for the provision of crowdfunding credit services shall be done only in writing on paper or on any other durable medium chosen by the consumer."	EP	
	Article 38(1), point (c)	"[Member States shall require that credit intermediaries: […]] (c) reach an agreement with the consumer on any fees referred to in point (b) **on paper or on any other durable medium chosen by the consumer** before the conclusion of the credit agreement;"	EP	

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				declarations and notifications to consumers (e.g., via a specific App of the creditor, email or paper form). The same principles apply to the credit contract itself. It should be up to the creditor to decide which processes for providing the documentation it decides to be the most efficient, including electronic form with a qualified electronic signature. Also given the endeavours in the EU to foster sustainability, creditors should also be able to decide freely and unanimously, for example, to abolish paper contracts in general. Furthermore, consumers know before signing the contract which medium the creditor will choose or has chosen. Therefore, the consumer decides before entering into a contractual relationship with the creditor whether he is fine with the chosen medium or not. There is no need for such extensive right for the consumer

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				to interfere in creditors' internal processes from a consumer protection perspective.
4.	**Data Protection**			
a)	Article 13(1)	"Without prejudice to Regulation (EU) 2016/679, Member States shall require that creditors, credit intermediaries and providers of crowdfunding credit services inform consumers in a clear and unambiguous manner when they are presented with a personalised offer that is based on automated processing of personal or inferred data. Member States shall require that creditors, credit intermediaries and providers of crowdfunding credit services communicate to the consumer who receive the offer the sources that have been used in the personalisation of the offer."	EP	In our view, all the proposed provisions in the left-hand columns are already exhaustively governed in regulation (EU) 2016/679 ("**GDPR**") and should therefore not be included in the CCD. It is unclear to us, why this wording has been included in the CCD draft proposal. If the provisions are indeed intended to further raise the standard of data protection, we see no reason why creditors or credit intermediaries should be treated more strictly than all other traders or creditors outside the scope of the CCD processing the same or at least similar personal data or applying automated processing of personal or inferred data. Such higher standards should therefore be addressed in the GDPR.
	Preamble (47)	"[…] Member States should guarantee the right to be forgotten to all Union patients as from 10 years after the end of their treatment, and as	EP	

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		from five years after the end of treatment for patients whose diagnosis was made before the age of 18, and should ensure equal access to all people cured of relevant communicable and non-communicable diseases to financial products or services such as insurance and loans. […]"		
	Article 3(1), point (25a)	"'right to be forgotten' means that persons who have survived relevant communicable and non-communicable diseases such as cancer do not have to declare their diagnosis as from 10 years after the end of their treatment, and as from five years after the end of treatment for patients whose diagnosis was made before the age of 18, and may no longer be treated differently to persons who have not had such a diagnosis when applying for and accessing financial products or services such as insurance and loans. For that purpose, Member States shall define their own lists of relevant communicable and non-communicable diseases, with the support of medical, scientific and statistical experts and with the consultation of all relevant	EP	

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		stakeholders including patients' organisations and relevant Union agencies (EMA, ECDC) in relation to which the 'right to be forgotten' applies, committing themselves to review those lists periodically. Member States shall also take measures to inform consumers of the existence of that right;"		
b)	Article 19(1)	"1a. Member States shall ensure that only those creditors and providers of crowdfunding credit services who are under the supervision of the competent national authority and who fully comply with Regulation (EU) 2016/679 have access to the database. 1b. Access to databases shall be limited to creditors and providers of crowdfunding credit services who are also providing their own information to databases."	EP	The access to external databases, such as Credit Bureaus, should be exclusively governed by the GDPR and not by the CCD. In particular, access to external databases is not only relevant for creditors whose business falls within the scope of the CCD, but also for creditors outside the scope of the CCD or even operators of online shops. These parties should all be treated equally applying the same legal grounds. For the sake of fairness and legal certainty, the access to databases should therefore be regulated exclusively by the GDPR.

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5.	**Non-discrimination**			
	Preamble (26)	"Consumers who are legally resident in the Union should not be discriminated against on ground of their nationality or place of residence, or on any ground as referred to in Article 21 of the Charter when requesting, concluding or holding a credit agreement within the Union. **This is without prejudice to the possibility of providing for differences in the conditions of access to a credit where those differences are directly justified by objective criteria.**"	Council	While both the Council and the EP have retained Preamble (26) on non-discrimination, the Council has at least deleted Article 6 from the original draft in its draft proposal for the CCD. Irrespective of the deletion by the Council in Article 6, both maintain the principle of non-discrimination and have only softened the provisions on non-discrimination in a way to allow for justifications for unequal treatment of consumers. While the Council stresses that unequal treatment may be justified "*by objective criteria*", the EP expressly emphasises that the prohibition of discrimination does not require creditors "*to provide services in a Member State where the creditor or, where applicable, the credit intermediary or the provider of crowdfunding credit services does not conduct business*". Although we appreciate the clarifications by both the Council and the EP, we would suggest incorporating *both* aspects into the final draft
	Ibidem	"Consumers who are legally resident in the Union should not be discriminated against on ground of their nationality or place of residence, or on any ground as referred to in Article 21 of the Charter when requesting, concluding or holding a credit agreement or an agreement for the provision of crowdfunding credit services within the Union. **However, nothing in this Directive should be construed as obliging a creditor, credit intermediary or provider of crowdfunding credit services to provide**	EP	

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		services in Member States in which they do not conduct business."		proposal of the CCD to the effect that the non-discrimination does expressly not include (i) cases of unequal treatment justified by objective criteria and, (ii) in particular, the relevant party's refusal to expend the services or credit offering to other Member States. Furthermore, 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. As stated above, 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 (i.e., their creditworthiness). However, those market participants within the EU that serve geographically limited markets may often lack the expertise for the market and its conditions in
	Article 6(1)	"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 EU, when those consumers request, conclude or hold a credit agreement or crowdfunding credit services within the Union."	EP	
	Article 6(2)	"**Refusal to provide services in a Member State where the creditor or, where applicable, the credit intermediary or the provider of crowdfunding credit services does not conduct business shall not be considered discrimination.**"	EP	

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				other EU Member States, for example with regard to the valuation of collateral or assets to be provided as collateral. They may also lack data to properly assess those consumers' creditworthiness and may therefore have issues from a bank regulatory perspective to properly assess the risks for the creditors in granting such loans. 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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6.	**Advertising**			
	Preamble (29)	"In order to reduce instances of mis-selling of consumer credit to consumer who are not able to afford it and to promote sustainable lending, credit advertising should contain, in all cases, a clear and prominent warning to make consumers aware that borrowing money costs money. Advertising should not incite over-indebted consumers to seek credit, specify that other credit contracts should have no influence on the assessment of a credit application and suggest that success or social achievement can be acquired thanks to credit agreements."	EP	The requirements according to the suggested wording are too vague. Already today, advertising of creditors and credit intermediaries is subject to enormous restrictions, which require, among other thigs, the explicit disclosure of the total costs of the credit and provision of a representative example. The additional requirements proposed by the European Parliament are very unspecific and leave creditors and credit intermediaries in the dark about the limits of advertising, especially since the advertising practices addressed are, in our opinion, already regulated and sufficiently taken into account by general restrictions on advertising. With regard to the proposed warning about costs, please also refer to our comments in Section 2 point e).
	Article 8(3c)	"Member States shall prohibit advertising for consumer credit products which: (a) incites over-indebted consumers to seek credit; (b) specifies that outstanding credit contracts or registered credit in databases have little or no	EP	

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		influence on the assessment of a credit application; (c) suggests that success or social achievement can be acquired by obtaining credit;"		Moreover, we do not see a reason why creditors or credit intermediaries should not be allowed to highlight the "ease or speed" of their online application processes and credit disbursement. In our experience, both aspects are key for many consumers and also form an integral part of the business particularly of many fintech companies.
	Article 8(3d)	"Member States may prohibit advertising for consumer credit products which: (a) highlights the ease or speed with which credit can be obtained; […]"	EP	
7.	**Payment Protection Insurance**			
	Preamble (42)	"Creditors should not use bundling practices which de facto remove consumer choice and lead to prohibited tying, for example due to disproportionate terms and conditions when purchasing the loan or the ancillary product separately. Consumers should, if necessary, have at least three days to compare insurance offers without the offer being changed."	EP	In our view, consumers are already sufficiently protected by (i) the withdrawal right regarding their payment protection insurance and (ii) the respective post-contractual information about the payment protection insurance and their rights seven days after the conclusion of the contract. In addition, in our opinion, any insurance-related requirements should not be subject to and governed by the CCD, unless this is directly

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				linked to the underlying loan contract – which, in our view, is not the case with the language proposed by the European Parliament. Furthermore, while we principally agree that consumers should have sufficient time to review the offer and compare it to other offers, we would like to point out again that this should not be implemented by imposing a cooling-off period, but rather by granting the consumer the right to return to the offer within, for example, up to three days (please also refer to our comments on Section 2 point b) above).
8.	**Unsolicited Sales**			
	Preamble (44)	"Granting of credit that has not been solicited by the consumers may in some cases be associated with practices that are harmful to the consumer. In this regard, unsolicited granting of credit, including non-requested pre-approved credit cards sent to the consumers, or the unilateral increase of a consumers' overdraft or credit card limit, should be prohibited. **This is**	Council	We appreciate that the Council has added an exclusion of the ban on unsolicited sales "*for creditors and credit intermediaries […] in the course of a commercial relationship in compliance with Union law on consumer protection and national measures in compliance with Union law*" at the end of Preamble (44). In our opinion, however, the whole concept of

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		without prejudice to the possibility for creditors and credit intermediaries to advertise or to offer credit in the course of a commercial relationship in compliance with Union law on consumer protection and national measures in compliance with Union law."		banning unsolicited sales should be deleted or at least softened. There already exist numerous regulations that significantly restrict the advertising possibilities of traders (including cold emails, cold calls, etc.), both at EU and national level (e.g., GDPR, directive 2005/29/EC, directive 2006/114/EC, etc.). We see no reason why creditors and credit intermediaries should be burdened with additional restrictions on sales, especially in view of the extensive information obligations already existing in the context of lending an advertising relating thereto. However, should the concept of prohibiting unsolicited sales be maintained and included in the final draft proposal for the CCD, we strongly suggest that the CCD should at least allow sales where the consumer has *either* requested *or* approved the sale by expressly entering into binding agreements. For this purpose, the word "*and*" at the end of Article 17 para. (1) should be replaced by an "or" to clarify that individualised
	Ibidem	"[…] In this regard, without prejudice to the creditor's possibility of advertising, unsolicited sale of credit, including non-requested pre-approved credit cards sent to the consumers, or the unilateral increase of a consumers' overdraft, overrunning or credit card limit, should be prohibited. **The prohibition of unsolicited sales of credit should, however, not apply to credits offered at a point of sale to finance the purchase of a good or a service.**"	EP	
	Article 17(1)	"Member States shall prohibit any granting of credit to consumers without their prior request and *[sic!]* explicit agreement."	Council	

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	Ibidem	"Without prejudice to the possibility of creditors, credit intermediaries and providers of crowdfunding services to advertise within the limitations set by Articles 7 and 8, Member States shall prohibit any sale of credit to consumers, without their prior request and explicit agreement."	EP	advertising and targeted mailings with offers for existing customers that are in compliance with other EU and relevant national regulations are not covered by this ban on unsolicited sales. A clarification to this effect should also be added to Preamble (44).
9.	**Creditworthiness Assessment**			
a)	Preamble (46)	"It is essential that the consumer's ability and propensity to repay the credit is assessed and verified before a credit agreement is concluded. That assessment of creditworthiness should be done in the interest of the consumer, to prevent irresponsible lending practices and over-indebtedness, and should take into consideration all necessary and relevant factors that could influence a consumer's ability to repay the credit. In cases where the loan application is submitted jointly by more than one consumer, the creditworthiness assessment could be performed on the basis of the joint repayment capacity. Member States should be	Council	The half sentence "*for example, by setting limits on loan-to-value or loan-to-income ratios*" should be deleted without replacement. Such a requirement goes beyond the scope of competence of the CCD and is also no longer taken up in the body of the CCD. 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.

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		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."		
	Ibidem	"[…] 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."	EP	
b)	Article 18(4)	"Member States shall ensure that the creditor only makes the credit available to the consumer where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement, taking into account relevant factors as referred to in paragraph 1."	Council	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) of the German Civil Code, 18a para. (1) of the German Banking Act).
	Ibidem	"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	EP	

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		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. […] Notwithstanding the first subparagraph, 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 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 that include cases of loans that fund exceptional healthcare expenses, student loans or loans for consumers with disabilities. If the creditor or the provider of crowdfunding credit services make credit available to the consumer in accordance with the first subparagraph, the creditor or the provider of crowdfunding credit services shall		Should the Council and the EP intend to introduce the raised standard for the creditworthiness assessment for general consumer credits, the wording should at least be opened up to justify the granting of consumer loans in exceptional cases. The second subparagraph from the original draft proposal of the CCD of the COM ("*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 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.*") that has been deleted in the draft proposal of the Council, needs to be retained.

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		warn the consumer, on paper or on any other durable medium chosen by the consumer, of a negative creditworthiness assessment that implies that taking the credit may lead to over-indebtedness. Such information shall be communicated to the consumer before the conclusion of the credit agreement. Member States shall take complementary measures to ensure that the consumers' level of protection against financial difficulties remains equivalent to the standards otherwise laid down in this Directive."		We would also suggest extending the list of credit contracts that are exempted from this clause in addition to the wording proposed by the EP and also exempt credit contracts for micro or small credits, which by their nature are likely to pose only a moderate risk to the consumer's financial well-being (especially compared to consumer credit contracts relating for residential immovable property). By further tightening the standard for the creditworthiness assessment, the CCD would even more restrict vulnerable consumers' access to sources of finance, thereby further hindering endeavours in the EU to promote financial inclusion, an important ESG goal.
10.	**Information Obligations regarding the Creditworthiness Assessment**			
a)	Preamble (50)	"Where a decision to reject an application for credit is based on the consultation of a credit database, the creditor or the provider of crowdfunding credit services should inform the consumer of this fact and of the information	Council	In view of the multiple different business models and the different underlying online application processes, which may also include cooperation partners, sub-brokers and/or third-party service providers, we consider it problematic from a

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		about him or her hold held in the database which was consulted."		technical and data protection point of view if the information with details on the rejection is transmitted together with the information about the rejection itself. If, for example, the entire application process (including the notification that no offer can be made) is carried out by a cooperation partner, but the actual creditworthiness assessment is carried out by the creditor, the creditor would have to inform the cooperation partner about the reason for the rejection of the credit application, which cannot be desirable from a data protection point of view and would even increase the damage to the consumer. The consumer should therefore only have a subsequent *right to request* further information on the credit assessment and decision, which they can exercise in their sole discretion. Correspondingly, creditors etc. should not be obliged to provide the information by default and in conjunction with the information about the credit decision.
	Ibidem	"Where a decision to reject an application for credit is based on the consultation of a credit database, the creditor or the provider of crowdfunding credit services should inform the consumer of that fact and of the information held about the consumer in the database consulted. The information contained in credit databases should be up-to-date and accurate. Consumers should be informed when new negative data are entered into those databases about them and procedures should be in place for consumers to be able to challenge the content of credit databases and the outcome of database searches."	EP	
	Article 19(4)	"Where the credit application is rejected on the basis of a consultation of a database referred to in paragraph 1, Member States shall require that the creditor informs the consumer without delay and free of charge of the result of such	Council	

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		consultation and of the details of the database consulted."		
	Ibidem	"Where the credit application is rejected on the basis of a consultation of a database referred to in paragraph 1, Member States shall require that the creditor or the provider of crowdfunding credit services informs the consumer immediately and free of charge of the result of such consultation and of the details of the database consulted as well as the categories of data taken into account."	EP	
b)	Article 18(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: (a) request and obtain human intervention on the part of the creditor to review the decision; (b) request and obtain from the creditor a clear and comprehensible explanation of the assessment of creditworthiness, including on the logic and risks involved in the automated	Council	Regarding point (b) of the draft proposals of the Council and the EP, it should be clarified that the consumer's right to information ends where more detailed information would interfere with the creditor's IP rights and trade secrets with regard to their automated data processing. With regard to point (c), we appreciate that both the Council and the EP have deleted the consumer's right to "*contest*" the creditworthiness assessment and decision. We

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		processing of personal data as well as its significance and effects on the decision; (c) express his or her point of view on the assessment of the creditworthiness and the decision."		strongly support the Council's approach to simply delete the "contest" mechanism from the draft CCD. If point (c) is retained, the wording should be amended to the effect that the consumer can request a review of the creditworthiness assessment and decision, as proposed by the EP. However, in our view, the concerns addressed by this point should already be sufficiently covered by Article 22 of the GDPR (cf. also the European Parliament's proposal to introduce a new Article 18 para. (6a): "*This Article shall apply without prejudice to Regulation (EU) 2016/679*"). Therefore, we believe that the introduction of these additional consumer rights is redundant and may result in legal uncertainty. If this language is indeed intended to extend the consumer's rights, we see no reason why creditors processing personal data in the context of profiling within the meaning of the GDPR should be burdened with, and forced to apply, stricter data protection
	Ibidem	"Where the creditworthiness assessment involves the use of profiling or other automated processing of personal data, Member States shall ensure that the creditor or provider of crowdfunding services informs the consumer of that fact and that the consumer has the right to: (a) request and obtain human assessment on the part of the creditor or the provider of crowdfunding credit services to review the decision in the event of a negative 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:	EP	

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		(i) the logic and risks involved in the automated processing of personal data as well as its significance and effects on the decision; (ii) the categories of data processed as part of the assessment and the weighting of each category in the decision; (c) express his or her point of view and request a review of the assessment of the creditworthiness and the decision. on the granting of the credit by the creditor or the provider of crowdfunding credit services; (ca) receive information about the procedure for reviewing the decision."		standards in this respect than all other parties processing the same or similar personal data. The comments in this section 10 apply accordingly to the changes proposed by the EP regarding the information obligations of the creditors etc. on consumers' rights pursuant to Article 18 para. (7), which, in our view, should also not be introduced in the final draft CCD.
11.	**Right to Withdrawal**			
	Preamble (56)	"Consumers should have a right of withdrawal without penalty and with no obligation to provide justification. However, in order to increase legal certainty, the withdrawal period should in any case expire 12 months and 14 days after the conclusion of the credit agreement if the	Council	The Council has deleted the wording that "*the right of withdrawal should not be used in bad faith.*" We do not support this deletion and suggest retaining this language to emphasise that consumers should only be protected by the right of withdrawal if and to the extent they are

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		consumer has not received the contractual terms and conditions and information in accordance with this Directive. The withdrawal period should not expire if the consumer has not been informed about his or her right of withdrawal."		actually worth protecting given the specific circumstances. We appreciate that, in order to adequately fulfil the consumer-friendly approach and the purpose of the right of withdrawal, the burden of proof that the consumer is worthy of protection cannot and should not be placed on the consumer. However, we would expect the creditor to be able to present reasons that contradict the borrower's worthiness of protection and thus the legitimacy of exercising the right of withdrawal. We appreciate, the newly added time limitation of the right of withdrawal to twelve months and 14 days that both the EP and the Council have suggested. From our point of view, such limitation is reasonable to mitigate potential risks arising from unpredictable court decisions (e.g., like the decision of the ECJ of September 2021), thereby adequately balancing the interests between consumers and creditors. We therefore firmly advocate and support including this addition in the final CCD draft.
	Article 26(1a)	"If the consumer has not received the contractual terms and conditions and information in accordance with Articles 20 and 21, the withdrawal period shall in any case expire 12 months and 14 days after the conclusion of the credit agreement. This shall not apply if the consumer has not been informed about his right of withdrawal in accordance with Article 21 (1) (p)."	Council	
	Article 26(1b)	"The right of withdrawal referred to in paragraphs 1 and 1a shall in any event lapse one year and 14 calendar days after the conclusion of the credit agreement or the agreement for the provision of crowdfunding credit services. Within that period, the right of	EP	

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		withdrawal shall also lapse, when the contract has been fully completed by both parties. The right of withdrawal shall not lapse if consumers have not been informed about their right of withdrawal."		
12.	**Early Repayments**			
a)	Preamble (22)	"'early repayment' means the full or partial discharge of the consumer's obligations under a credit agreement in advance of the date agreed;"	Council	In the proposed definition of "early repayment", it should be clarified that this definition only refers to a discharge of the consumer's obligations that has been "initiated by the consumer" themselves.
	Ibidem	"'early repayment' means the full or partial discharge of the consumer's obligations under a credit agreement or crowdfunding credit services, before the date for the final payment agreed in the credit agreement;"	EP	
b)	Preamble (62)	"The consumer should have the right to discharge his or her obligations before the date agreed in the credit agreement. As interpreted by the Court of Justice of the EU the right of the	Council	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.

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		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. In the case of early repayment the creditor should be entitled to a fair and objectively justified compensation for the costs directly linked to the early repayment, taking into account also any savings thereby made by the creditor. **Taxes and fees applied by and directly paid to a third party and which are not dependant on the duration of the contract should not be taken into consideration when calculating the reduction, as those costs are not imposed by the creditor and cannot therefore be unilaterally increased by the creditor. Fees charged by a creditor to the benefit of a third-party should however be taken into consideration when calculating the reduction. […]**"		The ECJ did not consider three-party relationships in its Lexitor ruling. We firmly support the clarification by the European Parliament according to which "*up-front costs, which are fully exhausted at the time of granting the loan and correspond to services effectively provided to the consumer*" shall not be taken into account. We also appreciate that the Council has expressly excluded third-party costs from the scope of the regulations where the "*fees [applied by and directly paid to a third party] are not dependant on the duration of the contract*". Although we interpret both proposals to mean that the brokerage fee of the credit intermediary that is paid up-front should under no circumstances be included in the total cost of the credit when calculating the reduction, especially the draft proposal of the European Council still leaves room for interpretation in cases where the creditor collects the up-front
	Ibidem	"As provided by the Court of Justice of the EU Lexitor ruling, the right of the consumer to a reduction in the total cost of the credit in the	EP	

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		event of early repayment of the credit includes all the costs imposed on the consumer**, except for up-front costs, which are fully exhausted at the time of granting the loan and correspond to services effectively provided to the consumer. The up-front costs should be adequately identified and declared in the credit agreement**."		brokerage fee from the consumer and forwards it to the credit intermediary. In our view, the draft CCD should be further amended and aligned with the decision of the ECJ to expressly exclude third-party costs *and* up-front costs that are fully exhausted at the time of the disbursement of the *credit.* In the draft proposal of the Council the wording "*applied by and directly paid to a third party"* should be deleted. The above comments should also be reflected in the definition of "total cost of credit" in Article 3 para. (1) point (5) o the draft CCD.
	Article 29(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**, except for up-front costs, which are fully exhausted at the time of granting the loan and correspond to services effectively provided to the consumer. The up-front costs shall be**	EP	

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		adequately identified and declared in the credit agreement."		
c)	Preamble (63)	"Member States should have the right to provide that compensation for early repayment may be claimed by the creditor only on condition that the amount repaid over a 12-month period exceeds a threshold defined by Member States. When fixing that threshold, which should not exceed EUR 10 000, Member States should take into account the average amount of consumer credits in their market."	Council and EP	The creditor's possibility to claim compensation should not be subject to any thresholds. This clause discriminates against providers of micro or small credits: Although the impact of early repayments for them may not be equally significant with regard to the individual credit contract, the impact in aggregate on their overall credit portfolio may be the same or even more significant. Moreover, it is to be expected that creditors would compensate for the lack of early repayment compensation by increasing the interest rates for *all* consumers – the protective effect for consumers can thus be questioned.
	Article 29(4), point (a)	"[By way of derogation from paragraph 2, Member States may provide that:] (a) the creditor is only entitled to the compensation referred to in paragraph 2 on the condition that the amount of the early repayment exceeds the threshold set out in national law, which shall not exceed EUR 10 000 within any period of 12 months;"	Council and EP	

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13.	**Caps on Interest Rates**			
	Preamble (65)	"The fixing of caps on interest rates, on annual percentage rates of charge and or the total cost of the credit to the consumer is a common practice in a number of Member States. Such capping system has proved beneficial in protecting consumers from excessively high rates. In that context, Member States should be able to maintain their current legal regime. In an effort to increase consumer protection without imposing unnecessary limits on Member States, adequate measures, such as caps or usury rates, should exist to ensure that consumers are not charged with excessively high interest rates, annual percentage rates or total costs of credit."	Council	The provisions in the left-hand columns should be deleted without replacement. The introduction of caps for the interest rate, APR 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. In particular, creditors and credit intermediaries that focus on financial inclusion and thus contribute to an important ESG goal would be negatively affected.
	Ibidem	"[…] Such capping has proved beneficial for consumers. In that context, Member States should be able to maintain their current legal regime. However, in an effort to increase consumer protection without imposing unnecessary limits on Member States, caps on	EP	

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		interest rates, on annual percentage rates of charge and or on the total cost of the credit to the consumer should be introduced throughout the Union."		
	Article 31(1)	"Member States shall introduce measures to ensure that consumers cannot be charged with excessively high interest rates, annual percentage rates of charge on loans or total costs of credit."	Council	
	Ibidem	"Member States shall introduce caps on one or more of the following: (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."	EP	

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The DLA is committed to the professional, integrity and transparency of digital financing and investing, and to ensuring that all market participants adhere to the highest quality standards in the interests of borrowers, investors and business partners. To this end, its members develop industry standards.

Its 24 members include companies from all parts of the ecosystem. The association was founded on June 4, 2019 and is headquartered in Berlin, Germany.

FINTICS - WHERE FINTECH MEETS POLITICS is the DLA's annual flagship event for digital financing and investing. There, relevant stakeholders from politics, supervision, science, media and the digital financing scene get together.

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