Mapping of national approaches in relation to creditworthiness assessment under Directive 2008/48/EC on credit agreements for consumers

1. Introduction

Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers (hereafter referred to as Consumer Credit Directive) aims to facilitate the emergence of a well-functioning internal market in consumer credit which offers a sufficient degree of consumer protection across the EU.

It notably seeks to prevent irresponsible lending by introducing an obligation on creditors to perform an assessment of the creditworthiness of the consumer before issuing credit. Article 8 specifies that "*Member States shall ensure that, before the conclusion of the credit agreement, the creditor assesses the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database*". Recital 26 further highlights that creditors "*should be allowed to use information provided by the consumer not only during the preparation of the credit agreement in question, but also during a long-standing commercial relationship*".

Conditions for access to databases (referred to in Article 8), including conditions for cross-border access, are specified in Article 9 of the Directive.

In its Consumer Financial Services Action Plan: Better Products, More Choice[1], the European Commission recognises the difficulties faced by creditors in assessing the creditworthiness of borrowers from other Member States. It notes that "*assessments in the area of consumer credit are carried out in ways which differ significantly across Member States. Standardised and harmonised assessment of creditworthiness would facilitate cross-border lending, which could lead to lower prices and offer more choice for consumers. Moreover, it would prevent vulnerable consumers from falling into a "debt trap" and ensure that consumers purchasing credit from other Member States are as protected as if they purchased credit domestically*". Against this background, the Commission announced that it would "*seek to introduce common creditworthiness assessment standards and principles for lending to consumers*".

The importance of having rules in place at national level to assess consumer affordability in order to reduce the likelihood of new non-performing loans in the context of consumer loans was also highlighted in the Second Progress Report on the Reduction of Non-Performing Loans in Europe[2] adopted in March 2018. On this occasion, the Commission stressed that it would continue to work with Member States to identify best practices and guiding principles for credit institutions and other creditors when assessing the creditworthiness of consumers, as announced in the Consumer Financial Services Action Plan.

[1] COM/2017/0139 final
2 COM/2018/0133 final

As a first step in this work, the European Commission decided to engage a dialogue with stakeholders and especially with the national authorities in charge of regulating and supervising consumer credit at the national level. The European Commission notably sought the expertise of its Member States Expert Group on the Implementation of Directive 2008/48/EC on Consumer Credit (CCD)[3] to establish an overview of national approaches concerning creditworthiness assessment throughout the European Union. The present report is the result of this mapping exercise and has been drafted thanks to the contributions of the Member States' experts.

2. National approaches to creditworthiness assessment for consumer credit

a. National framework for creditworthiness assessment

All 28 Member States have transposed the relevant requirements on creditworthiness assessment of the Consumer Credit Directive into their national laws.

i. National legal requirements going beyond the Consumer Credit Directive

Certain Member States have gone beyond the requirements laid down in Article 8 of the Consumer Credit Directive with a view to specifying in their national law certain aspects of the creditworthiness assessment, as illustrated by the following examples:

- The Estonian legislation provides guidance on which information to check during a creditworthiness assessment and how the data should be verified by the creditor in order to comply with the requirement for responsible lending[4].
- In Belgium, the creditor or intermediary is obliged to have a questionnaire filled out by the borrower asking for at least the purpose of the credit, income, persons at charge, the existing financial obligations of which the amount outstanding and the number of credit contracts.
- In the Netherlands the provider needs to check the information on the credits that already have been granted to the consumer in the system of credit registration in which he participates, if the credit amount exceeds € 250. A supplier also needs to have sufficient (written) information concerning the financial position of the consumer in order to prevent excessive lending. If the credit amount exceeds € 1000, it is necessary for the supplier to verify the income of consumers through loan slips and bank statements. If the credit amount does not exceed € 1000, it is sufficient for a consumer to state the income and declare that the consumer can pay for the loan. In order to prevent excessive lending, a credit provider lays down the criteria on which it bases the assessment of a credit application by a consumer and applies these criteria when assessing a credit application.

[3] http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2180
[4] Estonian Law of Obligations Act and Creditors and Credit Intermediaries Act

- In Spain creditors are also obliged to rely on specific written procedures to document the creditworthiness assessment.
- In the Slovak Republic, the legislation[5] defines the parameters to be taken into account when performing the creditworthiness of consumers, including the exact formula to be used by creditors.
- In Iceland, these additional elements refer to how the creditworthiness assessment is done (including the document and information on which it should be based), in what cases it needs to be done and what are the few exceptions.
- The UK has made rules and guidance (updated recently[6]) fleshing out the meaning of the Article 8 requirements and how they are intended to apply, in terms of the adequacy and proportionality of assessments.

It is also worth noting that, whilst in most cases, national requirements on creditworthiness assessment for consumer credit are different from those applicable to mortgages, some Member States have used the transposition of the Mortgage Credit Directive to establish creditworthiness assessment requirements that apply to both types of credits:

- Banco de Portugal issued in 2017 a Notice[7] defining procedures and criteria to assess creditworthiness of consumers for both mortgage and consumer credit. It details how credit institutions shall fulfil the obligation to assess the creditworthiness of consumers under the national laws transposing the Consumer Credit and Mortgage Directives.
- In Romania, the provisions on creditworthiness assessment from the Mortgage Credit Directive have been extended to consumer credits covered by the Consumer Credit Directive in order to avoid the risk of regulatory arbitrage. The regulatory framework on creditworthiness assessment for consumer credit also includes provisions derived from the Recommendation of the European Systemic Risk Board on lending in foreign currencies (ESRB/2011/1). As a consequence, the Romanian Central Bank's regulation in the consumer credit area contains very detailed requirements on the type of information to be collected and their quality; the methodology to be used when assessing the creditworthiness of consumers, including an obligation to take into consideration stressed scenarios for currency risk, interest rate risk and the risk of income reduction during the loan repayment period.

ii. Non-binding guidance and codes of conducts

To complement these legal requirements, 12 Member States (CY, DE, DK, EE, FI, LT, LU, LV, PL, PT, RO and SE) have issued non-binding guidance or guidelines which in some cases are regularly reviewed or updated by the national authorities. The Danish Guidelines, for instance, list specific requirements which are recommended to be taken into account when performing the assessment (so-called "comply-or-explain" requirements).

[5] Act No. 129/2010 Coll. on consumer credits
[6] https://www.fca.org.uk/publications/policy-statements/ps18-19-assessing-creditworthiness-consumer-credit
[7] Notice no. 4/2017 of 20 September

Several countries are in the process of updating such guidance. For instance, Belgium is developing its first Code of conduct (guidelines) on creditworthiness assessment (no finalized document yet). In Latvia, creditors have until 1 November 2018 to comply with the new version of the Guidelines adopted in April 2018.

In addition, 8 Member States (CY, CZ, LV, MT, NL, RO, SE and UK) have identified the existence of best practices/codes of conduct developed by creditors themselves. In the Netherlands, the development of such a Code of Conduct has been done in cooperation with the financial supervisory authority and is used as a benchmark in the enforcement of the national rules on creditworthiness assessment.

b. Enforcement of creditworthiness assessment obligations

The requirements on creditworthiness assessment stemming from the Consumer Credit Directive are generally enforced by the consumer authority (for all creditors in BE, EE, EL, FR, IS, LV and PL; for non-bank lenders in DK, SE, SI and regional ES authorities), the financial supervisory authority (for all creditors in EE; FR, NL, PL, UK and for bank lenders in DK and SE) or the national central bank (for all lenders in CY, CZ, ES, HU, IE, IT, LT, PT, RO, SK and for bank lenders in ES and SI). Data protection aspects, pertinent for creditworthiness assessment, are supervised by the national data protection authorities.

Failure to comply with the creditworthiness assessment obligation can have various consequences:

- administrative sanctions:
    - warnings/cautions in CZ, ES, IE, PT, RO and SE;
    - possibility of cancellation or limitation of licence or authorisation in BE, CZ, EE, IE, LT, LV, NL, PT, RO, SE, SI and UK;
    - penalty payments or fines in AT, CZ, DE, DK, EE, EL, ES; IE, IS, IT, LT, LV, NL, PT, RO, SE, SI and UK;
- civil consequences such as:
    - lower interest rates (in EE) and also possibility to terminate the contract at any time without notice and prepayment fee in DE and BE (in BE, it is nevertheless up to a judge to decide, it is not automatic);
    - invalidity of the contract with the creditor only entitled to the return of the sum lent (no interest, no other costs) and the borrower entitled to pay back the sum borrowed in time corresponding to his or her financial situation in CZ;
    - consumer exempted from the total cost of the credit, including interest, with the obligation to pay only the capital according to the credit agreement instalments (EL; SK);
    - right to claims for damages by the consumer (AT, PT);
    - consumer can turn to court and demand to pay legal interest (6% for a year, no other costs), if lender cannot prove sufficient creditworthiness assessment in LV)).

- Penal consequences as foreseen in BE, for instance if creditors conclude contracts with borrowers who they should know are unable to repay (e.g. in case of lack of consultation of the national database, not asking necessary information of the borrower, not submitting the mandatory questionnaire, not looking for the most adapted credit).

c. Elements of national approaches[8] to creditworthiness assessment

Information to be taken into account for the assessment

Details as to which information is to be taken into account and how it should be taken into account by the creditor to perform the creditworthiness assessment vary greatly between Member States.

Broadly speaking, three types of approaches can be distinguished.

First, we can identify a set of countries that leave discretion to the creditors as to which information is to be used for the creditworthiness assessment. In such a case, it is for the creditor to be able to demonstrate, if challenged, that it has taken account of sufficient information to enable a reasonable assessment of creditworthiness.

The second group of countries have approaches that are more prescriptive in so far as the creditors have to take into account information such as the consumer's (and in certain cases, the household’s) income and expenditures, their debts and, in certain cases, their assets. On top of such information, in some Member States, it can also be compulsory for the creditors to check credit databases to verify the information provided by the consumers and/or check the existence of any payment defaults and credit history. Approaches vary as to the extent of prescription including in relation to the sources of information and/or the extent to which information should be verified.

Finally, a group of countries goes further by setting out formulas with clear thresholds of indebtedness (for example, debt-to-income or debt service to income) defining whether or not the credit can be granted to the consumer according to his/her financial situation.

The table below seeks to reproduce these approaches in a simplified way.

[8] Covering legislation, guidelines/best practices and codes of conduct

Member States	Information to be taken into account in the creditworthiness assessment	Presence of a specific formula or threshold
Malta	Exact information left to the appreciation of the lender	
Denmark	Exact information left to the appreciation of the lender	
Germany	Exact information left to the appreciation of the lender[9]	
Austria	Exact information left to the appreciation of the lender	
Czech Republic	Exact information left to the appreciation of the lender	
United Kingdom	Exact information left to the appreciation of the lender Income and non-discretionary expenditure, unless it is obvious that the credit is affordable without doing so	
Italy	Exact information left to the appreciation of the lender but it should cover his/her economic and financial situation such as income and savings	
Luxemburg	Exact information left to the appreciation of the lender. However the consumer is obliged to provide the lender with the necessary information, including outstanding financial commitments and current income. In case the consumer resides in another Member State, the lender shall consult, if necessary, the appropriate databases of that Member State.	
Ireland	Exact information left to the appreciation of the lender Consultation of the Consumer Credit Register compulsory for credits of €2,000 and above	
France	Exact information left to the appreciation of the lender Consultation of national credit register (negative) compulsory	
Greece	Exact information left to the appreciation of the lender Consultation of credit database compulsory	
Estonia	Income, expenditures including financial obligations and	

[9] Germany: More specific rules meanwhile came into force for consumer credit agreements relating to immovable property, which might be regarded by practitioners as exemplary also for questions relating to credit agreements for consumers under Directive 2008/48/EC.

Member States	Information to be taken into account in the creditworthiness assessment	Presence of a specific formula or threshold
	performance on past payment obligations	
Sweden	Monthly incomes and expenditures, debts and to a lesser extent assets	
Cyprus	Monthly income, payment obligations, cash flow, collaterals and any other information deemed necessary by the lender.	
Iceland	Last tax return, income for the past three months, fixed expenditures, monthly debt repayments and other liabilities as well as the cost of living, in accordance with publications by the Ministry of welfare.	
Finland	Payment defaults as well as consumer's income, expenses, debts, assets and possible guarantee liabilities	
Spain	Assessment based on income, properties, savings, financial payment obligations and fixed living expenses Credit track record should be taken into account	
Poland	Income, expenditures including credit obligations, number of dependants, stability of income. As qualitative analysis: personal characteristics of the consumer (age, marital status, education), history of cooperation with the bank, credit history	
Slovenia	Income, expenditures, open credits and consultation of database	
Croatia	Average income for the past three months and information on timely repayment of previous and current loans. Consultation of debt liabilities in national credit registry	
Belgium	Financial situation of the consumer and consultation of database, questionnaire asking for at least the purpose of the credit, income, persons at charge, the existing financial obligations of which the amount outstanding and the number of credit contracts.	Prohibition to conclude contracts with borrowers whom the creditor should know are unable to repay, or are defaulting for more than 1.000 euros

Member States	Information to be taken into account in the creditworthiness assessment	Presence of a specific formula or threshold
Latvia	Income, history of debts, financial liabilities, expenditures	Limit of monthly liabilities to income – from 10% to 40%+ (depending from income level) – but only in LV guidance, not in legislation. Some provisions related to creditworthiness assessment are currently under consideration in parliament.
Portugal	Income (at least three months), expenditures, credit responsibilities and defaults Consultation of credit register database compulsory Age and professional situation	Debt service-to-income indicator shall be lower or equal to 50% considering all credit responsibilities arising from consumer and mortgage loans (macro-prudential approach)
Netherlands	Income, rent/ mortgages, financial liabilities, other obligation and basic costs of living (defined at national level by an independent institution and varies according to the type of household)	Formula taking into account the various information to be collected about the household's financial situation and allowing to determine whether the remaining income allows for a new loan to be taken
Slovak Republic	The consumer's net income; the costs of providing for basic needs of the consumer and their dependants, the amount of consumer credit instalments; and financial liabilities reducing the consumer's income. Consultation of credit database compulsory	I= (CI+FL)/((NI-CO)*1,20) Where: I - means indicator of the consumer's ability to repay the consumer credit CI – means amount of consumer credit instalments of applied credit FL – means other financial liabilities of the consumer NI – means consumer's net income CO – means the costs of providing for basic needs of the consumer and their dependants. The total amount of expenses means the amount of expenses on basic needs increased by 20% of the difference between the total amount of consumer's

Member States	Information to be taken into account in the creditworthiness assessment	Presence of a specific formula or threshold
		net income and the subsistence minimum of the consumer and their dependants[10].
Lithuania	Average of sustainable income of the consumer of at least the last 4 months (there are some exceptions); sources of income of the consumer, the variety of income, potential changes of income in the future; consumer’s expenses, existing liabilities; 6 months consumer's credit history, information about any missed or late repayments and debts of any financial obligations. Income and liabilities of a spouse should be included also	“40 percent rule” (debt service-to-income or DSTI) according to which the amount of the average contribution for all consumer’s liabilities to financial institutions shall not exceed 40 percent of the sustainable income of the consumer
Romania	Income (tax declaration) and income history and its sources; any income variability over time; expenses and other financial liabilities; financial and economic circumstances deemed necessary, sufficient and proportionate for assessing the creditworthiness, including credit history; client category	The indebtedness level is determined as the weight of the total payment obligations resulting from credits (including the loan to be granted) in the eligible net incomes (from which all the foreseeable expenses are deducted, including the amount for cost of living/basic needs). In addition, the creditors shall establish maximum indebtedness levels for consumer credits in stressed scenarios (by increasing the financial obligations with the currency risk and the interest risk, and lowering the net income considered with the risk of a reduction of the income during the period of the credit life). The maximum levels of indebtedness are differentiated depending on the type of credits (considering the destination, currency, type of interest rate, maturity) and the category of clients

[10]Slovak Republic: From 1st of July 2018 the maximum debt to income limit is 8*yearly net income of a consumer (exception – 5% of total quarterly volume of new mortgages and consumer credits can exceed DTI limit). There is compulsory check of credit databases to verify the information provided by the consumers and check other mortgage and consumer credit.

Member States	Information to be taken into account in the creditworthiness assessment	Presence of a specific formula or threshold
		(by creditworthiness).
Hungary	Assessment of ability to repay on the basis of information from the consumer and from credit register	PTI (Payment-to-income) limits, going from 10% to 60% cover all types of credit and loan operations

The situation of credits below EUR 200

The Consumer Credit Directive covers only credits of values comprised between EUR 200 and EUR 75 000[11] but Member States can decide to expand the rules of the Directive to credits below this threshold.

Feedback from the Member States shows that creditworthiness assessment is also compulsory for credits of value of less than EUR 200 (SI; CZ; BG; NL; SK; LT; RO; DK; HU; UK; FI; ES; PL; LV; CY; EE; IS; BE; IE; IT; SE) but with a certain degree of proportionality in some Member States (FI; UK; PL; EE; IE; BE; IT; CY; LV; IS; NL; ES in respect of regulated firms), meaning that creditworthiness assessment for small-value credits may not need to be as thorough as for credits of higher value, for instance as regards the data required to perform the assessment. For instance in Latvia, for credits below EUR 200, the creditor can base its assessment on the information provided by the consumers but is not required to ask supporting proofs of revenue. In other cases, though, the assessment may need to be more rigorous, if the costs and risks to the individual borrower are higher, taking account of the consumer's circumstances. In Spain, creditworthiness assessment for credits bellow EUR 200 is compulsory for credit institutions and other regulated financial institutions (in some cases, with some degree of proportionality), while it is not compulsory for creditors that are not credit or financial institutions (unregulated).

It is worth noting that in some countries (DK), specific guidelines have been issued on short-term consumer credits and that others have specific rules in place for such credits, including interest caps:.

- For instance, as of 1 September 2018, Sweden has in place specific rules for so called "high-cost credits" (credits with an APR that amounts to at least the reference rate (currently -0,5 per cent) with an addition of 30 percentage points). These rules include i.a. interest and cost caps, but not specific rules regarding the creditworthiness assessment.
- In the UK, there is a cost cap for high-cost short-term credit (payday lending) which is based on total costs, both interest and non-interest charges.
- In Ireland, the Central Bank can refuse to grant a licence to a moneylender if it is of the opinion that the cost of credit to be charged is excessive.
- In Iceland there is an APR cap of 50% plus active key interest rate from the Central bank of Iceland.
- In Portugal, there is a maximum APR regime that applies to all consumer credit contracts falling under the Consumer Credit Directive, independently of their term.

[11] Or higher if for home renovation – modification introduced by Mortgage Credit Directive

Usage of credit registers/databases by the creditors during the creditworthiness assessment

Information contained in credit registers/databases can be used by creditors to verify the information provided by the consumer and obtain information on defaulted loans.

The consultation of such database is compulsory[12][13] in a number of Member States (BE; BG; CY; EL; FI; FR; HU; IE; IS; LT; MT; NL; PT; RO; SI and SK).

Depending on the country, databases can be publicly-run (BE; ES; FR; HU; IE; IT; LT; MT; PT; RO and SI) and/or co-exist alongside privately-run ones. The content of such database however varies between countries and can include only negative data (FR) or, most frequently, both positive and negative data, coming from various sources and updated according to different timescales depending on the database.

Generally-speaking, when a database is publicly-run, it is supervised by the national financial supervisory authorities or the central banks, while private databases are usually supervised by national data protection authorities.

[12] In Ireland, for instance, lenders must consult the Consumer Credit Register (CCR) for credit advances of €2,000 and above. While lenders must consult the CCR for loans greater than €2,000, they may consult it for amounts less than this at their discretion. The Register does not collect information on loans under €500.

[13] Some Member States such as the Czech Republic however do recognise that compulsory consultation of databases can only be fully meaningful if such databases are limited in number in a given Member State and comprehensive as regards the data they include.