



Study on possible impacts of a revision of the CCD

Final report

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Final report

Directorate-General for Justice and Consumers (DG JUST)

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Abstract

This study provided evidence on the impacts of a possible revision of the Consumer Credit Directive. It assessed the problems identified in the Evaluation of the CCD in further depth through research and consultations. A long list of possible measures, identified at national level and through consultations, was compiled to enable an initial appraisal of their added value and expected effectiveness and efficiency. A reduced set of measures were allocated to four main policy options (next to the baseline option) and subsequently linked to policy objectives. Those policy measures deemed to be most effective were assessed following an in-depth qualitative analysis and multi-criteria analysis.

Executive summary

Introduction

The adoption of the Directive 2008/48/EC on credit agreements for consumers (the Consumer Credit Directive – CCD) on 23 April 2008 aimed at offering greater consumer protection while strengthening the EU single market of consumer credit. Prior to this study, the evaluation of the CCD found that while the Directive has proved to be partially effective, the CCD also faces a number of obstacles and shortcomings - mostly due to the emergence of new market developments since 2008. Following the European Commission's intentions to revise the CCD, this study provided supporting evidence for an impact assessment on potential EU action.

This study was carried out between May 2020 and January 2021. The main objective was to analyse existing problems and their scale, as well as and their impacts if left unmitigated. It then examined different ways to address these problems by assessing the effectiveness and impacts of those potential EU measures.

As part of the desk research, this study included a comprehensive review of relevant documentation and literature from EU and Member State sources. Additionally, the legal analysis covered the implementation and enforcement of consumer credit rules in the 27 EU Member States and the United Kingdom. The consultation stage involved the collection of information and feedback on the main problems encountered by consumers, credit providers and national authorities, possible solutions to those problems, and the impact of the different policy options considered. A broad range of stakeholders at EU and national level were consulted via online surveys, semi-structured interviews, workshops, and a public consultation (OPC). Stakeholder groups targeted included credit providers and intermediaries, business associations, consumer organisations, national authorities, EU institutions, alternative dispute resolution (ADR) bodies, members of the European Consumer Centres (ECC) network, members of the Consumer Protection Cooperation (CPC) network, academics and researchers, citizens, and NGOs.

The appraisal of policy options was conducted following the identification of practices at national level and the analysis of country case studies. Those policy measures deemed to be most effective were assessed following a multi-criteria analysis. In addition, policy options were subject to a cost-benefit analysis that estimated impacts on consumers, credit providers and national authorities.

Limitations

Main limitations encountered in this study relate to i) limitations in comparable quantitative data across Member States, in particular about the prevalence of specific credit products, market size and market trends and ii) limited responsiveness as part of the stakeholder consultation also as a result of the Covid-19 situation and the timing of the study (consultations commencing over the 2020 summer period).

The limited availability of comparable data mostly impacted precise quantification of the benefits expected to address key problems in the consumer credit market, and reduced the possibilities to assess costs for all measures. The very high number of different measures meant that costs could be assessed for certain measures.

The response rate in the stakeholder consultation was lower than originally envisaged. In particular inputs from the industry survey was low, despite a number of reminders and extensions to the survey period.

Introduction of five problem areas

The previous evaluation and this present study identified five main problems in the field of consumer credit, each of them broken down in several sub-problems:

Problem 1 relates to the existence of certain credit types or credit providers falling out of the scope of the CCD or likely to fall out and thus a part of the consumers are less well protected, these are likely to be more vulnerable while at the same time the products are deemed at high risk so they generate either high interest risks or high risks of falling over indebted. **Sub-problem 1.1:** The fast-evolving consumer credit market resulted notably in the increase of quick and easy to access credit products explicitly excluded from the CCD such as zero-interest loans, leasing agreements and pawnbroking agreements. Such products show a high level of risk for falling outside the scope of the CCD and consumers not being protected at the same level as for other products. **Sub-problem 1.2** The ambiguity of some CCD concepts and provisions around their application to credits not explicitly excluded from the CCD has generated a lot of uncertainty about whether consumers are protected. For example peer-to-peer lending (P2PL) and the application of the definitions of consumer and creditor in Article 3.

Problem 2 relates to insufficient safeguards in the CCD to ensure responsible lending and thus a limited capacity to prevent risks of over-indebtedness especially for the more vulnerable part of the population. **Sub-problem 2.1** The Directive does not include specific obligations to ensure that consumer credit is devised and marketed to consumers in their best interest. The competition in the consumer credit market therefore may lead certain credit providers to encourage consumers to get indebted by offering easy credits systems that are usually riskier such as high-cost credit, rolling over, cross-selling or unsolicited credit. Various Member States have regulated such markets leading to unequal consumer protection and segmentation of national markets. **Sub-problem 2.2** examines the extent to which some credit providers are not conducting proper creditworthiness assessments, despite the obligations provided in the CCD. This results from the use of vague terms in the CCD provisions (Art 8(1)) such as 'sufficient information'. There is also a certain level of non-compliant practices, for example evidence in a recent screening of websites offering credits. **Sub-problem 2.3** The consumer credit market is experiencing an increasing use of automated credit scoring tools and new data sources not directly provided by consumers. These practices have both advantages, for example in terms of amount of data used and avoidance of errors but may also pose some risks in relation to consumers' data protection rights and other fundamental rights. The CCD does not currently consider such risks.

Problem 3 relates to the low impact of the advertising and pre-contractual information on consumers to help them make reasonable choices when agreeing to a loan. **Sub-problem 3.1** Articles 4 and 5 of the CCD referring to the information to be provided at advertising and contractual stage have proved to be effective in providing higher level of consumer protection, but constitute an information overload, notably for certain categories of consumers because of the provision of complex information, or provision of information via digital means. **Sub-problem 3.2** explores practices of some credit providers exploiting consumer behavioural biases and circumventing rules, taking advantage of the vagueness of some of provisions of the CCD.

Problem 4 relates to the protection of consumers considered as being vulnerable. Under **sub-problem 4.1** the CCD does not foresee any tools to support and protect

consumers from over-indebtedness. Different levels of protection exist across Member States on this as certain of them tool specific measures. **Sub-Problem 4.2** relates to the protection of indebted consumers against exceptional and systemic crises across the EU.

Problem 5 focuses on the level playing field for credit providers and the low levels of direct cross-border credit transactions which keeps consumer credit markets segmented by Member States, reducing choices for consumers and keeping interest rates higher in certain markets. **Sub-problem 5.1** Differences in Member States transposition of the CCD mostly relate to the scope of the Directive, information-related requirements in advertising and pre-contractual stage or CWA obligations which prevents direct cross border transactions both from the perspective of consumers who hesitate to use systems that appear different and for financial institutions who have to adapt their offers to local conditions. **Sub-problem 5.2** delves into cross-border credit, whereby the levels of direct cross-border credit in the EU remain low (around 0.9%). Barriers identified are mostly associated with the lack of awareness, legal fragmentation, geographical restrictions, language and cultural barriers, amongst others. The credit market is characterised by a high level of establishment trade and the liberalisation of financial services has resulted in a high concentration of banks in the EU. However, as the national markets remain segmented due to the minimum harmonisation provisions in the CCD, the consumers do not benefit of the liberalisation, nor of the development of FinTech and digitalisation of markets.

Overview of policy options

The study compiled and preliminary assessed over 60 very detailed policy measures, the policy measures most likely to address the issues identified were selected.

Policy option 0 considers the baseline scenario, where no intervention is needed but identified problems remain unchanged. **Policy option 1** foresees the implementation of non-regulatory measures that seek to provide clarity on certain aspects of the Directive or to provide non-binding guidance to address elements that are currently not covered or not sufficiently covered in the CCD. Policy measures under Policy option 1 can be divided in four main groups: clarification of key terms of the CCD, non-binding guidance (addressed to Member States and/or credit providers/intermediaries), awareness raising campaigns run by European Consumer Centres, and increased (financial) support to consumer organisations and public bodies in the fields of financial education, debt advice and assistance.

Policy option 2 implies the amendment of provisions in the CCD, focusing on the scope of application, CWAs, information-related requirements and enforcement. **Policy options 3** comprise in addition new provisions added to the CCD, such as on responsible lending, preventing over indebtedness, and prohibit certain existing practices. This option is split into **Policy option 3a** and **Policy option 3b**.

The appraisal of the policy options included a qualitative assessment of the effectiveness, efficiency and coherence of each option. A quantitative assessment of costs and benefits was carried out for eleven measures on the limited sub-sector of banks while the non-bank sector had to be covered by assumptions due to the limited amount of comparable information at the EU level. A multi-criteria analysis was carried out to compare the options. Policy option 3a is the preferred option as it ensures the most positive cost/benefit ratio.

1 Introduction to the study

The main objective of this study is to provide sound evidence and analysis to support the Commission in preparing the impact assessment of potential EU action to revise the Consumer Credit Directive (CCD). It will do so by providing quantitative and qualitative evidence on the:

- existence and scale of problems leading to lower levels of consumer protection and cross-border activities than considered necessary;
- need and shape for further measures at EU level to address those problems; and
- effectiveness and impacts (including economic, environmental and social aspects) of those potential EU measures.

Table 1. Study scope

Scope	Elements covered
Material scope	<p>Consumer credit: Consumer credit within and outside the scope of the CCD, with the exception of mortgages.</p> <p>Credit providers: Creditors (banks and non-banks), credit intermediaries (including peer-to-peer platforms), and other business operators involved in the marketing and granting of consumer credit.</p>
Geographical scope	<p>All 27 EU Member States, with the following exceptions:</p> <ul style="list-style-type: none"> • The stakeholder interviews (Task 3.1) and the country case studies (Task 5.3) will cover 10 selected Member States.¹ • The desk research (Task 1.4) and the national legal research (Task 4.2) will cover the EU27 Member States and the UK.
Temporal scope	<ul style="list-style-type: none"> • The period 2015 – 2020 for the collection and analysis of evidence on current problems and implementation of the CCD, i.e. desk research (Task 1.4) and national legal research (Task 4.2). • The period 2021 – 2030 for the identification and analysis of the possible policy options, i.e. the remaining tasks.
Legal scope	<p>EU level: Directive 2008/48/EC and related case law and EU-level complaints; other relevant EU legislation such as the Directive 2014/17/EU ('Mortgage Credit Directive').</p> <p>National level: National legislation implementing the CCD, national enforcement decisions and consumer complaints on consumer credit and related national case law.</p>

1.1 Structure of the report

The remainder of this document is structured as follows:

- Section 2 summarises the methodological approach followed in the study.
- Section 3 presents the legal and political context of the study.
- Section 4 assesses the problems as well as their scale and their expected evolution
- Section 5 reflects on the competence of the EU to address the problems identified.
- Section 6 lays down the objective of an EU-intervention in this area.
- Section 7 presents the different policy options that will be assessed.
- Section 8 summarises the results of the assessment of impacts of the different policy options.

¹ Austria, Belgium, Bulgaria, Czech Republic, Estonia, Germany, Italy, the Netherlands, Poland and Sweden. Countries were pre-selected if they had implemented relevant measures going beyond the CCD (according to the information gathered as part of the Evaluation of the CCD), the size of the credit market, the diversity of the credit market, the presence of foreign lenders in the market, key players and similarities with other Member States.

- Section 9 shows how the option compare.

The main report is supported by the following annexes:

- Annex 1: Detailed methodological approach to the study
- Annex 2: Overview of stakeholders consulted
- Annex 3: List of documentation reviewed
- Annex 4: Stakeholder consultation synopsis report
- Annex 5: Recent evolution of the consumer credit market and detailed baseline
- Annex 6: Detailed problem statement
- Annex 7: Results of the legal analysis
- Annex 8: Overview of measures identified and assessed in the study
- Annex 9: Detailed description of the analytical methods used in preparing the impact assessment
- Annex 10: Results of the quantification analysis
- Annex 11: Assessment of added value of the policy options

2 Methodological approach

This section presents the methodological approach adopted for this study. It includes a summary of the approach adopted and outlines the key limitations of the study and the measures taken to mitigate their impact.

2.1 Overview of the method

The study was carried out between May 2020 and December 2020. The work was structured around seven main tasks, each of them with various sub-tasks. This section summarises the work under the key evidence-gathering and analysis activities. A more detailed description of the methodological approach is presented in Annex 1.

Desk research

The study included a review of relevant documentation and literature. The review covered a broad catalogue from a variety of EU and Member State sources, including legal and policy documents, statistical data, studies and academic papers, position papers and other publications from relevant stakeholders, etc. A list of the documentation reviewed is included in Annex 3.

Establishing the baseline and the key problems in the field of consumer credit

To prepare the work for the development of the policy options, the study first established the baseline for the intervention (Annex 5) and mapped and assessed the key problems in the field of consumer credit and their scale (Annex 6).

The baseline and problem definition were regularly updated based on evidence gathered from the various data collection tasks (e.g. stakeholder consultation, legal analysis, desk research, participative workshop).

Consultations with EU and national-level stakeholders

The stakeholder consultation aimed at collecting information and feedback on the evolution of the consumer credit in the EU Member States, the main problems encountered by consumers, credit providers and national authorities, possible solutions to those problems, and the impact of the various policy options considered.

This task was initially structured around two main activities:

- Online surveys with EU-level and national representatives from the following stakeholder groups: national authorities, credit providers / intermediaries, business associations and consumer organisations. The surveys explored market trends, problems, impact of regulatory approach of their Member State and the expected impact of overall policy options.
- Semi-structured interviews with EU-level and national stakeholders in the ten selected Member States. In the case of representatives from the stakeholder groups targeted by the online surveys, the interviews aimed at collecting more detailed information on the topics highlighted above, while those with other stakeholder groups sought to gather additional feedback.

The initial approach to the stakeholder consultation was amended to include the following additional exercises:

- Three additional, short surveys / questionnaires were launched, targeting Alternative Dispute Resolution (ADR) bodies in all Member States, members of the European Consumer Centres (ECC) network and members of the Consumer Protection Cooperation (CPC) network. The additional surveys / questionnaires focused on key problems faced by consumers and credit providers. They also sought to collect statistical evidence on the scale of these issues, based on the number of consumer complaints and related resolutions (e.g. case law, enforcement decisions, arbitrage cases).
- In addition, a fourth survey was launched after the validation workshop on the Options to ask for specific feedback.

- Analysis of the feedbacks provided by stakeholders on the Inception Impact Assessment² published in June 2020.
- Analysis of the responses to the CCD Review section of the Commission-run public consultation on the New Consumer Agenda.

Feedback from key stakeholders was also gathered as part of other tasks, notably:

- Scoping interviews with representatives from relevant EU institutions, i.e. the Directorates for Justice and Consumers (DG JUST), Economic and Financial Affairs (DG ECFIN) and Financial Stability and Capital Markets (DG FISMA) as well as several researchers from the Joint Research Centre (JRC).
- Two workshops organised by ICF throughout the course of the study. The first workshop – held in September 2020 - sought to gather input from selected key stakeholders representing EU level organisations on key trends and problems and potential solutions, gathering 54 participants. The second workshop held in November 2020 aimed at validating the findings of the study, and gathered 62 participants.
- A discussion with members of the Financial Services User Group (FSUG) was held on 19 November, where members could provide feedback the Options.

The consultation period ran between end of July 2020 and end of October 2020. Table 2 below shows the main stakeholder groups targeted and the number of consultations carried out (and in brackets the target number of consultations), per consultation method. A more detailed overview is presented in Annex 2.

Table 2. Stakeholders groups consulted

Stakeholder group	Consultation method			
	ICF Survey	Interview	Public consultation	Follow-up to ICF survey
EU institutions	N/A	4 (3)	-	-
Credit providers (including 5 non-banks)	8 (100)	7 (10)	14%	1
Credit intermediaries (including online and P2PL platforms)		0 (5)		0
Other business operators involved in the marketing and granting of consumer credit		2 (5)		1
EU-level business associations	23 (30)	2 (2)	22%	3
National business associations		7 (10)		6
EU-level consumer organisations	14 (30)	3 (5)	7%	1
National consumer organisations		4 (10)		2
National authorities (i.e. consumer enforcement authorities, responsible ministries and the relevant	32 (108)	5 (15)	13%	6

² The Inception Impact Assessment, as well as feedbacks received on it, are available on this webpage: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12465-Consumer-Credit-Agreement-review-of-EU-rules>

national regulatory and supervisory authorities)				
ADR bodies	10 (69)	N/A		-
CPC members	10 (29)	N/A		-
ECC members	6 (30)	N/A		-
Researchers and thematic experts / academia	N/A	1 (3)	3%	N/A
Citizens	N/A	N/A	28%	N/A
NGOs	N/A	N/A	9%	N/A
Other	N/A	N/A	4%	N/A
Total	103 (396)	35 (68)	100% (250)	20

In line with the Better Regulation Guidelines (BRG), the key findings from the stakeholder consultation are presented in the form of a stakeholder consultation synopsis report (Annex 4). In addition to the feedback gathered through the various stakeholder consultation activities outlined above, the synopsis report also considers the feedback from stakeholders to the Commission’s Inception Impact Assessment and other written feedback submitted by stakeholders during the course of the study.

Legal analysis

The study analysed the legal context of the implementation of the CCD, both at EU and at national level. Both the EU and the national-level legal analysis built on the legal analysis carried out during the Evaluation of the CCD³.

As part of the EU-level legal analysis, the study analysed the coherence of the CCD with other EU-level consumer policy and legislation, focusing on the aspects that could be better aligned. Following the submission of the Draft final report, it also examined the legal feasibility, proportionality, and coherence of the potential policy options.

The national-level legal analysis explored the implementation and enforcement of consumer credit rules in Member States, including the measures that regulate relevant aspects not harmonised by the CCD. It was carried out based on Member State legal factsheets produced by national researchers in 27 Member States and the United Kingdom.

The results of the legal analysis are summarised in Annex 7.

Development and appraisal of the policy options

The first step to developing the policy options consisted of the identification and preliminary assessment of policy measures that could potentially address the problems identified. This task was informed by the evidence gathered through the various tasks and included the following activities:

- identification of best practices at national level and other possible measures, i.e. a compilation of measures taken by Member States or third countries to regulate aspects not harmonised by the CCD and which have proved to effectively address identified problems;
- country case studies allowing to examine in more detail the consumer credit market in ten selected Member States, aspects related to the implementation and

³ Evaluation supporting study available at this link : https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/credit/consumer-credit_en

enforcement of consumer credit rules, and the expected effectiveness, efficiency and impact on the national market of the various policy options;

- development and preliminary assessment of potential policy measures that could address the problems identified (Annex 8).

The measures deemed to be most likely to be effective were combined to conform the various policy options assessed in the study (see Annex 8). The policy options were assessed on their expected effectiveness, efficiency and coherence with existing legislation, legal and technical feasibility, added value, and their impact on key stakeholder groups.

A quantification analysis covering the period 2021 – 2030 was carried out to monetise, where possible, impacts on consumers, credit providers and national authorities. Non-monetisable impacts were qualitatively assessed including through a multicriteria analysis.

2.2 Limitations of the study and mitigation measures

Limited availability of updated, EU-level, comparable quantitative data

Limited availability of timely and comparable MS-level data, heterogeneity, scope, and large number of policy options that were assessed

The limitations related to the lack of timely and comparable MS data and the cross-MS inconsistencies in the terminologies used for the data that was partially available, affected, among others, the assessment of key problems in the field of consumer credit and the assessment related to the baseline and future policy options conducted as part of cost and benefit analysis. These limitations constrained the study team ability to use comprehensive quantitative data to support certain presented arguments and to assess the scale of some identified problems and implications of future policy options. In particular, patchy character of statistics (e.g. on prevalence of financial products, consumer complaints and operations of non-bank lenders) and other quantitative data underpinning the assessment of potential costs and benefits⁴ stemming from the implementation of considered policy options limited the robustness of the quantitative assessment of the impacts, both in relation to measures already adopted in Member States, and in relation to the possible policy options developed by the study.

ICF has made all efforts possible in this study (and the preceding CCD Evaluation) to get relevant data for all elements of the CCD e.g. stakeholders had opportunities to contribute in any possible way (interviews, surveys, sharing of documents). Yet, the study team managed to estimate the baseline and the magnitude of the problems in the key areas covered by the CCD to the degree that has not been done by any prior research.

Furthermore, the heterogeneity, scope and exceptionally large number of measures for each of the policy options that were subject of the assessment represented a challenge for the assessment of costs and benefits. A total of 12 out of 46 measures were assessed quantitatively. Moreover, while the model applied for the assessment of measures captures broadly the costs' implications for banks, it does not capture the possible costs for non-bank lenders⁵, which for some policy options would be likely to incur as much costs as non-banks. And by analogy, benefits stemming from possible application of number of options are also underestimated due to the fact that consumers relying on non-bank lenders are not captured by the model. In the same vein, number of undertaken assumptions for baseline scenario and future policy options suffer from high uncertainty due to the lack sufficient data e.g. either because it is too early to extract accurate evidence (e.g. impact of the COVID-19 pandemic and the measures adopted

⁴ Even more problematic for benefits than for costs.

⁵ There is no consistent and comprehensive MS and EU level data on number of non-bank lenders (including disaggregation by their main types) available.

by Member States) or because data is not collected at all (e.g. some implications related to digitalisation, or current and future prevalence of some type of consumer loans at the MS/EU level).

To mitigate the impact of these limitations (to the extent possible), the study team undertook number of actions. It followed up directly with some of the authors of the reviewed literature to clarify selected aspects of interests, sought to access non-publicly available data from some stakeholders (e.g. national banking associations and ECRI), extended the timeline of the consultation process to gather as much feedback from stakeholders as possible, resorted to peer reviews, and when feasible, attempted to corroborate the existing evidence underpinning the key assumptions by relying on alternative available data. In addition, for some options where quantification of costs and benefits was not feasible, a qualitative approach was chosen instead.

Low response rate from stakeholders targeted by the stakeholder consultation

Several factors explain the low response rate from stakeholders consulted for this study, notably: the tight timeline of the assignment, the timing of the stakeholder consultation culminating over the course of the summer, the impacts of the Covid-19 crisis, the overlap with other consultation activities on the same topic ran by the Commission (e.g. public consultation, feedback on the Inception Impact Assessment) resulting in stakeholder's fatigue. In addition, data collection followed the Evaluation of the CCD carried out only last year decreasing an appetite of some stakeholders to contribute this year.

To boost the response rate, the deadlines to respond to the surveys and to participate in interviews were extended until mid-September and mid-October, respectively. In addition, several reminders were sent to stakeholders, including two additional reminders following the summer period (tailored in the national language where possible). Other mitigation measures included reaching out to relevant organisations with established contacts to encourage some of the most unresponsive stakeholder groups (i.e. credit intermediaries, P2PL platforms) as well as direct phone follow-ups.

3 Legal and political context

Directive 2008/48/EC on credit agreements for consumers (hereafter referred to as the *Consumer Credit Directive* or *CCD*) regulates provisions on consumer credit at EU level. It was adopted in April 2008 and amended on four occasions.⁶ The most recent consolidated version was published in 2019. The CCD harmonised laws governing consumer credit across the EU with the objective of guaranteeing a well-functioning market for consumer credit whilst ensuring a high level of consumer protection in this area. According to Article 22 of the CCD, insofar as it establishes harmonised provisions, Member States are not allowed to maintain or introduce national provisions other than those laid down in the Directive. However, such restrictions apply only where there are provisions harmonised in the Directive. Where no such harmonised provisions exist, Member States remain free to maintain or introduce national legislation.

Other key pieces of EU-legislation affecting the provision of consumer credit and consumer protection include horizontal legislation seeking to ensure consumer protection across the EU and which pre-date the CCD, such as the Unfair Contract Terms Directive (UCTD) (Council Directive 93/13/EEC), the Unfair Commercial Practices Directive (UCPD) (2005/29/EC), and the Distance Marketing of Financial Services Directive (DMFSD) (Directive 2002/65/EC).

Since the introduction of the CCD, the policy landscape has evolved considerably. In 2014, the Mortgage Credit Directive (MCD) (Directive 2014/17/EU) was adopted to create a more harmonised credit market at EU level and to further strengthen consumer protection in the area of mortgage credit. The Mortgage Credit Directive expanded the CCD's scope to unsecured credit agreements whose purposes is the renovation of a residential immovable property involving a total amount of credit above EUR 75,000.

Credit providers are also bound by wider obligations contained in EU-level legislation adopted or amended after 2008, such as Directive 2015/2366 on payment services (PSD2) and the General Data Protection Regulation (GDPR) (Regulation 2016/679). A last piece of legislation, the Insurance Distribution Directive (IDD) (2016/97/EU), is relevant in the area of credit insofar as an insurance may be linked to a credit agreement, but it is not directly relevant to consumer credit in itself.

Non-regulatory measures applicable to consumer credit have also been adopted recently, notably the guidelines published in 2020 by the European Banking Authority (EBA) on loan origination and monitoring, which seek to ensure that strong standards are in place to assess credit risks.

Almost a decade after its implementation, the CCD has been subject to a thorough analysis. In 2017, a REFIT Platform opinion responded to the criticism expressed by several business associations in relation to Article 4 of the CCD (i.e. information to be provided to consumers in advertising).⁷ A year later, the European Commission launched a full-fledged Evaluation, with the publication of a Roadmap, supported by an external study carried out by ICF between November 2018 and January 2020. In line with the Better Regulation Guidelines, the study assessed the effectiveness, relevance, coherence, efficiency and EU added value of the CCD in light of the developments in the consumer credit market since the adoption of the Directive. The evaluation found that the CCD has been partially effective in ensuring a high standard of consumer protection across the EU and fostering the development of a single market for consumer credit. However, the Directive's effectiveness and relevance was hindered by several factors due to its application, implementation and enforcement as well as wider market development not foreseen in 2008. More specifically, the varying levels of

⁶ The CCD was amended in 2011 (Commission Directive 2011/90/EU), 2014 (Directive 2014/17/EU), 2016 (Regulation (EU) 2016/1011) and 2019 (Regulation (EU) 2019/1243).

⁷ REFIT Platform, 2017, REFIT Platform Opinion on the submissions by 5 organisations on the Consumer Credit Directive 2008/48/EC.

harmonisations across Member States and the fast-paced evolution and digitalisation of the market were the most prominent.

Considering the findings of the Evaluation, the Commission has decided to include the Review of the Directive in its 2020 Work Programme, including an impact assessment on the expected economic, environmental and social impacts of a potential EU action to revise the Consumer Credit Directive. An Inception Impact Assessment was published in June 2020. This study aims to provide evidence and analysis to support the Commission's impact assessment, which will be published in the second quarter of 2021.

4 What is the problem and why is it a problem?

This section summarises the key findings concerning the identification and assessment of the problems in the field of consumer credit, related to the CCD. The most significant issues identified in the Evaluation and this study are presented structured around five main problems, each of them broken down in several sub-problems. The five main problems are:

- **Problem 1:** Consumers who obtain certain types of credit, or from certain actors, not explicitly under the scope of the CCD, are not guaranteed the level of protection afforded by the CCD.
- **Problem 2:** Insufficient safeguards to ensure responsible lending (from the perspective of product design as well as marketing and selling practices) and the respect of consumers' rights (data protection and fundamental rights).
- **Problem 3:** The information provided to consumers at advertising and pre-contractual stage, and the way it is presented, is not effective in ensuring that consumers are aware about the key elements and risks of the credit product they obtain.
- **Problem 4:** Low level of protection of consumers impacted by individual circumstances or economic disruptions affecting their financial situation and low systemic resilience to financial instability risk linked to exceptional and systemic crises.
- **Problem 5:** Partial achievement of a level playing field for credit providers and very limited levels of cross-border credit, leading to reduced cross-border competition and choices for consumers.

This aim of this section is to explain what these problems are and how significant they are (i.e. scale of the issues). It will also examine the main drivers leading to the problems and reflect on the expected evolution of the problems in the absence of targeted action. A more detail assessment of the problems and the data supporting the arguments is included in Annex 6.

4.1 Problem 1: Consumers who obtain certain types of credit falling outside the scope of the CCD, or from certain actors not explicitly covered are not guaranteed the level of protection afforded by the Directive

This problem is articulated around two sub-problems:

- **Problem 1.1:** Due to the expansion of credit products that are explicitly excluded from the scope of application of the CCD, some consumers purchasing consumer credit are not protected by the CCD.
- **Problem 1.2:** Consumers obtaining certain types of credit may not be protected by the CCD due to the uncertainty as to whether certain types of consumer credit products are covered by it.

Each of the sub-problems are explained below.

Problem 1.1 – Due to the expansion of credit products that are explicitly excluded from the scope of application of the CCD, some consumers purchasing consumer credit are not protected by the CCD

Many consumers are obtaining consumer credit which does not fall within the scope of the CCD. Since the CCD was adopted in 2008, the market for certain credit products providing quick and flexible access to credit has emerged or expanded, both in terms of offer and demand. Due to the limited scope of the CCD, some of these products – which are widely used by consumers across the EU – are not covered by the CCD. The consequence of this is that they are not guaranteed the level of protection afforded by the CCD, which is especially problematic as some of these products entail significant risks and may negatively impact the consumer and lead to

over-indebtedness (they cause so-called 'detriment'). Examples of problematic credit products that are either excluded or not always covered by the CCD are: zero-interest loans, leasing agreements, pawnbroking agreements, high-cost short-term credit, credit cards and revolving credit. The recent evolution of these products would suggest that the number of consumers using products falling outside the scope of the CCD will increase in the future in absence of EU-level intervention.

This study confirms the findings of the Evaluation with respect to the limited scope of the CCD. Some of the products that are not covered by the CCD are widely used by consumers, and some of them are particularly risky for them. Among the products explicitly excluded by Article 2 of the Directive, zero-interest loans, leasing agreements and pawnbroking agreements raise important concerns among stakeholders.

Zero-interest loans have become a common method of financing the purchase of certain products (e.g. electronic devices, furniture, etc.) and their importance is growing in many Member States. In fact, some Member States have decided to apply certain CCD rules to zero-interest loans. Belgium (but also the UK) have extended the scope of the CCD rules to zero-interest loans, while in Germany the right of withdrawal applies to these loans as well. Although the conditions may seem advantageous, zero-interest loans may foresee high fees for late or missed payments, of which consumers are not often aware. They also promote quick decisions, especially when they are offered to consumers at the Point of Sale (i.e. by the retailer of the good).

Leasing agreements have also raised concerns among consumer organisations, who argue that consumers are not adequately informed about the conditions of the agreement. Despite the limited availability of comparable data on their use across the EU, there are indications that leasing agreements are being increasingly used in some Member States (e.g. France⁸, Austria), especially to finance automotive purchases.

Pawnbroker agreements may be very beneficial for consumers - especially vulnerable consumers - as they offer quick access to credit to individuals that may not be able to get a loan at a bank (for consumers that are not considered 'creditworthy'). However, consumers are often unaware of the specific conditions of the contract (e.g. high interest rates) and their rights. There is limited data on the use of these services across the EU, but anecdotal evidence from several Member State suggests that the activity of pawnshops tends to increase in the aftermath of major economic crises (e.g. in Greece as a result of the 2008 financial crisis and more recently in Italy following the COVID-19 crisis).

Article 2 of the CCD also sets a minimum and a maximum threshold which exclude loans below EUR 200 or above EUR 75,000. One of the key findings of the Evaluation - which is confirmed by this study - is that stakeholders consider the **minimum threshold of EUR 200** to be particularly problematic, except for industry representatives. Although the feedback received by stakeholders suggests that loans below this sum seem to be uncommon in many Member States, there is a certain consensus that the rationale behind the threshold (i.e. the proportionality principle and the assumption of smaller loans entail lower risks) is not entirely justified and does not consider the differences in wages across Member States. It also disregards the fact that small loans can still entail important risks, not least because they are more likely to be used by vulnerable consumers and offered in the form of high-cost credit, such as payday loans (a type of short-term high-cost credit), credit cards or revolving credit.

Short-term high-cost credit (STHC) is not exempted from the CCD but it is often excluded due to the small amount of the credit. This type of credit can be very risky for consumers for its high costs (i.e. interest rates but also through non-interest fees

⁸ In France, the number of leasing transactions increased by 256% between 2008 and 2019. In parallel, the share of vehicle purchases financed through leasing also grew significantly, from 15% in 2008 to 56% in 2017.

because it becomes increasingly expensive if there are delayed payments). Certain practices observed in this segment of the market (e.g. consumers not considered to be very creditworthy that receive a low so-called credit score) also raise concerns. Payday loans are available in many EU Member States, although they seem to be a popular product only in certain countries (e.g. Latvia and the UK). In other countries, the importance of payday loans has decreased in the last years (e.g. Ireland), even becoming virtually non-existent in some countries (e.g. Germany, Netherlands, Belgium, Sweden, Denmark, Finland, Slovakia). In some of them, this is attributed to recent regulatory action, such as in Belgium and the Netherlands (e.g. establishment of rate and/or cost caps, or the requirement to apply for a license).

Credit cards and **revolving credit** are other types of high-cost credit that may often fall outside the scope of the CCD due to the amount of the loan. Both entail risks linked to their high cost, but also because their flexibility can easily play to the disadvantage of consumers due to certain behavioural biases (e.g. optimism bias, short-sightedness of the consequences, ignoring gradually increasing costs of the product). Although their use seems to be decreasing in the last years, both products are still widely used by EU consumers, especially credit cards. Based on Eurobarometer survey data, this study estimates that at least 167 million consumers in the EU own a credit card.

Evidence suggests that, overall, products such as STHC credit, credit below €200 or zero interest loans are not widely used in Member States, but they are following an upward trend. For example, in recent years 'buy now pay later' products have emerged, and have been growing due to COVID-19 restrictions. These are zero interest rate short term loans that allow consumers to delay paying for items often bought online or to spread the cost of purchases.⁹ Similarly, the demand for leasing agreements not imposing an obligation to purchase the object, credit cards or pawnshop agreements has also increased in recent years and their appeal to consumers is expected to grow even further. Therefore, if no EU-level action is taken, the purchase of consumer credit not covered by the CCD could potentially lead to an inconsistent level of protection for consumers, as the demand increases, especially among vulnerable people.

Problem 1.2: Consumers obtaining certain types of credit may not be protected by the CCD due to the uncertainty as to whether certain types of consumer credit products are covered by it

Certain provisions of the CCD (including its definitions of 'creditor' and 'credit intermediary') have resulted in ambiguities surrounding the coverage of certain types of credit products, notably loans provided through peer-to-peer lending (P2PL) platforms and overdraft facilities. These loans have expanded considerably since the CCD was adopted and are expected to continue growing in the coming years, helped by the technological advances and the emergence of the fintech sector. These developments are not fully captured by the CCD, resulting in great uncertainty as to whether they fall under its scope of application and potentially leaving consumers unprotected in many Member States.

Although P2PL is not included in the list of exemptions of Article 2(2), the Evaluation found that there is a lot of uncertainty, both in literature and among key stakeholders, as to whether the definitions of 'creditor' and 'credit intermediary' contained in Article 3 apply to cases in which the consumer credit is provided through one of these platforms.

Both definitions require that the activity of the creditor or credit provider be done as part of their trade, business, or profession. While it could be argued that P2PL acting as credit intermediaries (e.g. those operating under the *client-segregated account model* or the *notary model*¹⁰) fall within the definition of the Directive, it is less clear whether

⁹ UK FCA, Woolard Review, 2021, <https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf>.

¹⁰ See: <https://www.corporatecomplianceinsights.com/p2p-lending-risks-and-business-models/>

platforms issuing loans acting as an agent of the creditors can be defined as creditors, as they are not the lender. Moreover, even when the platform falls under the scope of the CCD because it acts as an intermediary, the question of whether private individuals acting as lenders can be considered as credit providers under the Directive (and therefore be bound by obligations such as carrying out a CWA) would remain.

P2PL may be a convenient and efficient way to access credit, especially for consumers who would otherwise be excluded from the traditional market. However, these same features may involve important risks, both for consumers, lenders and platforms. The fast processes may be at odds with the need to maintain a high level of consumer protection as it may lead to rush decisions. Furthermore, proper creditworthiness assessments may not be carried out, especially when the lender is a private individual who is neither bound by CCD rules nor has the same means or knowledge as credit providers.

The penetration of fintech companies differs across EU Member States. The UK is by far the largest market in Europe, but EU Member States like Spain and Germany also have significant shares of FinTech users (37% and 35% of the population use these services, respectively). An indication of the growing use of P2PL platforms among consumers is that several Member States have taken action against such platforms in the last years (e.g. Austria and Denmark, which imposed sanctions of P2PL platforms for failing to comply with existing rules). This would suggest that in the absence of regulatory action, the issues linked to their use are likely to increase along with their use.

Lastly, **overdraft facilities** may or may not fall within the scope of the CCD, with some being exempted and others subject to only certain provisions or to a 'light regime' (e.g. if they are unauthorised). The different requirements have favoured some practices in certain Member States (e.g. France) whereby they invite consumers to use the less regulated unauthorised facilities. Overdraft facilities are a very common tool to cover small and sudden financing tools, meaning that they are also likely to fall below the minimum threshold of the CCD. Their use varies widely across the EU; for instance, they seem to be very common in France (60% of French people overran their overdraft authorisation in 2019) and Sweden (where they represent 30% of the consumer credit products portfolio in Sweden), while they only make up for 16% of the consumer credit portfolio in Germany and Italy. In the UK it is 4%.

4.2 Problem 2: Insufficient safeguards to ensure responsible lending (from the perspective of product design as well as marketing and selling practices) and the respect of consumers' rights (data protection and fundamental rights)

This problem can be broken down in three sub-problems:

- **Problem 2.1:** EU-level regulation does not address certain aspects of responsible lending as regards consumer credit.
- **Problem 2.2:** Some credit providers are not conducting proper creditworthiness assessments, resulting in consumers being sold unsuitable credit, especially in certain segments of the market
- **Problem 2.3:** The growing use of alternative sources of information and automated decision-making entails risks for consumers that are not addressed by the CCD

Each of the sub-problems are explained below.

Sub-problem 2.1: EU-level regulation does not address certain aspects of responsible lending as regards consumer credit

Responsible lending is a concept that relates to the way products are designed and marketed, requiring credit providers to consider the consumer's best interests every step of the way. As part of its objective to ensure consumer protection, the CCD calls for the need to ensure responsible lending. However, as opposed to earlier versions of

the proposal, the final text of the Directive does not introduce specific obligations to ensure that consumer credit is designed and marketed in a way that ensures that the best interest of the consumer is considered. In the absence of such obligations, credit providers are using advertising and marketing practices that do not ensure responsible lending, often drawing on the growing demand among consumers for quick and easy access to credit and nudging them into borrowing irresponsibly. Examples of the most problematic practices which are deemed to cause important detriment on consumers are: high interest rates, credit rollovers, cross-selling, or unsolicited credit. Without a harmonised approach on responsible lending, the consumer detriment caused by irresponsible lending practices is expected to remain a source of concern, especially in Member States which have not adopted measures to tackle them at national level.

Some credit products are intrinsically detrimental for consumers due to the way they are devised. For instance, as discussed under Problem 1.1, one of the main risks attached to products like short-term high-cost credit, credit cards or revolving credit is their **high cost**. For instance, data from the ECB shows that the average interest rate for credit cards in the Eurozone surpasses 16%, while the average rate for other credit for consumption is 5% (see more details on interest rates in Annex 5). Similarly, the interest rates applied to revolving credit and overdrafts in some Member States is significantly higher than for other instalment consumer credit (e.g. 13 percentage points higher in Spain or 10 percentage points in France when the revolving credit is provided by a non-bank).

In the absence of EU regulation imposing obligations or conditions on the design of credit products, most Member States have adopted rules to address this issue, denoting the perceived importance of the problem at national level. The most common measure is the introduction of interest rate caps, adopted by 23 Member States. This measure is considered by the legislators in those Member States as a tool to ensure a high-level of consumer protection which has also led, in some cases, to the disappearance of market operators with products that are intrinsically detrimental for consumers, such as payday loans (e.g. Belgium, the Netherlands). Despite this, the existence of high interest rates is still a source of concern in some countries; in fact, they are the main reason for consumer complaints in some of them (e.g. Bulgaria, Malta).

Credit products that rely heavily on the borrower **rolling over** are also intrinsically harmful for consumers (e.g. payday loans or credit cards). Rolling over ensures certain flexibility as it allows consumers to postpone their payments, but they also increase the cost of the credit. This renders them a very profitable practice for credit providers. For instance, data from the UK shows that in 2013, around half of lenders' revenues were linked to rollover practices.¹¹ Consequently, credit providers have no incentives to prevent consumers from using this feature.

The study found that a few Member States have adopted provisions aiming at banning credit rollovers or making them less frequent. However, this practice is still a source of concern for many stakeholders, especially as this feature is particularly common among products that are generally used by vulnerable consumers or consumers that are already indebted, potentially pushing them into a spiral of debt and causing significant consumer detriment.

In terms of marketing practices, **cross-selling** has been identified as particularly problematic. Cross-selling entails selling an additional product together with the loan, either presenting it as a mandatory element (product tying) or as part of a package (product bundling). The most common product sold with consumer credit are insurance policies, especially payment protection insurance (PPI). Credit providers receive important commissions from insurance companies for the sale of the policies, rendering

¹¹ Financial Services Users Group (FSUG), 2019, Opinion on responsible consumer credit lending - Opinion and recommendations for the review of the Consumer Credit Directive

cross-selling a highly profitable practice for credit providers (e.g. 50% in Germany and 80% in the UK).

Cross-selling is a result of the same market failures that have fostered the provision of high-cost credit, i.e. information asymmetries between credit providers and consumers and the exploitation of consumer behavioural biases. Indeed, some credit providers tend to rely on aggressive marketing practices to (mis-)sell these products to consumers who do not need them (and which may not be suited to their needs) and who, very often, may not be aware that they are purchasing them or of their impact on the cost of the credit. The mis-sale of unsuitable PPI to consumers obtaining credit has been in fact the subject of some of the large financial scandals in some countries (e.g. UK, Ireland, Spain). This practice is particularly harmful when the product is sold to certain population groups, such as individuals who suffer or have suffered a life-threatening disease (e.g. cancer), as they are charged with even higher prices.

The Evaluation found that the approach of the CCD to regulating cross-selling (i.e. by merely imposing the obligation to reflect the cost of the additional product in the APR) is one of the main shortcomings of the Directive, potentially affecting up to 25 million consumers annually. This study confirms that cross-selling is seen as very problematic in some Member States (e.g. Italy, Belgium) – though not all – and that some have adopted measures to limit the practice.

Offering **unsolicited credit** has also been widely criticised by organisations protecting the interests of consumers in the EU, who highlight their risks as it seeks to nudge consumers to borrow and spend beyond their financial capabilities. This practice is not addressed by the CCD, and only partly regulated in other EU regulation.¹² While some Member States have imposed a ban or heavily regulated it (e.g. Belgium, France, Ireland), unsolicited credit is still commonly offered in many Member States (e.g. Slovenia, Slovakia), especially with certain types of products such as credit cards.

Although the feedback gathered for this study would suggest that regulating unsolicited credit is not one of the top priorities for stakeholders (especially industry representatives), the Evaluation estimated that this practice could be harming up to 12 million consumers every year.

Lastly, while credit providers are obliged to provide 'adequate explanations' to consumers before the signature of the contract, the CCD does not impose an obligation to **advise consumers on appropriate credit products**. The lack of this obligation is especially relevant given that the performance of staff members of most financial services companies is generally assessed based on their sales, encouraging them to sell as much credit as possible, even when this means doing it irresponsibly.

Based on the responses from citizens to the survey informing the Evaluation, it was estimated that in 2019, 11 million consumers (or 19% of consumers with a personal loan) considered it difficult to understand offers. This would mean that those consumers would be particularly at risk and indeed of being well-informed. This study confirms that the lack of personalised advice is one of the key problems that consumers face nowadays, according to consumer organisations.

Without a harmonised approach on the design and marketing of credit products, credit providers are expected to continue making use of the practices mentioned above as they are highly profitable for them, at least in those Member States that have not or will not adopt measures to limit the incentives for credit providers to make use of them.

Sub-problem 2.2: Some credit providers are not conducting proper creditworthiness assessments, resulting in consumers being sold unsuitable credit, especially in certain segments of the market

¹² Directive regulating distance marketing of consumer financial services (Directive 2002/65/EC).

While most credit providers who are bound by CCD rules are conducting creditworthiness assessments prior to granting credit to consumers, if checks are not correctly performed this limits their effectiveness in ensuring that consumers are granted suitable credit. Several factors contribute to this problem. On the one hand, the CCD provision establishing the obligation to perform a CWA is very limited, and some of its terms too vague to effectively ensure that credit providers carry out thorough assessments and make decisions accordingly. On the other hand, compliance issues have been identified in several Member States. Poor creditworthiness assessments are particularly common in certain segments of the consumer credit market, where there is a lack of incentives for credit providers to ensure that only suitable credit is sold to consumers because their business model relies heavily on ensuring quick access to credit as well as on credit rollovers (e.g. payday loans). Considering the growing demand for credit that is accessed quickly and easily, this problem is likely to increase in the coming years.

Several issues have been identified with Article 8(1) of the CCD, hindering its effectiveness in ensuring the suitability of credit sold to consumers:

- it does not establish whether the assessment should be creditor-focus (i.e. risk assessment) or borrower-focused (i.e. affordability assessment), a dichotomy which according to some scholars, is a sign that creditworthiness are not necessarily carried out in the best interests of the consumer;
- although it establishes that 'sufficient information' should be considered in the assessment of the consumer's creditworthiness, it does not specify the information that should be considered. When transposing the CCD, a majority of Member States established further requirements, adopting three different approaches: i) leaving the choice of the exact information to assess to the discretion of creditors, ii) establishing the minimum information to be assessed; and iii) specifying the information to be used;
- it does not establish the consequences of a negative CWA, a measure that has been adopted by some Member States which have prohibited the granting of credit following a negative CWA (e.g. Belgium and the Netherlands).

Along with the limitations of the provision of the CCD, the problem also concerns uncompliant practices by credit providers (which are not always picked up by enforcement authorities). The Evaluation found that although a majority of creditors comply with the obligation to carry out a CWA, the extent to which the checks are sufficient to be considered compliant was questioned, echoing concerns raised by stakeholders and in literature. The evidence gathered for this study confirms that CWA practices are still perceived as problematic in many Member States, with important issues raised by stakeholders in at least 12 Member States on the levels of compliance with national requirements.¹³ In fact, issues related to CWAs were the main element covered by enforcement decisions analysed in this study in three Member States (Ireland, Portugal and the Czech Republic) and the UK.

Poor creditworthiness assessments are especially common in certain segments of the consumer credit market. Payday loans and loans provided via P2PL platforms seem to be the most problematic products.¹⁴ In these areas of the market, credit providers have few(er) incentives to ensure the suitability of credit products because their business model relies heavily on ensuring quick access to credit and other lending practices (e.g. rollovers).

¹³ Belgium, Czech Republic, Estonia, Ireland, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia and Sweden (CPC questionnaire; National legal analysis; Interviews with consumer organisations; Interviews with national authorities).

¹⁴ ICF, 2020, Evaluation of the CCD; Cherednychenko, O., Meindertsma, J., 2018, Irresponsible Lending in the Post-Crisis Era: Is the EU Consumer Credit Directive Fit for its Purpose?

Based on the estimations of the Evaluation, the non-verification of CWA affects up to 6 million consumers a year. Findings from the stakeholder consultation carried out for this study show that despite the issues mentioned above, the sale of unsuitable credit is not one of the main issues that consumers are currently facing, except in the view of national authorities. This may explain why the appetite for more detailed rules at EU level is not particularly high, except among consumer organisations.

Both the evaluation of the CCD and evidence gathered for this study seem to confirm that the current legal framework for CWA is not sufficiently effective to protect consumers from acquiring unsuitable credit. Likewise, if not addressed, improper creditworthiness assessments can also increase, overall, the losses incurred to credit providers by default payments from consumers who had been sold unsuitable credits.

Problem 2.3: The growing use of alternative sources of information and automated decision-making entails risks for consumers that are not addressed by the CCD

Traditionally, credit providers would assess an individual's creditworthiness using credit scoring models that extract conclusions on whether a person is likely to be able to repay their debt based on previous patterns in past credit performance and financial account transaction data. This is no longer always the case. Thanks to the technological advances occurred in the last decades, a growing number of credit providers are using more sophisticated tools to predict individuals' ability to repay, including automated decision-making tools and alternative sources of data (including big data). These practices may result in important advantages for consumers, particularly those with a credit profile not interesting for most creditors, but they may also generate issues with consumers' data protection rights and other fundamental rights (e.g. discrimination). These risks are partially addressed by other EU-level regulation (i.e. General Data Protection Regulation), but the lack of specific CCD provisions establishing safeguards for the use of these practices indicate that the CCD is not equipped to mitigate the potential impact that the increasing use of automated decision-making and alternative data may have on consumers' rights.

With the digitalisation of the industry, providers of consumer credit are increasingly using automated credit scoring tools – which use machine learning methods - and alternative data to refine their predictions on whether an individual is likely to be able to repay their debts in the future. These tools are especially popular among newer lenders such as FinTech companies and P2PL platforms, but their use is also spreading among traditional credit providers, in many cases by partnering up with specialised firms such as FriendlyScore, CrediSafe or Big Data Scoring.¹⁵ For instance, among the 62 banks (and 18 market analysis) surveyed by the EBA risk assessment questionnaire, 35% indicated that they were using or had launched big data for risk scoring.¹⁶

These techniques can allegedly benefit both credit providers and consumers alike because they use a wider range of data and more advanced algorithms which can result in more accurate creditworthiness assessments, reducing financial risks for credit providers and improving the suitability of the products offered to consumers. By using a wider array of available data, they may also ensure access to financial products for consumers with a credit profile not interesting for most creditors, contributing to financial inclusion. These innovative practices can however entail risks for consumers as they may result in breaches of their data protection rights and other fundamental rights. An investigation by the Information Commissioner's Office (ICO) in the UK pointed to the issue of compliance with data protection (GDPR) legislation, and while

¹⁵ ICF, 2020, Evaluation of the CCD; BEUC, 2017, The Never-Ending European Credit Data Mess.

¹⁶ EBA, 2020, Report on big data and advanced analytics.

specifically targeting direct marketing data in another sector shows that enforcement authorities are attempting to come to grips with the potential risks.¹⁷

The use of alternative sources of information may go against GDPR requirements. Alternative credit data refers to information which is not directly related past credit performance and financial account transaction data. Alternative data can be provided by data brokers or be available through open sources, and they can range from information on utility bills to social media data. From a data protection perspective, credit providers/intermediaries who wish to use alternative data must do so within the boundaries of the GDPR, i.e. ensuring that the accuracy, quality, and completeness of credit reporting data are preserved, and the principles of data minimisation and proportionality respected. These rules would imply that any alternative data which is irrelevant for CWAs (e.g. social media data) should not be used.

With regard to automated decision-making, its use is not prohibited by the GDPR. However, the Regulation does require human intervention when the decision has a legal effect or 'significantly' affects a data subject (Article 22).¹⁸ It also establishes the principle of transparency when it comes to the processing of personal data (Article 5(1)(a)). The vagueness and complexity of some of the automated decision-making models may thus be problematic as they may lead to breaches of these obligations.

The use of automated decision-making tools may also derive fundamental rights issues, namely related to the risk of discrimination and unjustified exclusion. Discrimination can happen for various reasons, e.g. because the methods use data that do not reflect the capacity of an individual to repay a debt, because the system is trained on data that is based, because the data fed into the system is skewed, etc.¹⁹

Automated credit scoring and the use of alternative data can also lead to consumer detriment if they are used by credit providers to exploit cognitive and behavioural consumer biases (e.g. profiling) or to guide their pricing practices. The scale of the problem, however, remains unclear. Feedback from stakeholders suggests that although the risk of discrimination linked to the use of alternative data is not one of the key issues that consumers are facing nowadays, the risk is likely to increase in the coming years if no action is undertaken. Indeed, considering the ever-growing digitalisation of the market, if left unaddressed, several risks identified such as data-protection-related issues or discrimination of consumers can be expected to worsen along with this growing use of innovative tools by credit providers.

4.3 Problem 3: The information provided to consumers at advertising and pre-contractual stage, and the way it is presented, is not effective in ensuring that consumers are aware about the key elements and risks of the credit product they obtain

This problem is divided into two main sub-problems:

- **Problem 3.1:** The information provided to consumers prior to the signature of the contract does not allow them to properly read and process the key information and make good purchase decisions;
- **Problem 3.2:** Taking advantage of the vagueness of some of the CCD information-related provisions, some credit providers are exploiting consumer behavioural biases and circumventing the rules.

Each of the sub-problems are explained below.

¹⁷ See: <https://ico.org.uk/for-organisations/organisations-using-marketing-services-of-data-brokers/>

¹⁸ The Data Protection Working Party (29WP) published in 2017 guidelines on automated individual decision-making and profiling for the purposes of the GDPR.

¹⁹ Frederik Zuiderveen Borgesius (Council of Europe Study), 2018, Discrimination, artificial intelligence, and algorithmic decision-making.

Problem 3.1: The information provided to consumers prior to the signature of the contract does not allow them to properly read and process the key information and make good purchase decisions

The information requirements of the CCD are neither adapted to current behavioural patterns of consumers nor to the digital environment. The provisions of the CCD regulating the information to be provided in advertising and at pre-contractual stage seek to ensure that consumers base their decisions to purchase credit on complete and transparent information. To this aim, they establish the minimum information that consumers must be given before signing the agreement. These requirements are however not adapted to current behavioural patterns observed on consumers, as they result in consumers being provided with lengthy and complex information that they do not read or properly process. This is particularly the case when the information is provided through digital means. As an effect, consumers are still at risk of making inappropriate or irrational decisions when purchasing credit.

Articles 4 and 5 indicate the elements of the consumer credit agreement about which consumers must be informed in all cases during advertising and before signing the contract. Article 5 further specifies that at pre-contractual stage, information must be presented in good time before signing the agreement by means of a standard form (SECCI).

The Evaluation found that these articles have succeeded in positively impacting the overall level of consumer protection and ensuring a certain level of harmonisation in how information is provided through the adoption of the SECCI.²⁰ However, there are several elements that hamper the effectiveness of these provisions which have been highlighted by the Evaluation and were confirmed by the evidence gathered within the present study.

From the perspective of consumers, the lengthy and complex information disclosed to them in advertising and at pre-contractual stage appears to not be effective in helping them to properly read and process the information they need in order to reach decisions that are in their best interest. Various factors play a role in this issue:

- **information overload:** several consumer behavioural studies have provided that consumers do not tend to read and properly process large amounts of information.²¹ According to behavioural experts, consumers benefit from reduced information highlighting key elements;
- **complexity of the information provided:** some of the elements that are included in advertisements and pre-contractual information are too complex for consumers to understand (e.g. APR). The low level of financial literacy in some Member States and/or among certain population groups exacerbates this problem;
- **the use of certain communication channels:** the issues mentioned above are amplified when the information is provided through certain communication channels such as radio, TV or billboard signs, consumers do not have the time nor the necessary attention span to process detailed information. Furthermore, studies that focused on the impact of digitalisation on how consumer process information have reached similar conclusions on the effectiveness of information provided through digital means;
- **the myth of the rational consumer:** behavioural economics insights show that even when consumers are presented with adequate and easily understandable information, they are still at risk of making harmful financial decisions due to certain

²⁰ ICF, 2020, Evaluation of the CCD.

²¹ The Dutch Authority for the Financial Markets (AFM), 2019, A closer look at consumer borrowing An analysis of decision-making behaviour and potential interventions in the consumer credit market.

psychological factors and cognitive biases that are often imbedded in the way information is presented.

Considering these limitations, pre-contractual information and, although to a lesser extent, advertising is considered one of the main areas where EU-level action could further increase the level of consumer protection. More specifically, the need to avoid information overload and to adapt the requirements to digital means of communication are highlighted as key issues to be addressed.

From the perspective of credit providers, advertising and pre-contractual rules are widely criticised as being burdensome or not necessarily fit for purpose. In their view, the simplification of these rules is one of the top priorities that should be tackled by EU-level measures.

Some of the issues related to information overload and behavioural patterns affecting consumers in decision-making process are associated with the growing use of digital means through which information is presented. As digitalisation and the use of smartphones, tablets and online platforms increases, it can be expected that the associated risks will increase as well. This problem could result in consumers making inappropriate choices or entering irresponsible credit agreements, which, in turn, could increase the risk of over-indebtedness.

Problem 3.2: Taking advantage of the vagueness of some of the CCD information-related provisions, some credit providers are exploiting consumer behavioural biases and circumventing the rules

Several aspects contained in the information-related provisions of the CCD are not addressed in a strict and unambiguous manner and credit providers have exploited existing flexibilities by adopting advertising and marketing techniques that allowed them to circumvent, to some extent, their obligations and to take unfair advantage of consumer behavioural patterns or cognitive biases.

Although Article 4 establishes that information must be presented to consumers during advertising in a clear, concise and prominent way, it does not establish how exactly the information should be provided. This generates an increased level of non-compliance among credit providers confirmed by the fact that rules regarding advertising were often reported as enforcement issues by enforcement authorities and consumer organisations.

Several studies show that credit providers are using different practices to mislead or to exploit consumer behaviour and cognitive biases by experimenting with the way information is provided to consumers. Some of these practices either emphasise benefits rather than long-term consequences, present key information in a less prominent way, tease or determine consumers to make hasty decisions. This can potentially lead to irresponsible lending and consumer detriment, especially in the case of vulnerable consumers.

As regards Article 5, one aspect that leaves room to interpretation is the term “in good time”, which aims to ensure that consumers are given enough time to inform their decision before signing an agreement. This issue is also a source of non-compliance, of enforcement decisions and related case-law as evidence shows that consumers are often provided with very little time to decide, or they actually seek credit that is rapidly delivered, which puts them at risk of making harmful decisions for their finances.²²

Both aspects have been addressed by several Member States through the adoption of stricter national rules or additional guidance, yet they remain a source of concern at

²²ICF, 2020, Evaluation of the CCD (Interviews of consumer organisations); European Commission, 2019, Behavioural study on the digitalisation of the marketing and distance selling of retail financial services; European Credit Research Institute (ECRI), 2018, Consumer credit, digitalisation and behavioural economics: Are new protection rules needed?.

least in some Member States where non-compliance is still often reported. Tackling the issues at national level in various manners has also resulted in legal fragmentation across the EU, which causes the creation of different levels of consumer protection between Member States.

Evidence shows that traditional credit providers still lead the market,²³ however, in order to gain market share and to be competitive with banks, new operators rely on the complete digitalisation of services. As consumers look more and more towards quick and easy-to-obtain credit, the risks associated with misleading advertising and the exploiting of consumer biases are expected to increase. These can potentially lead to an increase in irresponsible lending and over-indebtedness.

4.4 Problem 4: Low level of protection of consumers impacted by individual circumstances or economic disruptions affecting their financial situation and low systemic resilience to financial instability risk linked to exceptional and systemic crises

This problem consists of two main sub-problems:

- **Problem 4.1:** Consumers who are over-indebted or at risk of over-indebtedness are not sufficiently protected across the EU.
- **Problem 4.2:** Insufficient protection of indebted consumers against exceptional and systemic crises across the EU, potentially leading to financial instability due to high levels of over-indebtedness.

Each of the sub-problems are explained below.

Problem 4.1: Consumers who are over-indebted or at risk of over-indebtedness are not sufficiently protected across the EU

Over-indebted consumers and those at risk of over-indebtedness have rather distinct needs for support. Very often, consumers who are struggling financially to repay their debts obtain other loans or refinance their current loans to avoid late payment fees. By doing this, they may enter in a spiral of debt from which it is difficult to escape, especially as many of the products to which they have access tend to be particularly detrimental for consumers. Several tools may help consumers avoid these situations and ensure that over-indebted consumers are effectively protected, but none of them are foreseen in the CCD, resulting in very different levels of consumer protection across the EU. In the absence of a harmonised EU approach to this problem, it can be expected that consumers will continue enjoying different levels of protection depending on their location, potentially leading to over-indebtedness and detriment for those consumers who are less protected.

Over-indebtedness refers to a situation in which a household is not able or at a significant risk to meet its economic and financial obligations²⁴ over a sustained period. Several indicators can be used to measure the level of over-indebtedness. The latest EU-SILC survey (2018) shows that on average, more than 30% of EU households were unable to meet an unexpected expense, with figures nearing 50% in some countries (e.g. Latvia, Croatia, Greece, Cyprus, Lithuania and Romania). Another survey, the 2016 European Quality of Life Survey (EQLS) also sheds some light on the percentage of population at risk of over-indebtedness, also showing great differences between Member States. Greece is at the top of the list, with 52% of households in arrears and 17% with

²³ ICF, 2020, Evaluation of the CCD; LE Europe, VVA Europe, Ipsos NV, ConPolicy and Time.lex, 2019, Annexes-Behavioural study on the digitalisation of the marketing and distance selling of retail financial services.

²⁴ Including the difficulty to make ends meet. The notion of "over-indebtedness" is not limited to the credit and financial dimension.

difficulties to make ends meet, while in Sweden, only 5% of households are in arrears and 1% reported difficulties to make ends meet.

Although over-indebtedness can be linked to irresponsible lending and borrowing practices, it often arises from unexpected changes in the household's financial situation, usually as a result of a combination of circumstances (e.g. unemployment, personal circumstances such as divorces, etc.). For instance, studies in France and Austria show that unemployment was the basis for over-indebtedness in 23% and 43% of cases, respectively (followed by regular budgetary problems in 21% of cases in Austria and 17% in France).²⁵ The feedback from stakeholders participating in this study confirms that the impact that unexpected circumstances have on their ability to meet their financial influence is an important problem for consumers, according to consumer organisations and national authorities. The losses linked to these situations do not seem to be an important issue for credit providers.

Several tools are available to support and protect consumers who are overly indebted or at risk of over-indebtedness, including the provision of financial education, debt advice services or forbearance measures. None of them are, however, foreseen in the CCD, resulting in differences in the level of protection that consumers enjoy across the EU. This is problematic as in the absence of a support system allowing them to improve their financial situation, over-indebted consumers may enter in a spiral of debt from which it is difficult to escape.

Financial literacy is closely linked to the borrowing and saving behaviour of households, and more broadly to wealth inequality and social inclusion. Higher levels of financial literacy result in better awareness when making borrowing decisions. In fact, a recent report concluded that low levels of financial literacy are more likely to lead to debt-related problems than a lack of income. Although the average level of financial literacy in the EU is relatively high (50%), some countries like Portugal or Romania rank very low (26% and 22%, respectively) compared to other Member States (e.g. 70% in Denmark or Sweden). Financial literacy also tends to be lower among certain population groups, such as lower income groups, women, and less educated respondents. This places citizens in certain groups and population group in a particularly vulnerable position. To tackle this issue, financial education programmes are implemented across the EU, although evidence on their effectiveness is mixed, with Eurofound noting that they tend to be more effective among higher income groups.

Debt advice services constitute therefore a key tool to protect consumers struggling financially. These services exist in many Member States, but to very different degrees of availability and use. Only nine Member States have well-established services, while 14 provide them sporadically, some of which offer almost no support. Even in countries where these services are widely available, effective access is often limited by several barriers that limit their effectiveness, the most important being a lack of resources (other barriers are e.g. entitlement criteria, inability to provide specific advice to certain population groups). Hence, only a very limited amount of consumers in the EU are benefitting from these services, a figure that is particularly problematic in light of the current reality in many EU countries, where the COVID-19 crisis will put many families at risk of over-indebtedness.

Forbearance measures are also a useful tool to support consumers who are over-indebted or at risk of over-indebtedness as they allow them to recover from temporary financial difficulties. The CCD does not establish the obligation on credit providers to adopt such measures, in contrast to the MCD. The evidence gathered for this study does not allow to determine the scale of this issue, as it does not shed light on the extent to which they are used across the EU, or their impact on over-indebtedness. Nonetheless, feedback gathered recently from stakeholders suggests that consumer organisations,

²⁵ Centre for European Policy Studies (CEPS), 2016, Two dimensions of combating over-indebtedness – Consumer protection and financial stability.

national authorities and citizens believe that these measures would be beneficial for consumers, especially during times of exceptional and systemic economic disruptions.

The differences in availability, accessibility and quality of debt advice services and financial education initiatives suggest that, in the absence of a minimum level of harmonisation governing these aspects, indebted and over-indebted consumers will continue to experience different levels of protection depending on their location. Since there seems to be a certain correlation between countries that rank worse in terms of over-indebtedness and those in which debt advice services are provided sporadically, it can be assumed that levels of over-indebtedness will remain high or even increase in these countries.

Problem 4.2: Insufficient protection of indebted consumers against exceptional and systemic crises across the EU, potentially leading to financial instability due to high levels of over-indebtedness

Over-indebtedness is more often driven by exogenous causes (e.g. macroeconomic factors, personal circumstances) than poor financial choices. Therefore, even when consumers make financially responsible decisions, they may face difficulties to fulfil their financial commitments when their financial situation worsens due to personal or systemic disruptions. The CCD does not include any provisions to ensure the protection of indebted consumers affected by exceptional and systemic crises, resulting in different levels of protection of consumers during economic crises across the EU. In addition to exacerbating the problems identified in this study as a result, a lack of protection could also potentially lead to higher levels of over-indebtedness which would trigger or aggravate the economic crisis, ultimately affecting the resilience of the financial system.

Macro-economic crises can – and do – impact directly the financial stability of households from various fronts. Although the links between crises and the financial situation of households are complex, evidence from the 2008 financial crisis show that the widespread retrenchment in credit that followed the crash, in combination with the job losses and the economic downturn, resulted in increased financial difficulties faced by European households. EQLS data from 2007 and 2011 show that both the proportion of households in arrears and facing difficulties to make ends meet increase between during that period in the countries that were most affected by the crisis. Since then, and until the COVID-19 crisis, several indicators showed signs of recovery.

Although it is too early to anticipate the exact consequences of the COVID-19 crisis, it is expected to have an impact on the financial situation of households. Consumer organisations and national authorities concur that the effects of the crisis are considered one of the main problems faced by consumers, despite the measures adopted by many Member States to mitigate the impact of the crisis (e.g. debt moratoria). Indeed, citizens responding to a public consultation on COVID-19 launched by the European Parliament between April and May 2020, 58% of respondents claimed they were experiencing financial difficulties since the start of the pandemic. When applied to the total EU population over 18, this would mean that 242 million citizens have suffered financially from the pandemic.

Vulnerable groups are typically more affected by economic crises. In 2008, certain population groups such as young people and migrants were particularly affected. Similarly, the ongoing COVID-19 pandemic is disproportionately affecting young people and those employed in the economic sectors most severely hit by the lockdown measures (e.g. accommodation and food service sector). One of the key factors explaining the disparity among population groups is that those who were already in a precarious situation before the crisis are usually the ones that are most impacted.

Despite consensus around the impact of the current crisis on consumers' financial situation, the feedback gathered from key stakeholders suggests that the impact on the consumer credit market and the level of over-indebtedness is not evident. More

specifically, views as to whether it will result in a reduction in consumer credit is divided, although recent data from a few Member States would suggest that it will. Indeed, preliminary evidence shows that the short-term impact of the pandemic seems to be that consumers have adjusted their consumption, decreased their demand for credit and started to rely on savings (insofar as available).²⁶ As a result, average household indebtedness could be expected to fall. In contrast, for some segments of consumers, in particular the low-income bracket disproportionately affected by COVID-19 (e.g. unemployment in tourism and hospitality sector), the level of indebtedness may increase.

The experience in different Member States varies, with some showing increases in the level of over-indebtedness (e.g. Lithuania) and others, an improvement (e.g. Belgium, Romania).²⁷

The current crisis is also testament of the consequences of a lack of a EU-level approach to approach these disruptions, with Member States adopting a wide variety of measures that have resulted in different levels of protection of consumers, including vulnerable consumers, across the EU. In this context, the responses to a recent public consultation reveal that most stakeholders representing consumer organisations, national authorities, citizens and NGOs think that EU-level action in this area is needed, while industry representatives would rather make use of the flexibility embedded in the prudential framework for banks to facilitate lending to support consumers and businesses in the crisis period.

Although the long-term effect of the current crisis is difficult to estimate, available evidence suggests that in the absence of EU common guidelines, consumers affected by the crisis will continue to enjoy different levels of protection across Member States. This is particularly important from the perspective of consumer credit, as those in precarious situations may see the need to obtain credit to cover their regular expenses, pushing them to obtain higher cost credit because they do not have access to less detrimental products, contributing to the detriment caused by the problems identified in this study.²⁸

4.5 Problem 5: Partial achievement of a level playing field for credit providers and limitations to cross-border credit, leading to reduced cross-border competition and choices for consumers

This problem is structured around two main sub-problems:

- **Problem 5.1:** Partial achievement of a level playing field for credit providers.
- **Problem 5.2:** Difficulties for consumers to access cross-border credit and businesses to offer cross-border credit, leading to reduced cross-border competition and choices for consumers.

Each of the sub-problems are explained below.

Sub-problem 5.1: Partial achievement of a level playing field for credit providers

The Evaluation found that, overall, the CCD was successful in creating a certain level playing field by establishing a harmonised regulatory framework²⁹. The CCD has introduced common obligations for all credit providers covered by the Directive in many

²⁶ Bruegel, July 2020. The financial fragility of European households in the time of COVID-19, Data from ECRI

²⁷ These observations should be treated with caution as the measures adopted by Member States may have temporarily distorted the effect on the indicators generally used to measure over-indebtedness.

²⁸ Social Europe, 2010, Research note 4/2010 Over-indebtedness – New evidence from the EU-SILC special module.

²⁹ ICF, 2020, Evaluation of the CCD.

key areas, such as information-related requirements, or the calculation of APR. However, in some other important areas, the differences in the way Member States have interpreted and transposed the CCD are increasing the legal fragmentation, therefore hampering the development of a harmonised internal market.

One of the main areas in which various national approaches have been developed since the adoption of the CCD concerns the scope of the Directive. Some types of consumer credit available in the market are either not covered or not explicitly covered by the CCD. Moreover, these types of consumer credit (e.g. zero-interest loans, certain overdraft facilities or leasing agreements) have also expanded considerably during recent years.

Many Member States have addressed scope limitations by including in their credit legislation certain types of consumer credit that were either commonly used or particularly risky in their respective markets. This has enabled the creation of a regulatory patchwork across the EU, as certain credit providers may need to comply with consumer credit rules depending on the specific type of credit provided and on the approach taken by the Member State/States in which they provide their services.

Another area highlighting a variety of national approaches concerns the provision of information in advertising or at pre-contractual stage as several Member States have introduced stricter or more detailed rules on the specific ways in which information must be provided to consumers. Similarly, although the CCD requires all credit providers within its scope to provide CWA, several Member States have gone beyond this obligation and provided specific requirements about the way in which CWA should be carried out.

All these different regulatory approaches observed at national level have resulted in different obligations for credit providers depending on the Member State in which they operate. As a result, legal fragmentation hinders the development of cross-border lending, as it can often discourage credit providers from accessing multiple national markets.

The future impact of this problem is difficult to assess since national markets vary greatly in terms of the types of credit providers they present. Likewise, the different approaches that Member States have taken in regulating different types of credit providers confirm the existing discrepancies between national markets and their expected evolution. However, the current EU-level market share of new operators such as P2P platforms or other Fintechs, albeit relatively small, appears to have grown significantly in the last years and is expected to continue expanding. Therefore, it can be assumed that, unless a higher degree of legal harmonisation is achieved, their ability to disrupt the market will grow. This issue will also likely have a negative influence on the evolution of cross-border credit, as legal fragmentation is one of obstacles often indicated by credit providers when it comes to the provision of cross-border credit.

Sub-problem 5.2: Difficulties for consumers to access cross-border credit and businesses to offer cross-border credit, leading to reduced cross-border competition and choices for consumers

As confirmed by the Evaluation, despite significant improvements brought by the CCD, the level of cross-border credit is still relatively low at around 1% of all outstanding credit³⁰ in the Eurozone and has had a very limited development since the adoption of the CCD. Several obstacles have been identified, such as consumers' lack of awareness and interest, language and cultural barriers or legal fragmentation. An underdeveloped cross-border market affects consumers by not enabling them to have access to a wider offer and credit products that may be better suited for them.

³⁰ This includes consumer credit and mortgage loans.

The Evaluation found that both the offer of and demand for cross-border consumer credit remains very low and has not or barely increased since the adoption of the CCD in 2008, a finding corroborated by this study.

The main reason explaining the low level of cross-border operations seems to be linked to a lack of interest from credit providers and consumers to engage in such operations. However, several barriers or obstacles that contribute to the lack of development of the cross-border market for consumer credit, notably:

- **lack of awareness:** since credit providers rarely target consumers in other Member States, many consumers are not aware of the possibility to access credit cross-border and, consequently, their interest is also low;
- **legal fragmentation:** as different regulatory approaches generate different levels of protection that consumers enjoy across the EU, both consumers and credit providers usually lack the necessary knowledge and/or confidence in the regulatory framework that would govern their rights and obligations. This acts as a particularly important barrier for credit providers, since adapting their business model to several different regulatory frameworks would entail increased risks and costs;
- **geographical restrictions:** a third barrier concerns geographical restrictions imposed by credit providers as traditional credit providers tend to limit access to their products to domestic consumers by using geo-blocking techniques and other means to prevent the conclusion of a cross-border transaction. Difficulties in assessing the creditworthiness of consumers and access to databases in cross-border situations are also important barriers often mentioned by credit providers;
- **language and cultural barriers:** these also often mentioned by consumers as reasons preventing them from looking for and accessing credit from other Member States.

There is no conclusive evidence on the future trend for cross-border credit. However, although their share in the market is difficult to estimate, the development of fintech and the emergence of new operators may potentially lead to an increase in cross-border operations, as they generally target consumers belonging to various Member States more than traditional operators. Some stakeholders believe that the increase of digitalisation and migration across Europe will likely facilitate the emergence of more cross-border digital solutions and financial service providers.

5 Why should the EU act?

The aim of this section is to assess whether a revision of the Consumer Credit Directive is legally feasible, in view of its purpose of achieving higher standards of consumer protection and a fair single market for both consumers and traders.

The EU's right to act in the field of consumer protection, and more specifically in the area of consumer credit, is determined by the EU Treaties. Article 5 of the Treaty on the functioning of the European Union (TFEU) sets out the principle of conferral, according to which the Union can only act "within the limits of the competences conferred upon its Member States in the Treaties". The TFEU further defines three distinct competences, namely exclusive, shared and supporting competences outlined in Articles 3, 4 and 6 respectively. Exclusive competence applies to a series of policy areas where only the EU has the right to act, whilst shared competence applies to those policy areas where Member States can act only if the EU has chosen not. Finally, supporting competences apply to those policy areas where only Member States can intervene, in which case the Union will only support, coordinate or complement Member State's action. The TFEU also sets down a non-exhaustive list of policy area falling under the different competences. According to **Article 4(2)(f) TFEU**, the **Union and Member States have a shared competence in the area of consumer protection**. This field covers a wide range of policies, including that of consumer credit.

The legal basis for EU intervention in the area of consumer credit is **Article 114 TFEU**, which confers on the European Parliament and the Council the competence of to adopt measures for the approximation of laws to ensure the establishment and functioning of the internal market, following the ordinary legislative procedure. Article 114(3) TFEU further specifies that when such measures concern consumer protection, the Commission must take as base a high level of protection in its proposals.

When exercising its competence to legislate in this area, the EU must also observe **Articles 12 and 169 of the TFEU** as well as Article 38 of the Charter of Fundamental Rights of the European Union. According to Article 169 of the TFEU, the Union "shall contribute to protecting [...] the economic interests of consumers, as well as to promoting their right to information [and] education." **Article 169(4)** specifies that EU measures **do not prevent Member States from taking more stringent protective measures** insofar they are compatible with the Treaties. Moreover, Article 12 specifies that consumer protection must be taken into account when "defining and implementing other Union policies". Similarly, Article 38 of the Charter of Fundamental Rights stipulates that EU policies must "ensure a high level of consumer protection."

It can therefore be said that any EU action on consumer credit occurs within the legal parameters of Articles 114 (notably 114(1) and 114(3)), 169 and 12 TFEU, as well as Article 38 of the Charter of Fundamental Rights. The EU is competent to legislate in the area of consumer law and consumer credit more specifically.

The EU's right to act is also determined by **the principle of subsidiarity and proportionality**. The former is a fundamental principle of EU law which governs the exercise of EU competences. Enshrined in Article 5(3) TFEU, it aims at identifying the best level of governance to ensure that decisions meet citizens' needs to the extent possible.

In policy areas where the EU has no exclusive competences, the **principle of subsidiarity** authorises an intervention of the Union if a specific issue cannot be addressed by the sole intervention of the Member States (necessity test) and provided the objective can better achieved "by reason of the scale and effects of the proposed action" at EU level (EU added value).

The added value of implementing and strengthening consumer credit rules at EU level primarily lies in their contribution to increasing consumer protection.

Together with the principle of subsidiarity, **the principle of proportionality** regulates how the Union exercises the powers conferred by the Member States to the EU. According to the principle of proportionality, EU action must be limited to what is necessary to achieve the objectives of the Treaties. It requires the Union to take only the actions deemed essential to achieve the aim pursued. As the principle of subsidiarity, proportionality is a general principle of EU law. It is enshrined in Article 5(4) TFEU and its implementing criteria are laid down in the Protocol No. 2 on the application of the principles of subsidiarity and proportionality annexed to the EU Treaties.

To ensure compliance with the principle of proportionality, any intervention of the Union in the field of consumer credit must ensure a higher level of consumer protection. In light of the variety of measures adopted at national level, and given that harmonising the cross-border market of consumer credit is essential for the good functioning of the internal market, further action at EU level is justified. This is especially the case in an area that is more likely to create serious risks for consumers, such as risk of indebtedness.

6 What should be achieved?

Figure 1 (overleaf) presents the intervention logic for possible revision of CCD. It illustrates the links between the general and specific problems identified with:

- the regulatory problem drivers explaining the shortcomings of the legal framework contributing to the problems;
- the consequences of the problems, focusing on consumers, credit providers, national authorities and the over-all level of over-indebtedness; and
- the objectives (general, specific and operational) pursued by an EU-level intervention in the field of consumer credit.

The five specific problems outlined in the intervention logic summarise the key issues in the field of consumer credit that have emerged from the evidence informing this study and the Evaluation of the Directive. These problems are grouped into two main categories, i.e. general problems, in line with the two main objectives of the CCD - improved consumer protection and the emergence of a well-functioning internal market for consumer credit.

The problems that hamper the attainment of the CCD's objectives can be traced back to several regulatory drivers such as the lack of harmonisation provided by EU-level regulation affecting the cross-border provision of consumer credit, an inadequacy of some information requirements in the CCD or its insufficient scope. Together with the regulatory problem drivers, several contextual factors such as technological developments and digitalisation, changing consumer behaviour or consumer biases, can also be attributed to the development of the identified problems.

Flowing from the general and specific problems, the intervention logic also presents the consequences of the problems identified which have been highlighted by the evidence gathering tasks of the study or are to be expected if the problems remain unresolved.

In line with the general problems (GPs) identified, **two general objectives** (GOs) have been established:

- to increase the level of protection of consumers taking out consumer credit in a changing market (GO1), which aims to address the first general problem identified, i.e. consumers taking out consumer credit could be better protected (GP1); and
- to improve the common framework to even out the playing field for providers, facilitate cross-border lending and improve the resilience of the internal market (GO2), which links to the second general problem outlined, i.e. a well-functioning internal market has not been achieved (GP2).

These general objectives are broken down into **five specific objectives** (SOs), each responding to one of the specific problems (SPs) identified:

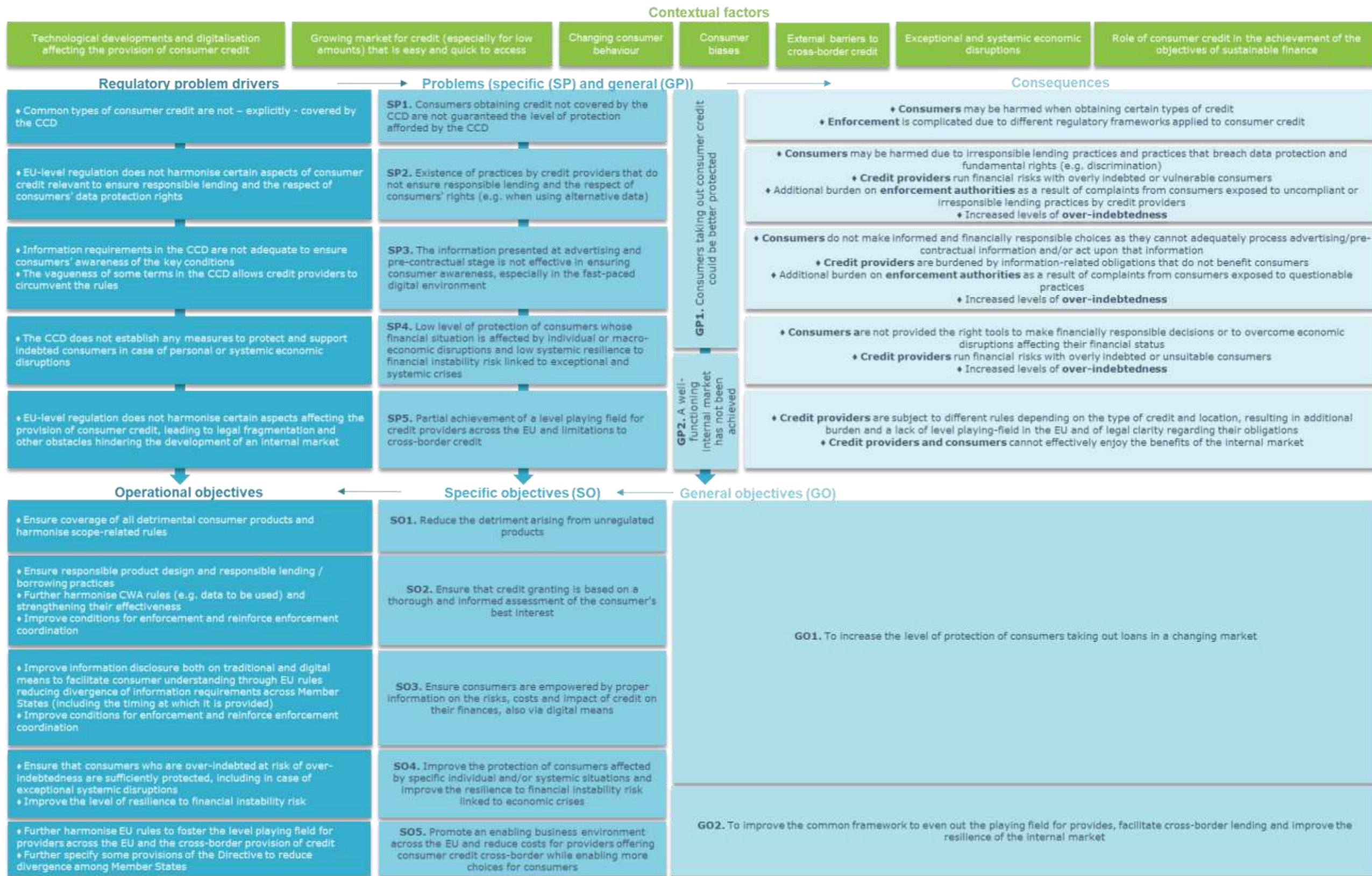
- to reduce the detriment arising from unregulated products (SO1), seeking to address the first specific problem, i.e. consumers obtaining credit not covered by the CCD are not guaranteed the level of protection afforded by the CCD (SP1);
- to ensure that credit granting is based on a thorough and informed assessment of the consumer's best interest (SO2), linked to the second specific problem, i.e. existence of practices by credit providers that do not ensure responsible lending and the respect of consumers' rights (e.g. when using alternative data) (SP2);
- to ensure consumers are empowered by proper information on the risks, costs and impact of credit on their finances, also via digital means (SO3), linked to the third specific problem, i.e. the information presented at advertising and pre-contractual stage is not effective in ensuring consumer awareness, especially in the fast-paced digital environment (SP3);
- to improve the protection of and support to consumers affected by specific individual and/or systemic situations, aiming to address the fourth specific problem (SO4), i.e. Low level of protection of consumers whose financial situation is affected by

individual or macro-economic disruptions and a potentially contributor to aggravating financial stability risks (SP4); and

- to promote a conducive business environment across the EU and reduce costs for providers offering consumer credit cross-border while enabling more choices for consumers (SO5), addressing the fifth specific problem, i.e. partial achievement of a level playing field for credit providers across the EU and limited levels of cross-border credit (SP5).

The specific objectives of the policy intervention are then translated into several operational objectives that aim to address each of the regulatory problem drivers, therefore drawing a complete circle starting with the root causes and ending with the proposed solutions.

Figure 1. Intervention logic of the initiative



7 What are the available policy options?

The study assessed a total of five policy options, including the baseline scenario, namely:

- **Policy option 0** – Status quo
- **Policy option 1** – Non-regulatory action
- **Policy option 2** – Amendment of provisions already contained in the CCD (i.e. targeted amendment)
- **Policy options 3** – Extensive amendment of the CCD, divided into two sub-options: one to include certain new provisions, in line with EU regulation (Policy option 3a) and a more ambitious amendment to include provision not addressed by other EU regulation (Policy option 3b).

7.1 Measures included in each policy option

To design the policy options and select the measures included under each of them, over 60 possible policy measures were compiled and preliminarily assessed (Annex 8 of the Final Report). The qualitative assessment identified the non-regulatory and legislative measures most adequate to address each of the (sub-) problems highlighted in Section 4 of this report. Given that the five specific objectives established in this study to guide a potential EU-level intervention are closely linked to the problems identified, this approach to selecting the measures ensured the coverage of all specific and operational objectives. Table 3 (overleaf) illustrates how each policy option links to the specific and operational objectives outlined in the intervention logic (Figure 1 of the Final Report).

Table 3. Policy options and (specific and operational) objectives

Operational objective	Policy option 1	Policy option 2	Policy option 3a	Policy option 3b
Specific objective (SO) 1. Reduce the detriment arising from unregulated products				
OO1.1. Ensure coverage of all detrimental consumer products and harmonise scope-related rules	1.1: Issue an official communication clarifying the definitions of 'credit provider' and 'credit intermediary' contained in Article 3, specifying the new types of consumer credit that fall under the scope of the CCD (e.g. P2PL) (non-regulatory)	<p>2.1: Remove the minimum and maximum thresholds</p> <p>2.2: Include currently excluded loans within its scope of application (including but not only, zero-interest loans, pawnshop agreements, all leasing agreements, all overdraft facilities)</p> <p>2.3: Amend the definition of some key terms which affect its scope of application (e.g. 'credit provider', 'credit intermediary')</p>	<p>3.1: Include a new provision addressing specifically peer-to-peer lending</p> <p>From other policy options:</p> <ul style="list-style-type: none"> Policy option 2: measures 2.1, 2.2, 2.3 	
Specific objective (SO) 2. Ensure that credit granting is based on a thorough assessment of the consumer's best interest				
OO2.1. Ensure responsible product design and responsible lending / borrowing practices	<p>1.2: Implement an annual awareness raising campaign through the European Consumer Centres to promote responsible borrowing (non-regulatory)</p> <p>1.3: Establish EU-level guidelines and recommendations on how to regulate aspects not harmonised by the CCD which are relevant to ensure responsible lending (e.g. limiting cross-selling practices, setting interest</p>	See: 2.4, 2.5 (OO2.2), 2.7, 2.8 (OO3.1)	<p>3a.1: Establish a legal obligation for credit providers and credit intermediaries to promote responsible lending (i.e. to act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers) (in line with Art. 7(1) MCD)</p> <p>3a.2: Establish an obligation upon credit providers to inform consumers whether</p>	<p>3b.1: Establish the obligation upon Member States to set interest rate/APR caps, without specific rules or guidelines on how these should be calculated</p> <p>3b.2: Establish an obligation for Member States to adopt measures to limit the additional costs/interests that credit providers can charge when a credit is rolled over</p> <p>3b.3: Prohibit unsolicited sale of credit</p>

rate caps, establishing an obligation for credit providers to advise consumers on suitable products, limiting or banning rollover practices) (non-regulatory)

advisory services are or can be provided (in line with Art. 22(1) MCD)

3a.3: Adopt standards on the provision of advisory services to consumers (in line with Art. 22(3) MCD)

3a.4: Prohibit product-tying practices (in line with Art. 12 MCD, except that in this case the prohibition would be at EU-level instead of established by Member States)

3a.5: Establish conduct of business rules on the remuneration policy of credit providers and intermediaries to ensure that it does not promote irresponsible lending practices (in line with Art. 7(3) MCD)

3a.6: Establish an obligation upon credit providers and credit intermediaries to ensure that staff members have the proper set of skills and knowledge (in line with Art. 9 MCD)

3a.7. Prohibit the use of pre-ticked boxes when selling consumer credit (offline and online)

From other policy options:

- Policy option 3a: measures 3a.1, 3a.2, 3a.3, 3a.4, 3a.7

002.2. Further harmonise CWA rules (e.g. data to be used) and strengthening their effectiveness

1.4: Providing guidance on the type of information that should be assessed during a CWA, in line with the EBA guidelines on loan origination

1.5: Establish guidelines on the use of automated decision-making to conduct CWA

2.4: Provide more detailed requirements in relation to how CWAs should be conducted

2.5: Provide a more detailed definition of some key terms related to the obligations contained in the Directive (e.g. 'sufficient information', 'in a timely manner', 'prominently', 'adequate explanations')

3a.8: Indicate that CWAs should take appropriate account of factors relevant to verifying the prospect of the consumer to meet his obligations under the credit agreement and should be carried out based on information on financial and economic circumstances which is necessary, sufficient and proportionate. Member States shall ensure that the procedures and information on which the assessment is based are established, documented and maintained (in line with Art. 18 MCD)

3a.9: Include a provision on the use of alternative sources of data to conduct creditworthiness assessments reflecting the principles of the GDPR (it would also include a definition of 'alternative data')

3a.10: Include a provision establishing the right of consumers to request and receive an explanation on how and on what basis a decision on their creditworthiness was reached (i.e. reflecting the GDPR principles concerning

3b.4: Introduction of an obligation to consult databases when carrying out CWAs

From other policy options:

- Policy option 3a: measures 3a.8, 3a.10

			automated decision-making)	
OO2.3. Improve conditions for enforcement and reinforce enforcement coordination	See: 1.3 (OO2.1); 1.4, 1.5 (OO2.2)	2.6: Inclusion of a non-exhaustive list of criteria to be taken into consideration by competent authorities when issuing sanctions See: 2.4, 2.5 (OO2.2)	3a.11: Introduce an article on 'Competent Authorities', (in line with Art. 5 MCD). 3a.12: Introduce a provision referring to the 4% rule set in the Omnibus Directive for cross-border cases (Art. 8b(4) as amended by Directive 2019/2161) See: 3a.3, 3a.4, 3a.7 (OO2.1); 3a.8 (OO2.2)	See: 3b.1, 3b.2, 3b.3 (OO2.1); 3b.4 (OO2.2) From other policy options: <ul style="list-style-type: none">Policy option 3a: measure 3a.1-3a.4, 3a.7 (OO2.1); 3a.8 (OO2.2)
Specific objective (SO) 3. Ensure consumers obtaining credit are empowered by effective information on the risks, costs and impact of credit on their finances, also via digital means				
OO3.1. Improve information disclosure both on traditional and digital means to facilitate consumer understanding through EU rules reducing divergence of information requirements across Member States (including the timing at which it is provided)	1.6: Implement an awareness raising campaign through the European Consumer Centres providing clarity to consumers on elements that are identified as unclear (e.g. APR) 1.7: Clarification of terms of the CCD that may be subject to interpretation (e.g. 'in good time' and 'adequate explanations' concerning pre-contractual information)	2.7: Reduce the amount of information to be provided to consumers in advertising focusing on key information, especially when provided through certain channels (TV, radio) 2.8: Present key pre-contractual information in a more prominent way (without reducing the amount of information provided to consumers at pre-contractual stage) 2.9: Establish detailed requirements in relation to when the pre-contractual information should be provided	3a.13: Establish detailed requirements in relation to the provision of adequate explanations (in line with Art. 16 MCD) 3a.14: Include a provision on accessibility requirements for the information provided to consumers, in line with the European Accessibility Act, referring to the requirements established in Annex 1 (Sections III and IV) of the EEA.	3b.5: Include more details on the way information should be displayed to consumers at advertising and pre-contractual stage (e.g. format, font size) 3b.6: Include an obligation on creditors to provide information about changes in the conditions of the credits in case special measures are applied following a systemic and exceptional economic disruption From other policy options: <ul style="list-style-type: none">Policy option 3a: measure 3a.13Policy option 2: measure 2.7, 2.9

		See: 2.5 (regarding 'adequate explanations', 'prominently', 'in a timely manner') (OO2.2)		
OO3.2. Improve conditions for enforcement and reinforce enforcement coordination	See: 1.7 (OO3.1)	See: 2.5 (OO2.2), 2.6 (OO2.3); 2.9 (OO3.1),	See: 3a.11, 3a.12 (OO2.3), 3a.13 (OO3.1)	See: 3b.5 (OO3.1) From other policy options: <ul style="list-style-type: none"> • Policy option 3a: measure 3a.13 (OO3.1) • Policy option 2: measure 2.9 (OO3.1)
Specific objective (SO) 4. Prevent that specific individual or systemic situations exacerbate consumer detriment and increase over-indebtedness				
OO4.1. Ensure that consumers who are over-indebted at risk of over-indebtedness are sufficiently protected, including in case of exceptional systemic disruptions	1.8: Increased support to capacity building in consumer organisations and public bodies via funding on financial education, debt advice and assistance 1.9: Establish EU-level guidance on measures that can be adopted by Member States to support indebted consumers whose financial situation is impacted by an external economic disruption (e.g. temporary moratoria on credit payments)	From other policy options: <ul style="list-style-type: none"> • Policy option 1: measures 1.8 	3a.15: Establish an obligation on Member States to promote that financial education/digital literacy initiatives are implemented, without establishing minimum requirements on the availability and the content of these initiatives (in line with Art. 6(1) MCD) 3a.16: Establish an obligation on the Commission to regularly assess the financial education / digital literacy initiatives implemented in Member States and identify best practices, and to publish the findings (in line with Art. 6(2) MCD) 3a.17: Establish an obligation upon Member	3b.7: Establish an obligation upon Member States to provide – directly or indirectly – debt advice services for over-indebted or otherwise vulnerable consumers (including low scoring consumers) 3b.8: Establish an obligation upon creditors to inform low-scoring consumers that debt advice services are available (provided that these services do not influence the credit ranking of the consumer), in particular if credit is granted following a negative outcome of the CWA 3b.9: Establish an obligation to include specific contractual clauses intended to cover cases of exceptional or systemic economic

			States to adopt measures to encourage creditors to exercise reasonable forbearance, limiting the charges on default payments (potentially include definitions as well) (partially in line with Art. 28 MCD) See: 3a.2 (OO2.1), 3a.8 (OO2.2) (preventive action)	disruptions (e.g. debt relief/payment moratoria or special assistance for consumers in these cases) See: measure 3b.6 (OO3.1) From other policy options: <ul style="list-style-type: none"> • Policy option 3a: measure 3a.17
Specific objective (SO) 5. Promote an enabling business environment across the EU and reduce costs for providers offering consumer credit cross-border while enabling more choices for consumers				
OO5.1. Further harmonise EU rules to foster the level playing field for providers across the EU and the cross-border provision of credit	See: 1.1 (OO1.1)	See: 2.1, 2.2, 2.3 (OO1.1)	See: 3.1 (OO1.1) From other policy options: <ul style="list-style-type: none"> • Policy option 2: measures 2.1, 2.2, 2.3 (OO1.1) 	See: 3.1 (OO1.1) From other policy options: <ul style="list-style-type: none"> • Policy option 2: measures 2.1, 2.2, 2.3 (OO1.1)
OO5.2. Further specify some provisions of the Directive to reduce divergence among Member States	See: 1.4, 1.5 (OO2.2), 1.7 (OO3.1)	2.10: Obligation for credit databases to hold certain reliable negative data, to enhance reciprocity See: 2.4, 2.5 (OO2.2); 2.6 (OO2.3), 2.9 (OO3.1)	See: 3a.1 – 3a.7 (OO2.1);, 3a.8 (OO2.2); 3a.11, 3a.12 (OO2.3); 3a.13 (OO3.1); 3a.17 (OO4.1)	3b.10: Obligation upon Member States to set up centralised databases holding (at least) reliable negative data recording late payments and containing information on national residents 3b.11: Introduction of a basic credit product that providers should make available to consumers See: 3b.1, 3b.2, 3b.3 (OO2.1); 3b.4 (OO3.1); 3b.7, 3b.8, (OO4.1). From other policy options:

- Policy option 3a: measures 3a.1-3a.4, 3a.7 (OO2.1); 3a.8 (OO2.2); 3a.13 (OO3.1); 3a.17 (OO4.1)
- Policy option 2: measures 2.7, 2.9 (OO3.1)

7.2 Considerations for the technical and operational implementation of the options

This section describes how each of the policy options envisaged would be implemented, highlighting certain technical and operational aspects that should be considered and which lay the ground for the assessment of the options in Section 8, notably in terms of their effectiveness or their impact on public authorities.

7.2.1 Policy option 0 – status quo

Description of its implementation
<p>Policy option 0 implies the continuation of the current situation, the status quo, and does not involve the introduction of any new measures.</p> <p>It would require the Commission to continue regularly monitoring how the CCD is being implemented at national level, and national authorities to continue monitoring and enforcing that credit providers act within the legislative framework. As has happened since the adoption of the CCD, efforts at national level to further develop the regulatory framework for consumer credit are expected to continue, either through legislative or non-regulatory measures.</p> <p>Enforcement authorities would continue cooperating through the CPC and the ECC networks, supported by the European Commission. Similarly, the ECJ can be expected to receive further requests for preliminary rulings, through which it will continue interpreting the provisions of the Directive, shedding some light on some of the unclear provisions, if required to do so.</p>
Technical and operational considerations
<p>Even with the 'status quo' there are some challenges with the implementation of the Directive and some provisions of the CCD that are difficult for the authorities to enforce due to the vagueness of the terms ('sufficient information', 'in good time', etc.) or to the complexity of some of the obligations (APR calculation). Thus, going forward, some technical and operational obstacles may remain.</p> <p>The COVID-19 pandemic may also compound existing problems with the practical implementation of the Directive. As a result of the economic crisis caused by the pandemic, more consumers are now in a vulnerable situation, and many of them may be pushed into resorting to consumer credit products which are particularly risky in order to make ends meet. This could potentially lead to a higher number of consumer complaints, exacerbating the existing problems with enforcement.</p> <p>Nevertheless, compared to the current situation, Option 0 should not give rise to any new technical or operational feasibility concerns.</p>

7.2.2 Policy option 1 – Non-legislative action

Description of its implementation
<p>Policy option 1 envisages the adoption of non-regulatory measures that seek to provide clarity on certain aspects of the Directive or to provide non-binding guidance to address elements that are currently not covered or not sufficiently covered in the CCD.</p> <p>The implementation, monitoring and enforcement of Option 1 will be mainly driven by the European Commission, although Member States and credit providers will also</p>

play a role. For the purpose of this section, the measures included in this option can be categorised in four main groups: clarification of key terms of the CCD, non-binding guidance (addressed to Member States and/or credit providers/intermediaries), awareness raising campaigns run by European Consumer Centres, and increased (financial) support to consumer organisations and public bodies in the fields of financial education, debt advice and assistance.

The **clarification of key terms and definitions** of the CCD, by means of non-regulatory guidance, will require the European Commission – possibly the Legal Service in collaboration with DG Justice and Consumers (DG JUST) – to carry out a legal analysis of the relevant provisions of the CCD which should take into consideration the interpretation that the Court of Justice of the EU (CJEU) has made of such provisions to date. For the clarifications to remain relevant in the future, they should consider the current market structure and practices whilst remaining sufficiently general to ensure that they are also adapted to potential future developments. This exercise would be entirely carried out by the Commission, although consultations with key stakeholders and subject-matter experts should be envisaged.

The adoption of **non-binding guidance** would also be driven by the European Commission, this time led by DG JUST with potential collaborations with other relevant Commission services, particularly DG FISMA but possibly also DG GROW. Some of the guidelines would be simpler to draft than others. For instance, the guidance on the type of information to be assessed during a CWA would be relatively straightforward, as it could be modelled after the EBA guidelines on loan origination which already apply to financial institutions. In contrast, the lack of a model for the guidance on responsible lending aspects or the use of alternative sources of data implies that further analysis and consultations are required before issuing any guidance in order to understand current practices across Member States, good practices and key risks and advantages. Nevertheless, as non-binding guidelines would be easier to amend than legislative provisions and have less impact at Member States, their adoption would be a relatively more straightforward exercise compared to the adoption of legislative measures.

Neither clarifications nor non-binding guidance would require transposition by Member States. They would be implemented, i.e. considered, directly by enforcement authorities and/or credit providers, where relevant. Although the Commission could monitor whether, and to what extent, they are considered at national level, they could not be directly enforced upon Member States or credit providers/intermediaries unless they are reflected in national legislation. This would render these measures difficult to implement and enforce, as pointed out by a national authority consulted on the policy options.³¹

European Consumer Centres are funded jointly by the Commission and Member States. Therefore, the implementation of annual **awareness raising campaigns** through these centres would require the Commission and national governments to agree on the scope, frequency, and target group of such campaigns to ensure that these initiatives are adequately funded across the EU. The negotiations could be difficult if Member States are not willing to contribute to these campaigns, especially considering that awareness raising is not part of the usual remit of ECCs, whose role is to “provide information, free advice and assistance in cross-border shopping”. The measure cannot be directly enforced by the EU, meaning that its implementation would require the negotiations to succeed. If this happens, it will require additional (EU and/or national) funding granted to these centres. In turn, they would be

³¹ Follow-up survey (1 open-ended response from national authorities)

requested to report on such activities, either directly to the Commission or through national authorities. This would allow the Commission to regularly monitor the implementation of these campaigns.

To conclude, the provision of **increased support to capacity building in consumer organisations and public bodies via funding of financial education, debt advice and assistance** initiatives could be implemented, for instance, through the Consumer Programme, managed by Chafea. The programme has four main objectives, one of which is the improvement of consumers' information and education and the support to consumer organisations. For the initiatives to be funded through this programme, the European Commission (DG JUST) would need to ensure that this objective is covered by the successor of the current programme, which spans the period 2014 – 2020, and that sufficient funds are dedicated to the relevant objective in the annual work programmes. Consumer organisations receiving funds through this programme would be required to report on the initiatives implemented directly to the Commission, enabling a regular monitoring. Access to EU funding should also be foreseen for other stakeholders implementing similar programmes (e.g. national authorities, non-governmental organisations) to ensure that all Member States can benefit from this measure, regardless of how these initiatives are implemented.

Technical and operational considerations

No major technical or operational feasibility problems have been identified in relation to Option 1, some considerations should be borne in mind:

- It can be difficult to develop guidance at EU level that is equally as well suited to the situation across all EU Member States. Some countries have already regulated some of the aspects covered by the measures under Option 1, either through legislative measures (e.g. interest rate caps in 23 Member States, or measures to ban or limit credit rollovers in France, Latvia and Lithuania). Where this is the case, Member States may be less willing to adopt new EU level guidance, especially if it contradicts the requirements they have already set. There are also differences between Member States in terms of the availability of different types of credit products/lenders which means that the guidelines may be more/less well suited to particular national contexts.
- No timeframe has been specified for the development of the guidance under Option 1 but given the number of different guidance documents to be issued, and the need for multiple rounds of drafting, stakeholder feedback and re-iteration, it may not be feasible to complete this task within a short period of time (e.g. six months or less).
- National Consumer Centres are funded jointly by the European Commission and national governments and some Member States may be more/less willing to contribute towards an awareness raising campaign for consumers on responsible borrowing (especially in light of COVID-19).

7.2.3 Policy option 2 – Amendment of provisions already contained in the CCD

Description of its implementation

Under Policy option 2, the amendment of the CCD would focus on certain key provisions that have been identified as problematic by the Evaluation and this study,

i.e. the scope of application, CWAs, information-related requirements and enforcement of provisions. To ensure that all problems and specific objectives are addressed, one non-regulatory measure included under Policy option 1 is also considered (increased support to debt advice and financial literacy initiatives). Policy option 2 will be implemented, monitored, and enforced through a combination of efforts of EU institutions, Member State authorities and credit providers and intermediaries.

The legislative amendment of the Directive, regardless of its scope, will require the European Commission to put forward a proposal which needs to be approved by the European Parliament and the Council. The preparation of the legislative proposal should be expected to be a more lengthy and complex process compared to the adoption of non-regulatory measures. Further consultations with stakeholders and analysis of practices in Member States will be required to decide on the final text of the proposal to ensure that the new provisions are adequate to achieve the objectives in a balanced manner, and that they stand the test of time in order to avoid further amendments in the near future.

Certain provisions will be relatively easy to draft (e.g. Art. 2 defining the scope), but others may be more challenging as they will require a close examination of Member State practices, but also consultations with subject-matter experts. Some of the key examples are:

- Updated definitions of 'creditor' and 'credit intermediary': the change to the definitions contained in Art. 3 CCD will have to be sufficiently detailed to avoid legal uncertainty, and sufficiently general to cover other operators potentially emerging in the future. This is particularly important considering that an amendment of the definitions will also affect the MCD, which contains the same definitions as the CCD. For this reason, the process will require collaborations between DG JUST and DG FISMA to ensure that, if necessary, the definitions can also be introduced in the MCD in the future.
- Detailed requirements in relation to how CWAs should be conducted: consideration should be given to the different approaches adopted by Member States about the steps that need to be taken (e.g. obtaining information from consumers and/or consulting a national database). During the consultations (including but not only those specifically focussed on the policy options), industry representatives also insisted that the requirements will also need to guarantee some level of flexibility to allow the system to adapt to the national context to ensure that it does not constitute an obstacle for consumers' access to credit.
- Obligation for credit databases to hold certain reliable negative data, to enhance reciprocity: currently, all databases already contain negative data. Therefore, a decision on the type of negative data included in credit databases should consider the current practices, but also the specificities of the reporting mechanisms existing in Member States to ensure that the rule can be effectively applied across the EU. This would require further research into the content of databases, but also into the negative data that could be possibly included. Further consultation with industry representatives and national authorities would be necessary before such a provision can be adopted.
- Inclusion of a non-exhaustive list of criteria to be taken into consideration by competent authorities when issuing sanctions: drafting this provision would require further research into current practices and consultations with national authorities and other EU institutions in order to arrive to the most optimal approach.

- Simplification of information-related requirements to focus on key information: what constitutes key information should be defined taking into consideration research findings and further feedback from behavioural economists and other subject-matter experts (including within the JRC), and consumers organisations.
- Detailed requirements as to when the pre-contractual information should be provided: setting a specific timeframe for the provision of information should consider current practices in Member States (some of which have already established similar requirements), research findings and feedback from subject-matter experts (including within the JRC).

The adoption of the text by EU legislators may lead to lengthy negotiations, as evidenced by the process leading up to the adoption of the current text (they lasted 6 years), especially considering that at the time some of the aspects that would change were controversial (e.g. scope).

Once approved, Member States will have two years to transpose the amended Directive into their national legislation. Although the extent of the changes will depend on the existing measures at national level, all Member States will have to adapt their rules, at least as far as it concerns information provision.

If adopted, this option will require credit providers and intermediaries to adapt their practices and systems to comply with their new legal obligations. In the case of credit providers brought under the scope of the CCD as a result of the amendment, the extent of the changes are expected to be significant as they will need to comply with all the obligations of the CCD, including the ones that remain unchanged. Less so for credit providers and intermediaries already bound by CCD rules, even though some key changes can be expected: a) modification of IT systems and tools to assess consumers' creditworthiness; b) changes to advertisements to comply with the new requirements; and c) changes to the way that pre-contractual information is presented to consumers.

The monitoring and enforcement mechanisms of the legislative measures featured in Option 2 would be similar to the current situation. Member States would be obliged to report on the transposition of the amendments and would enforce the legal obligations at national level (by enforcement authorities and national courts). National enforcement mechanisms would remain unaffected by this option. At EU level, the CCD would continue to be interpreted by the ECJ through preliminary rulings, when requested by national courts.

When considering the enforcement of this policy option, it is also important to note that the adoption of detailed requirements may further strengthen enforcement by ensuring that the amended provisions have direct effect in front of national courts, even if they have not been transposed at national level. This would entitle individual citizens to seek the direct application of the non-transposed Directive once the transposition period has expired (2 years after its adoption), provided that the requirements to ensure direct effect are fulfilled (i.e. the provision is sufficiently clear and precise, unconditional and does not give the member states substantial discretion in its application).

Technical and operational considerations

Policy Option 2 would be less technically and operationally challenging to implement than Options 3a and 3b, but certainly more challenging than Options 0 and 1.

A legislative amendment to the CCD would require approval from the Parliament and the Council and would therefore be more time and resource intensive than Options 0 and 1. Nonetheless, the limited scope of the amendments could facilitate the

negotiation process. Some of the measures are expected to be well received across all stakeholder groups - namely the simplification of information provided to consumers - while others may lead to further discussion and implementation-related challenges.

The changes to definitions or terms used in the CCD will need to strike a balance between the need to be specific enough to provide clarity and avoid different interpretations at national level, and the need to remain sufficiently broad in order to adapt to potential new developments. Furthermore, Member States will have to transpose these changes into their national law, which stakeholders indicated may pose a technical challenge. For example, some interviewees highlighted how difficult it can be to transpose detailed definitions of key terms (e.g. 'credit provider', 'credit intermediary') into a national legislative framework due to the need to be accurate and avoid discrepancies in the translation. The definition may also vary depending on the specific context. For example, what constitutes an 'adequate explanation' may differ depending on the customer (e.g. their level of financial literacy and whether they have had a similar product with the same provider before). Another consideration to take into account is that in order to maintain coherence across the legislative framework pertaining to financial services any clarification of key terms would also need to be reflected in the MCD.

Providing very detailed definitions may also lead to a lack of flexibility for Member States to adapt in light of innovation and other developments in the sector, which could leave consumers exposed to a risk of detriment. Prescriptive definitions may hinder innovation (industry stakeholders commented during the workshop that they favour having a technology-neutral text) and may need to be updated far more frequently.

Most of the opposition to the proposition to include currently excluded loans within the scope of application of the CCD seems to come from the industry as opposed to national authorities and consumer associations. There was some concern among creditors that extending the scope of the CCD - especially to cover loans below EUR 200 - may lead some products to be withdrawn from the market. This may reduce consumer choice and competition in the market. To avoid this, some of them indicated that further enforcement of current rules to ensure that these credits are subject to national supervision would be preferable.³² Another way to overcome this issue, according to a business association consulted, would be to distinguish categories of consumer loans and apply different regulatory practices to each category.³³

Establishing detailed requirements in relation to some of the obligations of the CCD, e.g. when the pre-contractual information should be provided or how CWAs should be conducted, should be technically feasible as well, as evidenced by the fact that some Member States have already established such rules at national level. However, deciding the most optimal set of rules will be a complex task which will have to consider any possible operational issues affecting their implementation as well as the ultimate effect on consumers. For instance, the establishment of a timeframe for the provision of pre-contractual information should take account of the fact that the APR (and therefore the cost of the credit for the consumer) depends on the result from the CWA (e.g. a consumer with a good CWA score may be offered a loan with a lower APR). Therefore, the CWA needs to be completed before the consumer is provided with the pre-contractual information. Many consumers also require (or desire) fast access to credit, which could be convenient for the consumer where the credit is used to pay off an existing and more costly debt (e.g. low-APR loan used to pay off high-

³² Follow-up survey (3 open-ended responses from business associations).

³³ Follow-up survey (1 open-ended response from business associations).

APR credit card). These factors need to be considered if an exact timeframe for the provision of pre-contractual information is specified.

To conclude, deciding on the negative data that credit databases must contain may prove technically difficult if re-structuring of the information held by credit databases is required. Further to this, consistency with GDPR would also need to be ensured.

7.2.4 Policy option 3a – Extensive amendment of the CCD to include certain new provisions, in line with EU regulation

Description of its implementation

Policy option 3a foresees the introduction of new provisions and obligations which are currently not covered by the CCD, in line with certain provisions found in other relevant EU regulation, namely the MCD and the GDPR. This option also includes the three scope-related measures presented under Policy option 2, which are deemed to be very effective in addressing the scope-related issues and reducing consumer detriment linked to products falling outside of the scope of the CCD. The implementation, monitoring and enforcement of Policy option 3a is similar to Policy option 2, but a few further considerations should be taken into account.

Compared to Option 2, the extent of the amendments to the CCD could be expected to result in a more lengthy and complex legislative procedure. However, most of the new provisions included in this option would be modelled after existing legislation – notably the MCD and the GDPR – which could facilitate the drafting and the negotiation process. This is especially the case considering that other than the broadening of the scope and the update of definitions in Art. 3, Option 3a would not include the measures from Option 2 that are expected to be more difficult to adopt.

Once approved by the Council and the Parliament, Member States would have two years to transpose the amended Directive into their national legislation, a process which will be monitored by the European Commission (as explained under Option 2).

The implementation of this option will require further changes within the industry to ensure compliance, compared to Option 2. Several provisions are expected to entail significant changes by credit providers and intermediaries. Because of the obligation to lend responsibly (honestly, fairly, transparently, and professionally), together with the specific provisions on responsible lending practices (e.g. remuneration policies, skills and knowledge of staff members, product-tying practices, ban of pre-ticked boxes) and forbearance measures credit providers will implement changes to their business and marketing practices which, in some cases, may be substantial (e.g. redesign of the remuneration policies). Similarly, based on the feedback provided by a small number of industry representatives, the rules on the use of alternative data and automated decision-making tools, would also entail some changes to the CWA processes of some industry representatives, in spite of the fact that they reflect applicable GDPR provisions setting the principles of data processing (Art. 5(1)) and the rules on automated decision-making (Art. 22).³⁴

For a number of measures, the responsibility to implement them lies with Member States. This is the case for the obligation to encourage credit providers to exercise forbearance before enforcement procedures, the obligation to promote financial education or digital literacy initiatives and the obligation to designate competent authorities for the enforcement of the Directive (also ensuring that they have investigative powers and resources). The three of them are already obligations under

³⁴ Follow-up survey (1 open response from a business association)

the MCD, but while promotion of financial education should not entail any major changes to the existing financial education schemes (which vary greatly from country to country and generally involve a wide range of actors from the public and private sectors³⁵) the other two are likely to require Member States to adopt specific measures to encourage these practices (e.g. national guidance, legal obligations or even fiscal or otherwise incentives for credit providers to exercise this right³⁶) or to implement the obligations.

Finally, the implementation of one of the measures included in Option 3a is the responsibility of the Commission, who would have the obligation to regularly assess the financial education and digital literacy initiatives implemented in Member States and identify best practices. To do so, national authorities would be required to report on such initiatives. The collection of evidence and the assessment of the measures could be a collaborative effort involving different relevant Commission services (e.g. DG JUST, DG EAC, DG FISMA) and other EU institutions already involved in this area, such as the European Economic and Social Committee, which has already published a compendium of best practices in the field of financial education.

Other than this, the monitoring and enforcement considerations presented for Option 2 are also applicable for Option 3a. In sum, the amendments to the CCD would be monitored and enforced through the existing mechanisms.

Similar to Option 2, the monitoring and enforcement mechanisms of the legislative measures featured in Option 3a would be similar to the current situation. Member States would be obliged to report on the transposition of the amendments and would enforce the legal obligations at national level (by enforcement authorities and national courts). National enforcement mechanisms would remain unaffected by this Option. At EU level, the CCD would continue to be interpreted by the ECJ through preliminary rulings, when requested by national courts.

When considering the enforcement of this policy option, it is also important to note that the adoption of detailed requirements may further strengthen enforcement by ensuring that the amended provisions have direct effect in front of national courts, even if they have not been transposed at national level. This would entitle individual citizens to seek the direct application of the non-transposed Directive once the transposition period has expired (2 years after its adoption), provided that the requirements to ensure direct effect are fulfilled (i.e. the provision is sufficiently clear and precise, unconditional and does not give the member states substantial discretion in its application).

Technical and operational considerations

As for Policy option 2, Option 3a would also require approval from the European Parliament and the Council, and then transposition into Member States' national law, which may pose some operational challenges. The wider scope of the amendments would also mean that Option 3a is likely to require longer and more complex interinstitutional negotiations compared to Option 2, although to a lesser extent than Option 3b given that it would be modelled after existing legislation (e.g. MCD and GDPR).

At national level, this option may involve making changes to numerous legal acts. As well as being time-consuming and costly for the Member States, transposition may be particularly problematic if the measures conflict with existing national law, case law, or guidance. For example, several Member States (e.g. Belgium, and Italy via

³⁵ European Economic and Social Committee, 2017, Financial Education for all (Second edition)

³⁶ Follow-up survey (1 open response from a business association)

case law) have already established an obligation for credit providers to inform consumers whether advisory services are, or can be, provided. While this does not affect the feasibility of imposing such an obligation at EU level, the potential conflicts with existing national rules should be considered because they could lead to implementation and enforcement challenges linked to a lack of legal clarity or adaptation of approaches and systems.³⁷

In terms of implementation, Policy option 3a would require changes to current practices but no major feasibility issues should be expected, especially considering that national authorities and some credit providers – those offering mortgages - are already bound by the MCD and GDPR obligations that would be introduced in the CCD.

From the perspective of national authorities, the promotion of financial education programmes warrants a closer look. Obliging Member States to promote financial education nationally is certainly feasible from a technical and operational viewpoint, especially considering that this is already an obligation under the MCD. However, the availability and the quality of these initiatives depends on a wide array of factors, including available resources, which may hinder the implementation of this provision.

At industry level, the implementation of Policy option 3a would also require changes to current practices. For instance, establishing rules on remuneration for staff employed by creditors and credit intermediaries could be difficult for industry to implement in practice, as it may require substantial changes to the types of incentives that staff are given (e.g. sales targets), the way they are remunerated (e.g. bonuses for achieving sales targets), and correspondingly to their employment contracts. However, some credit providers – those offering mortgages - are already bound by similar obligations under the MCD. As a result of such changes, some staff may find that they no longer receive the same level of remuneration. It is unlikely but still possible that national employment legislation may also need to be amended to take account of the changes.

Establishing an obligation for credit providers and credit intermediaries to ensure that staff members have the proper skills and knowledge should be feasible but may take some time to implement. Staff would need to have their competence assessed, training materials would need to be prepared and the training would then need to be given. Across a large organisation, this could involve a considerable resource cost. However, most credit providers and credit intermediaries already offer their staff routine training and so any new skills/knowledge requirements could be factored into this.

Some challenges can also be highlighted on the monitoring and enforcement of this option, although they are not unsurmountable. Here again, the fact that the new provisions would be in line with existing obligations under the MCD could limit the impact of these changes because enforcement authorities and credit providers (at least a great share of them) would already be familiar with the obligations. Establishing a legal obligation for creditors and credit intermediaries to act honestly, fairly, transparently and professionally taking account the rights and interests of the consumer (in line with Art. 7(1) MCD) may also be difficult, and costly, for Member States to monitor and enforce. It may require a substantial increase in the number of staff engaged in enforcement activities if, for instance, site visits are required.

Care will also need to be taken when specifying the factors that are relevant for verifying the prospect of the consumer meeting his obligations during CWA (in line with Art 18 MCD) to ensure that specific groups (e.g. people who are retired or

³⁷ Explicit mention to potential conflicts was made by the national researcher in Belgium.

nearing retirement, single parents, people who are seriously ill) are not penalised or unable to access credit.

7.2.5 Policy option 3b – Extensive amendment of the CCD to include provisions not addressed by other EU regulation

Technical and operational considerations

This policy option consists of a more ambitious amendment of the CCD, with measures going beyond what is established in other similar or relevant pieces of EU legislation. Overall, the implementation, monitoring and enforcement of Policy option 3b would be similar to the other legislative options (Options 2 and 3a), but a closer look at the additional measures included is required.

Due to the extent of the amendments under this option and the novelty of some of the obligations (which are not included in any relevant piece of EU legislation), the preparation and approval of the legislative proposal is expected to be more lengthy and challenging than for the other legislative options. Policy option 3b also includes some of the measures from Option 2 which are expected to be more controversial and difficult to adopt, such as those affecting the scope of application of the CCD, the simplification of advertisements to focus on key information, the establishment of a specific timeframe for the provision of pre-contractual information and the detailed requirements in relation to the process to conduct CWA.

Among the new measures included under Policy option 3b, two warrant special consideration when discussing the adoption of the Commission's legislative proposal:

- Detailed requirements about the way that information should be displayed to consumers and pre-contractual stage (e.g. format, font size): deciding on such level of detail for the way that information is displayed requires careful consideration of the specificities of each of the communication channels used by credit providers to advertise consumer credit. It should also consider existing evidence on consumer behavioural patterns to determine the most effective way to display this information. In practice, this would require further research into the impacts of similar measures – which have been adopted by some Member States such as Poland – and collaboration with subject-matter experts.
- The introduction of a basic credit product that providers should make available to consumers. The specific content of this obligation has yet to be defined, but it would most likely entail the design of a simple product with advantageous conditions that would ensure equal access to non-detrimental credit for non-vulnerable and vulnerable consumers alike. The design of this product would therefore require extensive research, consultations with stakeholders and subject-matter experts, and collaboration with other Commission services.

Once approved by the Council and the Parliament, Member States would have two years to transpose the amended Directive into their national legislation, a process which will be monitored by the European Commission (as explained under Option 2). Among the new measures proposed under Option 3b, one measure is worth examining in more detail:

- Setting up caps on interest rates/APR and the costs linked to rollovers: Option 3b imposes an obligation for Member States to set these caps, but it does not foresee the adoption of EU-level guidance on this. This would facilitate the transposition of the amendments for the many Member States that have already established

such restrictions, because they would not be required to change their legislation. However, Member States which have not yet imposed interest rate/cost caps would be required to do so considering the characteristics of their national markets.

In terms of implementation, Option 3b is the option that will require most changes within the industry. Some of the measures (caps on interest rates and costs linked to rollovers), combined with the broadening of the scope of the CCD, will require significant changes to the design of credit products, particularly in certain segments of the market. Similarly, the provisions seeking to ensure responsible lending (the ban on unsolicited credit as well as the relevant measures from other options included in Option 3b) will also trigger changes to the business practices of credit providers, who will have to adapt their systems and the way they conduct business.

Member States will be the implementing party for four of the measures featured in this option. Two of them - regarding forbearance measures and financial education programmes - are also featured in Option 3a (see analysis above), but the third and fourth ones would be unique to Option 3b. One of them sets an obligation upon Member States to provide debt advice services for over-indebted or otherwise vulnerable consumers, either directly or indirectly through other public or private actors. As explained in the problem statement (see problem 4 in Annex 6), debt advice services are currently provided in most Member States but to very different degrees. This obligation would probably imply that Member States in which these services are sporadically provided would have to step up their efforts and dedicate more resources to this. The other measure would require Member States to set up a centralised credit database. In some Member States, this would not signify any changes with respect to the current situation, but others would have to set it up.

Option 3b would also require Member States to report on the transposition of the amendments and would enforce the legal obligations at national level (by enforcement authorities and national courts). National enforcement mechanisms would remain unaffected by this option. At EU level, the CCD would continue to be interpreted by the ECJ through preliminary rulings, when requested by national courts.

Similar to Option 2 – and to a lesser extent, Option 3a - if the amended provisions are sufficiently clear and precise, they would possibly enjoy direct effect.

Description of technical and operational feasibility

Like Policy options 2 and 3a, Option 3b would require legislative amendments at EU and national level. The extent of the changes and the novelty of some of the obligations introduced also render the design, implementation, and enforcement of this option more challenging than for the previous options. This option can also be expected to spark debate and criticism from industry representatives and consumer organisations alike. While the industry will oppose such comparatively impactful measures, consumer organisations favour this option. Despite this, no unsurmountable challenges that would make this option unfeasible from a technical or operational point of view have been identified.

Some of the key operational channels identified relate to the development, at EU level, of some of the measures. This is especially the case for the establishment of a basic credit product, but also for all the measures that require European Commission to establish rules or minimum requirements to be applied across the EU. In the area of advertising, adopting specific requirements regarding the way in which the information should be presented may prove difficult considering the wide array of communication platforms used. They may also contradict the requirements already established in some Member States, with the consequences that this would entail

(e.g. legal instability, which may be costly for credit providers and confusing for consumers).

Establishing minimum requirements applicable to financial education programmes offered in Member States is a very complex task which would require a wider involvement of EU institutions and experts. It should also be considered whether the CCD is the most adequate tool to set such standards and to establish the obligation to provide debt advice services, given that these generally have a much broader scope than consumer credit.

Interestingly, the operational challenges linked to other measures emerge from a lack of EU-level requirements. For instance, this option requires Member States to set interest rate or APR caps and to limit the costs of rollover practices, though the Commission would not provide specific rules or guidelines on how these should be calculated. Thus, the introduction of this measure should be technically feasible. There are operational risks, however. If Member States set the rate caps too low, there is a risk that some credit providers, or credit products, will be pushed out of the market, reducing competition and exposing vulnerable consumers to illegal lenders. Without specific rules or guidelines on how the caps should be calculated, there is also a risk that Member States take different approaches, leading to competitive (dis)advantage. During the consultation, at least one industry expert noted that lenders would likely lobby against interest rate caps. In countries where caps on interest rates or APR are new, the systems used by lenders to calculate interest rates/APR may also need to be updated.

Prohibiting the unsolicited sale of credit would be beneficial for consumers, and reduce unfair competition, but may prove difficult to enforce, especially since consumers are targeted in so many different ways (e.g. in branch/shop, telephone, email, post, website pop-up, door-to-door). Legal clarification may be required of what constitutes an 'unsolicited' sale in different contexts. Fewer operational obstacles are expected from the ban of pre-ticked boxes. This measure has been already implemented in some countries to reduce consumer detriment (e.g. UK), an indication of its feasibility. The effectiveness of the measure also depends on the additional safeguards to ensure that information is being properly disclosed to consumers, as explained in the assessment of its effectiveness. Therefore, from an operational viewpoint, this measure would require strengthened enforcement of the (current and new) obligations related to the provision of pre-contractual information.

8 What are the impacts of the policy options?

This section contains the assessment of the five policy options (including the baseline). Section 8.1 presents a partial quantitative assessment of the policy options, based on the analysis of the monetisable impacts of a selection of policy measures for which enough quantitative evidence is available to carry out a cost-benefit analysis. Section 8.2 includes the qualitative assessment of each of the options.

The box below explains the approaches used to the scoring in the report.

Scoring approaches used in the report

0 to 5: The qualitative assessment for the effectiveness and coherence of each option is rated using a Likert scale ranging from 0 (not effective) to 5 (very effective). It should be noted that this assessment is not taken into account for the multi-criteria analysis (MCA).

-5 to +5: The scores given under efficiency to each of the eight types of impact ranges from -5 (very negative impact) to 5 (very positive impact). The reason is that certain effects can be negative and hence should be expressed as such. The various impacts considered under efficiency are used for the MCA.

+ and +/-: this is used for the simplified net result of weighing costs and benefits for the 5 options.

+ to + + + +: this is used for the assessment of Specific Objectives under effectiveness of each Option. These scores have then be translated into scores ranging from 0-5. The reason why the initial scores of Options against Specific Objectives follow this range is to avoid it would be confused with the total score in numerical values (0 to 5).

'•' low; '••' moderate; '•••' high: This approach has been used in Section 8.2 (see Table 18 in Annex 9.1) to denote the importance of each impact type (extent of the impact) for this study. If the effect is expected to be low, it has not been taken into consideration for either qualitative or quantitative assessment. Where it is moderate and high the study has considered it. The reason for not using a numerical range is precisely to avoid possible confusion with the assessment of the options themselves.

• – Positive impact, • – Negative impact, • – Positive or negative impact: this approach has been used in Section 8.2 (see Table 19 in Annex 9.1) in much the same way as the range of impact types. This has been done to enable an assessment of the type of impacts (severity).

8.1 Quantitative assessment of policy options

The quantitative assessment of policy options was done for the measures for which an assessment of costs and benefits could be carried out with a reasonable degree of confidence given the complexity of a measure and available data. As a result, this was the case for a total of 11 measures. It should be noted that quantification entails a non-exhaustive³⁸ set of costs and benefits for these measures, covering the following main types of costs and benefit:

- Costs:

³⁸ In practice, a given measure could entail a wider number of concrete benefits and costs, depending on number of factors e.g. the specificity of a national market and various responses from credit providers.

- Costs of drafting and transposing legislation (EU and public authorities)
- Costs for enforcement and monitoring (public authorities)
- Main type of compliance costs incurred by credit providers including staff training for familiarisation with the measure, costs of adapting IT infrastructure, incremental labour costs stemming from the adoption and ongoing implementation of a measure (industry)
- Benefits:
 - Reduction in consumers' financial detriment;
 - Reduction in time losses suffered by consumers.

It should be noted that the estimates did not consider potential indirect effects of the measures e.g. lost revenue of credit providers as a result of the measure, degree to which costs of a measure would be (if at all) passed on consumers, any implications for the competition, and the wider meso/ macro-economic effects including the impact on employment or wider impact on the GDP across the Member States³⁹. In addition, the model provides an overview of the plausible magnitude of costs and benefits in the context of the activities of the credit institutions (mostly banks). It does not capture, however, the non-bank sector and its consumers.

The approach for the calculation of the baseline spanning the period 2021-2030 is consistent with the approach used in the CCD Evaluation carried out in 2019. The detail explanation of this approach is presented in Annex 9 (see A9.1 and A9.2). In turn, the specific assessment of costs, benefits and net result (against the baseline) for the various measures is presented in Annex 10.

The qualitative assessment in section 8.2 is the main assessment for the options. The quantification of measures is used to support the qualitative assessment but should not be regarded as a stand-alone assessment. The final score as part of the multi-criteria analysis (MCA) includes the assessment of the costs and benefits of the measure.

8.2 Qualitative assessment of the impact of the policy options

This section presents the **qualitative assessment** of the options, of each of the policy options, on different categories of stakeholders, against **three main criteria**:

- **Efficiency**, i.e. their impact on the stakeholder groups, which can be either positive or negative. The study has considered a wide array of economic, social, environmental, and overarching impacts and determine their expected magnitude, likelihood and relevance for stakeholders. Based on this assessment, nine main categories of significant impacts were selected and assessed in a qualitative manner and, where possible, complemented with the quantitative assessment presented in section 8.1. An overview of all the impacts considered and selected for further assessment is included in Annex 9 (see A9.1).

To achieve a balanced approach of costs and benefits, the nine main categories of impact have been categorised in three categories of benefits and three categories of costs:

- Benefits:
 - consumer trust (choices and behaviour) and inclusion;
 - consumer protection and reduced detriment; and
 - industry level-playing field and competition and cross-border sales of credit.

³⁹ Nonetheless, this is considered to be negligible

- Costs:
 - industry compliance costs;
 - EU public authorities costs; and
 - Member State-level public authorities costs.

Each category of benefits / costs has been given a score illustrating the type and extent of impact on the stakeholder group at stake. The scores range from -5 (very negative impact) to 5 (very positive impact) and considers the qualitative assessment, but also the supporting quantitative assessment of costs. Where possible the regulatory burden for each of the options has been considered in the qualitative assessment. The attribution of scores and the description of the assessments presented in this section are the result of an analytical exercise which has examined, analysed and triangulated the whole body of evidence collected for the Evaluation conducted in 2019 as well as this study, including but not only, the feedback expressed by stakeholders consulted. The score obtained by each policy option is the basis for the multicriteria analysis (MCA) presented in section 9 of this report.

- **Effectiveness**, i.e. how successful the policy option is expected to be in addressing the five specific objectives (and 11 operational objectives) outlined in the intervention logic and Table 3 above. The effectiveness of each option is rated using a Likert scale ranging from 0 (not effective) to 5 (very effective), both generally and in relation to every specific objective. As indicated above, it is not part of the MCA.
- **Coherence**, which assesses how the measures planned would interact with existing EU legislation. The score given to policy options ranges from 0 (no change to the level of legal coherence as compared to the baseline) to 5 (the policy option would increase EU-level coherence to a very great extent). It also includes the legal feasibility assessment, in particular referring to proportionality and subsidiarity test. This assessment considers the legal obstacles that may hinder the adoption and implementation of the policy option. The legal assessment considers the EU’s right to act (further explained in section 5) and the legal considerations that must inform the feasibility assessment (including necessity, proportionality and subsidiarity). Equally, it is not part of the MCA.

The **EU added value** of the policy options has also been assessed – albeit not included in the multi-criteria analysis. The assessment is presented in Annex 11 and reflects on the extent to which EU-level action would be more adequate to achieve the objectives for a policy intervention, as compared to what could be achieved by Member States individually.

8.2.1 Policy option 0 – Status quo

8.2.1.1 Efficiency

Impact on consumer trust, choices, behaviour and inclusion

<i>Score</i>	0
Description of expected impacts	
<p>The demand for consumer credit has been growing over the past few years and several types of consumer credit products have seen a positive evolution. Moreover, the increase of digitalisation brought new actors into the market, such as P2P lenders or fintech companies and more innovative business models. Therefore, it can be expected that if this trend continues in the future, comparability will continue to have a positive evolution in line with the growth of the consumer credit market.</p>	

As regards consumer behaviour, some areas could be improved by taking into consideration existing evidence on consumers' vulnerabilities especially in the way they process information related to credit products. By adopting a 'no-action' approach, it can be expected that the identified vulnerabilities would continue to persist.

In the absence of specific measures, levels of over-indebtedness could be expected to increase, particularly as a result of the COVID-19 crisis, especially among the more vulnerable consumers which have been disproportionately affected by the crisis. Responses from the follow up survey on policy options shows that the majority of respondents see no impact on the overall level of over-indebtedness as an effect of a possible implementation of this policy.

Regarding social inclusion, the technological developments in the field of consumer credit may have a positive impact on the level of financial inclusion, as new and more accessible products emerge. However, if the products remain unregulated, they may entail important risks for consumers (especially vulnerable ones), possibly leading to an increase in the level of over-indebtedness.

Rationale for scoring

As this policy option entails the implementation of no additional measures, the impact of Policy option 0 on consumer choices, behaviour and inclusion would be very limited. While some aspects may see an evolution – in some cases, positive (e.g., consumer choice or consumer behaviour) and in others, negative (e.g., level of over-indebtedness) - this would rather be attributed as an effect of the market's evolution.

Impact on consumer protection and reduced detriment

Score	0
Description of expected impacts	
<p>In relation to several aspects covered by CCD, Member States went beyond the CCD requirements. As long as the situation remains the same and there is no further EU legal harmonisation, there will be no positive impact on the overall level of consumer protection. Consumers will continue to experience different levels of consumer protection based on the Member State in which they reside and also based on the products they choose, as several commonly used consumer credit products are not covered by the actual CCD scope.</p> <p>Nevertheless, improvements in the enforcement of consumer protection legislation and redress for consumer can reasonably be expected, as both Directives that form the 'New Deal for Consumers' package will enter into force in the coming years.⁴⁰ The Omnibus Directive will bring rules on more effective penalties for cross-border infringements, whereas the Representative Actions Directive will improve consumers' chances of obtaining redress against domestic and cross-border 'mass harm'.</p> <p>Ultimately, consumer detriment can be expected to remain at the same level if no specific measures are implemented, especially that arising from credit products that fall outside of the CCD's scope. A slight positive evolution could occur as an effect of the introduction of more stringent measures in national legislation (following the</p>	

⁴⁰ Directive on better enforcement and modernisation of EU consumer protection (the Omnibus Directive) was adopted by the European Parliament and the Council on 27 November 2019 and The Directive on Representative Actions (RAD) was adopted on the 24 November 2020.

trend observed over the past few years), but its extent cannot be assessed. In contrast, some negative effects could be expected from the COVID-19 crisis. If no additional measures are implemented to improve the overall level of consumer protection, more consumers could be exposed to the already existing risks or gaps in the legislation.

Rationale for scoring

By not implementing any specific measures, any development would rather be ascribed to external factors than to the effects of implementing Policy option 0.

Impact on industry: level playing field and competition and cross-border credit

Score	0
Description of expected impacts	
<p>As it stands, the consumer credit landscape is quite fragmented and somewhat inadequate in providing a level playing field or a robust competition. Most importantly, credit providers which offer credit on a cross-border basis have to adapt their business models to consumer protection rules that in some cases vary across Member States. Furthermore, some types of products might fall outside the scope of the CCD and therefore some credit providers are not subject to the same rules as their competitors. Legal fragmentation is also deemed to be one of the main barriers for the development of the cross-border provision of credit.</p> <p>In the context of a perpetuation of this situation, it is difficult to assess whether the market will evolve in a positive or a negative manner as regards the level playing field and competition. It can be expected, though, that the consumer credit market will naturally increase its competition as a result of the recent growth in new players on the market, innovation, digitalisation and an increase in consumer demand.</p> <p>In terms of cross-border credit, as Policy option 0 would not directly address any of the identified barriers, it can be reasonably expected that a continuation of the status quo would not produce any significant improvements.</p> <p>However, the cross-border provision of credit could see an expansion in the following years due to the effects of the digitalisation, which makes it more straightforward to achieve as online providers can reach a larger number of people than they would in a physical context. If competition in the consumer credit market continues to grow, it can also be expected that more credit providers would be attracted to adapt their business models into reaching consumers cross-border.</p>	
Rationale for scoring	
Option 0 should not have in itself any significant effect on the above-mentioned expected impacts.	

Impact on industry: overall compliance costs

Score	0
Description of expected impacts	

As Policy option 0 implies the continuation of the status quo, it can be reasonably expected that the industry will not be required to implement additional measures and that their compliance costs would remain relatively static. However, given the disruptive effect of the COVID-19 crisis that has also affected the businesses of credit providers, a situation of regulatory stability could prove beneficial for the industry.

The responses to the follow-up survey on the policy options confirm that the majority of stakeholders from the industry's side consider this policy option would have no impact on credit providers and other business operators.

A slight increase in compliance costs for the industry can however be expected anyway as an effect of the recently adopted EBA Guidelines on loan origination, but nevertheless, not as an effect of this particular policy option.

Rationale for scoring

Compared to the current situation, Option 0 should not give rise to any new compliance costs, therefore the impact of the policy is a neutral one in this area, although slightly positive as it would allow them to better navigate the post-COVID-19 challenges.

Impact on EU public administration

Score	0
Description of expected impacts	
<p>Since Policy option 0 does not introduce any new obligations or EU-level measures, the costs incurred by EU authorities to implement the 'status quo' option are minimal. However, the vagueness of some of the provisions of the CCD are expected to result in additional requests for preliminary rulings submitted to the CJEU, who would continue to interpret the Directive.</p> <p>As evidence suggests that the overall consumer detriment reported by consumers has declined in the last years, if this trend is preserved, enforcement problems could decrease.</p> <p>However, as a result of the economic crisis that has been created by the COVID-19 pandemic, more consumers can be expected to experience financial distress or to be in a vulnerable situation and as a consequence, to choose riskier credit products. This could lead to a higher number of consumer complaints that would overburden the enforcement authorities and potentially hinder enforcement coordination.</p>	
Rationale for scoring	
<p>As Policy option 0 foresees no specific measures to be implemented, its impact on EU authorities can be deemed as rather neutral.</p>	

Impact on MS-level public administrations

Score	0
Description of expected impacts	

The implementation of Policy option 0 should not bring any additional costs or new enforcement duties for the Member State-level public administration.

Nevertheless, the study highlighted that there are some challenges in the enforcement of the CCD as case-law and consumer complaints show that some CCD requirements are more prone to non-compliance than others. For example, some terms have proven to be difficult to enforce due to their vagueness ('sufficient information', 'in good time', etc.), which prompted different interpretations in practice.

Rationale for scoring

Compared to the baseline, the implementation of Policy option 0 would produce no significant impact on national authorities, nor in terms of additional costs, nor increased enforcement efforts.

8.2.1.2 Effectiveness

<i>Score</i>	0
Rationale for scoring	
<p>Policy option 0 foresees no specific EU-level measures. It does not mean, however, that the problems will remain unchanged, nor that the EU cannot take any measures going forward. In fact, the evidence collected suggests that the share of consumers reporting problems has decreased in the last years. Although it is difficult to assess to which extent, it can be expected that this trend will continue in the future to some degree even if no EU-level action is taken. This will be especially the case if more Member States decide to adopt stricter measures to regulate issues affecting consumers in their territory, as they have been doing since the entry into force of the CCD.</p> <p>Certain limited progress could be therefore expected towards ensuring that credit is granted in the consumer's best interest (SO2), that consumers are empowered by receiving adequate information (SO3) and that indebted and over-indebted consumers are better protected by specific individual or external economic disruptions, also increase the resilience of the system to financial instability risks linked to economic crises (SO4). In contrast, some of the specific objectives are not likely to be addressed without EU-level regulation. For instance, the first specific objective (i.e. reducing the detriment arising from unregulated products) would require that all Member States spontaneously decide to adopt the same regulatory approach regarding the scope of national rules transposing the CCD, which would be very unlikely. A similar conclusion can be reached with regard to the fifth specific objective (i.e. promote an enabling business environment across the EU and reduce costs for providers offering consumer credit cross-border while enabling more choices for consumers), as it would require Member States to align their regulatory approaches of their own accord.</p> <p>The responses to the follow-up survey on the policy options confirm this argument, although only to some extent. The results suggest that while a majority of</p>	

respondents believe that Option 0 would be effective in addressing the specific objective relating to the provision of information (SO3),⁴¹ only a minority believe so with respect to the other objectives. The objectives relating to the scope of the Directive (SO1) and to responsible lending (SO2) seem to be the least effectively tackled by Policy option 0, with mostly industry representatives indicating that this option would tackle the issues covered under these objectives.⁴² With regard to its impact on the level of over-indebtedness, most stakeholders consulted indicated that no change should be expected if this Option were implemented.⁴³

In sum, although certain improvement cannot be ruled out, this policy option is unlikely to lead to any progress towards the objectives laid down in this study.

8.2.1.3 Coherence

Score	0
Rationale for scoring	
Legal feasibility (including proportionality and subsidiarity):	
<p>Policy option 0 does not entail amendments to the current legal framework and does not envisage additional EU-level measures. There is, as a result, no legal assessment to be made concerning the legal feasibility of this option, however, the impact of a status quo is foreseeable.</p>	
Coherence with existing EU legislation:	
<p>As it stands, the CCD is generally coherent and complementary with other EU-level consumer policy and legislation. However, some elements could be better aligned, particularly in relation to the MCD, which in some commonly addressed areas, provides a higher level of consumer protection. Moreover, the legal analysis shows that the policy landscape has evolved considerably, as several EU-level legislative acts that are in some form complementary to the CCD have been adopted or revised in the more recent years (e.g. MCD, GDPR, PSD2). From this point of view, a 'no action' approach could be seen in itself as a drawback for effective legal coherence between the CCD and other EU legal instruments.</p> <p>Compared to the current situation, Policy option 0 will not give rise to any improvement in term of legal coherence.</p>	

⁴¹ Follow-up survey. A majority of respondents (11 out of 20 respondents) to the follow-up survey believe that Option 0 would be effective in addressing Problem 3 (4 out of 9 business associations, 0 out of 1 credit providers/intermediaries, 1 out of 1 other businesses, 2 out of 3 consumer associations, 4 out of 6 national authorities). In fact, Policy option emerged as the third most effective option to address this problem, after Options 2 and 3b (12 out of 20 respondents, both).

⁴² Follow-up survey. A minority of respondents (5 out of 20 respondents) indicated that Policy option 0 would be effective in tackling Problem 1 (4 out of 9 business associations, 1 out of 6 national authorities) and Problem 2 (5 out of 9 business associations).

⁴³ Follow-up survey. Across all stakeholder groups, 13 indicated that the level of over-indebtedness would remain the same and 2 that it would increase.

8.2.2 Policy option 1 – Non-legislative action

8.2.2.1 Efficiency

Impact on consumer trust, choices and behaviour and inclusion

Score	1
Description of expected impacts	
<p>Policy option 1 is expected to derive the following positive impacts on consumer choices and behaviour:</p> <ul style="list-style-type: none"> • Enhanced level of financial literacy of consumers and increased awareness about the risks of credit as a result of the increased support to financial education and debt advice initiatives in Member States and, to a lesser extent, the annual awareness raising campaigns. Those measures would facilitate, to some extent, a better understanding on the part of consumers of the information disclosed by credit providers, resulting in a better understanding of the conditions and risks of the different consumer credit products, potentially leading to better decisions. • Possible reduction in the use of high-cost credit by over-indebted consumers who need to pay existing debts as a result of the increased support to debt advice initiatives. • If the non-binding guidance and the clarification of terms that are unclear in the CCD ('adequate explanations', 'in good time') are applied by Member States (e.g. transposed at national level) and/or observed by credit providers/intermediaries, consumers would also be likely to have a clearer protection framework, increasing the level of trust, including in products which are currently not clearly bound by CCD obligations, at least in some Member States, potentially broadening consumer credit portfolio. As they depend on the willingness of Member States and credit providers/intermediaries in applying the guidelines, these impacts can be considered unlikely and, in any case, of low magnitude. <p>Supporting Member States' efforts to raise the level of financial literacy and provide advice to over-indebted consumers are also likely to have a positive impact on the level of over-indebtedness. They are also be expected to contribute to the inclusion of vulnerable consumers, as this is the population group more in need of this support (as explained in Problem 4.1 in Annex 6). In contrast, the non-binding guidance for Member States and credit providers is expected to have only a marginal impact on the (sometimes irresponsible or uncompliant) behaviour of credit providers, if any. This would limit drastically the impact of Option 1 on the overall level of over-indebtedness.</p> <p>Due to the non-binding nature of the measures means, it is unlikely that Policy option 1 will impact the offer of products available for consumers, unless Member States decide to follow the guidelines to adopt national legislation.</p>	
Rationale for scoring	
<p>Compared to the baseline, Option 1 is expected to slightly improve the situation of consumers regarding their behaviour and access to consumer credit, and ultimately, the level of over-indebtedness and social inclusion, especially as a result of the increased support to financial education and debt advice initiatives. However, the non-binding nature of most measures under Option 1 means that the impact on consumer choice should be very low (and unlikely).</p>	

Impact on consumer protection (rights/redress) and reduced detriment

Score	1
Description of expected impacts	
<p>The clarification of terms and the guidance on the type of information to be used in CWAs in the CCD could result in:</p> <ul style="list-style-type: none"> • Better enforcement of CCD obligations by national authorities: even if non-binding, EU level guidance would allow enforcement authorities to identify breaches of CCD obligations more easily, which could be expected to have a positive – albeit limited – impact on the enforcement of consumer rights. However, this would only improve enforcement in a small share of cases (i.e. where there was a lack of legal clarity). • Consumers would be better informed about their rights and the obligations of credit providers, allowing them to identify cases in which they can seek redress: this is especially the case if Member States replicate EU-level guidance at national level. Otherwise, only a small share of consumers could benefit directly from the EU-level guidance. For this reason, both the likelihood and the magnitude of this impact are low. <p>The clarification of the definitions would also potentially lead to an increased (and harmonised) level of protection of consumers obtaining credit which is not clearly covered by the CCD (e.g. P2PL). For this measure to have an impact, it requires that Member States decide to follow the guidelines. If, on the contrary, the guidelines go against what is already established in national legislation, the measure would have no impact. The likelihood of this impact is therefore low, and so is its impact (i.e. even if it is applied in a number of Member States, it would only improve the situation of a small share of consumers).</p> <p>The guidance on aspects not harmonised by the CCD (e.g. responsible lending practices, use of alternative sources of data) would:</p> <ul style="list-style-type: none"> • Improve consumer protection against irresponsible lending practices, although only insofar as Member States and/or credit providers/intermediaries decide to follow the guidelines. For this reason, the likelihood and magnitude of this impact are low. • Increase protection of consumer data privacy and fundamental rights by improving the understanding of existing obligations under the GDPR. Since there is some uncertainty about the use of alternative data and automated decision-making tools, these guidelines are likely to clarify them to some extent, but their impact would be low as they would not create additional obligations for credit providers/intermediaries. <p>As a result of the above, some of the measures featured in Policy Option 1 are expected to eventually result in a decrease in consumer detriment, which would vary across measures but would in any case remain limited. The reduction of consumer detriment can be explained by:</p> <ul style="list-style-type: none"> • Less unsuitable credit being sold to consumers due to the combination of several measures. The support to financial education and debt advice services are the measures with the greatest impact on this outcome, with both its likelihood and magnitude deemed as high. It would achieve this by increasing the level of financial literacy (i.e. consumers become more aware of the risks) and the enhanced support to over-indebted consumers (i.e. over-indebted consumers would avoid obtaining higher cost credit). The awareness raising campaigns would contribute to this end, but to a much lesser extent; the likelihood would be 	

medium, but their impact is deemed low. If the non-binding guidance on responsible lending and CWAs is considered by Member States and credit providers/intermediaries, these measures would also have a (limited) impact on this outcome, but the likelihood that this will happen is low.

- Less uncertainty about the rights and obligations in the CCD as well as other pieces of EU legislation (e.g. GDPR), which would **facilitate their enforcement** in some cases, leading to a limited reduction of consumer detriment. As this would only happen if Member States and/or credit providers/intermediaries decide to follow the guidelines, the likelihood of this impact is also low.
- To some extent, the decrease in the level of over-indebtedness (as explained above), although this is expected to be very limited due to the restricted scope or the non-binding nature of the measures.

To conclude, supporting the implementation of debt advice services is very likely to raise the level of protection of consumers who are over-indebted or at risk of over-indebtedness. Debt advice services are considered a very useful tool to support this group of consumers, and a lack of resources is one of the key obstacles limiting their availability across the EU. The likelihood that this measure will yield (some) positive results is therefore deemed high, and so is its impact on consumer protection.

On the flipside, since measures such as debt moratoria entail costs for credit providers, they could entail an increase in the cost of credit for consumers.

Rationale for scoring

Overall, Option 1 is expected to have a positive – although very limited due to the non-binding nature of most measures – effect on consumer protection and reduced detriment.

Compared to the baseline, these measures could represent an improvement in terms of consumer protection and detriment given that both the potential positive impacts are expected to offset the possible negative effect, both in terms of likelihood and magnitude. However, the situation for consumers will improve only to a very limited extent.

Impact on industry: level playing field and competition and cross-border sales of credit

Score	0
Description of expected impacts	
<p>Two types of measures are relevant when discussing the impact of Option 1 on the level playing field and the level of cross-border sales:</p> <ul style="list-style-type: none"> • Clarification of unclear CCD terms: if all – or a significant number of - Member States who have not established more detailed requirements when transposing the CCD follow the guidelines when interpreting the obligations, the guidance could lead to a more uniform interpretation of the CCD across Member States. Similarly, the clarification of the definitions, could potentially lead a more level playing field for credit providers/intermediaries by increasing the share of market players bound by CCD rules. However, this would only happen in Member States that decide to transpose these guidelines at national level. Even in cases where this happens, the magnitude of this impact would be low as it would only concern a relatively small share of market players. 	

- Guidelines on the type of information to be used during CWAs, in line with EBA guidelines: EBA guidelines on loan origination apply to financial institutions. Therefore, establishing guidelines that would apply to all credit providers would ensure fairer competition. They could lead to a more uniform implementation of the obligation to consider 'sufficient information' when carrying out CWAs, provided that a significant number of Member States follow the guidance. However, the likelihood and impact of these impacts is limited due to the non-binding nature of the guidelines.

The other non-binding measures are not expected to have a tangible impact on the level of competition / playing field in the consumer credit market or the cross-border provision of credit, unless they are transposed at national level by all Member States.

Rationale for scoring

Option 1 would have an almost negligible (positive) impact on the level of competition, level playing field and cross-border market, notably because non-binding measures would not ensure that the same rules apply to all credit providers across the EU. Admittedly, if the guidance is followed by a significant number of Member States, it would result in a more harmonised regulatory framework. However, the likelihood that this will happen with certain aspects which are not part of the CCD is too restricted to be considered. In the case of guidelines touching upon aspects harmonised, but not fully, by the CCD, the likelihood is a bit higher, even if still low.

Impact on industry: overall compliance costs

Score	-1
Description of expected impacts	
<p>Option 1 is not expected to trigger any major compliance costs for credit providers i.e. time spent to familiarise with new guidelines, internal communications and training of staff, and costs of updating/adapting IT systems. Because the measures are non-binding, credit providers/intermediaries will most likely avoid implementing any changes which would entail important costs.</p> <p>An exception to this would be if a given Member States decides to adopt national legislation/binding guidelines at national level, following the EU-level guidance. However, the likelihood that this will happen in many Member States is low and therefore, the overall impact across the EU would still be low.</p> <p>One of the measures could potentially entail important costs for a group of credit providers, the clarification of the definitions. In those Member States in which consumer credit provided through, e.g. P2PL, is excluded from the legislative framework transposing the CCD, the guidelines could potentially lead to a broadening of the scope of the national laws. This would have a significant impact on these credit providers, who would have to comply with the totality of CCD obligations and face costs i.e. initial communication / staff training regarding the CCD obligations, additional cost of advertisements to comply with information-related requirements, additional cost of carrying out CWAs.</p>	
Rationale for scoring	
<p>As mentioned above, the measures that could potentially entail costs for credit providers/intermediaries are non-binding. Therefore, the likelihood of these costs is expected to be low. Their magnitude would be determined by the number of Member</p>	

States that ultimately decide to follow the guidelines, and the extent and nature of the additional national requirements, making it difficult to assess at this stage. Nonetheless, even if limited costs, some compliance costs could be expected if the guidance is followed.

Impact on EU public administration

Score	-1
Description of expected impacts	
<p>EU public administration is the most surely impacted by Option 1 given that even if guidance is not binding, it would still require the Commission to dedicate time and resources to develop it. The key impacts or costs will be:</p> <ul style="list-style-type: none"> • Development of guidelines/guidance, including conducting research on current practices and potential impacts. This is particularly the case for the documents clarifying the definitions of Art. 3a and on how to regulate responsible lending aspects. In contrast, the documents covering the information to be used by CWA would require less effort as they would follow the EBA guidelines. • Public consultations with key stakeholders, especially to develop the guidelines on responsible lending practices. • Dissemination of guidelines, including translation to all EU official languages. • Interservice collaboration, e.g. with the Legal Service. • Regular monitoring or assessment of the level of update of the guidelines and recommendation. <p>The support to national organisations or the launch of awareness raising campaigns through the ECCs will generate costs such as:</p> <ul style="list-style-type: none"> • Costs (resources, time) linked to the negotiation with Member States on the organisation of awareness raising campaigns through the ECCs (as this is not part of their usual remit and these centres are co-funded by the EU and national governments), and drafting/translating supporting material. • Deployment and coordination of additional funding for ECCs (i.e. awareness raising campaigns) and for consumer organisations and public bodies (i.e. support to financial education and debt advice initiatives). • Regular collaboration with ECCs to devise the annual raising campaigns. • Monitoring / evaluation of campaigns / initiatives. <p>The likelihood of these impacts is high (if not certain), but their magnitude is low to moderate.</p>	
Rationale for scoring	
<p>Compared to the baseline, Option 1 entails moderate costs for EU institutions. The development of guidelines and the implementation of certain non-regulatory measures would require lower costs compared to what would be required for an amendment of the CCD.</p>	

Impact on MS-level public administrations

Score	0
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Description of expected impacts
<p>The implementation of this Option will also require national authorities to dedicate time and resources to contribute to the development and implementation of the measures. National authorities will be requested to participate in the consultation process ran by the Commission to develop the content of the guidelines. Once adopted, they will also have to transpose them or translate them at national level to ensure that they can be understood by all key stakeholders. The likelihood of these impacts is high (certain), but their magnitude is low as they are not very resource intensive.</p> <p>National authorities will also have to engage with the Commission at the start of the process to discuss and agree on the implementation of the awareness raising campaigns through the ECCs as well as the step-up of efforts in the areas of financial education and debt advice. Later on, these measures will require ECCs and the organisations (or public bodies) receiving support to dedicate additional resources to implement these measures as well as report on the outcome of the initiatives. However, the additional funding should cover most of these costs.</p> <p>On the positive side, the clarification of obligations and adoption of guidance can be expected to benefit, to some extent, enforcement authorities by improving legal clarity and facilitating the interpretation of the CCD. It could also potentially lead to a slightly lower number of consumer complaints and compliance issues.</p>
Rationale for scoring
<p>Option 1 would generate some costs for national authorities. However, since the guidelines do not need to be transposed into national legislation, the initial costs would be significantly lower than adopting legislative measures.</p> <p>This option is also likely to produce (limited) benefits for national authorities, notably linked to the facilitation of enforcement due to an easier interpretation of the obligations contained in the CCD, and possibly a (very small) decrease in the number of consumer complaints.</p> <p>On balance, the potential benefits are expected to compensate for the initial costs.</p>

8.2.2.2 Effectiveness

<i>Score</i>	1
Rationale for scoring	
<p>Overall, this policy option would allow the EU to make very limited progress towards the specific and operational objectives laid down. It is deemed to be slightly effective.</p> <p>The measures would facilitate the interpretation of some CCD provisions which affect its scope of application or the obligations concerning the provision of information, CWAs or the rights of early repayment and withdrawal. It would also provide a reference framework for Member States wishing to regulate aspects not covered by it. However, two key limitations affecting the option's effectiveness have been identified:</p> <ul style="list-style-type: none"> • some of the issues identified (e.g. limited scope of the Directive) cannot be fully tackled through non-regulatory measures; and 	

- their effectiveness would ultimately depend on the will of national legislators and credit providers to follow the non-binding guidance.

Like Option 0, a majority of stakeholders consulted do not expect Policy option 1 to have an impact on the level of over-indebtedness, although some disagree.⁴⁴

Description

Reducing the detriment arising from unregulated products (SO1):

The main tool under Option 1 to achieve the first specific objective is an official communication issued by the European Commission clarifying the definitions of 'credit provider' and 'credit intermediary' contained in Article 3. This document would promote a higher level of harmonisation in regard to the scope of application of the CCD and better coverage of detrimental consumer products (OO1.1), but only to a certain extent. Through this non-legislative guidance, Option 1 would address the issues related to the uncertainty surrounding the coverage of certain products, notably P2PL.

This option would not however ensure that all consumer products are covered by the Directive. Some of the products that entail the most risk for consumers explicitly excluded from the scope of application as per Art. 2 CCD, e.g. loans below EUR 200, some leasing agreements, zero interest rate loans. Addressing this issue would therefore require a legislative amendment.

According to the feedback gathered, industry representatives⁴⁵ are the main group that believes that Option 1 would be effective in addressing scope-related objectives.⁴⁶

Rating (SO1): + (Slightly effective)

Ensure that credit granting is based on a thorough assessment of the consumer's best interest (SO2):

Policy option 1 includes two non-regulatory measures seeking to ensure responsible product design and lending / borrowing practices (OO2.1), and two measures aiming at further harmonising CWA rules and strengthening their effectiveness (OO2.2). Three of these measures would also help to improve conditions for enforcement and reinforce enforcement coordination (OO2.3).

To ensure responsible lending, EU-level guidelines and recommendations would be adopted to provide guidance for Member States on how to regulate relevant aspects not harmonised by the CCD, such as cross-selling practices, interest rate caps, advisory services on suitable products, rollover practices, etc. Such guidelines could serve as inspiration for Member States looking to regulate these practices, but their effectiveness is likely to be limited due to their non-binding nature. On the one hand, it is very unlikely that Member States that have already regulated these aspects would change their regulatory approach to align it with the guidelines / recommendations.

⁴⁴ Follow-up survey. Across all stakeholder groups, 9 indicated that the level of over-indebtedness would remain the same, 4 that it would decrease, and 2 that it would increase.

⁴⁵ Business associations, credit providers/intermediaries and other businesses involved in the marketing and provision of consumer credit, as further explained in the stakeholder synopsis report (Annex 4).

⁴⁶ A majority of industry representatives (6 out of 9 business associations, 1 out of 1 credit providers/intermediaries and 0 out of 1 other businesses) believe that this Option would be effective in addressing Problem 1, while only a minority of consumer organisations (1 out of 3 respondents) and national authorities (2 out of 6 respondents) do.

To promote responsible borrowing, an awareness raising campaign would be implemented through the European Consumer Centre in each Member State. This measure could potentially help ensure that consumers are more aware of the risks of obtaining credit. Such a campaign could have a positive effect on the behaviour of consumers, especially if it is properly designed and implemented to reach population groups with a lower level of financial literacy. However, its effectiveness is not expected to be higher than that of the warning messages included in advertisements in some Member States which highlight the risks and costs of obtaining credit.

To harmonise and improve the effectiveness of CWA rules, the European Commission would establish non-regulatory guidance on the type of information that credit providers should assess during a CWA – in line with the EBA guidelines on loan origination to ensure that no additional or contradicting guidance is given.⁴⁷ The main advantage of these guidelines is that they would apply to all credit providers who are bound by CCD rules, as opposed to only financial institutions. They can be expected to help credit providers better understand what their CWA obligations entail and to facilitate the enforcement of CCD rules by helping national authorities interpret the provisions of the CCD. However, as mentioned above, their non-binding nature would limit their effectiveness, which would ultimately depend on the will of credit providers and national legislators to follow the guidelines.

In the follow up survey, Option 1 emerged as one of the two options (together with Option 2) most positively rated in addressing the issues leading to this specific objective (Problem 2), but a closer analysis reveals that while a majority of industry representatives believe that it would be effective, only a minority of consumer organisations and national authorities share this view.⁴⁸

Rating (SO2): ++ (Moderately effective)

Ensuring that consumers obtaining credit are empowered by proper information on the risks, costs and impact of credit on their finances, also via digital means (SO3):

Two non-regulatory measures are included under Policy option 1 to achieve this objective. The first measure is an awareness raising campaign implemented through the ECCs in each Member State to provide clarity on elements that are identified as unclear (e.g. APR). This can be expected to have a positive – albeit limited – impact on the effectiveness of the information disclosed to consumers prior to signing the contract. If properly implemented and tailored to consumers in each country – especially groups with lower levels of financial literacy – the campaign would improve consumers’ understanding of certain key pieces of information which are notoriously problematic due to their complexity. This would have a positive impact on their ability to properly process the information disclosed to them prior to signing the contract, which has been identified as one of the key issues limiting the effectiveness of the

⁴⁷ The information required by the EBA guidelines includes: evidence of identification and residence, information on the purpose of the loan and evidence of eligibility for the purposes of the loan (where applicable), evidence of employment (including type, sector, status and duration), evidence of income and other sources of repayment, information on financial assets and liabilities, information on other financial commitments, information on household composition and dependants, evidence of tax status, evidence of life insurance for the named borrowers and data from credit registers of credit information bureaux (where applicable), and information on guarantees.

⁴⁸ Follow-up survey. A majority of industry representatives indicated that Policy option 1 would be effective in addressing Problem 2 (5 out of 9 business associations, 1 out of 1 credit provider, 0 out of 1 other businesses), in contrast to a minority of consumer organisations (1 out of 3 respondents) and national authorities (2 out of 6 respondents).

information-related requirements. However, the measure is too restricted to effectively solve the wider issue relating to the ineffectiveness of these rules, as it does not tackle the inadequacy of the information requirements currently imposed by the CCD.

The effectiveness of the clarification of terms used in the CCD which may be subject to interpretation (e.g. 'in good time' and 'adequate explanations') is also likely to be limited. By providing EU-level guidance on what the CCD obligations entail which would be used by both credit providers and national authorities, it could theoretically improve information disclosure (OO3.1), reduce legal fragmentation and facilitate the conditions for enforcement (OO3.2). However, its effectiveness would be once again determined by the willingness of credit providers and national authorities to follow these guidelines. In practice, this measure is not expected to have an impact on the level of compliance, according to a majority of stakeholders (in all groups) consulted. In the best case scenario, it is probable that it will only help tackle a small share of compliance issues (i.e. cases in which credit providers / intermediaries wish to comply but are not sure what the obligation entails).

The feedback on the policy options gathered from stakeholders indicates that industry representatives and consumer organisations are more optimistic about the effectiveness of Option 1 to address the problems leading to this specific objective (Problem 3). Among them, a majority of indicated that it would be effective, as opposed to a minority of national authorities.⁴⁹

Rating (SO3): + (Slightly effective)

Prevent that specific individual or systemic situations exacerbate consumer detriment and increase over-indebtedness(SO4):

Among the two measures foreseen under policy option 1 to support and protect consumers who are over-indebted (OO4.1), the increase of funding for national consumers organisations to support the implementation of financial education and debt advice and assistance initiatives has the potential to be particularly (cost-) effective. By relying on organisations that are already active in this field, it builds on their know-how, networks and already established reputation, while helping them overcome one of their lack of resources. Considering this, several national researchers argued that this measure would be quite effective.

The effectiveness of EU-level guidance on measures that can be adopted to support indebted consumers impacted by external economic disruptions is likely to be more limited. While the guidance can provide a reference framework for Member States, potentially leading to a more uniform approach across the EU, its effectiveness would be reduced by its non-binding nature. During the pandemic, the European Commission published guidance with best practices in relation to relief measures (in July 2020), which according to evidence from a couple of Member States reported by an EU-level consumer association, were not systematically followed. This may be explained by the fact that the rules already exist in some Member States, which have adapted their approach to the specificities of the national context.⁵⁰

Rating (SO4): + (Slightly effective)

⁴⁹ Follow-survey. A majority of industry representatives (4 out of 9 business associations, 0 out of 1 credit provider, 1 out of 1 other businesses) and consumer organisations (2 out of 3 respondents) indicated that Policy option 1 would be effective in addressing Problem 3, in contrast to a minority of national authorities (2 out of 6 respondents).

⁵⁰ Follow-up survey (2 open-ended responses from consumer organisations).

Promote an enabling business environment across the EU and reduce costs for providers offering consumer credit cross-border while enabling more choices for consumers (SO5):

This objective relies heavily on the further harmonisation of rules to foster, on the one hand, a level playing field by credit providers (OO5.1) and a lower degree of legal fragmentation in the implementation of the CCD across Member States (OO5.2). For the most part, both objectives are indirectly addressed by some of the measures adopted in the context of the other four specific objectives.

In the context of policy option 1, the clarification of the terms ‘creditor’ and ‘credit provider’, the provision of guidance concerning the type of information to be assessed during a CWA (including guidance on the use of alternative data) and the clarification of terms that may be subject to interpretation would indirectly ensure a more interpretation of the CCD across the EU. This would ensure some progress towards the further harmonisation of EU rules, but their effect would be limited due to their non-binding nature and their inability to tackle some of the issues emerging directly from the provisions of the CCD.

The feedback from the follow-up survey on policy options shows that Option 1 is deemed to be effective to address the problems related to this specific objective (Problem 4) by industry representatives, but the same cannot be said about consumer organisations and national authorities.⁵¹

Rating (SO5): + (Slightly effective)

8.2.2.3 Coherence

<i>Score</i>	2
Rationale for scoring	
Legal feasibility (including proportionality and subsidiarity):	
<p>As described above, the EU is competent to legislate in the area of consumer credit (shared competences, having due regard to Article 4(2)(f), 114, 169 and 12 TFEU). Furthermore, Article 288 TFEU provides the institutions of the European Union with the possibility to adopt recommendations and opinions, two non-legally binding instruments.</p> <p>In this light, the EU has the competence to issue EU-level guidelines and recommendations on how to regulate aspects not harmonised by the CCD. Nonetheless, several aspects need to be considered:</p> <ul style="list-style-type: none"> • The remit of ECCs is to provide advice and assistance to consumers in the EU, Norway and Iceland, focusing on cross-border shopping in the EU. While some of them may implement awareness-raising activities, running an awareness raising campaign focusing on, for instance, APR or responsible lending, may fall outside their usual remit. Therefore, these measures may require an amendment of their established roles. 	

⁵¹ Follow-up survey. A majority of industry representatives (7 out of 9 business associations, 1 out of 1 credit provider, 0 out of 1 other businesses) indicated that Policy option 1 would be effective in addressing Problem 4, in contrast to no consumer organisations (0 out of 3) and a minority of national authorities (2 out of 6 respondents).

- The additional funding provided to consumer organisations or national authorities would need to fall within the scope of existing programmes. In this case, the Consumer Programme (2014 – 2020) appears to be an adequate tool to channel these funds, but only insofar as the activities are in line with the specifications of the programme.

Coherence with existing EU legislation:

Within the boundaries set by the current CCD, the guidelines would consider existing EU-level legislation. In fact, some of these guidelines will aim at integrating rules or principles that pertain to other existing policies and to adapt them to the specificities of the consumer credit landscape. For example, providing guidance on the type of information that should be assessed during a CWA, is specifically designed to complement the existing EBA guidelines on loan origination assessment. Similarly, establishing guidelines on the use of automated decision-making to conduct CWA would reflect data protection principles established by the GDPR by considering the characteristics of the CWA in the context of consumer credit. Therefore, the implementation of Policy option 1 has the potential to enhance legal coherence between existing EU legal instruments, although their overall impact would be limited due to their non-binding character.

8.2.3 Policy option 2 – Amendment of provisions already contained in the CCD (i.e. targeted amendment)

8.2.3.1 Efficiency

Impact on consumer trust, choices, behaviour and inclusion

Score	2
Description of expected impacts	
<p>The measures included in Option 2 could potentially positively influence consumer behaviour and consumer choice in various ways, with some of them also potentially leading to a reduction in the level of over-indebtedness:</p> <ul style="list-style-type: none"> • The broadening of the scope of the CCD would imply that credit providers offering consumer credit currently out of its scope (or not clearly covered by the CCD) would be obliged to comply with CCD rules, including the information-requirements. This would mean that consumers would receive more information, potentially increasing their ability to make better informed purchasing decisions. The likelihood and magnitude of this impact is moderate because many Member States have already extended the scope of the CCD to some of these products. Although to a lesser extent, the broadening of the scope could also potentially increase consumers’ trust in these products, potentially widening the offer to which they can safely access. • In terms of its impact on over-indebtedness and social inclusion, this measure would have a rather positive impact. It would ensure that all (or most) consumers are awarded the same level of protection, therefore reducing discrimination and increasing social inclusion, especially as some of the products that are currently out of the scope of application of CCD (and which are deemed potentially very detrimental) are more often used by vulnerable consumers. On the flipside, the additional burden on business operators may ultimately lead to the disappearance of certain credit products, which restrict access to credit. However, such products are deemed to be quite risky for consumers 	

- The simplification of information-requirements to focus on key (advertising and pre-contractual) information are expected to have a significant positive impact on consumer behaviour. In fact, according to current behavioural economics literature, consumers' ability to properly process information improves when key information is presented more prominently. This would result in consumers becoming more aware of the credit products they purchase, and could lead to more responsible borrowing practices. In fact, it is worth mentioning that Option 2 is one of the two options (together with Option 3b) that received an overall positive feedback in terms of impact on the level of over-indebtedness. A possible explanation for this is that both options foresee the simplification of the information provided to consumers at advertising and pre-contractual stage, which is expected to increase the level of consumer awareness and improve the decision-making process.
- The detailed requirements on the timing of pre-contractual information could also be expected to affect, to some extent, consumer behaviour. By ensuring that consumers receive the pre-contractual information well ahead of signing the contract (and potentially establishing a fixed timeline), consumers would have more time to review the information, possibly avoiding rushed decisions.
- If the detailed requirements on how CWAs need to be conducted require credit providers / intermediaries to obtain the information from borrowers (even if further checks are carried out), this measure could also have a positive – albeit limited – impact on consumer behaviour. This is because consumers would be better aware of the information that is considered during CWAs, and potentially the reasons why their request is granted or rejected. This information could also help them improve their situation. This is also expected to reduce – if only slightly – the number of consumers who are granted credit which is unsuitable to their situation. Combined, these measures could potentially lead to a (limited) reduction of over-indebtedness.
- Some of the non-regulatory measures included in Option 2 would also have some impact on consumer behaviour. The increased support to financial education and debt advice initiatives is the measure most likely to have an impact on the way that consumers decide to purchase credit, as it increases their ability to understand the key risks and navigate financially strained situations, helping them to avoid purchasing products that are possibly detrimental.

On the flipside, Option 2 could result in an increase in the price of consumer credit as credit providers revert on consumers the additional costs of compliance in which they would incur as a result of some measures (e.g. on CWA). The price of consumer credit currently outside of the scope of the CCD could also be expected to increase, especially for loans below EUR 200 (e.g. payday loans), but also other products (e.g. pawnshop agreements). Ultimately, some operators might be pushed out of the market, reducing the offer for consumers, in particular those in need of fast credit.⁵² At the same time, the products which are more likely to disappear are the most detrimental ones for consumers, especially vulnerable consumers. While costs are passed on to consumers the effects might stabilise over time as continued competition and smaller margins in a very competitive landscape of banks and non-bank lenders might mitigate this risk.

Rationale for scoring

⁵² To avoid this, some industry representatives consulted indicated that further enforcement of current rules to ensure that these credits are subject to national supervision would be preferable (Follow-up survey (3 open-ended responses from business associations)).

The overall assessment of Option 2 in relation to consumer trust, social inclusion and the level of over-indebtedness is positive.

Even if the scope of the amendment is more limited than in Options 3a and 3b, some of the measures featured in Option 2 would result in significant advantages for consumers, whose ability to make better informed decisions is expected to be positively shaped by e.g. the simplification of information disclosed in advertising or at pre-contractual stage, or the broadening of the scope of the CCD.

In contrast, some credit providers (most likely those offering products detrimental to consumers) may be eliminated from the market.

Impact on consumer protection (rights/redress) and reduced detriment

Score	2
Description of expected impacts	
<p>Option 2 is expected to increase the level of consumer protection in the following ways:</p> <ul style="list-style-type: none"> • As a result of the broader scope of the CCD, a larger share of consumers across the EU would be protected. The likelihood of this impact is high, but its magnitude is moderate because it would only affect a small share of consumers at EU level, especially considering that many Member States have already extended the scope of application of CCD rules at national level. At national level, the impact on consumer protection could be determined by two main factors: the regulatory approach, and the number of consumers using these products. For instance, in Latvia, where P2PL is widely spread, the clarification of the definitions in Art. 3 would have a greater impact than in other Member States where these products are barely used. Similarly, credit below EUR 200 is more popular in some Member States than others. • Similarly, the improved legal clarity of the CCD provisions (due to the clarification of definitions and terms - e.g. 'adequate explanations' - or to the more detailed requirements regarding CWAs or pre-contractual information) is expected to improve, to some extent, the enforcement of the obligations. This is because, on the one hand, consumers would be better placed to judge if a credit provider is being uncompliant and seek redress. On the other hand, enforcement authorities would be able to identify uncompliant practices and enforce the CCD obligations (i.e. poorly conducted CWAs or late provision of pre-contractual information). In a marginal number of cases, legal clarity could also increase the level of compliance by enabling credit providers/intermediaries to better understand their obligations. • The support provided to debt advice services would also have a limited impact on consumer protection. They would result in a higher level of protection and support to over-indebted consumers. The adoption of guidelines on measures to support indebted consumers impacted by economic disruptions also aims at moderately raising the level of consumer protection, although the likelihood that this will happen is deemed low because they would be non-binding. • Listing the elements that should, at a very minimum, be considered by national enforcement authorities when issuing sanctions would also have a limited, positive impact on the level of consumer protection across the EU. The list would ensure that a 'minimum set of elements' are taken into consideration by enforcement authorities in all Member States, potentially raising the standards in some 	

countries while not affecting the current practices in those which already take them into consideration.

For the same reasons listed above, Policy option 2 is expected to **reduce consumer detriment** to a moderate extent:

- A broader scope of application will certainly address some of the issues that consumers of credit products currently excluded are facing (i.e. poorly informed consumers, lack of CWAs), improving their situation. It will not however have an impact on some of the most detrimental aspects of these credits, such as the high cost of some of these credits. The impact on time losses and problems cannot be assessed with a total degree of certainty, but in view of the problems with credit products outside the scope of the CCD, its inclusion of those products in the CCD is expected to reduce problems and time losses.
- The rules on how to conduct CWAs are likely to reduce the number of consumers who are granted unsuitable credit, but they do not ensure that only when the outcome of the CWA is positive will a consumer be granted credit.
- The moderate gains in terms of compliance could potentially lead to fewer problems, although the likelihood that this will happen is very low because it would only affect situations in which compliance is hindered by a lack of legal clarity.
- The simplification of information provided to consumers prior to signing the contract and the establishment of a timeline regarding pre-contractual information would increase awareness and potentially lead to better decisions, which could eliminate problems faced by consumers, but only moderately.

In particular, the CBA carried out for this study covers some of the measures included in Policy option 2 and concludes that:

- The three scope-related measures would generate benefits (i.e. reduction in consumers' financial detriment and monetised time losses) of: EUR 276.18 million as a result of the removal of the thresholds, EUR 759.51 million linked to the inclusion of currently exempted loans as per Art. 2(2) CCD, and EUR 241.66 million linked to the changes in the definitions of the CCD (see Table 45 in Annex 10.2).
- The simplification of information-related requirements is also likely to have a potentially positive effect on consumer detriment, estimated at EUR 138.09 million in the case of the simplification of information in advertising and EUR 69.05 million as regards the measure concerning pre-contractual information (see Table 45 in Annex 10.2).

Rationale for scoring

The impact of Option 2 on the level of consumer protection – and ultimately, detriment – is overall deemed as positive. Among the main positive effects that can be identified, the protection of a larger share of consumers or the better identification of uncompliant practices due to the clearer EU-level legislative framework are worth highlighting.

Compared to Options 3a and 3b, Option 2 is expected to yield a less significant positive impact relative to the baseline. The measures contained in Option 2 would not turn the current situation around in terms of consumer protection and detriment mainly because this option fully addresses only some of the problems identified.

Impact on industry: level playing field and competition and cross-border sales of credit

Score	1
Description of expected impacts	
<p>The measures featured in Option 2 are likely to level the playing field within and across Member States, although only in a small number of areas. As a result of this, the playing field within and across Member States would be slightly levelled. This is particularly the case for the ones which concern the scope of application of the CCD – as they would ensure that all credit providers are bound by the same rules – but the higher degree of harmonisation in certain areas would also contribute to this, although to a lesser extent.</p> <p>In contrast, some credit providers offering products which are currently exempted from CCD obligations, may disappear from the market because their business model (often based on exploitation of consumer behaviour and situation) will be no longer profitable. Admittedly, these developments will benefit the operators remaining in the market but might have a slightly negative effect on the overall level of competition, which should however be restored over time in the very competitive landscape of banks and non-bank lenders.</p> <p>The higher degree of harmonisation – even if it is very limited – is also expected to contribute to reducing the costs of providing credit cross-border by facilitating business operators’ understanding of the legal framework in other Member States.</p>	
Rationale for scoring	
<p>The impact of Option 2 on the level playing field and the level of cross-border credit sales is expected to be overall positive but very limited. The higher degree of harmonisation and the broadening of the scope of the CCD would admittedly ensure a more level playing field among credit providers, both within and across Member States. It could also reduce the costs linked to providing credit in other Member States as the difference in the legislative framework would be reduced. However, this Option is not expected to have a major impact on the current situation for various reasons. Legal fragmentation is only one of numerous factors hindering the provision of cross-border credit, and the scope of the changes introduced in Option 2 is not sufficient to significantly alter the current situation.</p>	

Impact on industry: overall compliance costs

Score	-2
Description of expected impacts	
<p>The impact of Option 2 on compliance costs incurred by the industry can be summarised as follows:</p> <ul style="list-style-type: none"> • All credit providers will have to employ time and resources to familiarise themselves with the new obligations. They will also have to dedicate resources in the beginning to communicate the changes and train their staff members and to adapt their practices and IT systems, e.g. to comply with CWA or pre-contractual requirements. Certain segments of the market, where the level of compliance with the current obligations is comparatively lower, will be especially affected. • Compliance costs incurred by credit providers offering products who are currently excluded by the CCD will be higher. This is because on top of the above, they will 	

have to employ significant resources to adapt to the other obligations under the CCD, even sometimes adapting their business model.

- A small group of industry representatives engaged in EU policy-making will also dedicate resources to participate in the consultations organised as part of the legislative process. The fact that the industry seems to oppose some of the measures featured in this option suggests that the level of engagement that can be expected will be relatively high (although lower than for Options 3a and 3b).

Nonetheless, the costs are expected to be limited and/or offset due to several factors:

- It is expected that most credit providers will pass most of the compliance costs on to consumers.
- The improvements in the legal clarity of the CCD obligations may facilitate compliance, potentially reducing the risk of suffering financial losses linked to fines.
- The simplification of information-related requirements is expected to generate important savings linked to advertising costs, especially when certain communication channels are used.

Although an estimation of the total compliance costs that implementing Option 2 would generate for the industry, the study estimates that the scope-related measures will generate costs (i.e. investment in infrastructure, including IT, and personnel cost) of at least (see in Annex 10):

- EUR 146 million linked to the removal of thresholds;
- EUR 751 million as a result of the amendment of Art. 2(2); and
- EUR 389 million linked to the amendment of definitions.

Rationale for scoring

Any legislative amendment is expected to lead to compliance costs for the industry, which in the case of credit providers/intermediaries brought under the scope of the CCD will be significant. However, some measures are expected to generate some savings for the industry, and most credit providers/intermediaries will be able to offset part of the costs by increasing the price of their products.

Impact on EU public administration

Score	-1
Description of expected impacts	
<p>Any legislative amendment – regardless of its scope – is expected to generate higher costs for EU authorities than adopting non-binding guidance. This is because the process to table a legislative proposal and have it adopted by EU legislators requires more time and the involvement of a wider team than non-legislative measures. For this reason, the adoption of the three legislative options (Options 2, 3a and 3b) are expected to be more resource intensive than Options 1 and 0. Several key factors determine the exact level of resources needed:</p> <ul style="list-style-type: none"> • The scope of the amendment: in the case of Option 2, the fact that it is a targeted amendment means that it requires fewer resources than the extensive amendment foreseen under Options 3a and 3b. • The complexity of the provisions adopted: Option 2 includes certain amendments which are relatively easy to develop (e.g. those relating to the scope) and others 	

which are more complex, such as updating definitions in Art. 3 or defining the most optimal approach to CWA processes. These would require further research (e.g. on current practices and their expected impacts), consultations with a wide array of stakeholders and collaboration with subject-matter experts. For instance, the establishment of a timeframe for the provision of pre-contractual information should take account of the fact that the APR depends on the result of the CWA (e.g. a consumer with a good CWA score may be offered a loan with a lower APR). Therefore, the CWA needs to be completed before the consumer is provided with the pre-contractual information.

- The level of stakeholder pushback expected: the legislative process may become more resource-intensive when measures are controversial for one or more stakeholder groups. Among the measures included in Option 2, some seem to be very popular among all stakeholder groups, i.e. those relating to the simplification of pre-contractual information. However, the evidence gathered reveals that certain measures are especially controversial among industry representatives, notably those relating to the scope (in certain segments of the market), CWA or on the timing of pre-contractual information. In contrast, consumer organisations consulted tend to agree that Option 2 is not the optimal one. It can therefore be expected that Option 2 will receive criticism from both sides, potentially slowing down the adoption process.

Other costs incurred by EU institutions relate to the monitoring of the transposition and implementation by Member States, which will be higher in the first two to three years following the adoption of the CCD and reduce overtime.

As explained above, the adoption of non-regulatory measures will add to these costs. At EU level, the ECJ would continue to interpret the CCD when requested by national courts (through preliminary rulings).

On the positive side, the increased level of harmonisation is expected to lead to certain efficiency gains in relation to the enforcement of the CCD obligations, by facilitating the exchanges within the CPC network and the implementation of its tasks (e.g. identification common issues across the EU, coordinated actions).

Although the overall costs incurred by EU authorities to implement Option 2 could not be calculated, this study estimates that adopting the three scope-related measures would lead to, at least, the following costs (i.e. personnel costs) (see in Annex 10):

- EUR 2,600 for the removal of thresholds;
- EUR 30,000 as a result of the amendment of Art. 2(2); and
- EUR 22,000 linked to the amendment of definitions of Art. 3.

Rationale for scoring

The adoption of a legislative amendment of the CCD – combined with the implementation of non-regulatory measures – will require the Commission to employ a significant amount of resources. Although the magnitude of this impact is not as great as for Options 3a and 3b, due to the more restricted scope of the amendments, some provisions are expected to be complex to develop or controversial for certain groups of stakeholders, potentially slowing down the process. In turn, enforcement at EU level could be facilitated to some extent thanks to the higher degree of legal harmonisation. As a result, although the costs would still outweigh the benefits, the overall impact on EU public authorities would be slightly less negative than for Options 3a and 3b, and equivalent to Option 1 (due to the efficiency gains in enforcement).

Impact on MS-level public administrations

Score	0
Description of expected impacts	
<p>Similar to EU institutions, national authorities are expected to incur some unavoidable costs depending on of the level of ambition of the legislative amendment, as they will be required to transpose the amendment. The extent of these costs is determined by two main factors:</p> <ul style="list-style-type: none"> • The existing legislative framework at national level: some of the measures included in Option 2 have already been adopted by some Member States. In those Member States, the legislative changes – and therefore the resources employed – would be more limited. • The level of detail and the complexity of the provisions: measures that are more detailed or more complex to translate will generate more costs because legislators may encounter difficulties when translating them considering the national context. <p>Legislative amendments will also generate an obligation for Member States to report on the transposition of the measures and are likely to increase the costs linked to the reporting of the implementation of the measures. Finally, they will also lead to internal dissemination costs for public authorities, including enforcement (to ensure that they become familiar with the new measures).</p> <p>In contrast, the further elaboration of some of the CCD obligations or the list of aspects to be taken into account when issuing sanctions are expected to result in a higher degree of legal clarity, which would render enforcement procedures more efficient, to some degree. The marginal improvement in the level of compliance resulting from the improvement of legal clarity, together with the gains in consumer awareness and financial education (as a result of the non-regulatory measures included), could also lead to a slight decrease in consumer detriment and the number of complaints, allowing enforcement authorities to make better use of their resources. It is important to note that, as opposed to the costs which would mostly be one-off, they would be maintained over time.</p> <p>Although the quantification analysis does not capture the entirety of the measures included in Option 2, it estimates that the scope-related measures will generate the following costs for Member State-level authorities in terms of investments in infrastructure (including IT systems) and personnel cost (see in Annex 10):</p> <ul style="list-style-type: none"> • EUR 178,708 as a result of the removal of the thresholds; • EUR 619,508 linked to the amendment of Art. 2(2); and • EUR 533,139 from the amendment of the definitions of Art. 3. 	
Rationale for scoring	
<p>The option requires Member States to dedicate significant resources to transpose the amended CCD, although less so than for an extensive amendment. These costs are however expected to be countered by the positive impact of Option 2 on enforcement, which will be facilitated by some of the measures featured in this option. Since the positive impact on enforcement will be maintained over-time, the overall effect of this option on Member State-level authorities is deemed neutral.</p>	

8.2.3.2 Effectiveness

Score	3
Rationale for scoring	
<p>Broadly speaking, this policy option is deemed to be effective in addressing the specific and operational objectives highlighted in the intervention logic.</p> <p>It would be particularly effective in addressing issues related to the limited scope of application of the CCD and to the inadequacy of the CCD requirements for the provision of information at advertising and pre-contractual stage. This will also improve the level playing field in the EU and reduce legal fragmentation across the EU.</p> <p>This policy option is also deemed effective in improving the conditions to ensure responsible lending and borrowing practices (i.e. improved CWA), although to a lesser extent than Options 3a and 3b.</p> <p>This option would be less effective in what concerns the prevention of consumer detriment and over-indebtedness as a result of individual or systemic economic disruptions. Under this option, the only measure to achieve this objective would be the additional support to debt advice initiatives also included under Option 1.</p> <p>Below is a more detailed assessment of the effectiveness of policy option in addressing each of the specific (and operational) objectives.</p>	
Description	
<p>Reducing the detriment arising from unregulated products (SO1):</p> <p>Under Policy option 2, the scope of the CCD would be redefined. The minimum and maximum thresholds would be removed, and the list of exemptions under Art. 2 CCD would be reduced. This, together with the amendment of the definitions of 'creditor' and 'credit provider' included in Art. 3, would ensure that all products that have been identified as particularly problematic are brought under the scope of the CCD (e.g. credit below EUR 200, zero-interest loans, pawnshop agreements, leasing agreements, overdraft facilities, P2PL). The inclusion of credit below EUR 200 is deemed as a key measure to improve the protection of vulnerable consumers and reduce the level of over-indebtedness. Moreover, definitions which are sufficiently generic and adaptable to new developments would also ensure that other credit products which can potentially emerge in the future will also be covered by the CCD.</p> <p>As a result, the share of users of consumer credit who are guaranteed the level of protection awarded by the CCD would increase significantly, and the detriment caused by these products would reduce, at least to the extent that it relate to aspects regulated by the CCD.</p> <p>Indeed, despite the reservations that some industry representatives consulted on the policy options expressed about the removal of the minimum threshold of the Directive, industry representatives (particularly business associations) seemed to favour Option 2 over Option 3. In contrast, more national authorities and consumer organisations indicated that Option 3b would be more effective in targeting scope-related issues.</p> <p>The measures on expanding the scope and the thresholds could mean that for pawnshop agreements up to 3.1 million consumers could be covered by the CCD, 7.2 million for zero-interest loans, up to 8.2 million for leasing agreements, between 21</p>	

and 46 million for overdraft facilities, up to 20 million for STHC loans and roll-over credit, and 24 million consumers for cross-selling.

Rating (SO1): +++++ (Very effective)

Ensure that credit granting is based on a thorough assessment of the consumer's best interest (SO2):

To achieve this objective, Option 2 focuses on the amendment of the provisions of the CCD concerning CWAs, namely by further elaborating the definition of the phrase 'sufficient information'. Overall, this measure is seen as effective to address the problems relating to responsible lending by almost half of respondents answering to the follow-up survey on the policy options. The results show very different opinions across stakeholder groups, with national authorities being particularly optimistic, while industry representatives and consumer organisations are less so.⁵³

By establishing the procedure to be followed, this policy option is expected to result in a higher level of harmonisation of rules across Member States (OO2.2) and improve conditions for enforcement (OO2.3). A more detailed definition of 'sufficient information' would also facilitate the interpretation and implementation of the CCD. However, as it does not specify the information to be assessed, it is not sufficient to ensure a high degree of harmonisation on the information that credit providers must consider when conducting CWAs.

Both measures are expected to improve the conditions to lend responsibly by providing more clarity on the minimum requirements for these checks to be compliant. However, they would not ensure that credit is actually granted bearing in mind the consumer's best interest (OO2.1), given that credit providers would still be free to grant credit to a consumer whose creditworthiness is negative. This is not necessarily detrimental for consumers; in fact, it may improve the situation of those who would be financially excluded if the rules were applied strictly, an argument which has been repeatedly put forward by industry representatives. However, it may pose risks for vulnerable consumers, who may be harmed by irresponsible lending / borrowing practices.

The inclusion of a non-exhaustive list of criteria to be taken into consideration by competent authorities when issuing sanctions would also reinforce enforcement coordination (OO2.3), although differences in the enforcement provisions will remain as the rule does not prescribe the sanctions that should be taken.

Rating (SO2): ++ (Moderately effective)

Ensuring that consumers obtaining credit are empowered by effective information on the risks, costs and impact of credit on their finances, also via digital means (SO3):

The measures included under Policy option 2 to address this objective focus on the amendment of the information requirements laid down by the CCD to adapt them to current consumer behaviour and communication channels. The simplification of information provided at advertising stage on certain channels follow the recommendations from several recent studies analysing the way that consumers read and process information. Therefore, these measures are expected to be very effective in improving the disclosure of information both on traditional and digital means to

⁵³ Follow-up surveys (1 out of 7 business associations, 1 out of 1 credit providers/intermediaries, 0 out of 1 other businesses, 1 out of 3 consumer organisations, 6 out of 6 national authorities).

facilitate consumer understanding. This has been reflected in the feedback provided by stakeholders consulted for this study (across all stakeholder groups).⁵⁴

The positive impact of the simplification of information is also expected to increase thanks to the detailed requirements on when the pre-contractual information should be provided and the more detailed definition of 'adequate explanations'. Both measures are expected to improve the level of compliance by credit providers and improve conditions for enforcement by establishing detailed requirements as to what these obligations entail in practice. This is particularly the case for the first one, as the vagueness of the current provision on pre-contractual information has allowed credit providers to circumvent the spirit of the law by providing the information with insufficient time.

Rating (SO3): ++++ (Very effective)

Prevent that specific individual or systemic situations exacerbate consumer detriment and increase over-indebtedness(SO4):

The approach under Policy option 2 to address this specific objective only includes the additional support to debt advice and financial education initiatives, also included in Option 1. As explained above, this measure would only ensure certain progress towards this objective. Interestingly, the feedback from stakeholders on the policy options reveals that fewer industry representatives consider that Option 2 will be effective in addressing the issues leading to this specific objective as compared to Option 1.⁵⁵ Conversely, this was the preferred option for national authorities to address this problem.⁵⁶

Rating (SO4): + (Slightly effective)

Promote an enabling business environment across the EU and reduce costs for providers offering consumer credit cross-border while enabling more choices for consumers (SO5):

The broadening of the scope and the amendment of the definitions of 'creditor' and 'credit intermediary' are likely to be very effective measures to foster the level playing field for providers, as they would ensure that a wider range of credit providers are bound by CCD obligations in all Member States alike.

Other measures providing more detailed requirements about the assessment of consumers' creditworthiness and the provision of pre-contractual information would also reduce, to a certain extent, the legal fragmentation across Member States by harmonising some aspects which have been regulated differently at national level.

This option is not expected to have a negative impact on competition and consumer choice. The cost impacts for industry (see the assessment below) to broaden the scope of the CCD would not have unsurmountable impacts on the ability to operate across the EU, and hence not negatively impacting the supply side (credit market). Consumer choice would remain essentially intact.

⁵⁴ Follow-up survey. Option 2 (together with Option 3b) were the best rated in terms of effectiveness as far as problem 3 concerns (12 out of 20 responses across all stakeholder groups indicated that it would be effective). A majority of industry representatives (4 out of 7 business associations, 1 out of 1 credit providers and 0 out of 1 other businesses), consumer organisations (2 out of 3 responses) and national authorities (5 out of 6 responses) believe that the Option will be effective.

⁵⁵ Follow-up survey (1 out of 7 business associations, 1 out of 1 credit providers/intermediaries, 0 out of 1 other businesses)

⁵⁶ Follow-up survey (4 out of 6 responses from national authorities)

In addition, the amendment of the CCD to specify the type of negative information that credit databases can contain seeks to facilitate the exchange of information between credit databases in different Member States, with a view to tackling one of the obstacles to serve consumers in other Member States. While this amendment is not expected to have a major impact on the level of cross-border credit due to the role that other factors play in the decision of consumers and credit providers to engage in cross-border operations, it is likely to result in a slightly higher degree of harmonisation regarding the content of the databases. At the same time, it risks not to cover all relevant types of information in the future. Its effectiveness is therefore limited. Finally, the possible simplification of certain information requirements at advertising and pre-contractual support creating a more enabling business environment.

Rating (SO5): +++ (Effective)

8.2.3.3 Coherence

Score	3
Rationale for scoring	
<p>Legal feasibility (including proportionality and subsidiarity):</p> <p>As mentioned above, legal action in the area of consumer credit must occur within the legal parameters of Articles 4(2)(f), 169 and 12 TFEU, and in compliance with the principle of proportionality and subsidiarity. Nonetheless, given that these amendments would mainly target provisions already included in the CCD, an EU intervention is deemed legally feasible since the EU has already legislated in this policy area.</p> <p>The aim of certain amendments is to broaden the scope of the CCD by removing the minimum and maximum threshold, as well as including currently excluded loans (e.g. zero-interest loans, all leasing agreements, all overdraft facilities <i>inter alia</i>) and providing a more detailed definition of some key terms which affect its scope of application. Except for Cyprus and Greece, all Member States have already adopted transposing measure that extend the scope of the Directive in this sense. Indeed, 15 Member States⁵⁷ removed the minimum and/or the maximum threshold (fully or partially) when transposing the Directive in their national legislation. Similarly, the majority of Member States (15)⁵⁸ extended the scope of application of the CCD (or certain of its provisions) to consumer credit not covered by the Directive.</p> <p>Furthermore, a series of proposed amendments envisaged in Policy option 2 would modify those provisions referring to pre-contractual information, information provided at advertisement stage and CWA. The aim is to present key pre-contractual information in a more prominent way, establish detailed requirements in relation to when this information is provided to the consumer and, at the same time, reduce the amount of information provided to consumers in advertising. Also in this instance, 18 Member States⁵⁹ have already adopted more detailed measures in relation to information given at a pre-contractual stage and 25 Member States have imposed</p>	

⁵⁷ BE, BG, CZ, DE, DK, EE, ES, FI, FR, HU, IT, LV, PT, RO, SK.

⁵⁸ AT, BE, BG, CZ, EE, FI, FR, HR, HU, IT, NL, PT, RO, SI, SK.

⁵⁹ BE, BG, CZ, DE, ES, FI, FR, HR, HU, IE, LV, LT, LU, MT, NL, PT, SI, SE.

stricter requirements about the presentation of the information provided in the advertisement. Similarly, whereas Option 2 suggest to provide more detailed requirements in relation to how the CWA is conducted, the majority of Member State (15)⁶⁰ have already laid down further provisions defining how the CWA is to be conducted and imposing other obligations on creditors.

Therefore, an intervention of the EU is deemed not only legally feasible, but also necessary to avoid (further) fragmentation of national regulatory regimes and provide a harmonised EU-level framework. This move towards a more homogeneous implementation of the requirements already contained in the CCD appears proportionate as it would simply address key issues observed in the daily application of existing rules. It would not go beyond what is already provided for in the Directive. For that same reason, the subsidiarity test would not raise any issue around the legitimacy of the EU to act on that front.

In addition to the above-mentioned targeted amendments, Policy option 2 also provides for a small number of non-regulatory measures aimed at addressing any relevant element to cover specific gaps. An EU intervention appears to be legally feasible as for those measures envisaged in Policy option 1. However, as for Policy option 1, the use of non-regulatory measures will still leave a certain degree of discretion to Member State, maintaining a fragmented national regulatory regime across the EU.

Coherence with existing EU legislation:

Policy option 2 involves a series of targeted amendments to provisions that are already included in the CCD. The proposed measures would build upon the existing principles of the CCD but change some of the elements that have proved insufficient or inadequate in achieving the main objectives of the Directive.

As regards amendments to CCD's key definitions, it would reduce legal coherence in relation to the MCD as both Directives generally provide similar and coherent definitions. For instance, 'creditor' and 'credit intermediary' are defined in the same way in both texts, meaning that an amendment to Article 3 would negatively impact legal coherence. Similarly, the phrase 'in good time' is also used in the MCD, so any clarifications about its meaning could also potentially reduce legal coherence. Other measures, however, target terms that are specific to the CCD requirements (e.g. 'sufficient information'), in which case legal coherence would not be affected.

Extending the scope of the CCD should not affect the existing EU legal coherence provided that the types of loans included within its scope of application are not explicitly regulated by other legal instruments.

With respect to the simplification of information provided at advertising and pre-contractual stage, it is worth noting that the CCD and the MCD have adopted a very similar approach in this area, with almost identical requirements in terms of standard information that needs to be provided. Therefore, any change to these requirements will certainly not improve legal coherence between the two Directives. This is particularly the case for the information provided in advertising as the amended CCD would reduce the information displayed, focusing only on key information and diverging from the MCD. In turn, the measures aimed at addressing the way pre-contractual information is provided to consumers should not affect legal coherence as their aim is not to reduce the amount of information provided but to ensure the information is provided in a more prominent way, therefore not hampering the existing coherence in this respect with the similar provision in the MCD.

⁶⁰ BE, CZ, DK, ES, FI, HU, IT, LV, LT, NL, PL, RO, SI, SK, SE.

In what concerns the measure proposing the introduction of more detailed requirements in relation to how CWAs should be conducted would improve coherence with other EU-level instruments, i.e. EBA guidelines on loan origination, provided they are aligned.

In conclusion, the targeted amendments covered by Policy option 2 can be expected to lead to a more coherent EU framework because some of the provisions could bring the CCD closer to other EU-level measures relevant for credit providers. Nonetheless, certain measures (notably those concerning the simplification of information provided to consumers in advertising) would diverge from what is established in the MCD. For this reason, Option 2 is considered to increase coherence to a comparatively lesser extent than Option 3a.

8.2.4 Policy option 3a – Extensive amendment of the CCD to include certain new provisions, in line with EU regulation

8.2.4.1 Efficiency

Impact on consumer trust, choices, behaviour and inclusion

<i>Score</i>	3
Description of expected impacts	
<p>Policy option 3a is expected to have a mainly positive impact on consumer choices and behaviour.</p> <p>The prohibition of tying practices would give consumers the freedom to buy the products they want and that best meet their needs, without having to spend money on supplementary products/services that are not desired or necessary. The ban on pre-ticked boxes would also reduce the chances that consumers are convinced or misled into buying additional products they did not intend to purchase.</p> <p>Establishing an obligation on credit providers to inform consumers whether advisory services are, or can be, provided should help them to be better informed about the possibility to request advice on suitable products. Consumers who require financial advice would find it easier to select a credit provider that can provide this service.</p> <p>New rules on the remuneration of staff employed by credit providers and intermediaries and establishing an obligation for credit providers and credit intermediaries to ensure that staff members have the proper set of skills and knowledge should increase consumers' confidence in these organisations and their staff.</p> <p>Indicating that CWAs should take appropriate account of factors relevant to verifying the prospect of the consumer meeting his obligations under the credit agreement (in line with Article 18(1) MCD) should have a positive effect: fewer consumers would be able to obtain an unsuitable credit, which in turn should result in fewer over-indebted consumers.</p> <p>The introduction of these provisions of the MCD which promote responsible lending business practices are also expected to reduce the number of consumers obtaining unsustainable credit. Especially when combined with the broadening of the scope, these measures are likely to ultimately contribute to a limited reduction of over-indebtedness.</p>	

Regarding social inclusion, the broadening of the scope will contribute to social inclusion by ensuring that consumers obtaining credit currently outside of the scope of application of the Directive (notably vulnerable consumers) are guaranteed sufficient protection. Similarly, the reference to the European Accessibility Act is expected to lead to more inclusive advertisements and messages. In contrast, the possible disappearance of certain credit products as a result of the additional measures may result in lacking opportunities for certain specific consumers who may need quick loans in a given moment, irrespective of the costs of these loans. However, such products are likely to be potentially highly risky for consumers.

Rationale for scoring

Compared to the baseline, Option 3a is expected to have a positive impact on consumer choices and behaviour which would ultimately translate, into greater social inclusion and a potentially lower level of over-indebtedness. In terms of consumer behaviour and trust and the level of over-indebtedness, the introduction of MCD provisions on responsible lending are expected to lead to more responsible consumers and credit providers, positively shaping consumer behaviour and potentially leading to a positive impact on the level of over-indebtedness. As opposed to Options 2 (and 3b), Policy option 3a does not foresee any simplification of information disclosed to consumers at advertising stage, however it includes several other measures which are expected to have a very positive effect on consumer behaviour. Moreover, financial education and forbearance measures would be effective in increasing social inclusion.

Impact on consumer protection (rights/redress) and reduced detriment

Score	3
Description of expected impacts	
<p>Most of the measures under Option 3a are expected to provide positive impact on consumer protection. Overall, the measures are also likely to increase legal certainty, which should make enforcement easier, thereby further enhancing the protection of consumer rights. The improvements in terms of consumer protection would ultimately reflect positively on the reduction of consumer detriment across the EU. Broadly speaking, the inclusion of obligations on credit providers/intermediaries to lend responsibly should result in less unsuitable credit being sold to consumers, and therefore fewer problems faced by individuals affected by these practices.</p> <p>The measures that would generate the most positive impacts are:</p> <ul style="list-style-type: none"> Prohibiting product tying practices (in line with Article 12 MCD) and the use of pre-ticked boxes (in line with the Consumer Rights Directive) would protect consumers against cross-selling practices and would help to ensure that consumers are informed about the products that they purchase and avoid purchasing 'hidden' products. <p>This is likely to lead to a strong reduction in consumer detriment linked to unsuitable products tied to consumer credit (e.g. PPI). However, it is also worth noting that in the view of industry, product tying may benefit consumers because</p>	

it can allow creditors to provide a better price.⁶¹ Hence there is a slight risk that this measure could lead to a small increase in detriment for some consumers.

- Establishing an obligation for Member States to adopt measures to encourage creditors to exercise reasonable forbearance before enforcement procedures are initiated and limiting the charges when consumers default (in line with Article 28 MCD) should ensure that consumers are better protected against excessive charges in the case of default.

Consumers would also benefit from more lenient behaviour from creditors and would be given more flexibility to address late payments. Fewer consumers would resort to high-cost credit and so consumer detriment linked to this credit would also fall. Forbearances are also positive for creditors, as they allow debtors to repay their debts in a more feasible manner, avoid expensive legal complaints and preserve the relation of the credit providers with its clients and its public reputation. In addition, their "costs" are often lesser than the costs for the credit service that the creditor has to face for eviction and foreclosures, as well as the discount that it has to pay to the buyer of the unpaid credits.

- Under this option, consumers would also benefit, to some extent, from a more consistent and fair CWA process. A measure to indicate the factors that are relevant in the CWA process for verifying the prospect of the consumer meeting his obligations should help to reduce the number of consumers who are offered credit that they cannot afford. In turn, this should reduce the number of consumers facing difficulty with consumer credit and/or who are indebted.
- Establishing an obligation on credit providers to inform consumers whether advisory services are, or can be, provided (in line with Article 22(1) MCD) should enhance transparency, by ensuring that consumers know what to expect from their credit provider. This measure should also aid the enforcement of consumer rights, since it should be easier to spot when financial advice has not been provided or has not been provided properly.
- Lastly, by improving the conditions for enforcement, the provision on 'Competent Authorities' (in line with Art. 5 MCD) and on the 4% rule contained in the Omnibus Directive would have a positive impact on consumer protection (i.e. in cross-border cases, the possibility for a supervisory authority to issue a fine whose maximum amount is at least 4% of the credit provider/intermediary's annual turnover in the Member State(s) concerned). This is particularly true for the former, as it would oblige Member States to ensure that enforcement authorities have the adequate powers and resources to investigate consumer credit-related cases. In contrast, as the Omnibus Directive applies to consumer credit, the introduction of the 4% rule in the CCD would not have a great added value, but would ensure consistency.
- Establishing conduct of business rules on the remuneration policy of credit providers and intermediaries to ensure that they are not incentivised to lend irresponsibly (in line with Article 7(3) MCD) should be very beneficial for consumers. Staff should be disincentivised from mis-selling and other forms of exploitive or deceitful market conduct.

In addition to the benefits highlighted under Policy option 2 concerning the three scope-related measures, some of the measures under Option 3a can be expected to

⁶¹ CEPS & Van Dijk Management Consultants (2009): Tying and other potentially unfair commercial practices in the retail financial services sector, Final Report for the European Commission, available at: https://ec.europa.eu/finance/consultations/2010/tying/docs/report_en.pdf

generate the following benefits (i.e. reduction in consumers' financial detriment and monetised time losses) (see further details in **Error! Reference source not found.** in Annex 10.2):

- The prohibition of product-tying practices would generate EUR 138.09 million in benefits.
- The establishment of a right of consumers to request and receive an explanation on how and on what basis a decision on their creditworthiness was assessed would lead to savings amounting to EUR 138.09 million.
- The obligation upon the Commission to regularly assess the financial education and digital literacy initiatives implemented would also generate savings of EUR 34.52 million.
- The obligation on credit providers to inform consumers whether advisory services are or can be provided would lead to savings of EUR 20.71 million.

Rationale for scoring

Option 3a measures are expected to have a positive impact on consumer protection. Furthermore, the enforcement-related measures foreseen under Option 3a are expected to allow authorities to step up their enforcement efforts, therefore increasing the level of consumer protection.

Impact on industry: level playing field and competition and cross-border sales of credit

Score	2
Description of expected impacts	
<p>In addition to ensuring a higher degree of legal coherence with other EU regulation (notably the MCD and GDPR), Option 3a is expected to lead to a more harmonised regulatory approach to regulating consumer credit across the EU. The relatively higher degree of harmonisation, together with the broadening of the scope of the CCD – also foreseen under this option – would result in a more level playing field for credit providers. For example, adopting standards on the provision of advisory services, establishing conduct of business rules related to remuneration policies, and indicating that CWA should take appropriate account of factors relevant to verifying the prospect of the consumer meeting his obligations should all have a positive (though moderate) impact on harmonisation and, in turn, levelling the playing field for all market providers, across all Member States.</p> <p>In line with the argument presented under Option 2, a higher degree of harmonisation across Member States can be expected to facilitate the provision of cross-border credit, although only to some extent as this is only one of the many factors that prevent credit providers from selling credit in other Member States. In the case of Option 3a, some of the measures would surely contribute to reducing legal fragmentation.</p>	
Rationale for scoring	
<p>To assess the overall ability of Option 3a to yield benefits for the industry by levelling the playing field and facilitating the provision of cross-border credit, it is important to distinguish between the two aspects:</p>	

<ul style="list-style-type: none"> • In terms of level playing field and competition, it has been established that most measures under Option 3a would have a positive impact on levelling the playing field for industry. • As for cross-border sales, Option 3a is expected to lead to little change relative to the baseline. While a moderate impact is likely to arise from further harmonisation under some measures, there are many factors and costs besides the lack of harmonisation that hinder cross-border sales of credit that would not be addressed with further harmonisation (e.g. language barriers). <p>Compared to the other legislative packages (Options 2 and 3b), Option 3a is expected to yield an overall slightly more positive result, albeit still limited. This is because, on the one hand, it goes beyond Option 2 in harmonising the legal framework and ensuring that the same rules apply to a higher share of providers of consumer credit, both within and across Member States. On the other hand, although Option 3b would certainly a higher degree of harmonisation and the most level playing field, the negative impact that some of the most prescriptive measures featured in Option 3b would have on the level of competition in the consumer credit market are deemed to almost offset its positive impact.</p>

Impact on industry: overall compliance costs

Score	-3
Description of expected impacts	
<p>Policy Option 3a is likely to lead to certain compliance costs. Several of the measures under this option would require industry (e.g. legal departments) to familiarise themselves with the new legislative requirements. Furthermore, the introduction of new requirements would also give rise to a need for internal communication and staff training in relation to the new measures. Both these factors could create a high (albeit one-off) cost burden for industry.</p> <p>In addition to the costs linked to the broadening of the scope (specified under Policy option 2), this option is estimated to generate, at least, the following compliance costs for credit providers (see in Annex 10):</p> <ul style="list-style-type: none"> • EUR 91.3 million linked to the establishment of the right of consumers to request and receive an explanation on how and on what basis a decision on their creditworthiness was reached; • EUR 6.8 million linked to the adoption of the obligation upon credit providers to inform consumers whether advisory services are or can be provided; and • EUR 24.7 million in costs generated by the provision banning product-tying practices. 	
Rationale for scoring	
<p>Overall, Option 3a is expected to lead to moderate to significant compliance costs for industry, relative to the baseline. While several of the measures should give rise to low (or no) costs relative to the baseline, some measures are likely to give rise to certain compliance costs.</p>	

Impact on EU public administration

Score	-2
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Description of expected impacts
<p>Most of the measures under Option 3a are certain to create a moderate cost burden for EU public administrations. Like Options 2 and 3b, Option 3a would require an amendment of the legislative text of the CCD. This impact is certain and would entail a moderate, one-off, cost burden for EU public administration. Compared to Options 2 and 3a, the legislative process could be facilitated by the fact that the amended provisions would be modelled after existing legislation, requiring less research and resources to develop them. However, it is important to consider that this amendment is expected to receive significant pushback from the industry, rendering the process more difficult and resource intensive.</p> <p>On the other hand, improving the alignment between CCD and MCD should facilitate enforcement and interpretation by the CJEU. This would provide an ongoing and moderate benefit to EU public administration.</p> <p>In addition to the costs linked to the broadening of the scope (specified under Policy option 2), this option is estimated to generate, at least, the following costs (i.e. personnel costs) for EU public authorities (see in Annex 10):</p> <ul style="list-style-type: none"> • EUR 13,000 linked to the establishment of the right of consumers to request and receive an explanation on how and on what basis a decision on their creditworthiness was reached; • EUR 1 million as a result of the Commission’s obligation to regularly assess financial education initiatives implemented by Member States; • EUR 7,000 linked to the adoption of the obligation upon credit providers to inform consumers whether advisory services are or can be provided; and • EUR 8,000 generated by the provision banning product-tying practices.
Rationale for scoring
<p>The costs of amending the CCD to update the requirements and include new provisions (under Option 3a) would be significantly higher than for providing guidelines and implementing certain non-regulatory measures (as under Option 1). The costs would also be higher than only amending some of the provisions that are already contained in the CCD (as under Option 2).</p> <p>In terms of enforcement at EU level, it is worth noting that both Options 3a and 3b introduce new measures into the CCD and these provisions may need to be interpreted by the CJEU. In the case of Options 3a, the fact that the new measures are also contained in other pieces of EU legislation may simplify the legislative framework, which could potentially facilitate its enforcement and interpretation.</p> <p>Considering this, Option 3a is expected to generate more costs for EU public authorities than Option 2 but less than Option 3b.</p>

Impact on MS-level public administrations

<i>Score</i>	0
Description of expected impacts	
<p>Most of the measures to be adopted under Option 3a would have a moderate impact on Member State-level public administrations. Firstly, the revised text of the CCD would need to be transposed into national law in order to implement the measures. For most measures this would give rise to a moderate one-off cost. Establishing</p>	

conduct of business rules pertaining to remuneration policy may give rise to higher costs, since some national labour laws may also need to be amended.

In addition to reporting on the transposition of the amendments, public administrations would also be required to monitor compliance with the new requirements. For example, monitoring whether creditors and credit intermediaries are complying with the new conduct of business rules related to staff remuneration could be very costly (at least initially), as sales incentives are currently very common practice.

In contrast, the alignment with other EU legislation could facilitate enforcement, by simplifying the legislative framework applicable to credit. This is important considering that the same enforcement authorities who are responsible for consumer credit rules also enforce the rules applicable to mortgages. Therefore, the impact of the legislative changes would be balanced.

In addition to the costs linked to the scope-related measures (presented under Option 2), the quantitative assessment analysed the costs (i.e. investment in infrastructures, including IT systems, and personnel costs) incurred by Member State-level authorities to implement a number of measures featured in Option 3a, reaching the following minimum estimates (see further details in in Annex 10):

- The establishment of a right for consumers to receive an explanation of how the decision on their creditworthiness was reached would generate costs amounting to EUR 76,000;
- The introduction of an obligation upon credit providers to inform consumers whether advisory services are or can be provided would generate costs of EUR 95,000;
- The ban on product-tying practices would be the costliest measure of these three, generating costs of EUR 191,000 for Member State-level authorities.

Rationale for scoring

Although some of the measures to be implemented under Option 3a should not give rise to any additional costs for Member State-level public administrations relative to the baseline (and bearing in mind existing obligations that already exist under the other EU-level legislation), most of the measures are expected (with a very high degree of certainty) to have a moderate cost impact on Member State-level public administrations. However, the expected positive impact on enforcement may help reduce some of these costs. Thus, overall, the costs of Option 3a for Member States authorities are balanced with its benefits.

8.2.4.2 Effectiveness

Score	3
Rationale for scoring	
<p>The effectiveness of the measures included to achieve the specific and operational objectives is overall deemed to be significant. The inclusion of the MCD provisions on certain responsible lending practices are expected to be very effective. The changes to CWA rules foreseen will certainly improve legal coherence and they are likely to have limited impact favouring consumers on the assessment of consumers' creditworthiness and the use of alternative data and automated decision-making.</p> <p>This policy option is weaker than Option 2 or 3b on information requirements, as it would only introduce more details on the obligation to provide adequate explanations</p>	

and ensure that the information is equally accessible for consumers with particular needs. Therefore, they would modify the current rules to a limited extent. On the protection and support of indebted and over-indebted consumers, the introduction of the provision on forbearance measures is expected to be effective.

Overall, this policy option is considered effective. Moreover, Option 3a would ultimately ensure better alignment with the MCD and the GDPR while ensuring proportionality. Alignment is deemed beneficial because it allows for more uniform rules, improving legal clarity. Based on the feedback on the policy options, the opinions on its impact on the level are quite divided.⁶²

Description

Reducing the detriment arising from unregulated products (SO1):

Policy option 3a foresees the same scope-related measures presented under Option 2. Therefore, the assessment presented above remains valid for this policy option. In sum, the three measures would address all scope-related issues related to the study, effectively reducing the detriment caused by these products.

In addition, it also foresees the introduction of a new provision specifically addressing peer-to-peer lending to ensure that the CCD applies to consumer credit provided through these platforms, regardless of the specific role of the platform in the transaction. This new article would therefore complement the amendment of Art. 3 and reduce the amount of consumer credit falling outside of its scope of application.

Rating (SO1): +++++ (Extremely effective)

Ensure that credit granting is based on a thorough assessment of the consumer's best interest (SO2):

Additional provisions would be included in the CCD to harmonise certain aspects considered key to ensure responsible lending / borrowing practices (OO2.1), even though not all of them (e.g. responsible product design, see problem 2.1 in Annex 6). The provisions would be modelled after the MCD articles regulating these aspects. The legal obligation for credit providers and intermediaries to "act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers" would make them liable, giving enforcement authorities the power to act against operators who do not consider the best interest of consumers, also improving conditions for enforcement (OO2.3).

This would be further complemented by the ban on pre-ticked boxes, a measure which is further assessed under SO3. Some examples of practices that would be addressed are the potential conflict between the interest of staff members selling credit – who are remunerated based on the sales they make – and of consumers, or problematic cross-selling practices.

The extent to which introducing the MCD measures would effectively ensure responsible lending is difficult to predict based on available evidence. The recent evaluation of the MCD concluded that the Directive had been effective on this front, but was not able to determine the impact of each of the measures by comparing the baseline to the situation prior to its entry into force, also because of the short time span those measures were in place⁶³.

⁶² Follow-up survey. Across all stakeholder groups, 4 indicated that the level of over-indebtedness would remain the same, 5 that it would decrease, and 5 that it would increase.

⁶³ Member States were required to transpose the Mortgage Credit Directive into their national law by 21 March 2016, but only eight transposed the Directive on time. Spain was the last country to

It is therefore safe to assume that while these provisions are likely to improve the protection of consumers against irresponsible lending practices as compared to the current framework – and as such, they are welcomed by consumer associations – certain limitations need to be considered. Firstly, they will not address all the key issues related to irresponsible lending identified in this study. Secondly, to be effective, they need to be properly monitored and enforced by national authorities.

The amendment of the CCD provision regulating CWAs – in line with Art. 18(1) MCD – and the inclusion of provisions reflecting GDPR principles on the use of alternative sources of data and automated decision-making tools, would certainly improve the level of coherence with EU regulation and to some extent ensure more harmonised and strengthened CWA rules.

To strengthen the enforcement of these provisions, Option 3a would introduce a provision referring to the 4% rule set in the Omnibus Directive. Considering that the Omnibus Directive covers consumer credit, the measure will not change drastically the way that the CCD is being enforced, but it may contribute to a more coordinated enforcement of provisions across the EU.

Additionally, the introduction of the article on 'Competent Authorities' modelled after Art. 5 MCD is expected to further strengthen enforcement, although the extent to which it will produce changes compared to the current situation cannot be ascertained.

Stakeholder feedback on the policy options suggests that consumer organisations are especially optimistic regarding the effectiveness of Option 3a in addressing irresponsible lending practices.⁶⁴ The opinions are more divided across national authorities,⁶⁵ while only a small share of industry representatives (among which no business associations) expressed a positive view.⁶⁶

Rating (SO2): +++++ (Very effective)

Ensuring that consumers obtaining credit are empowered by proper information on the risks, costs and impact of credit on their finances, also via digital means (SO3):

Three measures are included under Policy option 3a to improve information disclosure (OO3.1). The first measure concerns the establishment of detailed requirements when providing adequate explanations in line with Article 16 MCD.

The recent evaluation of the MCD concluded that the effectiveness of the provision on adequate explanations is uncertain. Indeed, the consumer survey undertaken to inform the evaluation showed that little improvement can be observed on the provision of explanations since 2016, although this could be due to the fact that it was transposed late.

Option 3a also involves rules on the way that information is displayed to consumers at advertising and pre-contractual stage, focusing on ensuring accessible services for persons with specific needs and elderly people. The measure would refer to the requirements imposed on service providers by the European Accessibility Act. Credit

fully transpose the Mortgage Credit Directive, in June 2019. The Evaluation support study was launched in September 2019.

⁶⁴ All consumer organisations responding to the follow-up survey indicated that Option 3a would be effective in addressing problem 2, while 2 out of 3 consumer organisations did for Option 3b.

⁶⁵ Follow-up survey (3 out of 6 responses)

⁶⁶ Follow-up survey (0 out of 7 business associations, 1 out of 1 credit provider/intermediary, 1 out of 1 other businesses)

providers and intermediaries will be bound by the European Accessibility Act (whose rules should be applied by Member States from June 2025), regardless of whether the CCD includes an explicit reference to it or not. Therefore, although this provision would ensure better alignment with EU legislation, the potential of this measure could not be fully attributed to the CCD.

The third measure concerns prohibition of pre-ticked boxes when selling consumer credit (which would also address SO2). To be more effective, such ban should go hand in hand with safeguards to ensure that information is properly being disclosed to consumers, as indicated by one consumer organisation consulted.⁶⁷ Nonetheless, they are a useful tool to prevent consumers from being misled into buying additional products they do not need.

Three of the measures included in Option 3a would also allow to improve the conditions for enforcement as regards the provision of information. The first two are the introduction of an article on 'Competent Authorities' as well as the 4% rule laid down in the Omnibus Directive, whose effectiveness has already been assessed under SO2. On the other hand, the further details concerning the provision of adequate explanations is also expected to facilitate enforcement by improving legal clarity.

The limited measures to address the inadequacy of current information-related requirements explain why this option was generally rated worse than Options 2 and 3b in terms of its effectiveness to solve the issues which this objective aims to address.⁶⁸ Industry representatives expressed a clear preference for Option 2, as the latter (partly like Option 3b) features the simplification of information requirements.⁶⁹

Rating (SO3): ++ (Moderately effective)

Prevent that specific individual or systemic situations exacerbate consumer detriment and increase over-indebtedness (SO4):

The measures from the MCD which would be included in the CCD mainly revolve around the provision of financial education initiatives and the exercise of forbearance measures before enforcement procedures are initiated.

The provisions on financial education would certainly ensure a higher consumer empowerment to prevent and potentially face crises or individual situations of economic difficulties. However, the extent to which these measures would be effective in protecting indebted and over-indebted consumers (OO4.1) is not straightforward. As explained in the problem definition (see problem 4.1 in Annex 6 of this report), the evidence on the effectiveness of financial education programmes is inconclusive. Similarly, the findings from the recent evaluation of the MCD would suggest that despite the obligation imposed on Member States to promote financial education and on the Commission to publish an overview of such measures, most consumers struggle to understand some of the key elements of the credit such as the APR or the consequences of exercising their right to early repayment.

It is worth noting that the impact of financial education programmes can generally only be observed in the long term. Therefore, the lack of tangible improvement since 2016 – or since the moment the MCD was transposed at national level - should not be considered conclusive evidence of its ineffectiveness, as it may simply be too early to assess it. However, in the current context there is therefore no evidence this measure can be expected to be effective.

⁶⁷ Ad-hoc feedback on policy options from a consumer organisation.

⁶⁸ Follow-up survey (0 out of 7 business associations, 1 out of 1 credit providers/intermediaries, 1 out of 1 other businesses, 3 out of 3 consumer organisations, 4 out of 6 national authorities)

⁶⁹ Follow-up survey (1 open-ended response from a business association)

To better protect over-indebted consumers (OO4.1) and ultimately improve the level of resilience to financial risk (OO4.2), Policy option 3a also foresees the inclusion of a provision on forbearance measures, in line with Article 28 MCD, which are deemed to be effective in prevent that specific individual or systemic situations exacerbate consumer detriment and increase over-indebtedness. The effectiveness of this article was also examined by the recent evaluation of the MCD, which noted that there are indications that the MCD has contributed to a reduction of mortgage NPLs. It also argued that the provision could be more specific regarding what constitutes 'reasonable forbearance'.

Finally, Option 3a also features non-regulatory guidance on measures that can be adopted to support indebted consumers impacted by external economic disruptions, already assessed under Policy option 1.

According to the feedback received on the policy options, industry representatives and consumer organisations believe that these measures would be effective in addressing the issues tackled by this specific objective, while national authorities did not.⁷⁰

Rating (SO4): +++ (Effective)

Promote an enabling business environment across the EU and reduce costs for providers offering consumer credit cross-border while enabling more choices for consumers (SO5):

The broadening of the scope and the amendment of definitions are likely to be effective in levelling the playing field for providers by ensuring that CCD rules are applied to a greater share of credit providers across the EU.

Other measures providing more detailed requirements or establishing EU-level obligations in relation to responsible lending practices, the information to be provided to consumers, CWAs and the protection of indebted and over-indebted consumers are expected to be very effective in reducing legal fragmentation in relation to a relatively significant number of key consumer credit aspects.

However, the costs that credit providers/intermediaries will incur to comply with the new obligations should be considered as well. Compared to Option 2, Option 3a introduces a wider range of new obligations, some of which are likely to be costly to implement by business operators.

Rating (SO5): +++ (Effective)

8.2.4.3 Coherence

Score	4
Rationale for scoring	
Legal feasibility (including proportionality and subsidiarity):	
In areas not falling within the exclusive competence of the EU - such as consumer policy - the principle of subsidiarity is aimed at protecting the decision-making powers of the Member States. It therefore legitimises the Union intervention where the objectives of an action cannot be achieved by the sole action of the Member	

⁷⁰ Follow-up survey (6 out of 7 business associations, 1 out of 1 credit providers/intermediaries, 1 out of 1 other businesses, 2 out of 3 consumer associations, 0 out of 6 national authorities)

States, often due to 'the scale or the effects of the proposed action". The objectives of the CCD are twofold insofar as they entail i) achieving a greater protection of consumers on the one hand, while ii) enhancing the internal market of consumer credits on the other. If the first objective can largely be ensured by national policies and laws, it can reasonably be argued that the second one has, by essence, an international dimension, and therefore requires a supranational intervention.

In addition, the legitimacy of the European Union to act in this domain is no longer to be demonstrated, when considering the wide range of legal instruments that exist in the area of consumer law.

Both the Evaluation and this study have demonstrated that national legislation has not sufficiently or adequately addressed some of the problems identified. Furthermore, the fact that Member States have adapted their regulatory approach to the specificities of their consumer credit market (structure and issues) has led to a fragmented legal environment across the EU.

The measures contained in Policy option 3a seek to address these shortcomings by adopting more detailed requirements or establishing additional obligations for credit providers/intermediaries, in line with provisions contained in other pieces of EU legislation. Taking the form of legally binding provisions, these measures, if adopted, should pass the principle tests referred above. To ensure an even cross-border competition and to guarantee consumers are given the information they need to choose the agreement that best suits their needs, the intervention of the EU could be said to be necessary to address the supra-national dimension that cannot be tackled by national action only.

The fact that these safeguards are already in place in other consumer-related laws, such as the MCD (in, respectively, Articles 7(1), 22(1), 22(3), 16 and 12), or the GDPR, also means that Option 3a would also contribute to a better alignment of the different laws framing consumer lending.

Contained in the same Article 5 of Protocol No 2 on the Application of the principles of subsidiarity and proportionality, the **proportionality principle** requires that any action of the EU must be limited to what is necessary to achieve the objectives of the Treaties. When considering the proportionality of the measures, one may rightly argue that due to the size of the loans, the risks to which consumers obtaining mortgage are exposed are comparatively higher than for smaller consumer loans. Consequently, it is necessary to ensure that only MCD obligations incorporated in the CCD are not disproportionate to the risks that consumer credit users incur. In this sense, it is worth noting that only a small number of measures – notably those that address problems that are deemed to be sufficiently spread or detrimental for consumers – have been included in Option 3a. This is the case for the measures seeking to promote financial education and encourage creditors to exercise reasonable forbearance (to mitigate the risks of over-indebtedness) and the rules on CWA and conduct of business (to tackle issues linked to irresponsible lending).

Similarly, rights stemming from the GDPR should not be seen as problematic when applied to the CCD. This concerns for instance the rights for consumers to request and receive an explanation on how and on what basis a decision on their creditworthiness was reached. The growing use of alternative sources of information and automated decision-making entails risks for consumers that are not addressed by the CCD indeed, while safeguards are envisaged by other legal instruments and could be applied to the CCD without raising any issue from a legal point of view.

In line with the reasoning followed for the assessment of the principle of subsidiarity, the proportionality assessment seems rather straightforward, especially as most revisions suggested tackle problems that have been widely observed in relation to

consumer credit. An (extensive) amendment of the CCD to include the above-mentioned new provisions should thus not cause major issues around its legitimacy, as long as these are in line with other EU legislation and any deviations are specific to the characteristics of the CCD.

Coherence with existing EU legislation:

Measures covered by Policy option 3a would require changes to existing provisions of the CCD in order to address the limitations identified but would not introduce aspects that are not addressed by other EU regulation.

The majority of measures proposed under this policy option have been inspired by MCD requirements and are intended to achieve a level of consumer protection that would be closer to the one achieved by the MCD. Therefore, under Option 3a the existing legal coherence would be enhanced through their implementation as this would achieve a more harmonised legal framework for credit agreements in general.

Greater alignment with the MCD, whenever it is relevant and proportionate, is important since the Evaluation found that the most common examples of legal incoherence mentioned by stakeholders concern the MCD, particularly its requirements for responsible lending and CWAs and the fact that the MCD has gone further than the CCD in establishing more specific obligations in some areas that are especially relevant for tackling over-indebtedness. Some of these differences can be attributed to the greater complexity and risks attached to mortgages, which explains why they are not a reason for concern for most stakeholders. However, certain room for further alignment has been identified. Examples of MCD provisions that would be incorporated into the CCD under Option 3a and ensure further alignment are the obligation for credit providers to inform consumers about the availability of advisory services (in line with Art. 22(1) MCD) or the obligation to promote responsible lending (in line with Art. 7(1) MCD). The latter is covered by the CCD only by means of a recital, which has proven to have a limited effect on the overall achievement of responsible lending among credit providers. Other aspects that have been highlighted as problematic in the context of CCD, but which are addressed by the MCD are product-tying practices and sales incentives (Art. 12, 7(3) and art. 9 of MCD), the provision of adequate explanations in relation to pre-contractual information (Art. 16 MCD), financial education and digital literacy initiatives (Art. 6(1) and (2) of MCD) or forbearance measures (art. 28 of MCD).

Since these provisions are already safeguarded by the MCD and implemented by Member States, the proposed measures can be deemed coherent from a legal point of view.

Another legal instrument that covers aspects which are intertwined with the ones covered by the CCD is the GDPR, particularly when personal data is processed. Since GDPR applies horizontally, the way credit providers carry CWAs in practice and the way they process personal data in relation to consumers have to be in full compliance with the GDPR. Measures proposed by this policy option aim to address the vulnerabilities identified in the processing of personal data that are specific to practices observed in the consumer credit market. Such vulnerabilities are the use of alternative sources of data for CWAs or the transparency of CWAs when they are carried with the help of automated decision-making processes. Both aspects are covered by the GDPR, however the measures intend to reflect the GDPR requirements in the context of the CCD. Provided that CCD is amended in line with the relevant GDPR requirements, legal coherence between the two legal instruments could be increased by explicitly specifying the relation between them.

This option would also include two explicit references to the European Accessibility Act and to the Omnibus Directives, both of which already apply to the provision of consumer credit.

Another measure that might be similar to other EU rules is the prohibition of the use of pre-ticked boxes when selling consumer credit. CRD prevents the traders from using pre-ticked boxes for 'extra payments in addition to the remuneration agreed upon for the trader's main contractual obligation' in its art. 22, however the CRD is not applicable to financial services. Therefore, the measure might actually achieve a harmonised approach in relation to these harmful practices by specifying it in the context of financial services.

In conclusion, among the options considered, Option 3a is the one that would lead to the highest level of legal coherence, given that all the amendments would bring the CCD more in line with other relevant legal instruments.

8.2.5 Policy option 3b – Extensive amendment of the CCD to include provisions not addressed by other EU regulation

8.2.5.1 Efficiency

Impact on consumer trust, choices, behaviour and inclusion

<i>Score</i>	4
Description of expected impacts	
<p>Option 3b constitutes the most ambitious amendment of the CCD, with some measures going significantly beyond what is already established in existing EU legislation. The legislative amendments unique to this option are expected to have both a positive and a negative effect on consumer behaviour and choices.</p> <p>The establishment of APR/interest rate caps as well as the limits to the costs that can be charged for rollover practices are expected to (initially) lead to a reduction in the cost of credit, especially considering that Option 3b also foresees the extension of the scope of application of the CCD. This will have a particularly positive impact on vulnerable consumers, as they are the main group using high-cost credit. The magnitude of this impact is therefore deemed as high, although slightly restricted by the fact that Member States would remain free to set the caps at the level they deem most appropriate, with some possibly setting high interest rates. In contrast, evidence from Member States that have already established caps at national level shows that some operators (mostly those offering high cost, risky products) have difficulties to adapt to this measure and are therefore expelled from the market, ultimately leading to a restriction of consumer choice. At the same time, the potential knock-on effects of this measure on the credit market and competition, could in time reduce consumer choice and bring about other costs.</p> <p>Bans on unsolicited credit offers or the use of pre-ticked boxes is likely to impact consumer behaviour positive by promoting a more careful purchase decision-making process. This would be achieved by restricting the possibilities for credit providers to exploit consumer behavioural biases on which these practices are generally based. This effect would be further strengthened by the amendment of the CCD information requirements (i.e. focus on key advertising and pre-contractual information,</p>	

requirements on when pre-contractual information must be provided, further details on what the provision of 'adequate explanations' requires).

The amendments to the information requirements featured in Option 3b are overall expected to have a very positive impact on consumers, especially thanks to the simplification of the information provided. The unique measures from Option 3b, i.e. the specifications on how the advertising and pre-contractual information needs to be displayed and the obligation to inform consumers about changes in the conditions of the credits in case of special measures following economic disruptions, could also make it easier for consumers to compare offers and find the product most suitable to their needs. It would also reduce the possibility for misleading information, allowing them to make better informed decisions. Similar requirements have been established in other areas, with positive results. However, an industry representative consulted for this study indicated that in Poland – where such rules already exist for consumer credit – are often ineffective, disrupting the form of advertising and is not suitable for modern information channels.

The measures on debt advice services, i.e. obligation for Member States to provide them and for credit providers to inform low-scoring consumers of the possibility to access them, are expected to have an important positive impact on consumer behaviour. They would raise the level of consumer awareness about the existence of these services. Moreover, consumers who are over-indebted or at risk of over-indebted could benefit greatly from the advice provided, as they would provide them with the necessary tools to improve their ability to manage their debts (and therefore meet their financial obligations). In turn, this would lead to a higher level of customer engagement and possibly a reduction in the use of higher cost credit – or other types of potentially detrimental products – to repay existing debt. The main limitation of this measure is that it only targets low-scoring consumers. While it is indisputable that ensuring that these consumers are properly informed about the possibility to access debt advice services, it could also be argued that they are not the only ones that may need to resort to them. As stated in the problem definition, many consumers whose risk at the time of being granted a loan is estimated low may encounter financial difficulties later on, putting them at risk of over-indebtedness. These consumers could miss out on the opportunity to receive the support they need because they were not deemed low-scoring candidates at the time the credit was granted.

The establishment of an obligation to include specific contractual clauses intended to cover cases of exceptional or systemic economic disruptions would also contribute to ensuring a higher degree of engagement by indebted consumers who have difficulties to repay their debts.

To conclude, the establishment of centralised databases could potentially affect consumer behaviour positively to some extent.

The far-reaching measures also render Option 3b the legislative package most likely to derive a greater positive impact on **over-indebtedness**. The measures seeking to promote responsible lending under this option are further reaching than under Option 3a, even covering the design of credit products. Option 3b would also go further around debt advice. The measures, especially the latter, are expected to lead to a significant reduction of consumer detriment - even if they do not establish the obligation to only grant credit to consumers who are deemed to be 'creditworthy' - but also to reduce the level of over-indebtedness by ensuring more responsible practices and empowering consumers to better manage their financial obligations. This would be further achieved with the introduction of a basic financial consumer credit product, which would ensure more equal access to advantageous credit conditions for vulnerable consumers.

In terms of **social inclusion**, the potential benefits of some of the measures included (e.g. debt advice services) are quite considerable.

Rationale for scoring

Option 3b would have an overall significant positive impact on consumer behaviour and the choice of products available for consumers. When combined, most measures would promote more responsible and better-informed financial decisions. Some measures would also likely result in a higher degree of engagement of and better decisions taken by consumers struggling to meet their financial commitments. This is also expected to lead to the most significant – albeit still somewhat limited – reduction of over-indebtedness among all policy options.

However, certain risks should also be considered, notably a potential reduction in the variety of credit offered to consumers or the availability of innovative products. However, these products are likely to be more risky than other products in the market, even though they are often used by vulnerable consumers.⁷¹ However, one of the measures included in Option 3b could offset this effect, notably the introduction of a basic consumer credit product ensuring access to credit with advantageous conditions for all consumers. This measure can be expected to mitigate the negative impact that this potential development would have on consumer choice and social inclusion, as explained below.

For the reasons explained above, the overall impact of Option 3b is deemed to be more positive than that of Options 2 and 3a.

Impact on consumer protection (rights/redress) and reduced detriment

Score	4
Description of expected impacts	
<p>Option 3b would generate a considerable positive impact on the level of consumer protection in the EU, namely:</p> <ul style="list-style-type: none"> • Consumers would be significantly better protected against irresponsible or otherwise questionable lending practices, also compared to the other options considered. In addition to the measures specifically seeking to limit certain irresponsible lending practices – including product design – the information-related measures would also contribute to this, as they would protect consumers against practices which, even if they cannot be qualified as abusive, seek to take advantage of behavioural biases observed on consumers (e.g. prioritising immediate gains over future issues). Ultimately, certain measures (i.e., caps, provision of debt advice) could also result in a reduction who end up in debt spirals. • This option also includes measures that clarify or elaborate existing obligations (i.e. provision of ‘adequate explanations’, timeframe for pre-contractual information) or establish additional clear obligations on credit providers (i.e. bans 	

⁷¹ Finance Watch, 2020, Basic Financial Services – A European-wide study on financial services and products needed to tackle financial exclusion of citizens.

on unsolicited offers or pre-ticked boxes). Measures that impose clear obligations are also beneficial for consumer protection, as they allow both consumers and enforcement authorities to identify uncompliant practices more easily.

- Similar to what has been said under Option 2, the clarification of the CCD obligations could also potentially increase, although to a very limited extent, the level of compliance among credit providers/intermediaries.

Option 3b can also be expected to reduce consumer detriment across the EU. Compared to other legislative options considered in this study, three main additional gains should be considered:

- By leading to better responsible lending / borrowing practices and more financially responsible and engaged consumers, it will have a direct impact on the number and the magnitude of the issues currently faced, and they are also expected to lead to a decrease in the use of certain credit products that are very often detrimental for consumers (especially vulnerable consumers), such as STHC. Certain measures (i.e. caps, provision of debt advice) are likely to result in a reduction of consumers who end up in debt spirals.
- The improved disclosure of information can also be expected to have a significant positive impact on consumer detriment, as consumers would enter into agreements with a better understanding of the risks of the product purchased, avoiding potential issues. It is worth noting, however, that adopting specific requirements on how the pre-contractual and advertising information should be displayed is not expected to have a major impact on consumer detriment, compared to other measures already included in Options 2 or 3a.
- The introduction of a basic consumer credit product has the potential to reduce consumer detriment by ensuring that vulnerable consumers have access to consumer credit with advantageous conditions, making them less dependent on high-cost products. This is particularly important considering that the set of measures included in Option 3b – some of which are very far-reaching or prescriptive – may lead to a reduction in the offer of consumer credit which would disproportionately affect vulnerable consumers.

Ultimately, Option 3b should lead to a reduction in the level of over-indebtedness by promoting more responsible practices and better-informed choices, and helping consumers avoid using certain types of credit that often lead to over-indebtedness.

In terms of consumer benefits, the positive impact of two of the unique measures to Option 3b on consumer detriment (i.e. consumers' financial detriment and monetised time losses) have been assessed qualitatively (see Table 45 in Annex 10.2):

- The prohibition of unsolicited credit offers would generate EUR 172.62 million in savings; and
- The obligation on credit providers to inform low-scoring consumers that debt advice services are available would lead to savings estimated at EUR 138.09 million.
- This is in addition to the savings linked to scope-related measures (see Policy option 2), the obligation to inform consumers whether advisory services are or can be provided, the ban on product-tying practices, and the right of consumers to receive an explanation of how a decision on their creditworthiness was reached (see Policy option 3a).

Rationale for scoring

As described above, Option 3b is expected to yield very positive results on the level of consumer protection and, ultimately, consumer detriment, notably through the establishment of legal obligations for credit providers in relation to certain responsible lending or other questionable practices, in addition to the provision of information, and support to indebted and over-indebted consumers.

Compared to the other options, Policy option 3b would lead to the most marked improvement in the situation of consumers.

Impact on industry: level playing field and competition and cross-border sales of credit

<i>Score</i>	1
Description of expected impacts	
<p>Like Options 2 and 3a, Policy option 3b would broaden the scope of the CCD to cover all, or most, consumer credit available in the market. Furthermore, Option 3b is the legislative package that would ensure the highest level of harmonisation, meaning that it is also the Option expected to be more successful in levelling the playing field across the EU. The fact that this is the policy option that achieves the highest degree of harmonisation also renders it the one with the highest potential to facilitate the cross-border sales of consume credit. This is because credit providers wishing to offer their products in other Member States will be in a better position to understand the legal obligations to which they are bound in other Member States. In practice, this would translate into less time and resources spent to understand the legal framework as well as lower financial risks. It could also lead to a higher demand of cross-border consumer credit as a result of an increased trust in the legal framework in other Member States, creating more incentives for credit providers to operate in other Member States.</p> <p>Nonetheless, it is worth noting that this option does not harmonise every aspect of consumer credit and therefore, it would not ensure a complete level playing or harmonisation across the EU. Moreover, as explained above, legal fragmentation is only one of many obstacles preventing credit providers and consumers from engaging in cross-border operations and therefore, this option can only be expected to have a limited impact on the cross-border provision of consumer credit.</p> <p>On the negative side, similar to Options 2 and 3a, the additional measures featured in this option are likely to impact some credit providers more negatively than others. Therefore, Option 3b is also the most likely to lead to a decrease in the number of credit providers or credit products offered, affecting the level of competition and innovation in the industry.</p> <p>Cross-border credit provision could also be negatively impacted as credit providers currently operating across the EU face higher costs (compliance costs, as well as lower margins and lower revenues). This can reduce cross-border operations and thereby sales of credit.</p>	
Rationale for scoring	
<p>As explained above, Option 3b is the one with the highest potential to lead to a more level playing field and the most likely reduction of costs linked to the provision of cross-border credit. However, this option is also the most likely to generate non-negligible negative effects that would almost offset its advantages, mostly the reduction of competition that the most prescriptive or ambitious measures would have. As far as cross-border credit concerns, its impact would be limited for two main</p>	

reasons: one, it will fall short of ensuring a completely harmonised approach, and two, it will not address many of the obstacles preventing the development of a cross-border market for consumer credit. In addition, the risks of a reduced competitive landscape will offset an important part of the benefits.

Ultimately, this would reduce the positive effect of Option 3b to a level similar to that of Option 2, and lower than Option 3a.

Impact on industry: overall compliance costs

Score	-4
Description of expected impacts	
<p>The impact of Option 3b on compliance costs incurred by the industry can be summarised as follows:</p> <ul style="list-style-type: none"> • Like Policy options 2 and 3a, all credit providers will have to employ time and resources to familiarise themselves with the new legal obligations. They will also have to dedicate resources in the beginning to communicate the changes and train their staff members and to adapt their practices and IT systems. The higher level of ambition of Option 3b would also mean that the implementation costs are expected to be higher, as most (if not all) credit providers/intermediaries would have to adopt changes to their practices and IT systems to comply with the new information-related requirements (including the requirements on how to display the information or the obligation to inform them of possible changes to the conditions), CWAs (including the obligation to consult a database), the inclusion of certain clauses in the credit agreements or the ban of unsolicited offers. The costs on interest rates/APR and costs charged for rollover practices would require significant effort as they are likely to lead to changes to the pricing policy, and even the business model of some certain industry operators. These changes will be comparatively more harmful for smaller credit providers/intermediaries, with less margin to comply with the additional obligations. • APR/interest rate caps and caps on costs for rollover practices will also lead to lost revenue in most cases, and credit products taken off the market. Similarly, the introduction of a basic consumer credit product could lead to financial losses and the disappearance of certain products. • The costs will be comparatively higher for credit providers offering products currently excluded by the CCD, as they will also have to employ significant resources to adapt to the other obligations under the CCD, even sometimes adapting their business model. • A small group of industry representatives – those that are engaged in EU policy-making – will also dedicate resources to participate in the consultations organised as part of the legislative process. The fact that the industry seems to oppose many measures featured in this option would mean that the level of engagement that can be expected will be the highest as compared to the other options. <p>In this case, compliance costs will be limited only by the simplification of information-related requirements, which could generate important savings relating to advertising costs. Nonetheless, the measure on debt advice services is expected to also produce benefits for credit providers by allowing them to recover debt more easily, and also reduce the costs of the recovery procedure.</p> <p>The improvements in the legal clarity of the CCD obligations may facilitate compliance, potentially reducing the risk of suffering financial losses linked to fines.</p>	

Similarly, the increased alignment with other EU legislation (e.g. MCD or DMFSD in relation to unsolicited offer) could simplify, to some extent, the legal framework in which they operate.

In terms of compliance costs, two quantified measures of Option 3b would translate into the following costs for credit providers (i.e. investment in infrastructure and personnel costs) (see Table 45 in Annex 10.2):

- The prohibition of unsolicited credit offers would generate costs of EUR 37.49 million; and
- The obligation on credit providers to inform low-scoring consumers that debt advice services are available would lead to costs of EUR 141.37 million.

This is in addition to the costs linked to scope-related measures (see Policy option 2), the obligation to inform consumers whether advisory services are or can be provided, the ban on product-tying practices, and the right of consumers to receive an explanation of how a decision on their creditworthiness was reached (see Policy option 3a).

Rationale for scoring

Option 3b is the legislative alternative expected to generate, by far, the highest costs for credit providers to ensure compliance. The only potential savings allowing them to cope with the increased costs would be the ones linked to the simplification of information in advertisements and the increased legal clarity and standardisation, but these are too limited to offset the costs.

Impact on EU public administration

Score	-3
Description of expected impacts	
<p>Like Options 2 and 3a, this policy option constitutes a legislative amendment of the CCD, generating important costs for the Commission and other EU institutions. Option 3b is also the most ambitious amendment of all the options considered and as such, it is also expected to be the most resource-intensive one.</p> <p>The following aspects warrant special attention:</p> <ul style="list-style-type: none"> • The scope of the amendment: Option 3b constitutes the most extensive amendment of the CCD, with aspects that have not been regulated at EU level in similar legislation. Therefore, the resources dedicated to the development of the legislative proposal and its negotiation for approval will also be higher than in Options 2 and 3a. • The complexity of the provisions adopted: like the other two legislative options, Option 3b includes certain amendments which are relatively easy to develop (e.g. those relating to the scope or the provision setting up an obligation for Member States to set caps to the costs and interest rates/APR) and others which are more complex. In the case of Option 3b, the fact that some of the measures are "innovative" compared to other EU-level legislation, and some of them very prescriptive, would mean that their development would require extensive research, consultations with key stakeholders and subject-matter experts, and ample collaboration with other EU institutions. This would be the case, for instance, with the design of a basic consumer credit product. Similarly, as mentioned above, certain provisions would require clarifications (e.g. what constitutes 'unsolicited credit') in order to be adequately enforced. 	

- The level of stakeholder pushback expected: because it is the most ambitious package, Option 3b is also expected to receive the highest level of pushback from the industry. The consultations carried out for this study reveal a great level of opposition from industry to Option 3b, especially some of its measures (e.g. APR caps, measures on CWA processes, the introduction of contractual clauses applicable in situations of external disruptions). Consumer organisations, on the other hand, are more likely to welcome these measures, although they are also expected to advocate for even more ambitious measures in relation to, for instance, CWA (i.e. banning the provision of credit if the outcome is negative).

Other costs incurred by EU institutions relate to the monitoring of the transposition and implementation by Member States, which will be higher in the first two to three years following the adoption of the CCD and reduce overtime. In the case of Option 3b, the complexity of some of the measures (e.g., introduction of a basic consumer credit product) will also result in more resources being dedicated to monitoring how Member States are implementing them over time.

In the area of EU-level enforcement, Option 3b is also the option most likely to lead to efficiency gains as a result of the higher degree of harmonisation. Its costs could be offset, to some extent, by the fact that some provisions will be clearer compared to the baseline, facilitating their interpretation.

In terms of costs for EU-level authorities, the two unique measures to Option 3b have been estimated to lead to the following costs at EU-level (i.e. personnel costs) (see in Annex 10):

- The prohibition of unsolicited credit offers would generate costs of EUR 22,000; and
- The obligation on credit providers to inform low-scoring consumers that debt advice services are available would lead to costs of EUR 11,000.

This is in addition to the costs linked to scope-related measures (see Policy option 2), the obligation to inform consumers whether advisory services are or can be provided, the ban on product-tying practices, and the right of consumers to receive an explanation of how a decision on their creditworthiness was reached (see Policy option 3a).

Rationale for scoring

Option 3b is the option most resource-intensive for EU institutions, as it will require more time, resources and effort to adopt, implement, and enforce compared to the baseline. It is also the one leading to less significant gains in terms of enforcement since the amended CCD will incorporate many new (and innovative) provisions. Therefore, it can be reasonably expected that the interpretation of the CCD will also require significant resources.

Impact on MS-level public administrations

Score	-1
Description of expected impacts	
Option 3b is also expected to result in a significant amount of resources being implemented by national authorities to transpose, implement, and enforce the measures contained therein.	

The extent of the legislative amendment will also mean that national authorities will have to dedicate more time and resources to transpose the amended Directive at national level, compared to the other two legislative packages. Among the measures that are unique to Option 3b, certain measures are also very complex to transpose as national authorities will have to consider the national context when developing the national provisions. Admittedly, some Member States have already established these measures at national level (e.g. cost or interest rate/APR caps, implemented by 23 Member States), allowing them to reduce to some extent the costs. In this sense, the fact that some measures in Option 3b set an obligation but do not establish further details would facilitate these savings. However, no Member State will be spared from amending their national legislation given that the likelihood that a Member State has in place all the additional measures, in line with the new Directive is extremely low. Furthermore, some measures would modify the current EU rules, such as in the area of information requirements.

Additionally, Member States would have to dedicate significant resources to set up and maintain a centralised credit database. Although the impact of this measure would be minimum or non-existent in those Member States where such a credit register exists already, this would not be the case in many countries.

As mentioned above, legislative amendments will also generate an obligation for Member States to report on the transposition of the measures and are likely to increase the costs linked to the reporting of the implementation of the measures. They will also lead to internal dissemination costs for public authorities, including enforcement (to ensure that they become familiar with the new measures). This is particularly true for Option 3b due to its very wide scope, which will increase the amount of resources dedicated to this.

Some of these costs are likely to be offset by the efficiency gains expected in relation to the enforcement of the obligations at national level. Although enforcement authorities – those with lower levels of protection – may need to dedicate more resources to monitor compliance and enforce these obligations, it can be expected that the increased level of consumer protection, financial literacy, and legal clarity may lead to fewer problems faced by consumers, allowing enforcement authorities to use their resources more efficiently, even if the impact is not expected to be significant. The clearer provisions (at least compared to the baseline) is also expected to reduce the room for interpretation for enforcement authorities, rendering enforcement easier. In this sense, it is also important to note that some of the additional provisions foreseen under Option 3b may still lead to interpretation issues and therefore, the benefits of this option in this area may be slightly lower than for Options 2 and 3a.

Like with Options 2 and 3a, these benefits would be maintained over time, partially reducing the overall cost for national authorities. Considering however, that the costs incurred by Member State authorities to implement Option 3b are significantly higher than for Options 2 and 3a, and the benefits are expected to be slightly lower than for those options, the gains are not expected to offset the costs.

The quantitative assessment shows that Member State-level authorities would incur in the following costs (i.e. personnel costs) to implement two of the measures unique to Option 3b (see Table 45 in Annex 10.2):

- The prohibition of unsolicited credit offers would generate costs of EUR 350,000; and
- The obligation on credit providers to inform low-scoring consumers that debt advice services are available would lead to costs of EUR 170,000.

This is in addition to the costs linked to scope-related measures (see Policy option 2), the obligation to inform consumers whether advisory services are or can be provided, the ban on product-tying practices, and the right of consumers to receive an explanation of how a decision on their creditworthiness was reached (see Policy option 3a).

Rationale for scoring

The overall impact of this Option on national authorities is deemed slightly negative. The measures can be expected to produce benefits for enforcement authorities, but these are expected to be slightly lower than under Options 2 and 3a, while Option 3b would require important transposition, implementation and monitoring costs for national authorities, and a very significant increase from the baseline (indeed even considerably higher than for Options 2 and 3a). As a result, the costs incurred by Member State-level authorities to implement Option 3b are expected to outweigh the potential benefits linked to efficiency gains in the area of enforcement.

8.2.5.2 Effectiveness

Score

4

Rationale for scoring

Overall, it is deemed to be very effective in addressing the five specific objectives on which EU-level intervention would be based. It is also expected to result in a decrease on the level of over-indebtedness by half of respondents answering to the follow-up survey, making it the Option better rated on this front.⁷²

Policy option 3b would also entail the broadening of the scope of application of the CCD in the same way as Options 2 and 3a, thus responding to the scope-related issues identified in a very effective manner. It is also deemed to be very effective in addressing issues related to the information-related requirements, the protection of indebted and over-indebted consumers, and the promotion of an enabling business environment across the EU. Concerning the provision of information to consumers, this policy option is expected to benefit credit providers and consumers alike by simplifying the information provided in advertisements, and to facilitate the comparison offers by establishing EU-level requirements on how the information should be displayed. It is also expected to improve the disclosure of information at pre-contractual stage – although not significantly compared to policy option 2 – and to reduce the chances that consumers are misled into buying products they do not need.

This policy option is also the most effective in terms of supporting and protecting indebted and over-indebted consumers. This is because it establishes obligations for Member States and credit providers concerning the provision of debt advice services.

It is also the policy option which ensures a further level of harmonisation of rules across the EU. At the same time, several measures under this option entail significant costs for industry and there is a substantial risk in it negatively impacting the credit market by reducing credit supply and thereby reduce competition and consumer choice.

⁷² Follow-up survey. Across all stakeholder groups, 3 indicated that the level of over-indebtedness would remain the same, 7 that it would decrease, and 4 that it would increase.

In terms of responsible lending, the main strength of this policy option is that it would also address aspects related to product design which are expected to reduce the incentives to provide some of the products that are riskier for consumers. Its main limitations are that it would not address some of the responsible lending practices covered under policy option 3a, and that the changes to CWA rules would not as far as to ensure that consumer credit is only granted to consumers who are deemed creditworthy, leaving some room for potential issues.

Below is a more detailed assessment of the effectiveness of policy option in addressing each of the specific (and operational) objectives.

Description

Reducing the detriment arising from unregulated products (SO1):

Policy option 3b foresees the same scope-related measures presented under Option 3a. Therefore, the assessment presented above remains valid for this policy option. In sum, the three measures would address all scope-related issues related to the study, effectively reducing the detriment caused by these products.

As for Option 2, the measures on expanding the scope and the thresholds could mean that for pawnshop agreements up to 3.1 million consumers could be covered by the CCD, 7.2 million for zero-interest loans, up to 8.2 million for leasing agreements, between 21 and 46 million for overdraft facilities, up to 20 million for STHC loans and roll-over credit, 24 million for revolving credit (not requested extensions of the credit line) and 24 million consumers for cross-selling.

Like option 3a, forbearance measures could impact 17.5 million consumers, and debt advice services also 17.5 million consumers⁷³.

In addition, it is estimated that up to 24 million consumers at least are affected by unsolicited credit.

Effectiveness (SO1): +++++ (Extremely effective)

Ensure that credit granting is based on a thorough assessment of the consumer's best interest (SO2):

In addition to four measures from Policy option 3a (i.e. legal obligation to lend responsibly, the provision regarding advisory services and the ban on product-tying practices and pre-ticked boxes), this policy option features measures to ensure responsible product design by limiting their costs (i.e. obligation to set interest rate /APR caps and to limit the additional costs and interests that credit providers can charge when a credit is rolled over). In doing so, it is the only policy option which addresses some of the key issues identified in this study, namely the high interests and the profitability of rollover practices for credit providers.

Based on evidence from the 22 Member States which have established caps on credit costs, APR or interest rates, these are effective tools which lower the costs for consumers (e.g. PT). In some Member States, these measures have also reduced or virtually eliminated the supply of certain short-term high-cost credit products which are particularly risky for consumers (i.e. payday loans). Establishing an obligation at EU level to set interest rate caps or to limit the costs linked to credit rollovers is thus expected to result in fewer incentives for creditors to provide these types of credit in the EU. It may also result in the disappearance of certain products which would no

⁷³ This calculation considers the results from the latest EU-SILC (2018), where 30% of households reported difficulties to make ends meet, and the total number of consumers with credit agreements.

longer be profitable, limiting their supply. In this sense, an industry representative argued that this may have a perverse effect on consumer detriment, as it will not necessarily reduce the demand for these products (e.g. easy and quick to access), ultimately pushing consumers – especially the most vulnerable ones – to other types of un-regulated and potentially more detrimental products.⁷⁴ This argument is not shared by consumer organisations consulted, one of which referred to evidence from the UK Financial Conduct Authority which concludes that the elimination of payday loans in the UK resulted in significant cost reductions and did not push consumers to other forms of high-cost credit or illegal money lending.⁷⁵

Prohibiting the unsolicited sale of credit would be beneficial for consumers, and reduce unfair competition, but may prove difficult to enforce, especially since consumers are targeted in so many different ways (e.g. in branch/shop, telephone, email, post, website pop-up, door-to-door). Furthermore, legal clarification may be required of what constitutes an 'unsolicited' sale in different contexts.

The harmonisation of rules would also facilitate enforcement to some degree. On the one hand, it would result in more legal clarity for credit providers and enforcement authorities alike. On the other hand, it is likely to lead to a reduction in the number of consumers reporting problems linked to the most problematic products in the market. This would be especially the case if some of the products that entail most risks for consumers disappear from the market.

On the harmonisation and strengthening of CWA rules, Policy option 3b includes measures from Options 2 and 3a (i.e. specification that CWAs should only consider relevant information and the right of consumers to receive an explanation of how a decision on their creditworthiness was reached), but it also goes beyond by including an obligation to consult a centralised credit database. Combined, these measures are likely to increase the level of harmonisation across Member States, albeit only to a certain extent given that they do not establish rules on the consequences of a CWA with a negative outcome.

Effectiveness (SO2): +++++ (Extremely effective)

Ensuring that consumers obtaining credit are empowered by proper information on the risks, costs and impact of credit on their finances, also via digital means (SO3):

Policy option 3b foresees a combination of measures included in Policy options 2 and 3a, combined with two additional measures.

To improve the disclosure of information (OO3.1) in advertising, the information required in advertisements would be simplified to focus on key information (analysed under Policy option 2). This would be further strengthened by the establishment of detailed requirements on how the information should be displayed, in terms of format, font size, etc. They would ensure further standardisation of information, ultimately facilitating the comparison of offers. As similar requirements have already been established by some Member States, establishing EU-level rules would also reduce divergence of information requirements across Member States. Lastly, by establishing clear guidelines allowing to better interpret the CCD phrase 'in a prominent way', the measure would facilitate the enforcement of CCD obligations (OO3.2).

⁷⁴ Follow-up survey (1 open-response from a business association)

⁷⁵ Ad-hoc contribution on the policy options from a consumer organisation. The evidence stems from a 2017 report from the UK FCA available at: <https://www.fca.org.uk/publication/feedback/fs17-02.pdf>

To improve the disclosure of information at pre-contractual stage (OO3.1), the CCD would be amended to include detailed obligations as to when the pre-contractual information should be provided (analysed under Policy option 2) as well as in relation to the provision of adequate explanations (analysed under Option 3a). Similar to the conclusion concerning advertising rules, the establishment of clear requirements is also expected to help enforcement authorities interpret and enforce the CCD obligations (OO3.2).

Option 3b would also go beyond the signature of the contract, by imposing an obligation on credit providers to inform customers of any changes in the conditions of the credit whenever special measures are applied following a systemic or exceptional economic disruption. With this measure, the CCD would empower consumers in these situations, as they would receive any relevant information that would allow them to make better informed decisions in those situations, also contributing to the achievement of SO4.

Effectiveness (SO3): +++++ (Very effective)

Prevent that specific individual or systemic situations exacerbate consumer detriment and increase over-indebtedness (SO4):

Under Policy option 3b, measures to support indebted and over-indebted consumers include obligations upon Member States to provide debt advice services (directly or indirectly), and upon credit providers to inform low-scoring consumers of the availability of these services, in particular if credit is granted following a negative outcome of the consumer creditworthiness assessment. These two measures combined are deemed to be effective in protecting consumers (OO4.1), an argument that is supported by the experience in some Member States in which they are already implemented, such as the Netherlands and Belgium. They are also expected to have a positive impact on the level of over-indebtedness, therefore increasing the level of resilience of the system to financial instability risks (OO4.2).

The protection of indebted and over-indebted consumers (OO4.1) and the improvement of the level of resilience (OO4.2) is also sought through the establishment of an obligation to include specific contractual clauses intended to cover cases of exceptional or systemic economic disruptions. This would add to the obligation to exercise reasonable forbearance before enforcement procedures, already assessed under policy option 3a, which would also be part of Policy option 3b. The evidence collected suggests that it is unclear whether adopting standard EU-level clauses would be the most effective approach to ensure the protection of consumers in these situations.

Effectiveness (SO4): +++++ (Very effective)

Promote an enabling business environment across the EU and reduce costs for providers offering consumer credit cross-border while enabling more choices for consumers (SO5):

The broadening of the scope and the amendment of the definitions of 'creditor' and 'credit intermediary' are likely to be very effective measures to foster the level playing field for providers, as they would ensure that a wider range of credit providers are bound by CCD obligations in all Member States alike.

Other measures providing more detailed requirements or establishing EU-level obligations in relation to responsible lending practices, the information to be provided to consumers, CWAs and the protection of indebted and over-indebted consumers are expected to be effective in reducing legal fragmentation in relation to a relatively significant number of key consumer credit aspects.

A substantial risk is that the measures under this Option will lead to a 'one-size-fits-all' approach, upsetting the balance of targeted measures in specific Member States acted on problems specific to the national markets. In addition, the costs of implementation are highest in this scenario, as is lost revenue due to shrinking supply and retiring specific credit products. Evidence from Member States like Slovakia, Finland, Sweden and Denmark shows the impacts in particular of APR/interest rate caps, which have made it difficult to operate for many smaller market players, often offering risky products. This could reduce competition and in turn choice for underbanked consumers. Against this background, the introduction of a basic credit product – as foreseen in Option 3b – could potentially help mitigate these risks.

Effectiveness (SO5): ++ (Moderately effective)

8.2.5.3 Coherence

Score	2
Rationale for scoring	
<p>Legal feasibility (including proportionality and subsidiarity):</p> <p>The measures included in Option 3b would translate into significant legislative amendments and new obligations for Member States. Due to the prescriptive nature of these potential provisions, a thorough assessment of both the principle of subsidiarity and that of proportionality is necessary to determine the leeway for further action.</p> <p>Concerning the principle of subsidiarity and the assessment of the legitimacy for the EU to intervene and proceed with these measures, it is noted, firstly, that the area under scrutiny is falling within shared competence between the EU and the Member States. Compliance with this principle requires that the objectives of the action at stake cannot be achieved <i>sufficiently</i> by the Member States (necessity test).</p> <p>Research shows that the issues described are widespread across the EU. A few Member States have adopted their own measures to counter those risks and shortages. Research conducted at national level shows that the some of the measures suggested are already in place in some Member States. To date, no less than 22 EU countries have set-up caps on the APR, while only a few have adopted provisions banning or limiting credit rollovers, or the unsolicited offer of credit. This shows that although some problems have been widely tackled across the EU, others remain unaddressed at EU level.</p> <p>Considering that Member States generally only act upon the practices that they deem sufficiently detrimental, national initiatives are not expected to be sufficient to solve the problem at EU level, unless all EU countries were to adopt the exact same measures. In addition, the sanitary threat caused by the COVID-19 pandemic showed that risks emanating from unforeseen circumstances such as economic disruptions do not only affect a couple of Member States but rather large parts of the Union deserve uniform solutions.</p> <p>In that sense, a common approach, applicable to and by all Member States would be more suited than individual, potentially heterogeneous initiatives. Diverse national policies, while aiming at the same ultimate objective, would likely lead to significant obstacle to cross-border credit. This would be the case for interest rate/APR caps, but also for debt advice which is free and independent. Consumers would undoubtedly feel more comfortable borrowing money from another Member State knowing that</p>	

the same rules apply on the other side of the border. It would not only reassure consumers but also allow them to get the information they need in their own language first.

Therefore, the policy objectives guiding a possible EU intervention would be better achieved at Union level, first of all because their root cause is the similar between one Member State to another, but also due to the dimension of the results expected (an enhanced and safer internal market).

As to the **proportionality of the measures**, both the content and the form of the EU action must not go beyond what is necessary to meet the objectives of the Treaty in that area, *i.e.* an enhanced functioning of the credit market and a greater protection of consumers. Certain measures – those which are common across the EU – do not raise any concerns in terms of proportionality. For instance:

- By not establishing a common approach to how rate or cost caps need to be calculated, the establishment of an EU-level obligation to set up these caps can be considered a proportional (*i.e.* not unnecessarily interventionist) measure to ensure a more homogenous landscape.
- A few Member States have enacted rules aimed at banning or severely regulating unsolicited sales of credit, a practice also prohibited by the DMFSD for inertia selling.
- The provisions proposed to promote debt advice services and develop consumers' financial literacy are being applied in many Member States. Most Member States are already implementing programmes in these areas, although to various degrees of availability and quality. Creditors in 14 Member States are obliged to inform low-scoring consumers whether debt advice services is also in place, and an obligation on national authorities to provide – directly or indirectly – debt advice services for over-indebted or otherwise vulnerable consumers exists in nine Member States. Taking EU-level action would certainly facilitate a better alignment of national rules across the EU without creating unjustified financial or administrative burden for national governments or economic operators.

Other measures warrant a more careful assessment in relation to their proportionality. For instance, many of the additional obligations which would be imposed on credit providers (or Member States) under Option 3b would generate significant compliance costs, and in some cases, their added value with respect to less prescriptive measures is not entirely clear. An example of this is the establishment of detailed requirements on how advertising information should be displayed, or the obligations to include specific contractual clauses intended to cover cases of exceptional or systemic economic disruptions or to set up a central credit database.

Coherence with existing EU legislation:

Although not covered by other EU regulation specifically, measures proposed under this policy option are inspired by legal measures that have been implemented by Member States at national level and which go beyond the requirements of the CCD. The purpose of these measures is to increase the level of harmonisation across the EU by introducing new obligations for Member States in the CCD. This would ensure that measures such as interest rate/APR caps or limits on costs related to rolled over credit can be consistently implemented across the entire EU and not only in the Member States that have taken the option to go beyond the CCD.

The measure prohibiting the unsolicited sale of credit is also present in some national laws although not specifically covered by EU legislation. The Omnibus Directive⁷⁶ includes several provisions on contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers. However, a ban on the unsolicited sale of credit in any circumstance would be a broader measure targeted at credit products and should not conflict with any of those provisions.

At EU-level, although the measures included should not give rise to major legal coherence concerns, they would not achieve the same level of harmonisation as those included under Option 3a. In some cases, they would go beyond what is already established in other legislation, such as the MCD.

A second group of measures would decrease, to certain extent, the legal coherence with the MCD. This is the case, for instance, of the measure seeking to simplify the information provided in advertising, which as explained under Option 2, would stray from the MCD requirements.

Lastly, a third type of measures would simply regulate aspects that have not been established at EU level. Therefore, they would neither increase nor reduce legal coherence. Detailed requirements about the way information should be displayed to consumers at advertising and pre-contractual stage should not affect the existing legal coherence as long as the requirements for the content of the information are kept in line with other EU legal instruments that provide similar rules, such as the MCD.

As regards a legislative measure amending the CCD to clarify some definitions in light of new interpretations of the ECJ, this would also enhance the overall legal coherence and harmonised interpretation of EU regulation at EU level.

One measure that might create a risk in terms of legal coherence would be the proposal to establish an obligation to include specific contractual clauses intended to cover cases of exceptional or systemic economic disruptions. While this measure aims to address the negative effects of economic crises such as the COVID-19 crisis when the developing negative effects are not yet regulated, as the situation further develops, there is also the potential for other new regulation to try to address the same matters, therefore giving rise to possible future legal overlaps. This risk can however be significantly minimised if the relevant amendments ensure that their reach is general and broad enough to allow for the necessary flexibility.

In conclusion, the measures proposed by this policy option should not raise any major coherence concerns in relation to other EU legislation, as long as the amendments are in line with the existing legal instruments. However, several measures under this option would specifically go beyond or diverge from what is established in other legislation, meaning that compared to Option 3a, and even Option 2, Policy option 3b would ensure a lower degree of legal coherence at EU level.

⁷⁶ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules

9 How do the options compare?

9.1 Efficiency

This section compares the performance of the five policy options considered in this study through a MCA focused on efficiency. To do so, each impact under the efficiency criterion has been given a weight which reflects its importance in informing the decision on whether to intervene, and how, at EU level. Importantly, as pointed out in section 8, the assessment of effectiveness and coherence are crucial for a complete and comprehensive understanding of the various options, but they are not part of the MCA. The reason is that effectiveness is, in essence, a reflection of the policy objectives and therefore are framed and presented as Commission objectives. Coherence is a consideration on the legal feasibility of the options and their interplay with existing legislation, and as such does not relate to the merits of the options as such. For this reason, the MCA weighs the costs and benefits (impacts) of the options, while taking also due account of their effectiveness and coherence without including them in the MCA. Including them in the MCA would unduly skew the scoring towards benefits.

The decision to adopt EU-level measures should carefully consider whether the potential benefits will outweigh the costs of implementing it. In the case at hand, any EU-level intervention should seek to strike a balance between the benefits for consumers and credit providers and the costs for credit providers and intermediaries, and EU-level and national authorities. This is key to ensure that the intervention complies with the principle of proportionality.

Considering the above, and to ensure the robustness of the comparative analysis, this study proposes a main scenario (Scenario 1) and two additional plausible scenarios (Scenarios 2 and 3) that allow to carry out a sensitivity analysis.

Scenario 1 represents a conservative scenario where costs and benefits are balanced, each representing 50% of the total weight. This approach ensures that the burden that any policy or legislative change would create on the industry is duly taken into consideration, while also acknowledging the benefits for the industry that could derive from an intervention in terms of easier compliance and procedures which are business friendly (ultimately resulting in fewer costs generated by incompliance issues, litigation processes, etc.) as well as the positive externalities that the measures to avoid or reduce over-indebtedness would generate.

In this scenario, the weight among the three main types of costs and the three main types of benefits is distributed as follows:

- The benefits for consumers and the compliance costs which the industry would have to incur to achieve these benefits are balanced out, each representing 40% of the total weight.
- Within the two types of benefits for consumers - consumer protection and detriment, on the one hand and, on the other, consumer trust, behaviour, choice and social inclusion - the latter is considered a secondary effect that should be considered but which is not part of the main objective of an EU-level intervention. Consequently, the impact category of consumer protection and detriment is given 30% of the total weight, whereas consumer trust, behaviour, choice and social inclusion represents 10%.
- The benefits for the industry in terms of level playing field and cross-border sales represent the remaining 10% that would correspond to benefits.
- The costs for authorities are also attributed 10%, of which Member-State authorities would represent 8% and EU-level authorities, 2%.

The other plausible scenarios are based on the first scenario, with slight variations:

- **Scenario 2** prioritises the benefits (60% of the total weight) over the costs (40% of the total weight).
- **Scenario 3**, whereby costs are given more weight (60% of the total weight) than benefits (40% of the total weight). In this scenario, the additional

The performance of the policy options in each of these scenarios is presented in Tables Table 4 to Table 6, using the scores attributed in the previous section (Section 8.2). The weighted performance for each of the six categories of costs and benefits was calculated; the sum of all the weighted performance scores determines the overall performance of the option against the efficiency criterion.

Policy option 3a has obtained the best overall score in the main scenario as well as in the second scenario – where benefits carry a greater weight than costs. In Scenario 2, all options score best that the baseline scenario. In contrast, where costs are attributed more weight than benefits (Scenario 3), Policy options 1 to 3b all obtained a negative overall score, meaning that the best ranked option is Policy option 0. This is because costs are granted a very high weighting. The main results from the comparative analysis and the sensitivity analysis can be summarised as follows:

- Under the main scenario (**Scenario 1**), the policy option that would represent the best course of action is **Policy option 3a** (score of 0.16), followed by Option 2 (0.08). These are the only two policy options that would represent an improvement compared to the baseline, as the benefits of implementing them would outweigh the costs. In contrast, the negative values for Options 1 (-0.02) and 3b (-0.04), indicate that implementing them would generate more costs than benefits, rendering the baseline a better alternative.
- In the scenario where benefits are given greater weight compared to the costs (**Scenario 2**), **Option 3a** also emerges as the package of measures with the best performance in terms of efficiency (0.71), followed by Option 3b (0.61), Option 2 (0.43) and Option 1 (0.13). In this scenario, all the policy options proposed outrank the baseline scenario.
- In **Scenario 3**, where costs are attributed more weight than benefits, **none of the policy options appears to be a better alternative than the baseline scenario**, as all policy options have obtained negative scores. This means that in this scenario, the benefits are not sufficient to justify an intervention. Options 1 and 2 occupy the second place after the baseline scenario (both with a score of -0.17), followed by Options 3a (-0.24) and 3b (-0.64).

Table 4. Multicriteria analysis (BRG #63) (main scenario)

Input matrix		Policy options									
		0		1		2		3a		3b	
Cost / benefit category	Weight	Performance	Weighted performance	Performance	Weighted performance	Performance	Weighted performance	Performance	Weighted performance	Performance	Weighted performance
Benefits											
Consumer trust, choices, behaviour and inclusion	0.1	0	0	1	0.1	2	0.2	3	0.3	4	0.4
Consumer protection and detriment	0.3	0	0	1	0.3	2	0.6	3	0.9	4	1.2
Level-playing field and cross-border sales	0.1	0	0	0	0.0	1	0.1	2	0.2	1	0.1
Costs											
Compliance costs	0.4	0	0	-1	-0.4	-2	-0.8	-3	-1.2	-4	-1.6
EU authorities	0.02	0	0	-1	-0.02	-1	-0.02	-2	-0.04	-3	-0.06
MS authorities	0.08	0	0	0	0	0	0	0	0	-1	-0.08
Total 1	1	0	0	0	-0.02	2	0.08	3	0.16	1	-0.04

Table 5. Multicriteria analysis (BRG #63) (Scenario 2 – plausible scenario – where benefits represent 60% of the total weight and costs are attributed 40% of the total weight)

Input matrix		Policy options									
		0		1		2		3a		3b	
Cost / benefit category	Weight	Performance	Weighted performance	Performance	Weighted performance	Performance	Weighted performance	Performance	Weighted performance	Performance	Weighted performance
Benefits											
Consumer trust, choices, behaviour and inclusion	0.15	0	0	1	0.15	2	0.3	3	0.45	4	0.6
Consumer protection and detriment	0.3	0	0	1	0.3	2	0.6	3	0.9	4	1.2
Level-playing field and cross-border sales	0.15	0	0	0	0	1	0.15	2	0.3	1	0.15
Costs											
Compliance costs	0.3	0	0	-1	-0.3	-2	-0.6	-3	-0.9	-4	-1.2
EU authorities	0.02	0	0	-1	-0.02	-1	-0.02	-2	-0.04	-3	-0.06
MS authorities	0.08	0	0	0	0	0	0	0	0	-1	-0.08
Total	1	0	0	0	0.13	2	0.43	3	0.71	1	0.61

Table 6. Multicriteria analysis (BRG #63) (Scenario 3 – plausible scenario – where costs represent 60% of the total weight and benefits are attributed 40% of the total weight)

Input matrix		Policy options									
		0		1		2		3a		3b	
Cost / benefit category	Weight	Performance	Weighted performance	Performance	Weighted performance	Performance	Weighted performance	Performance	Weighted performance	Performance	Weighted performance
Benefits											
Consumer trust, choices, behaviour and inclusion	0.1	0	0	1	0.1	2	0.2	3	0.3	4	0.4
Consumer protection and detriment	0.2	0	0	1	0.2	2	0.4	3	0.6	4	0.8
Level-playing field and cross-border sales	0.1	0	0	0	0	1	0.1	2	0.2	1	0.1
Costs											
Compliance costs	0.4	0	0	-1	-0.4	-2	-0.8	-3	-1.2	-4	-1.6
EU authorities	0.07	0	0	-1	-0.07	-1	-0.07	-2	-0.14	-3	-0.21
MS authorities	0.13	0	0	0	0	0	0	0	0	-1	-0.13
Total 3	1	0	0	0	-0.17	2	-0.17	3	-0.24	1	-0.64

As per BRG Tool #63, an outranking matrix has also been developed, which allows to better illustrate the comparative analysis of the options under the first scenario (1). The outranking matrix compares each policy option against the others, indicating which option is favoured by presenting the total sum of the weights of the assessment criteria (i.e. cost / benefit categories) in which a given option (vertical axis) outranks another (horizontal axis). For instance, the comparison of Policy option 3a against Policy option 3b gets the sum from the weight attributed to: level-playing field and cross-border sales (0.1), compliance costs (0.4), costs for EU authorities (0.02) and costs for national authorities (0.08), whereas the opposite comparison (Policy option 3b in relation to Policy option 3a) would only get the sum from the weight attributed to consumer trust, choices, behaviour and inclusion (0.1) and consumer protection and detriment (0.3). The weight attributed to assessment criteria where both policy options have obtained the same score is distributed equally between both options. Any score above 0.5 indicates that the policy option listed in the left column outranks the option against which it is being compared. A score of 0.5 shows that they perform equally.

Table 7. Comparative analysis ("outranking matrix", BRG #63)

Policy option	Policy option 0	Policy option 1	Policy option 2	Policy option 3a	Policy option 3b
Policy option 0	-	0.51	0.46	0.46	0.5
Policy option 1	0.49	-	0.45	0.46	0.5
Policy option 2	0.54	0.55	-	0.46	0.55
Policy option 3a	0.54	0.54	0.54	-	0.6
Policy option 3b	0.5	0.5	0.45	0.4	-

Based on the comparative analysis of the different options, the policy options can be ranked as follows:

- Policy option 3a shows the best performance in terms of efficiency, outranking all the other options.
- Policy option 2 ranks second: it is only outranked by Option 3a while it outranks the other options.
- Policy option 0 ranks third: although it is outranked by Options 3a and 2, it outranks Policy option 1 and has an equal performance to Option 3b.
- Policy option 3b ranks fourth: it shows an equal performance to Options 0 and 1 and is outranked by Options 2 and 3a.
- Policy option 1 ranks fifth: it is outranked by all other options, with the exception of Option 3b, with which it is tied in terms of efficiency.

9.2 Effectiveness

The highest scoring option in terms of effectiveness is Option 3b (with an overall score of 4 on a scale from 0 to 5). The overall effectiveness of both Option 2 and Option 3a is expected to be similar (i.e. both were awarded an overall score of 3), even looking at individual scorings, each option would address the problems identified differently and Option 3a would be slightly more effective than Option 2. Option 1 would be slightly effective in addressing the initiative's objectives (with an overall score of 1) and Option 0 would not be effective (with an overall score of 0).

9.3 Coherence

Option 3a is expected to achieve a greater level of coherence, having obtained a score of 4 (on a scale from 0 to 5), while Option 2 was awarded a score of 3 (out of 5). Option 3b and 1 would both ensure a limited level of coherence with existing EU legislation,

with a score of 2 (out of 5). Option 0 would not affect the existing coherence of the EU legal framework, and was awarded a score of 0 (out of 5).

9.4 Comparison of options and REFIT considerations

The multicriteria and the comparative analyses presented in the previous pages suggest that **Policy option 3a is the most efficient option overall**. It is the best rated option in two out of three scenarios, among which the main scenario, where it outranks all the other policy options. **Option 3a also emerges as the alternative with the best overall score if other criteria which were not included in the MCA are taken into account (i.e. effectiveness and coherence).**

On this basis it could be concluded that Option 3a is, overall, the most optimal policy option considered in this study.

REFIT considerations

Any EU-level intervention in the field of consumer credit should seek to tackle the key issues that consumers and credit providers are facing. In this sense, it is important to recall that many of the problems identified in the Evaluation of the CCD – and confirmed by this study – point to an inadequate or insufficient level of protection of consumers against certain risks linked to consumer credit, and to great differences in the obligations of credit providers and intermediaries across Member States. Although these issues cannot be effectively tackled simply by imposing new obligations on credit providers, including measures that introduce new obligations or create additional burdens for credit providers seems inevitable. In this sense, Policy option 3a is not an exception.

Having said that, this option appears relatively balanced for two main reasons:

- Except for measures included in the MCD, the new provisions introduced in the CCD would not create additional obligations for credit providers. They would merely recall rules to which they are already bound, established by the GDPR, the European Accessibility Act, and the Omnibus Directive.
- Only MCD provisions which are deemed adequate and proportionate to address the key issues affecting the provision of consumer credit would be introduced in the CCD. In doing so, Policy option 3a would simplify the regulatory framework applicable to credit providers while avoiding obligations that are disproportionate to the risks to which consumers are exposed.

The main limitation of Policy option 3a in terms of burden reduction relates to the lack of measures simplifying the information requirements currently included in the CCD, a measure which is part of Policy options 2 and 3b. The findings of this study reveal that this measure would be welcomed by not only industry representatives, but also other stakeholder groups. This is because it would reduce the advertising costs for credit providers/intermediaries (especially when using certain communication channels) while also ensuring that consumers are presented with clearer information that they can process and understand more easily.

The study attempted to assess the possible reduction of burden for advertising on radio, for which we had relevant data that could be used.

This study estimates that the spending of radio airtime is approximately EUR 560 million per year, of which approximately EUR 28 million is affected by credit terms and conditions and having a cost to advertisers of EUR 7 million in view of existing legislation on information to be presented.⁷⁷ A reduction of this cost due to simplifying information requirements could save a fraction of the figure of EUR 7 million. It is

⁷⁷ Based on data from UK Radiocentre and extrapolated for the EU based on EU GDP data for Member States.

estimated this figure does not exceed 10-20%, or EUR 700,000 to EUR 1.4 million. For TV and other media this would likely be higher, and one data from the Netherlands shows an approximate cost of ads to be three times for TV as opposed to radio. This means the cost reduction could be higher, but this would depend on the total volume of TV ads (unknown) and their actual cost (unknown).

The burden reduction of adapting information requirements for digital use is difficult to ascertain. However, with nearly 70 million personal loans in the EU in 2019 and an even higher number of credit cards, an equal number of SECCI forms would have had to be prepared. At an estimated preparation time of 15 minutes per form (per consumer) based on average financial sector wages for an FTE, this would be equal to nearly EUR 790 million FTE time spent on preparing such forms each year. Adapting the form for mobile use has an initial cost but would lead to reduced burden for providers. In view of the fact that 36% of consumers entered a credit agreement online⁷⁸ this could ultimately mean that forms will have to be adapted for over 25 million personal bank loans annually, but once adapted this should be standard practice for industry.

⁷⁸ CCD Evaluation survey of consumers (Q30).

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