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# Consumer Credit Directive

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## Background

Directive 2008/48/EC (hereinafter "the Consumer Credit Directive") was transposed into Irish law under the European Communities (Consumer Credit Agreements) Regulations 2010 (hereinafter "the Regulations"). The Regulations came into effect on 11 June 2010 and, broadly, apply to credit agreements with a value of €200 – €75,000, not secured by a mortgage or not for the purpose of acquiring land / buildings. The Regulations introduced the following benefits for consumers:

- Standardised pre-contractual information and standardised information to be contained in credit agreements;
- Assumptions and guidance on the calculation of the Annual Percentage Rate of charge ("APR");
- The right to be informed of any creditworthiness checks performed;
- Transparency in the fees paid to credit intermediaries;
- Maximum limits for early repayment fees and a €10,000 12-month threshold, under which early repayment fees may not be charged; and
- A 14-day cooling-off period.

Amendments came into effect on 1 January 2013 which provided additional assumptions for the calculation of APR.

In 2020 the European Commission (hereinafter "the Commission") launched a public consultation relating to its consumer agenda, including a review of the Consumer Credit Directive ("CCD"). An impact assessment was completed by the Commission which identified a number of areas of improvement. Below we set out a summary of the Commission's findings and the proposed changes as a result:

## Consumer Credit Directive – Findings

The following is a high-level summary of the Commission's findings:

- The scope of the CCD is too narrow. It does not adequately protect consumers given the emerging trends in consumer credit. These trends may lead to over-indebtedness / financial difficulty and include:
  - Peer-to-peer and non-bank credit providers; and
  - High cost and instant loans for an amount under €200.
- Transparency requirements for advertisements and pre-contractual information does not reflect the use of new digital devices like smart phones / tablets in the credit application process. Single click credit may impact the behaviour of customers and lead to irresponsible lending;
- The information requirements introduced by the CCD may result in documentation being provided to consumers which is overly complex and does not allow for the easy comparison of credit offers between providers;
- The provisions regarding creditworthiness checks are ambiguous, they do not provide sufficient safeguards to ensure responsible lending and do not specify the types of data that can be used for this purpose. This results in variances in standard practice across the European Union ("EU") and may lead to unfair treatment of borrowers; and
- The CCD does not deal with hardship and forbearance in the event of an "exceptional and systemic economic disruption", such as that caused by the current COVID-19 pandemic.

## Consumer Credit Directive – Focus of the public consultation

The public consultation launched by the Commission closed on 6 October 2020. Therein, the Commission sought feedback from a number of groups including consumers, consumer organisations, credit providers, credit intermediaries, credit registers, professional associations, EU institutions and national Parliaments. The Commission focussed its public consultation on trends impacting consumer policy strategy, empowering consumers in the green transition, proposed updates to the General Product Safety Directive and proposed updates to the CCD. For the purposes of this paper we have reviewed the proposed changes to the CCD. The following is a high-level summary of the areas in which feedback was sought:

- An **increase in scope** for the CCD to include:
  - Credit below €200;
  - Credit above €75,000 (with the exception of credit for the purposes of renovation of a residential immovable property);
  - Peer-to-peer lending; and
  - All other lines of credit currently exempt for example, leasing, overdrafts and credit granted free of interest.
- Changes to the **format of pre-contractual information**, including:
  - Simplified information focussing on key product features;
  - Comparative information provided in tables; and
  - Online information that is adaptable to screen size.
- Increased focus on **responsible lending**, including:
  - Designing credit products to consider customers' interests, objectives and characteristics;
  - Caps on interest rates;
  - A ban on unsolicited credit / an increased focus on the cooling-off period where unsolicited credit has been accepted;
  - Additional responsibilities for lenders where credit has been offered as a result of a negative creditworthiness assessment for example, an obligation to provide debt advice;
  - A ban on online credit which does not allow a sufficient period for reflection;
  - A ban on the mandatory purchase of additional products i.e. bundling / tying;
  - A harmonised approach to creditworthiness checks and a ban on an offer of credit where these checks have shown negative results; and
  - The promotion of financial education by credit providers.
- Specific **timelines for the provision** of pre-contractual information and key features to be included;
- Varying levels of information required in **advertising** dependent on the medium;
- Common **standards across the EU** for creditworthiness checks and allowable data sources; and
- The creation of **safeguards for consumers** and credit providers in the case of macro-economic disruption.

The consultation process launched by the Commission displays an increased focus on conduct-related issues, fair treatment of borrowers and responsible lending practices. The proposed changes are very similar to those implemented in 2016 through the Mortgage Credit Directive for mortgage products. While a number of additional consumer protection measures are in place at a national level for those outside the scope of the Regulations, the introduction of increased protections at an EU level will require a significant change in lending practices and will impact processes, systems and people.

### Next Step - Adoption

*It is anticipated that the Commission will adopt any updates in the second quarter of 2021.*

### How can KPMG help?

KPMG's Consulting experts in the conduct, regulatory and financial services sectors have unparalleled experience assisting financial institutions with conduct risk reviews and regulatory implementations. We have extensive experience in guiding organisations through regulatory change and designing and implementing your operating policies, procedures and systems to align to the requirements. We have designed methodologies that will help you during the process. Examples of how our team of experts can assist include:

- Support you in establishing a programme of work to address the changes required as a result of the new requirements;
- Assist you with a gap analysis, assessing the changes which will be required to be adopted, including any scope changes for lending that are currently not covered by CCD;
- Where a change is required, we will assist you with the design of those changes and how these changes impact your organisation across people, processes and technology;
- Assist you with the testing of the changes to ensure that they are adequately designed pre-implementation;
- Assist you with implementation and post-implementation assessment ensuring that the changes were applied correctly and in line with the new regulatory requirements; and
- Our team will support you in training your people following the changes through a variety of techniques.

It is important to maintain oversight of your lending products post-implementation to ensure continued adherence to these requirements. We have an established product assurance framework, which will arm you with tools and techniques to control your product set on an on-going basis, maintain regulatory compliance and enable positive customer engagement.

# Contact us

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Produced by: KPMG's Creative Services. Publication Date: November 2020. (6668)