# CREATING A FAIR SINGLE EUROPEAN MARKET FOR CONSUMER CREDIT AND ADAPTING TO THE CHANGES OF DIGITALISATION

Position paper of the Federation of German Consumer Organisations (vzbv) on the proposal for a directive of the European Parliament and of the Council on consumer credits

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**Editorial Information**

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# I. SUMMARY

With this proposal for a Directive of the European Parliament and of the Council on consumer credits [COM (2021) 347 final], the European Commission wants to amend the current Consumer Credit Directive (CCD). The proposal aims to achieve significant improvements in consumer protection in the European consumer credit market. In addition, the European Commission is taking into account the changes in digitalisation and the lessons learned from the COVID-19 crisis. This section summarises some of the main comments and suggestions of the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv) in relation to this proposal for a Directive.

Wider view of credit products and credit services

The proposed extension of the scope is likely to significantly improve consumer protection in the consumer credit market (Article 2). This is urgently needed and is therefore supported by vzbv. In addition, however, the European Commission must ensure that new digital credit services or credit products do not lead to regulatory loopholes to the detriment of consumers.

Consumers need credit that is suitable to their needs and their financial situation

The European Commission recognises the problem that consumers may not be able to assess whether the loans and ancillary services offered are suitable for them due to insufficient information and explanations. Therefore, creditors and credit intermediaries must explain the credits and ancillary services offered in such a way as to enable consumers to assess whether they are suitable for them and must obtain the relevant information from consumers (Articles 12 and 16). The proposal goes in the right direction, but it does not go far enough. vzbv demands a mandatory suitability test for offered credit agreements or crowdfunding credit services.

Responsible and consumer-centric lending

The proposed Directive also provides for a consumer-centric design of creditworthiness assessment and stricter requirements regarding the scope and outcome of the assessment (Article 18). This is to be welcomed in principle. However, the requirement of a sufficient level of financial standing should not be limited solely to the viability of debt service. The impact on consumers' budgets must also be taken into account. For this reason, vzbv calls for a comprehensive budget analysis, on the basis of which consumers can make an informed credit decision. vzbv supports the European Commission's demand that consumers should have the right to human intervention, explanation of the process and contest the result of automatic creditworthiness assessment procedures. However, vzbv points out that the proposed rules must also apply to semi-automatic processes. In addition, explanations of the procedure and the data used must always relate to the individual case and must not remain abstract. It is also worth highlighting that, in exceptional cases, consumers may be granted credit even if the creditworthiness test outcomes are negative. This is supported by vzbv because the creditworthiness assessment models are not perfect and special life situations may cause these models to fail. In addition, such loans should be included in the list of exemptions, which have a similar effect to an investment for consumers.

Negotiated solutions benefit consumers with financial difficulties as well as creditors

Consumer credit default is often caused by personal crisis events in the lives of consumers, such as unemployment or illness. However, credit default can be prevented if credit grantors give consumers time and thus the opportunity to solve their financial problem. Therefore, the European Commission proposes that creditors should exercise forbearance in such cases and find a negotiated solution before initiating enforcement proceedings for late payment (Article 35). This proposal is explicitly supported by vzbv. The approach is, in principle, appropriate to prevent consumer over-indebtedness and defaulted loans on creditors' balance sheets. In order for the approach of this proposal to be effective, creditors must be obliged to offer a modification of the existing terms and conditions of a credit agreement before enforcement proceedings are initiated if the solvency of the consumer deteriorates due to a personal crisis event.

# II. INTRODUCTION

vzbv is the umbrella organisation for more than 40 consumer organisations throughout Germany and represents the interests of German consumers vis-à-vis policymakers, the private sector and in public. vzbv is also a founding member of BEUC, the European Consumer Organisation.

Consumer credits are important for German and European consumers to enable participation in economic and social life. That way, expenditure can be financed and income losses can be compensated if financial resources available are insufficient. A functioning European single market for consumer credit benefits consumers as well as businesses and can stimulate the economy. However, the consumer credit market does not work well for consumers in some instances.

Consumer credit is a credence good whose quality is difficult to assess for consumers. There is an asymmetry of information between consumers and creditors or credit intermediaries. Consumers must therefore be able to rely on consumer-centric credit advice and on responsible lending. However, reality shows that lending is often not geared towards consumer needs but towards the profit of the providers. Creditworthiness assessments often do not include a comprehensive budget analysis. vzbv is observing credit being granted that does not match the consumer's financial situation, his or her financing needs and his or her demands for flexibility. The aggressive distribution of ancillary services drives up credit costs. [1]

Decisions to take out a credit often have an impact on the consumer's budget for many years. This can lead to economical and psychological pressure on consumers. Incorrect credit decisions by consumers can lead to over-indebtedness in the worst case. However, bad decisions also burden consumers if the credits can be repaid in some way. Money spent on loan instalments is not available for spending in other areas of life. The thought of possible personal crisis events, such as unemployment or disease, can lead to concerns about financial overload.

Therefore, vzbv argues that there must be strict consumer-centric rules of conduct for creditors and credit intermediaries. Credit must be granted while taking into account the economic performance and individual circumstances of consumers. It is important to

[1] iff 2019, https://www.iff-hamburg.de/wp-content/uploads/2019/02/Faire_Kreditvergabe_Layout.pdf [access: 19.08.2021]

ensure that consumers only receive credit offers that are actually suitable for them. There is a conflict of objectives between protecting against over-indebtedness and granting access to credit. In justified exceptional cases, credit should be granted even if the result of the creditworthiness assessment is negative. This is the case, for example, if the credit is likely to increase the economic performance of the consumer. A dynamic view of credit relationships in the face of personal crisis events in the lives of consumers should also preserve credit relationships and prevent credit defaults.

The European Commission's analysis of the current Consumer Credit Directive (2008/48/EC) has identified deficiencies in ensuring a consistent high level of consumer protection across the European Union.[2] The proposal for a Consumer Credit Directive aims to reduce these deficits and also to adapt to the impact digitalisation has on the structure of supply and demand in the European consumer credit market. vzbv thanks the European Commission for the opportunity to comment on the proposal for a directive and sees a need for additions and corrections in some of the proposed rules.

[2] European Commission 2021, https://ec.europa.eu/info/files/consumer-credit-review-supporting-study-and-annexes_en [access: 19.08.2021]

# III. ASSESMENT

| Article | Comment |
| --- | --- |
| 1. CHAPTER I – GENERAL PROVISIONS | |
| **2 - Scope** | From vzbv's point of view, the extension of the scope provided in the European Commission's proposal is urgently needed.<br><br>The protective rules of the current Consumer Credit Directive[3] (CCD) apply only to those credit products that fall within the scope of the directive. However, the scope contains a number of exceptions. These exceptions include easily available credits that often target vulnerable consumers. As a result, responsible lending cannot be guaranteed and vulnerable consumers are often harmed. This applies, for example, to credits whose amount is lower than 200 euros. Those credits usually have a short maturity and very high costs.[4] Even in the case of interest-free and fee-free loans, which often can be found in retail (stationary and online), there is often a lack of sufficient consumer protection.[5]<br><br>In addition, vzbv welcomes the inclusion of crowdfunding credit services. The European Commission thereby takes account of digitisation. However, if new digital credit services are offered in the future, the structure of which does not correspond to crowdfunding credit services, they may fall outside the scope and create a regulatory gap to the detriment of consumer protection.<br><br>The scope should be extended in such a way as to cover not only crowdfunding credit services but also similar digital credit services that may be offered in the future. |
| 2. CHAPTER II - INFORMATION TO BE PROVIDED PRIOR TO THE CONCLUSION OF THE CREDIT AGREEMENT OR OF THE AGREEMENT FOR THE PROVISION OF CROWDFUNDING CREDIT SERVICE | |
| **8 - Standard information to be** | The proposed rules on standard information to be included in advertising of credit agreements and crowdfunding credit services will continue to apply only to advertising which includes |

[3] Directive 2008/48/EC

[4] European Commission 2014, https://ec.europa.eu/info/sites/default/files/ccd_implementation_report_2014_en.pdf [access: 19.08.2021]

[5] Marktwächter Finanzen 2018, https://www.verbraucherzentrale.de/sites/default/files/2020-10/20-03-02_marktwaechteruntersuchung_kreditvermittlung_im_einzelhandel-1.pdf [access: 19.08.2021]

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|---|---|
| **included in advertising of credit agreements and crowdfunding credit services** | interest rates or other cost figures. This provision is too narrow.<br><br>From a consumer point of view, information on the cost of credit should be provided in all advertisements of credit agreements and crowdfunding credit services, particularly by means of giving a representative example. This enables consumers to evaluate any advertising in terms of possible costs.<br>Furthermore, in vzbv's view, it is necessary that the representative example should include, in addition to average values, the range of the interest rates offered ("from to") because there may be a significant discrepancy between the interest rates advertised and those actually offered.[6] |
| **10 - Pre-contractual information** | Pre-contractual information on the terms and costs of a credit, as well as adequate explanations, is an important element for enabling consumers to make an informed decision. The European Commission proposes that consumers must receive the pre-contractual information at least one day before the conclusion of the credit agreement.<br><br>A time gap between the receipt of the pre-contractual information and the conclusion of the credit agreement is a necessary condition for consumers to be able to make an informed decision. The European Commission's proposal therefore goes in the right direction, but not far enough. It is crucial that the time gap is really sufficient for consumers to understand and evaluate the information and explanations. In addition, consumers should have the possibility to compare credit offers.<br><br>The proposed Directive provides that creditors can also circumvent the minimum time interval between the delivery of the pre-contractual information and the conclusion of the contract by consumers. For this, consumers only have to be informed of the right of withdrawal under Article 26 no later than one day after the conclusion of the credit agreement (recital 32). This circumvention possibility thwarts the intended purpose of the minimum time interval.<br><br>From vzbv's point of view, a time gap of at least one day is too short to fulfil its purpose. Considering the amount and complexity of the information and the scope of a credit decision, the time interval should be at least two days without exception. The rules must apply regardless of the sales |

[6] iff 2021, https://www.vzbv.de/sites/default/files/2021-06/100321_Gutachten_Produktiver_Kredit.pdf [access: 17.08.2021]

> channel of the credit, even if a credit agreement is concluded digitally. Digital sales channels have become increasingly important for consumers and this trend is expected to continue.[7] Also, consumers should be reminded of their right of withdrawal in all cases. This increases the effectiveness of the right of withdrawal.

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**12 - Adequate Explanations**

**16 – Advisory Services**

Article 12 of this proposal for a Directive requires creditors and, where applicable, credit intermediaries and crowdfunding credit service providers to explain to consumers the credit offered and any ancillary services. The aim is to enable consumers to assess whether the offers match their needs and financial situation. vzbv welcomes this proposed rule because it is a step in the right direction.

A look at the consumer credit market shows that many credits that are granted are unsuitable for consumers. Article 12 (2) (a) of the proposal provides that Member States may make the nature and extent of the explanations subject to the "circumstances of the situation in which the credit is offered". This wording is unclear. There is a risk that the explanations will not cover everything that would be necessary, and that would be to the detriment of consumers.

> The limitation relying on "circumstances of the situation in which the credit is offered" should be deleted.

Article 16 of the proposed Directive also supports the objective of ensuring appropriate credit and crowdfunding credit services. Paragraph 3 (c) of the proposal requires creditors and, where appropriate, crowdfunding credit service providers to ensure that relevant information on the financial situation, preferences and objectives of consumers is obtained in order to recommend suitable credit products or services. Paragraph 5 also states that consumers must be warned if the credit agreement or crowdfunding credit service offered induces a specific financial risk for the consumers.

vzbv welcomes these proposals. However, the European Commission's proposals does not go far enough.

> vzbv demands a mandatory suitability test for offered credit agreements or crowdfunding credit services, which should include information on criteria such as credit costs, flexibility, household budget and consumer wealth. The results should be documented and handed out to the consumers.

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[7] European Commission 2020, https://ec.europa.eu/info/sites/default/files/ccd_evaluation_final_report_2020.pdf [access: 17.08.2021]

> Establishing such a standard should ensure that all relevant aspects are covered in a suitability test. However, the suitability test should always be carried out on an individual basis in order to take account of the personal situation of consumers.[8]

A suitability test has already been established in the securities and insurance sectors. The credit sector has some catching up to do here.

## 3. CHAPTER III – TYING AND BUNDLING PRACTICES, AGREEMENTS FOR ANCILLARY SERVICES, ADVISORY SERVICES AND UNSOLICITATED CREDIT SALE

**14 - Tying and bundling practices**

In Article 14 of the proposed Directive, the European Commission proposes in paragraph 4 that Member States may allow creditors and providers of crowdfunding credit services to require consumers to take out a relevant insurance policy. However, the proportionality of such a measure must be considered. Based on this wording, it would be possible for creditors or providers of crowdfunding credit services to require the purchase of a residual debt insurance. As consumer groups have already demonstrated in the past, the sale of residual debt insurance is largely not oriented to the needs of consumers. These insurances almost never offer sufficient protection and are at the same time very expensive.[9]

> vzbv therefore criticises the proposed rule and calls for its deletion.

**15 - Inferred agreement for the purchase of ancillary services**

Under Article 15, it is no longer possible to infer agreement for the purchase of ancillary services through default options. From vzbv's point of view, the sale of a residual debt insurance may only take place in the form of a voluntarily concluded ancillary service. Inferred consent, such as pre-checked boxes, may not be considered as consent. The proposed rule in Article 15 is therefore to be welcomed.

> vzbv also demands that offers for residual debt insurance may only be made if they are suitable for consumers. An appropriate suitability test must be carried out (see comments on Articles 12 and 16). In addition, the offers must be made separately from the offers for the credits or crowdfunding credit services and at a different time. The residual

[8] vzbv 2021b, https://www.vzbv.de/sites/default/files/2021-06/Die%20verbraucherorientierte%20Kreditbeziehung_Positionspapier_vzbv.pdf [access: 19.08.2021]

[9] vzbv 2018, https://www.vzbv.de/sites/default/files/downloads/2018/10/22/18-09-20_positionspapier_rsv-final-ls-lg.pdf, [access: 19.08.2021]

> debt insurance must not be funded by the credit or crowd-funding credit service. Costs must be included in the annual percentage rate (APR).

## 4. CHAPTER IV – ASSESSMENT OF CREDITWORTHINESS AND DATABSE ACCESS

Responsible lending must ensure that consumers are able to afford credit. It is the role of the creditworthiness assessment to ensure this.[10] Although there is currently a requirement to carry out a creditworthiness assessment, it is not precise enough and requires interpretation.

The proposed Directive foresees that the creditworthiness assessment must in future be consumer-centric (Article 18 (1)). It also lays down stricter requirements for the scope (Article 18 (2)) and the result of the assessment (Article 18 (4)), as well as an obligation to document and keep the results (Article 18 (3)). vzbv welcomes this.

However, a sufficient level of financial standing should not be limited solely to the viability of debt service. The impact on consumers' budgets must also be taken into account.

**18 - Obligation to assess the creditworthiness of the consumer**

> vzbv therefore calls for an obligation to carry out a comprehensive budget analysis.[11] This budget analysis should process information on income, expenditure, assets and existing liabilities as well as known future financial changes. Consumers must then receive a written overview of the impact on their budget. The results must be documented and stored based on an appropriate standard that allows consumers to check the correctness of the information used and allows competent authorities to verify compliance with the requirements of the Directive.

Paragraph 6 deals with automated procedures of creditworthiness assessments. If profiling or any other automated processing of personal data takes place, consumers should have the right to request and obtain human intervention on the provider's side to review the decision. In addition, consumers should have the right to get a clear explanation of the creditworthiness assessment. Finally, consumers have the right to express their point of view and should have the right to

[10] From our point of view, the term creditworthiness is not optimal because every person should be worthy of a credit. Rather, the assessment is intended to determine whether a consumer is able to repay. Therefore a new term should be developed for this assessment.

[11] The applicable data protection rules must be taken into account. The data collected must only be used for this purpose.

contest the assessment of the creditworthiness and the decision based on it.

> vzbv would like to highlight that the proposed rules must apply to all procedures of creditworthiness assessments that involve automated processing of personal data, both fully automated and semi-automated procedures.

In semi-automated procedures, data processing supports a human decision. Here, too, incorrect data can lead to incorrect decisions to the detriment of consumers. It is important that consumers have the opportunity to identify which information were decisive for their decisions. They should also have the opportunity to know which associated assumptions were decisive for the decision.

> For this reason, vzbv demands that the explanations on the procedures of creditworthiness assessment must not be abstract, but concretely related to the individual case. Creditors and providers of crowdfunding credit services must explain in a comprehensible form which data was used in the specific case and how it was weighted in the calculation.

Only such a case-by-case obligation to explain the creditworthiness assessment will enable consumers to actually understand, review and possibly contest the decisions.

Furthermore, the European Commission proposes that creditors or crowdfunding credit service providers “may exceptionally make credit available to the consumer in specific and well justified circumstances” if the outcome of the creditworthiness assessment is negative (Article 18 (4)). Examples include loans to fund exceptional healthcare expenses, student loans or loans for consumer with disabilities (recital 47). vzbv supports this exemption. The creditworthiness assessment models are not perfect and special life situations may cause these models to fail. Exceptions may therefore be appropriate.

> vzbv calls for a supplement to this exceptions, namely for credits whose purpose will increase the economic performance of consumers in the future. These credits have the effect of an investment. Consumers should work out an investment appraisal together with the creditors or providers of crowdfunding credit services that shows what effect the investment should achieve over what period of time.

## 5. CHAPTER XI – FINANCIAL EDUCATION AND SUPPORT TO CONSUMERS IN FINANCIAL DIFFICULTIES

**35 - Arrears and forbearance measures**

The proposed Directive requires creditors to exercise forbearance and find a negotiated solution (Article 35 (1)) before the consumer causes an enforcement proceeding due to default. Examples of such measures include deferring payment of the instalment repayment for a period of time or changing the interest rate.

vzbv welcomes the fact that the European Commission is thinking in this direction and takes into account personal crisis events in the lives of consumers that can lead to payment defaults. Such a dynamic view of credit relations makes them less susceptible to disruptions. However, the proposal does not go far enough. On the one hand, creditors should have adequate policies and procedures. However, it is not sufficient for them to "make efforts to exercise, where appropriate, reasonable forbearance."

> vzbv demands that creditors must offer a modification of the existing terms and conditions of a credit agreement before enforcement proceedings are initiated if the solvency of the consumer deteriorates due to a personal crisis event. However, this should not allow creditors to benefit from granting this modification (paragraph 4).

It is likely that over-indebtedness can be prevented in many cases in this way. In 2020, 49.5% of the over-indebtedness cases in Germany were due to personal crisis events, such as unemployment or illness.[12] Maintaining a credit relationship is also in the interest of creditors since they are not burdened by defaulted loans. Finally, it should be mentioned that these are relatively rare cases. In 2020, 97.9% of all instalment loans in Germany were duly paid.[13]

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**36 - Debt advisory services**

Under the proposed Directive, Member States are obliged to provide independent debt advisory services to consumers. vzbv welcomes this proposal. An important aspect of the proposal is that debt advisory service should be available to all consumers by default, not just vulnerable consumers (recital 72). It must be ensured that these debt advisory services are genuinely independent. Commercial providers to sell debt collection services must not misuse the debt advisory service.

> vzbv demands that in addition to debt advisory services consumers are also given access to consumer advisory

[12] SchuldnerAtlas 2020, https://www.boniversum.de/wp-content/uploads/2020/11/SchuldnerAtlas_Deutschland_2020.pdf [access: 17.08.2021]

[13] Schufa 2021, https://www.schufa.de/media/documents/pressemitteilungen_3/srkk21/SCHUFA_Risiko-_und_Kredit-Kompass_2021.pdf [access: 10.08.2021]

services and household budget advisory services. Furthermore, it must be ensured that the waiting time for debt advisory service, consumer advisory service or household budget advisory service remains reasonable for all consumers in the Member States.

The proposed directive should also specify the extent to which debt advisory service, consumer advisory service or household budget advisory service must be provided in the Member States.

## 6. COMPETENT AUTHORITIES

**41 - Competent authorities**

The proposed Directive requires Member States to designate the national competent authorities empowered to ensure the application and enforcement of this Directive. These authorities must be given the necessary powers of investigation and enforcement (recital 79). If there are several competent authorities in a Member State, it is important to ensure that their respective duties are clearly defined and that they cooperate closely and effectively.

In Germany, the supervision of credit granting, credit intermediation and pricing in credit advertising is distributed among different authorities. The *Bundesanstalt für Finanzdienstleistungsaufsicht* (*BaFin)* is responsible for the granting of consumer credits. The federal states are responsible for supervising the intermediation of those credits and pricing in credit advertising. These competent authorities in the federal states in many cases delegate the tasks to different local authorities. This fragmentation of supervision hampers effectiveness. There are sometimes significant differences between those different authorities in terms of competences attributed and staffing.

vzbv draws the European Commission’s attention to the fact that the supervisory requirements formulated in the draft directive are currently not met in Germany.[14]

## 7. ADDITIONAL COMMENTS

**Additional Comments on digitalisation**

Digitalisation is taking place in the consumer credit market and has brought many changes since the adoption of the Consumer Credit Directive in 2008. On the one hand, this

[14] In addition to an effective supervision by authorities, it must be ensured that law infringements can continue to be addressed quickly and efficiently through private enforcement by consumer organisations. Furthermore, it should always be possible to clarify open legal questions in court proceedings.

concerns the structure of the supply side in which new market participants and new products have emerged. On the demand side, consumer preferences have changed. The European Commission refers to the changes of digitalisation in many areas of lending in its proposal. However, in vzbv's view, three important aspects are not taken into account.

In terms of advertising of credit agreements and crowdfunding credit services, vzbv believes that social media channels must also be considered for regulation. Unlike visual advertising, it is possible on social media platforms such as YouTube or TikTok to disguise advertising, for example through so-called influencers.

The second aspect relates to instant lending. With these digital instant loans, there are only a few minutes between the application for a credit and the conclusion of the contract, provided the outcome of the automated creditworthiness assessment is positive. One can question whether or in what cases consumers need such quick contract conclusions in the first place. A same-day payout may be attractive to some consumers for impulse purchases. This however is in opposition to the need for a stable financial situation. From vzbv's point of view, consumers must be able to understand and evaluate all relevant information and explanations in connection with a credit agreement so that they can make an informed decision. There must be a minimum time gap of at least two days between receipt of this pre-contractual information and conclusion of the contract (see comment on Article 10). It is essential that these requirements apply to all distribution channels and to instant lending.

Finally, the draft Directive does not refer to the use of so-called "dark patterns" by creditors or providers of crowdfunding credit services. Dark patterns surreptitiously influence consumers' behaviour by manipulative interface designs that exploit consumers' behavioural biases. These techniques harm consumer welfare by unfairly subverting or impairing user autonomy and their decision-making. Thereby, they limit the contestability of creditors' und providers' services, as consumers are pushed to make decisions that do not reflect their actual preferences. The proposed Directive should explicitly provide that creditors and providers of crowdfunding credit services might not circumvent their obligations by exploiting dark patterns and manipulative choice architectures.[15]

[15] vzbv 2021a, https://www.vzbv.de/sites/default/files/2021-05/21-05-04_vzbv_Position_Paper_DMA_ENG.pdf [access: 19.08.2021]