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**NOTE**

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From: Presidency  
To: Delegations

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL on consumer credits  
- Presidency compromise text

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In view of the Working Party on Consumer Protection and Information (Consumer Credits) meeting on 9 March 2022, delegations will find in Annex to this note a Presidency compromise proposal.

Changes compared to the Commission proposal are indicated in **bold underlined** for new text and ~~strikethrough~~ for deleted text. In addition, changes compared to the previous Presidency compromise (document 14794/21) are highlighted in grey.

2021/0171 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on consumer credits**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2008/48/EC of the European Parliament and of the Council<sup>2</sup> lays down rules at Union level concerning consumer credit agreements ~~and crowdfunding credit services for consumers.~~

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<sup>1</sup> ...

<sup>2</sup> Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

- (2) In 2014, the Commission presented a report on the implementation of Directive 2008/48/EC. In 2020, the Commission presented a second report on the implementation of that Directive and a Commission Staff Working Document to present the results of a REFIT evaluation of the Directive which included broad consultation of relevant stakeholders.
- (3) Those reports and consultations revealed that Directive 2008/48/EC has been partially effective in ensuring high standards of consumer protection and fostering the development of a single market for credit, and that such objectives are still relevant. The reasons why that Directive has been only partially effective stem both from the Directive itself, as for instance imprecise wording of particular articles, and from external factors, such as the developments linked to digitalisation, the practical application and enforcement in Member States as well as from the fact that certain aspects of the consumer credit market are not covered by the Directive.
- (4) Digitalisation has contributed to market developments that were not foreseen at the time when Directive 2008/48/EC was adopted. In fact, the rapid technological developments registered since the 2008 Directive have brought significant changes to the consumer credit market, both on the supply side and on the demand side, such as the emergence of new products and the evolution of consumer behaviour and preferences.
- (5) The imprecise wording of certain provisions of Directive 2008/48/EC, allowing Member States to adopt diverging provisions going beyond those provided in that Directive, resulted in a fragmented regulatory framework across the Union in a number of aspects of consumer credit.
- (6) The *de facto* and *de jure* situation resulting from those national differences in some cases leads to distortions of competition among creditors in the Union and creates obstacles to the internal market. The situation restricts consumers' ability to benefit from a gradually increasing offer of cross-border credit, which is expected to further grow as a result of digitalisation. Those distortions and restrictions may in turn have consequences in terms of reduced demand for goods and services. The situation also leads to an inadequate and non-consistent level of protection for consumers across the Union.

- (7) In recent years, credit offered to consumers has evolved and diversified considerably. New credit products have appeared, in particular in the online environment, and their use continues to develop. This has raised legal uncertainty with regard to the application of the Directive 2008/48/EC to such new products.
- (8) This Directive complements the rules set out in Directive 2002/65/EC of the European Parliament and of the Council<sup>3</sup> concerning the distance marketing of consumer financial services. In order to ensure legal certainty, it should be clarified that in case of conflict between the provisions, the provision of this Directive as *lex specialis* should apply.
- (9) In accordance with Article 26 of the Treaty on the Functioning of the European Union (TFEU), the internal market comprises an area in which the free movement of goods and services and the freedom of establishment are ensured. The development of a more transparent and efficient legal framework for consumer credit should increase consumer trust and facilitate the development of cross-border activities.
- (10) In order to improve the functioning of the internal market for consumer credits, it is necessary to provide for a harmonised Union framework in a number of core areas. In view of the developing market in consumer credit, in particular in the online environment, and the increasing mobility of European citizens, forward-looking Union legislation which is able to adapt to future forms of credit and which allows Member States the appropriate degree of flexibility in their implementation will help to create a level playing field for businesses.
- (11) Article 169(1) and Article 169(2), point (a), TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union (the ‘Charter’) provides that Union policies are to ensure a high level of consumer protection.

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<sup>3</sup> Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).

- (12) It is important that consumers benefit from a high level of consumer protection. Thus, it should be possible for the free movement of credit offers to take place under optimum conditions for both those who offer credit and those who require it, with due regard to specific situations in the Member States.
- (13) Full harmonisation is necessary in order to ensure that all consumers in the Union enjoy a high and equivalent level of protection of their interests and to create a well-functioning internal market. Member States should therefore not be allowed to maintain or introduce national provisions diverging from other than those laid down in this Directive, unless otherwise provided in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. Accordingly, Member States should have the possibility to maintain or introduce national provisions on joint and several liability of the seller or the service provider and the creditor. Member States should also have the possibility to maintain or introduce ~~of~~ national provisions on the cancellation of a contract for the sale of goods or supply of services where the consumer exercises his right of withdrawal from the credit agreement ~~or from the agreement for the provision of crowdfunding credit services~~. In this respect, Member States, in the case of open-end credit agreements, should be allowed to fix a minimum period needing to elapse between the time when the creditor asks for reimbursement and the day on which the credit has to be reimbursed.

(14) The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with Union law, of the provisions of this Directive to areas not covered by its scope. A Member State could thereby maintain or introduce national legislation corresponding to this Directive or certain provisions of this Directive on credit agreements outside its scope, for instance on credit agreements upon the conclusion of which the consumer is requested to deposit an item as security in the creditor's safe-keeping and where the liability of the consumer is strictly limited to that pledged item. Furthermore, Member States could also apply this Directive to linked credit which does not fall within the definition of a linked credit agreement in this Directive. Thus, the provisions of this Directive on linked credit agreements could be applied to credit agreements that serve only partially to finance a contract for the supply of goods or provision of a service.

(15) A number of Member States have applied Directive 2008/48/EC to areas not covered by its scope to enhance the level of consumer protection. In fact, several of the credit agreements not falling within the scope of that Directive can be detrimental for consumers, including short-term high cost loans whose amount is typically lower than the minimum threshold of EUR 200 set out in Directive 2008/48/EC. In this context, and with the aim to ensure a high level of consumer protection and to facilitate the cross-border consumer credit market, the scope of this Directive should cover some agreements that were excluded from the scope of Directive 2008/48/EC, ~~such as consumer credit agreements below the amount of EUR 200.~~ Likewise, other potentially detrimental products, because of the high costs they entail or high fees in case of missed payments, should be covered by this Directive, to ensure increased transparency and better consumer protection, resulting in higher consumer confidence. To this extent, ~~leasing agreements,~~ **consumer credit agreements below the amount of EUR 200,** credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month, ~~and~~ credit agreements where the credit is granted free of interest and without any other charges, ~~including Buy Now Pay Later schemes, i.e. new digital financial tools that let consumers make purchases and pay them off over time,~~ and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable should not be excluded from the scope of application of this Directive. **However, for those credit agreements, Member States should be able to exclude the application of certain provisions of this Directive in order to adapt the obligations imposed on creditors to the nature and the risks of the credit for the consumer.** *[The last 2 sentences moved to new recital (15e)]*

**(15a) In addition, regarding credit agreements in the form of an overdraft facility, only certain provisions of Directive 2008/48 were applicable to those where the credit had to be repaid on demand or within three months. Such type of credit agreements should be maintained in the scope of application of this Directive while Member States should be able to maintain the exclusion of the application of certain limited provisions of this Directive, allowing more generally to strengthen the information provided to consumers and the obligations on creditors for this type of credit agreements.**

**(15b) Buy Now Pay Later schemes, understood as new digital financial tools that let consumers make purchases and pay them off over time, whereby the creditor grants a consumer a credit agreement for the exclusive purpose of purchasing goods or services via the supplier of such goods or services, are usually credit granted free of interest and without any other charges and should therefore be included in the scope of application of this Directive. This should be distinguished from deferred payment of invoices, covering the situation where a supplier of goods or services gives time to a consumer to pay for such goods or services, which should be excluded from the scope of application of this Directive.**

**(15c) Deferred debit cards should also be excluded from the scope of application of this Directive as they are already covered by the Payment Services Directive 2015/2366, provided that deferred payments are free of interest, that only charges linked to the provision of the payment service are applicable and that the sums are repaid within 40 days. This exclusion is without prejudice to the application of relevant provisions on overdraft or overrunning.**

**(15d) Hiring and leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement should not be included in the scope of application of this Directive considering that they do not necessarily involve the purchase of goods or services.**

**(15e)** Moreover, all credit agreement up until EUR 100 000 should be included in the scope of application of this Directive. The upper threshold of credit agreements under this Directive should be increased to take into account indexation to adjust for the effects of inflation since 2008 and in coming years. *[Moved from recital (15)]*



- (16) Crowdfunding is increasingly a form of finance available to consumers, typically for small expenses or investments. Regulation (EU) 2020/1503 of the European Parliament and of the Council<sup>4</sup> excludes from its scope crowdfunding services, including those facilitating the granting of credit, that are provided to consumers as defined in Directive 2008/48/EC. In this context, this Directive aims to complement Regulation (EU) 2020/1503 by remedying this exclusion by bringing legal clarity on the applicable legal regime for crowdfunding services when a consumer seeks to take out a credit through a provider of crowdfunding credit services.
- (17) **Since 2008, crowdfunding has developed as a form of finance available to consumers, typically for small expenses or investments.** A provider of crowdfunding credit services **platform** operates a digital platform open to the public in order to match or facilitate the matching of prospective lenders, **acting in the course of their trade, business or profession or not**, with consumers that seek funding. Such funding could **therefore** take the form of consumer credit **agreements to consumers**. Where providers of crowdfunding credit services **platforms** directly provide credit to consumers, the provisions of this Directive concerning creditors **would should** apply to them. Where providers of crowdfunding credit services **platforms** facilitate the granting of credit between creditors acting in the course of their trade, business or profession, and consumers, obligations for creditors under this Directive should apply to those creditors. In such a situation, providers of crowdfunding credit services **platforms** act as credit intermediaries, hence obligations for credit intermediaries under this Directive should apply to them.

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<sup>4</sup> Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

- (18) ~~Some provisions of this Directive should moreover apply to providers of crowdfunding credit services, acting in such capacity and not as creditors or credit intermediaries, where they facilitate the granting of credit between, on the one side, persons granting consumer credit outside of the course of their trade, business or profession, and on the other side, consumers. In this context, the provider of crowdfunding credit services should comply with certain rules and obligations of this Directive including the obligation to carry out a creditworthiness assessment and the rules on pre-contractual information. Persons granting credit not in the course of their trade, business or profession, to consumers through a crowdfunding credit platform should not be subject to obligations for creditors under this Directive.~~
- (19) In the case of specific credit agreements to which only some provisions of this Directive are applicable, Member States should remain free to regulate, in their national law, such types of credit agreements as regards other aspects not harmonised by this Directive.
- (20) Agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for them for the duration of their provision by means of instalments, may differ considerably, in terms of the interests of the contractual parties involved, and the modalities and performance of the transactions, from credit agreements covered by this Directive. Therefore, such agreements should not be regarded as credit agreements for the purposes of this Directive. Such agreement includes, for example, an insurance contract where the insurance is paid for in monthly instalments.

- (21) Credit agreements covering the granting of credit secured by **residential immovable property** ~~real estate~~ and credit agreements the purpose of which is to finance the acquisition or retention of property rights in land or in an existing or projected building **including premises** should be excluded from the scope of this Directive as such agreements are regulated by Directive 2014/17/EC of the European Parliament and of the Council<sup>5</sup>. However, ~~unsecured~~ credits the purpose of which is the renovation of a residential immovable property, ~~including those~~ involving a total amount of credit above EUR 100 000, **and which are not secured either by residential immovable property or by a right related to residential immovable property** should not be excluded from the scope of this Directive.
- (22) This Directive should apply irrespective of whether the creditor is a legal person or a natural person. However, this Directive should not affect the right of Member States to limit the provision of credit for consumers to legal persons only or to certain legal persons.
- (23) Certain provisions of this Directive should apply to natural and legal persons (credit intermediaries) who, in the course of their trade, business or profession, for a **benefit fee**, present or offer credit agreements to consumers, assist consumers by undertaking preparatory work in respect of credit agreements or conclude credit agreements with consumers on behalf of the creditor.
- (24) Information to consumers, such as **adequate explanations**, pre-contractual information or general information, **information on consultation of databases**, should be provided free of charge.

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<sup>5</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

- (25) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union ('the Charter'). In particular, this Directive fully respects the rights to the protection of personal data, to property, to non-discrimination, to protection of family and professional life, and to consumer protection pursuant to the Charter. **Regulation 2016/679 applies to any processing of personal data carried out by creditors and credit intermediaries falling within the scope of this Directive.**
- (26) Consumers who are legally resident in the Union should not be discriminated against on ground of their nationality or place of residence, or on any ground as referred to in Article 21 of the Charter when requesting, concluding or holding a credit agreement ~~or an agreement for the provision of crowdfunding credit services~~ within the Union. **This is without prejudice to the possibility of providing for differences in the conditions of access to a credit where those differences are directly justified by objective criteria.**
- (27) Consumers should be protected against unfair or misleading practices, in particular with respect to the information provided by the creditor, credit intermediary ~~or provider of crowdfunding credit services~~, in line with Directive 2005/29/EC of the European Parliament and of the Council<sup>6</sup>. That Directive continues to apply to credit agreements ~~and crowdfunding credit services~~ and works as a "safety net" ensuring that a high common level of consumer protection against unfair commercial practices can be maintained in all sectors, including by complementing other Union law.
- (28) *[This recital moved to new recital (29a)]*

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<sup>6</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

(29) Specific provisions should be laid down on advertising of credit agreements ~~or crowdfunding credit services~~ and certain items of standard information to be provided to consumers in order to enable them, in particular, to compare different offers. Such information should be given in a clear, concise and prominent way by means of a representative example. The standard information should be shown upfront and saliently, in a clear way and in an engaging format. It should be clearly legible and adapted to take into account the technical constraints of certain media such as mobile telephone screens. **The standard information should also be clearly demarcated from any additional information pertained to the credit agreement.** Temporary promotional conditions, such as a teaser rate with lower interest rate for the initial months of the credit agreement ~~or crowdfunding credit services~~, should be clearly identified as such. Consumers should see all essential information at a glance, even when they watch it on the screen of a mobile telephone. The creditor and, where applicable, credit intermediary ~~and provider of crowdfunding credit services~~' telephone number and email address should also be communicated to the consumer to enable him or her to contact the creditor, the credit intermediary ~~or provider of crowdfunding credit services~~ quickly and efficiently. A ceiling should be provided where it is not possible to indicate the total amount of credit as the total sums made available, in particular where a credit agreement gives the consumer freedom of drawdown with a limitation with regard to the amount. The ceiling should indicate the upper limit of credit which can be made available to the consumer. In specific and justified cases, in order to improve consumer understanding of information disclosed in advertising of credit agreements ~~or crowdfunding credit services~~ where the medium used does not allow to visually display it **at all or in an easily legible way**, such as in radio advertising, the amount of information disclosed ~~could~~ **should** be reduced. In addition, Member States should remain free to regulate information requirements in their national law regarding advertising of credit agreements ~~or crowdfunding credit services~~ which does not contain information on the cost of the credit.

**(29a)** Advertising tends to focus on one or several products in particular, while consumers should be able to make their decisions in full knowledge of the range of credit products on offer. In that respect, general information plays an important role in educating the consumer in relation to the broad range of products and services available and the key features thereof. Consumers should therefore be able at all times to access general information on credit products available. This should be without prejudice to the obligation to provide consumers with personalised pre-contractual information. *[Moved from recital (28)]*

(30) In order to be able to make their decisions in full knowledge of the facts, consumers should receive adequate **pre-contractual** information, for careful consideration at their own leisure and convenience, at least one day prior to the conclusion of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~, including information on the conditions and cost of the credit and on their obligations, as well as adequate explanations thereof. These rules should be without prejudice to Council Directive 93/13/EEC<sup>7</sup>. **In case pre-contractual information is provided less than one day before the consumer is bound by any credit agreement or agreement for the provision of crowdfunding credit services, the creditor and, where applicable, the credit intermediary or providers of crowdfunding credit services should provide the information before the consumer is bound and remind consumers, one day no later than seven days after the conclusion of the contract, of the possibility to withdraw from the credit agreement.** *[the last sentence moved from recital (32), with changes]*

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<sup>7</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

- (31) Pre-contractual information should be provided through the Standard European Consumer Credit Information form. To help consumers understand and compare offers, ~~a Standard European Consumer Credit Overview form summarising~~ the key element of the credit should be provided ~~in addition to~~ **in a prominent way on the first page of** the Standard European Consumer Credit Information form, through which consumers should see all essential information at a glance, even on the screen of a mobile telephone. Information **provided in the Standard European Consumer Credit Information form** should be clear, clearly legible and adapted to the technical constraints of certain media such as mobile telephone screens. It should be displayed in an adequate and suitable way on the different channels, to ensure that every consumer can access information on an equal basis and in line with Directive (EU) 2019/882 of the European Parliament and of the Council<sup>8</sup>.
- (32) To ensure the fullest possible transparency and comparability of offers, pre-contractual information should, in particular, include the annual percentage rate of charge applicable to the credit, determined in the same way throughout the Union. As the annual percentage rate of charge can at this stage be indicated only through an example, such example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement ~~or crowdfunding credit services~~ under consideration and, if applicable, to the goods purchased. When determining the representative example, the frequency of certain types of credit agreement ~~or crowdfunding credit services~~ in a specific market should also be taken into account. As regards the borrowing rate, the frequency of instalments and the capitalisation of interest, creditors should use their usual method of calculation for the consumer credit concerned.
- [the last sentence moved to recital (30), with changes]*

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<sup>8</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

- (33) The total cost of the credit to the consumer should comprise all the costs, including interest, commissions, taxes, fees for credit intermediaries and any other fees which the consumer has to pay in connection with the credit agreement ~~or crowdfunding credit services~~, except for notarial costs. Creditors' actual knowledge of the costs should be assessed objectively, taking into account the requirements of professionalism laid down in this Directive.
- (34) Credit agreements ~~or crowdfunding credit services~~ in which a borrowing rate is periodically revised in line with changes occurring in a reference rate referred to in the credit agreement ~~or crowdfunding credit services~~ should not be regarded as credit agreements ~~or crowdfunding credit services~~ with a fixed borrowing rate.
- (35) Member States should remain free to maintain or introduce national provisions prohibiting the creditor ~~or the provider of crowdfunding credit services~~ from requiring the consumer, in connection with the credit agreement ~~or crowdfunding credit services~~, to open a bank account or conclude an agreement in respect of another ancillary service, or to pay the expenses or fees for such bank accounts or other ancillary services. In those Member States where such combined offers are allowed, consumers should be informed before the conclusion of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~ about any ancillary services which are compulsory in order for the credit to be obtained in the first place or on the terms and conditions marketed. The costs payable in respect of those ancillary services, in particular insurance premiums, should be included in the total cost of the credit. Alternatively, if the amount of such costs cannot be determined in advance, consumers should receive adequate information about the existence of costs at a pre-contractual stage. The creditor ~~or the provider of crowdfunding credit services~~ should be presumed to have knowledge of the costs of the ancillary services which he or she offers to the consumer himself or herself, or on behalf of a third party, unless the price thereof depends on the specific characteristics or situation of the consumer.



- (36) For specific types of credit agreements, however, it is appropriate, in order to ensure an adequate level of consumer protection without placing an excessive burden on creditors or, where applicable, credit intermediaries, to restrict the pre-contractual information requirements, taking into account the specific character of such types of agreements.
- (37) The consumer should be given comprehensive information before he or she concludes the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~, regardless of whether or not a credit intermediary is involved in the marketing of the credit. Therefore, in general, the pre-contractual information requirements should also apply to credit intermediaries. However, where suppliers of goods and services act as credit intermediaries in an ancillary capacity, it is not appropriate to impose on them the legal obligation to provide the pre-contractual information in accordance with this Directive. Suppliers of goods and services may be deemed, for example, to be acting as credit intermediaries in an ancillary capacity if their activity as credit intermediaries is not the main purpose of their trade, business or profession. In those cases, a sufficient level of consumer protection is still achieved since the creditor should be responsible for ensuring that the consumer receives the full pre-contractual information, either from the credit intermediary, where the creditor and the intermediary so agree, or in some other appropriate manner.
- (38) Member States should have the possibility to regulate the potentially binding character of the information to be provided to the consumer prior to the conclusion of the credit agreement ~~or the crowdfunding credit services~~ and the period of time during which the creditor ~~or the provider of crowdfunding credit services~~ is to be bound by it.

- (39) Despite the pre-contractual information to be provided, the consumer may still need additional assistance in order to decide which credit agreement ~~or crowdfunding credit services~~, within the range of products proposed, are the most appropriate for his or her needs and financial situation. Therefore, Member States should ensure that creditors and, where applicable, credit intermediaries ~~and providers of crowdfunding credit services~~ provide such assistance in relation to the credit products which they offer to the consumer, by providing adequate explanations about the relevant information including in particular the essential characteristics of the products proposed to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his or her economic situation. Creditors and, where applicable, credit intermediaries ~~and providers of crowdfunding credit services~~ should adapt the way in which such explanations are given to the circumstances in which the credit is offered and the consumer's need for assistance, taking into account the consumer's knowledge and experience of credit and the nature of individual credit products. Such explanations should not in itself constitute a personal recommendation.
- (40) As highlighted in the Commission Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)<sup>9</sup>, artificial intelligence (AI) systems can be easily deployed in multiple sectors of the economy and society, including cross border, and can circulate throughout the Union. In this context, creditors, **and** credit intermediaries ~~and providers of crowdfunding credit services~~ **should be allowed to personalise , when personalising** the price of their offers for specific consumers or specific categories of consumer based on automated decision-making and profiling of consumer behaviour allowing them to assess the consumer's purchasing power, ~~Consumers~~ should ~~therefore be~~ clearly ~~informed when~~ **inform consumers that** the price presented to them is personalised on the basis of automated processing, so that they can take into account the potential risks in their purchasing decision.

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<sup>9</sup> COM/2021/206 final.

- (41) As a general rule, tying practices should not be allowed unless the financial service or product offered together with the credit agreement ~~or crowdfunding credit services~~ could not be offered separately as it is a fully integrated part of the credit, for example in the event of an overdraft facility. While, taking into account proportionality considerations, creditors ~~or providers of crowdfunding credit services~~ should be able to require the consumer to have a relevant insurance policy in order to guarantee repayment of the credit or to insure the value of the security, the consumer should have the opportunity to choose his or her own insurance provider. This should not prejudice the credit conditions set by the creditor ~~or the provider of crowdfunding credit services~~, provided that the insurance policy of that provider has an equivalent level of guarantee as the insurance policy proposed or offered by the creditor ~~or providers of crowdfunding credit services~~. Moreover, Member States should have the possibility to standardise, wholly or in part, the cover provided by insurance contracts in order to facilitate comparisons between different offers for consumers who wish to make such comparisons.
- (42) Ancillary services should be presented in a clear and transparent manner. In addition, it should not be possible to infer the consumer's agreement to ~~such~~ **credit agreements or** ancillary services, but such agreement should be a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the consumer's approval. In this context, silence, pre-ticked boxes or inactivity should not constitute agreement. **In particular, creditors and credit intermediaries should not infer the agreement of the consumer for the sums made available under the credit agreement and the repayment term through default options.**

- (43) Providing advice in the form of a personalised recommendation (‘advisory services’) is an activity which may be combined with other aspects of granting or intermediating credit. Therefore, in order to be in a position to understand the nature of the services provided to them, consumers should be made aware of what constitutes such advisory services and of whether advisory services are being, or can be, provided or not. Given the importance which consumers attach to the use of the terms ‘advice’ and ‘advisors’, Member States should be allowed to prohibit the use of those terms, or similar terms, when advisory services are being provided to consumers by creditors, credit intermediaries ~~or providers of crowdfunding credit services~~. It is appropriate to ensure that Member States impose safeguards where advice is described as independent to ensure that the range of products considered and remuneration arrangements are commensurate with consumers’ expectations of such advice. When providing advisory services, the creditor, credit intermediary ~~or provider of crowdfunding credit services~~ should provide an indication of whether the recommendation will be based on only their own product range or on a wide range of products from across the market, so that the consumer can understand the basis on which the recommendation is made. Moreover, the creditor, credit intermediary ~~or provider of crowdfunding credit services~~ should provide an indication of the fee payable by the consumer for the advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.
- (44) ~~Credit sales~~ **Granting of credit** that ~~have~~ **has** not been solicited by the consumers may in some cases be associated with practices that are harmful to the consumer. In this regard, unsolicited ~~sale~~ **granting** of credit, including non-requested pre-approved credit cards sent to the consumers, or the unilateral increase of a consumers’ overdraft or credit card limit, should be prohibited. **This is without prejudice to marketing activities in compliance with consumer legislation.**

- (45) Member States should take appropriate measures to promote responsible practices during all phases of the credit relationship, taking into account the specific features of their credit market. Those measures may include, for instance, the provision of information to, and the education of, consumers, including warnings about the risks attaching to default on payment and to over-indebtedness. In the expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness. Member States should carry out the necessary supervision to avoid such behaviour of creditors and should determine the necessary means to sanction such behaviour. Without prejudice to the provisions on credit risk of Directive 2013/36/EU of the European Parliament and of the Council<sup>10</sup>, ~~creditors or providers of crowdfunding credit services~~ should bear the responsibility of checking individually the creditworthiness of the consumer. To that end, ~~creditors or providers of crowdfunding credit services~~ should be allowed to use information provided by the consumer not only during the preparation of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~ in question, but also during a long standing commercial relationship. Consumers should also act with prudence and respect their contractual obligations.
- (46) It is essential that the consumer's ability and propensity to repay the credit is assessed and verified before a credit agreement ~~or an agreement for the provision of crowdfunding credit services~~ is concluded. That assessment of creditworthiness should be done in the interest of the consumer, to prevent irresponsible lending practices and over-indebtedness, and should take into consideration all necessary and relevant factors that could influence a consumer's ability to repay the credit. **In cases where the loan application is submitted jointly by more than one consumer, the creditworthiness assessment could be performed on the basis of the joint repayment capacity.** Member States should be able to issue additional guidance on additional criteria and methods to assess a consumer's creditworthiness, for example by setting limits on loan-to-value or loan-to-income ratios.

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<sup>10</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(47) The assessment of creditworthiness should be based on information on the financial and economic situation, including income and expenses, of the consumer. The European Banking Authority Guidelines on loan origination and monitoring (EBA/GL/2020/06) provide guidelines on what categories of data may be used for the processing of personal data for creditworthiness purposes, which include evidence of income or other sources of repayment, information on financial assets and liabilities, or information on other financial commitments. Personal data, such as personal data found on social media platforms or health data, including cancer data, should not be used when conducting a creditworthiness assessment. Consumers should provide information about their financial and economic situation in order to facilitate the creditworthiness assessment. In principle, credit should only **be** made available to the consumer where the result of the creditworthiness assessment indicates that **there is no significant doubt that** the obligations resulting from the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ **are likely to will** be met in the manner required under that agreement. ~~However, should such assessment be negative, the creditor or the provider of crowdfunding credit services can exceptionally make credit available in specific and justified circumstances such as when they have a long-standing relationship with the consumer, or in case of loans to fund exceptional healthcare expenses, students loans or loans for consumers with disabilities. In such case, when deciding on whether or not to make the credit available to the consumer, the creditor or the provider of crowdfunding credit services should take into account the amount and the purpose of the credit, and the likelihood that the obligations resulting from the agreement will be met.~~

- (48) The Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), establishes that AI systems used to evaluate the credit score or creditworthiness of natural persons should be classified as high-risk AI systems, since they determine those persons' access to financial resources or essential services such as housing, electricity, and telecommunication services. In view of those high stakes, whenever the creditworthiness assessment involves automated processing, the consumer should have a right to obtain human intervention on the part of the creditor ~~or providers of crowdfunding credit services~~ **in accordance with Regulation (EU) 2016/679**. The consumer should also have the right to obtain a meaningful, **comprehensible** explanation of the assessment made and of the functioning of the automated processing used, including among others the main variables, the logic and risks involved, as well as a right to express his or her point of view and to contest the assessment of the creditworthiness and the decision.
- (49) To assess the credit status of a consumer, the creditor ~~or the provider of crowdfunding credit services~~ should also consult credit databases. The legal and actual circumstances may require that such consultations vary in scope. To prevent any distortion of competition among creditors ~~or providers of crowdfunding credit services~~, they should have access to private or public credit databases concerning consumers in a Member State where they are not established under non-discriminatory conditions compared with creditors ~~or providers of crowdfunding credit services~~ established in that Member State. Member States should facilitate the cross-border access to private or public databases, in compliance with the Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>11</sup>. To enhance reciprocity, credit databases should as a minimum hold information on consumers' arrears in payment, in accordance with Union and national law.

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<sup>11</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (50) Where a decision to reject an application for credit is based on the consultation of a credit database, the creditor ~~or the provider of crowdfunding credit services~~ should inform the consumer of this fact and of the information about him or her hold in the database consulted.
- (51) This Directive does not regulate contract law issues related to the validity of credit agreements ~~or agreements for the provision of crowdfunding credit services~~. Therefore, in that area, the Member States may maintain or introduce national provisions which are in conformity with Union law. Member States may regulate the legal regime governing the offer to conclude the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~, in particular when it is to be given and the period during which it is to be binding on the creditor ~~or the provider of crowdfunding credit services~~. If such an offer is made at the same time as the pre-contractual information provided for by this Directive, it should, like any additional information the creditor ~~or the provider of crowdfunding credit services~~ may wish to give to the consumer, be provided in a separate document. That separate document may be annexed to the Standard European Consumer Credit Information.
- (52) The credit agreement ~~and the agreement for the provision of crowdfunding credit services~~ should contain all necessary information in a clear and concise manner to enable the consumer to know his or her rights and obligations under that agreement.
- (53) Without prejudice to Directive 93/13/EEC, and to pre-contractual obligations under this Directive, and in order to ensure a high level of consumer protection, the consumer should be presented, in due time and prior to any modifications to the terms and conditions of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~, with a description of the proposed changes and, where applicable, the need for consumer consent or of the changes introduced by operation of law; the timescale for implementing those changes; the means for complaint available to the consumer as well as the time period for the consumer to lodge a complaint and the name and address of the competent authority where the complaint may be submitted. The modification of a contract should not affect any consumer right, including information rights under this Directive.



- (54) In order to ensure full transparency, the consumer should be provided with information concerning the borrowing rate, both at a pre-contractual stage and when the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ is concluded. During the contractual relationship, the consumer should further be informed of changes to the variable borrowing rate and changes to the payments caused thereby. This is without prejudice to provisions of national law not related to consumer information which lay down conditions for, or prescribe the consequences of, changes, other than changes concerning payments, in borrowing rates and other economic conditions governing the credit, for instance rules providing that the creditor ~~or the provider of crowdfunding credit services~~ may change the borrowing rate only where there is a valid reason for such change or that the consumer may terminate the contract should there be a change in the borrowing rate or in other specific economic condition concerning the credit.
- (55) In case of a significant overrun exceeding a period of one month, the creditor should present the consumer without delay with information on the overrun, including the amount involved, the borrowing rate and any applicable penalties, charges or interest on arrears applicable. In case of regular overrunning, the creditor should offer to the consumer advisory services, where available, to help consumers identifying less expensive alternatives, or redirect consumers towards debt advisory services.
- (56) Consumers should have a right of withdrawal without penalty and with no obligation to provide justification. However, the right of withdrawal should not be used in bad faith.
- (57) Where a consumer withdraws from a credit agreement ~~or an agreement for the provision of crowdfunding credit services~~ in connection with which the consumer has received goods, in particular from a purchase in instalments or from a hiring or leasing agreement providing for an obligation to purchase, this Directive should be without prejudice to any regulation by Member States of questions concerning the return of the goods or any related questions.

- (58) In some cases, national law already provides that funds cannot be made available to the consumer before the expiry of a specific deadline. In those cases, consumers may wish to ensure that they receive the goods or services purchased early. Therefore, in the case of linked credit agreements, Member States should have the possibility to exceptionally provide that, if the consumer explicitly wishes early receipt of the purchased goods or services, the deadline for the exercise of the right of withdrawal could be reduced so that it is the same as the deadline before which funds cannot be made available.
- (59) In the case of linked credit agreements, a relationship of interdependence exists between the purchase of goods or services and the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ concluded for that purpose. Therefore, where the consumer exercises the right of withdrawal in respect of the purchase agreement, based on Union law, the consumer should no longer be bound by the linked credit agreement. This should not affect national law applicable to linked credit agreements in cases where a purchase agreement has been voided or where the consumer has exercised his or her right of withdrawal based on national law. Nor should this affect the rights of consumers granted by national law according to which no commitment may be entered into between the consumer and a supplier of goods or services, nor any payment made between those persons, as long as the consumer has not signed the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ to finance the purchase of the goods or services.
- (60) The contracting parties should have the right to effect a standard termination of an open-end credit agreement. In addition, where agreed in the credit agreement ~~or in the agreement for the provision of crowdfunding credit services~~, the creditor ~~or the provider of crowdfunding credit services~~ should have the right to suspend the consumer's right to draw down on an open-end credit agreement for objectively justified reasons. Such reasons may include, for instance, suspicion of an unauthorised or fraudulent use of the credit or a significantly increased risk of the consumer being unable to fulfil his or her obligation to repay the credit. This Directive should not affect national contract law regulating the rights of the contracting parties to terminate the credit agreement on the basis of a breach of contract.

- (61) Under certain conditions, the consumer should be allowed to pursue remedies against the creditor ~~or the provider of crowdfunding credit services~~ in the event of problems related to the purchase agreement. However, Member States should determine to what extent and under what conditions the consumer is required to pursue the remedies against the supplier, in particular by bringing an action against the supplier, before being in a position to pursue them against the creditor ~~or providers of crowdfunding credit services~~. Consumers should not be deprived of their rights under national law attaching joint and several liability to the seller or supplier of services and to the creditor ~~or the provider of crowdfunding credit services~~.
- (62) The consumer should have the right to discharge his or her obligations before the date agreed in the credit agreement. As interpreted ~~provided~~ by the Court of Justice of the EU ~~Lexitor ruling~~,<sup>12</sup> the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer. In the case of early repayment the creditor should be entitled to a fair and objectively justified compensation for the costs directly linked to the early repayment, taking into account also any savings thereby made by the creditor. However, in order to determine the method of calculating the compensation, it is important to respect several principles. The calculation of the compensation due to the creditor should be transparent and comprehensible to consumers already at the pre-contractual stage and in any case during the performance of the credit agreement. In addition, the calculation method should be easy for creditors to apply, and supervisory control of the compensation by the competent authorities should be facilitated. Therefore, and due to the fact that consumer credit is, given its duration and volume, not financed by long-term funding mechanisms, the ceiling for the compensation should be fixed in terms of a flat-rate amount. This approach reflects the specific nature of consumer credits and should not prejudice the approach in respect of other products which are financed by long-term funding mechanisms, such as fixed-rate mortgage loans.

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<sup>12</sup> ~~Judgment of the Court of Justice of 11 September 2019, Lexitor, C-383/18, ECLI:EU:C:2019:702.~~

- (63) Member States should have the right to provide that compensation for early repayment may be claimed by the creditor only on condition that the amount repaid over a 12-month period exceeds a threshold defined by Member States. When fixing that threshold, which should not exceed EUR 10 000, Member States should take into account the average amount of consumer credits in their market.
- (64) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Union, it is necessary to ensure the comparability of information relating to annual percentage rates of charge throughout the Union.
- (65) The fixing of caps on interest rates, on annual percentage rates of charge and or the total cost of the credit to the consumer is a common practice in a number of Member States. Such capping has proved beneficial for consumers. In that context, Member States should be able to maintain their current legal regime. However, in an effort to increase consumer protection without imposing unnecessary limits on Member States, caps on interest rates, on annual percentage rates of charge and or on the total cost of the credit to the consumer should be introduced throughout the Union.
- (66) There are substantial differences in the laws of the various Member States with regard to the conduct of business in the granting of credit agreements ~~or in the provision of crowdfunding credit services~~. While recognising the diversity in the types of actor involved in credit intermediation, certain standards at Union level are essential in order to ensure a high level of professionalism and service.

- (67) The applicable Union framework should give consumers the confidence that creditors, credit intermediaries ~~and providers of crowdfunding credit services~~ take account of the interests of the consumer, based on the information available to the creditor, credit intermediary ~~and providers of crowdfunding credit services~~ at that moment and on reasonable assumptions about risks to the consumer's situation over the term of the proposed credit agreement ~~or proposed crowdfunding credit services~~. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry, appropriate management of conflicts of interest including those arising from remuneration and to require advice to be given in the best interests of the consumer.
- (68) It is appropriate to ensure that the relevant staff of creditors, credit intermediaries ~~and providers of crowdfunding credit services~~ possess an adequate level of knowledge and competence in order to achieve a high level of professionalism. It should be, therefore, required to prove relevant knowledge and competence at the level of the company, based on the minimum knowledge and competence requirements. Member States should be free to introduce or maintain such requirements applicable to individual natural persons. For the purpose of this Directive, staff directly engaged in activities under this Directive should include both front- and back-office staff, including management, who fulfil an important role in the credit agreement ~~or crowdfunding credit services~~ process. Persons fulfilling support functions which are unrelated to the credit agreement ~~or crowdfunding credit services~~ process, including human resources and information and communications technology personnel, should not be considered as staff under this Directive. Member States should put in place measures to support raising awareness of the requirements of this Directive in small and medium-sized creditors (SMEs) and facilitating their compliance, such as information campaigns, user guides, employee training schemes.

- (69) In order to increase the ability of consumers to make informed decisions about borrowing and managing debt responsibly, Member States should promote measures to support the education of consumers in relation to responsible borrowing and debt management in particular relating to consumer credit agreements. This obligation could be fulfilled taking into account the financial competence framework developed by the Union together with the Organisation for Economic Co-operation and Development (OECD). It is particularly important to provide guidance for consumers taking out consumer credit for the first time, and especially on digital tools. In that regard, the Commission should identify examples of best practices to facilitate the further development of measures to enhance consumers' financial awareness. The Commission may publish such examples of best practices in coordination with similar reports drawn up in view of other Union legislative acts.
- (70) Given the significant consequences for creditors, consumers and potentially financial stability of enforcement proceedings, it is appropriate to encourage creditors to deal proactively with emerging credit risk at an early stage and to put in place necessary measures to ensure that creditors exercise reasonable forbearance and make reasonable attempts to resolve the situation through other means before enforcement proceedings are initiated. Where possible, solutions should be found which take account, among other elements, of the individual circumstances of the consumer, the consumer's interests and rights, his or her ability to repay the credit and reasonable need for living expenses, and limit costs for consumers in case of default. Member States should not prevent the parties to a credit agreement from expressly agreeing that the transfer to the creditor of goods covered by a linked credit agreement or proceeds from the sale of such goods is sufficient to repay the credit.
- (71) Forbearance measures may include a total or partial refinancing of a credit agreement or a modification of the previous terms and conditions of a credit agreement. Such modification may include, among others: extending the term of the credit agreement; changing the type of the credit agreement; deferring payment of all or part of the instalment repayment for a period; changing the interest rate; offering a payment holiday; partial repayments; currency conversion; and partial forgiveness and debt consolidation.

- (72) Consumers facing difficulties to meet their financial commitments stand to benefit from specialised help on managing their debts. The objective of debt advisory services is to help consumers facing financial problems and guide them to repay, as far as possible, their outstanding debts, while maintaining a decent level of life and preserving their dignity. This personalised and independent assistance ~~provided by professional operators which are not creditors, credit intermediaries, providers of crowdfunding credit services or credit servicers,~~ may include legal counselling, money and debt management as well as social and psychological assistance. **This assistance should be provided by professional operators from private or public sector and which are not creditors, credit intermediaries or credit servicers, and are independent from them.** Member States should ensure that debt advisory services provided by independent professional operators are made available, directly or indirectly, to consumers, and that where possible, consumers facing difficulties to repay their debts are referred to debt advisory services before that enforcement proceedings are initiated. Member States remain free to maintain or introduce specific requirements for such services.
- (73) In order to ensure market transparency and stability, and pending further harmonisation, Member States should ensure that appropriate measures for the regulation or supervision of ~~creditors and providers of crowdfunding credit services~~ are in place.
- (74) Member States should ensure that non-credit institutions are subject to an adequate admission process including entering the non-credit institution in a register and supervision arrangements by a competent authority.
- (75) This Directive regulates only certain obligations of credit intermediaries in relation to consumers. Member States should therefore remain free to maintain or introduce additional obligations incumbent on credit intermediaries, including the conditions under which a credit intermediary may receive fees from a consumer who has requested his service.

- (76) Assignment of the creditor's rights under a credit agreement ~~or an agreement for the provision of crowdfunding credit services~~ should not have the effect of placing the consumer in a less favourable position. The consumer should also be properly informed when the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ is assigned to a third party. However, where the initial creditor, in agreement with the assignee, continues to service the credit vis-à-vis the consumer, the consumer has no significant interest in being informed of the assignment. Therefore, a requirement at Union level that the consumer be informed of the assignment in such cases would be excessive.
- (77) Member States should remain free to maintain or introduce national rules providing for collective forms of communication where this is necessary for purposes relating to the effectiveness of complex transactions such as securitisations or liquidation of assets that take place in the compulsory administrative liquidation of banks.
- (78) Consumers should have access to adequate and effective alternative dispute resolution procedures for the settlement of disputes arising out of rights and obligations **stemming from credit agreements** established under this Directive, using existing entities where appropriate. Such access is already ensured by Directive 2013/11/EU of the European Parliament and of the Council<sup>13</sup> in so far as relevant contractual disputes are concerned. However, consumers should also have access to alternative dispute resolution procedures in the event of pre-contractual disputes concerning rights and obligations established by this Directive, for example, in relation to pre-contractual information requirements, advisory services and creditworthiness assessment and also in relation to the information given by credit intermediaries which are remunerated by creditors and therefore have no direct contractual relationship with consumers. Such alternative dispute resolution procedures and the entities offering them should comply with the quality requirements established by Directive 2013/11/EU.

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<sup>13</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).



- (79) Member States should designate competent authorities empowered to ensure enforcement of this Directive and ensure that those competent authorities are granted investigation and enforcement powers and adequate resources necessary for the performance of their duties. Competent authorities of different Member States should cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive.
- (80) Member States should lay down rules on penalties to address infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties provided for should be effective, proportionate and dissuasive.
- (81) Current national rules on penalties differ significantly across the Union. In particular, not all Member States ensure that effective, proportionate and dissuasive fines can be imposed on traders responsible for widespread infringements or widespread infringements with a Union dimension. To ensure that Member States' authorities can impose effective, proportionate and dissuasive penalties in relation to widespread infringements and to widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement measures in accordance with Regulation (EU) 2017/2394 of the European Parliament and of the Council<sup>14</sup>, fines should be introduced as an element of penalties for such infringements. In order to ensure that the fines have a deterrent effect, Member States should set in their national law the maximum fine for such infringements at a level that is at least 4 % of the creditor, credit intermediary or provider of crowdfunding credit services<sup>2</sup> annual turnover in the Member State or Member States concerned. In certain cases, those traders can also be a group of companies.

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<sup>14</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

- (82) To enhance transparency and consumer confidence, competent authority may disclose to the public any administrative penalty that is imposed for infringement of the measures adopted pursuant to this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.
- (83) Since the objective of this Directive, namely the establishment of common rules for certain aspects of the laws, regulations and administrative provisions of the Member States concerning consumer credit, cannot be sufficiently achieved by the Member States considering market developments in the light of digitalisation and the goal to facilitate cross-border credit provision but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (84) In order to amend non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of additional assumptions for the calculation of the annual percentage rate of charge. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>15</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>15</sup> OJ L 123, 12.5.2016, p. 1

- (85) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>16</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (86) Taking account of the number of amendments that need to be made to Directive 2008/48/EC due to the evolution of the consumer credit sector and in the interests of the clarity of Union legislation, that Directive should be repealed and replaced by this Directive.
- (87) Member States should apply the measures necessary to comply with this Directive from [*OP: please insert date: six months from the transposition deadline*]. ~~However, taking into account the difficult economic circumstances created by the COVID-19 pandemic and the specific challenges faced by micro, small and medium undertakings, such undertakings should be provided with sufficient time to prepare for the application of this Directive. Hence, as regards micro, small and medium undertakings, Member States should apply the measures necessary to comply with this Directive from [*OP: please insert date: 18 months from the transposition deadline*].~~
- (88) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725<sup>17</sup> and delivered an opinion on XX XXXX<sup>18</sup>,

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<sup>16</sup> OJ C 369, 17.12.2011, p. 14.

<sup>17</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>18</sup> ...

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### **Subject matter**

This Directive lays down a common framework for harmonisation of certain aspects of the laws, regulations and administrative provisions of the Member States concerning consumer credits in the form of certain credit agreements for consumers ~~and crowdfunding credit services for consumers~~.

#### *Article 2*

#### **Scope**

1. This Directive applies to credit agreements.

~~Articles 1, 2 and 3, Articles 5 to 10, Articles 12 to 23, Articles 26, 27 and 28, Articles 30 to 33, Article 37 and Articles 39 to 50 shall also apply to crowdfunding credit services where those services are not provided by a creditor or by a credit intermediary.~~

2. This Directive does not apply to the following:

- (a) credit agreements which are secured either by a mortgage, or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property;
- (b) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building **including premises**;
- (c) credit agreements involving a total amount of credit of more than EUR 100 000;

- (d) credit agreements where the credit is granted by employers to their employees as a secondary activity either free of interest or offered at annual percentage rates of charge which are lower than those prevailing on the market and which are not offered to the general public;
- (e) credit agreements which are concluded with investment firms as defined in Article 4(1), point (1), of Directive 2014/65/EU of the European Parliament and of the Council<sup>19</sup> or with credit institutions as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>20</sup> for the purposes of allowing an investor to carry out a transaction relating to one or more of the financial instruments listed in Section C of Annex I to Directive 2014/65/EU, where the investment firm or credit institution granting the credit is involved in that transaction;
- (f) credit agreements which are the outcome of a settlement reached in court or before another statutory authority;

**(fa) hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement;**

**(fb) deferred payment of an invoice whereby the supplier gives its consumer-time to pay the invoice, free of interest and without any other charges, except for limited charges of non-compliance as set out in the supplier's invoice or as laid down by law, and whereby this payment is to be executed in one single payment within two months of the issuance of the invoice;**

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<sup>19</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

<sup>20</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

**(fc) deferred debit cards, under the terms of which the credit has to be repaid within 40 days free of interest and only charges linked to the provision of the payment service are payable;**

- (g) credit agreements which relate to the deferred payment, free of charge, of an existing debt;
- (h) credit agreements where the consumer is requested to deposit an item as security in the creditor's safe-keeping and the liability of the consumer is strictly limited to that deposited item;
- (i) credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest or on other terms which are more favourable to the consumer than those prevailing on the market.
- (j) credit agreements existing on [*OP: please insert date six months from the transposition deadline*]; however, Articles 23 and 24, Article 25(1), second sentence, Article 25(2) and Articles 28 and 39 shall apply to all open-end credit agreements existing on [*OP: please insert date six months from the transposition deadline*].

3. Notwithstanding paragraph 2, point (c), this Directive applies to ~~unsecured~~ credit agreements involving a total amount of credit of more than EUR 100 000, **which are not secured either by residential immovable property or by a right related to residential immovable property,** where the purpose of those credit agreements is the renovation of a residential immovable property.

4. In the case of credit agreements in the form of overrunning, only Articles 1, 2 ~~and~~ 3, ~~Article 25,~~ 37 and Articles ~~41-40~~ 40 to 50 shall apply.

5. Member States may determine that only Articles 1, 2 and 3, Articles 7 and 8, Article 11, Article 19, Article 20, Article 21(1), points (a) to (h) and (l), Article 21(3), Article 23, Article 25, Articles 28 to ~~51~~**50** apply to credit agreements which are concluded by an organisation whose membership is restricted to persons residing or employed in a particular location or employees and retired employees of a particular employer, or to persons meeting other qualifications laid down under national law as the basis for the existence of a common bond between the members and which fulfills all of the following conditions:

- (a) it is established for the mutual benefit of its members;
- (b) it does not make profits for any other person than its members;
- (c) it fulfils a social purpose required by national law;
- (d) it receives and manages the savings of, and provides sources of credit to, its members only;
- (e) it provides credit on the basis of an annual percentage rate of charge which is lower than that prevailing on the market or which is subject to a ceiling laid down by national law.

Member States may exempt from the application of this Directive credit agreements concluded by an organisation referred to in the first subparagraph where the total value of all existing credit agreements entered into by that organisation is insignificant in relation to the total value of all existing credit agreements in the Member State in which the organisation is based and the total value of all existing credit agreements entered into by all such organisations in the Member State is less than 1 % of the total value of all existing credit agreements entered into in that Member State.

Member States shall each year review whether the conditions for the application of any such exemption as referred to in the second subparagraph are still fulfilled and shall take action to withdraw the exemption where they consider that they are no longer met.

6. Member States may determine that only Articles 1, 2 and 3, Articles 7 and 8, Article 11, Article 19, Article 20, Article 21(1), points (a) to (h), (l) and (r), Article 21(3), Article 23, Article 25, Articles 28 to 38 and Articles 40 to 50 shall apply to credit agreements ~~which provide for arrangements to be agreed by the creditor and the consumer~~ in respect of deferred payment or repayment methods, where the consumer is already in default **or will likely default** on the initial credit agreement and where the following conditions are fulfilled:

- (a) the arrangement is likely to avert the possibility of legal proceedings concerning the default of the consumer;
- (b) the consumer would not by entering into the arrangement be subject to terms less favourable than those laid down in the initial credit agreement.

**6a. Member States may determine that articles 8(2) points (d) to (f), 10(3a), 10(8), 11(2a), 21(3) and 29 shall not apply to the following credit agreements: credit agreements involving a total amount of credit less than EUR 200; credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months; credit agreements where the credit is granted free of interest and without any other charges; credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable.**

### *Article 3*

#### **Definitions**

For the purposes of this Directive, the following definitions shall apply:

- (1) ‘consumer’ means a natural person who acts for purposes which are outside his or her trade, business or profession;
- (2) ‘creditor’ means a natural or legal person who grants or promises to grant credit in the course of his or her trade, business or profession;



- (3) ‘credit agreement’ means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;

**(3a) “ancillary service” means a service offered to the consumer in conjunction with the credit agreement;**

- (4) ~~‘crowdfunding credit services’ means services provided by a crowdfunding platform to facilitate the granting of consumer credit;~~
- (5) ‘total cost of the credit to the consumer’ means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement ~~or crowdfunding credit services~~ and which are known to the creditor, in the case of credit agreements, ~~or to the crowdfunding credit services provider, in the case of crowdfunding credit services~~, except for notarial costs; costs in respect of ancillary services relating to the credit agreement ~~or crowdfunding credit services~~ are also included in the total cost of the credit to the consumer where, in addition, the conclusion of a contract regarding such ancillary services is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;
- (6) ‘total amount payable by the consumer’ means the sum of the total amount of credit and the total cost of the credit to the consumer;
- (7) ‘annual percentage rate of charge’ or ‘APR’ means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit **and calculated as set out**, ~~where applicable including the costs referred to in Article 30(2);~~
- (8) ‘borrowing rate’ means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

- (9) ‘fixed borrowing rate’ means the borrowing rate that the creditor ~~or the provider of crowdfunding credit services~~ and the consumer agree on in the credit agreement ~~or in the agreement for the provision of crowdfunding credit services~~ for the entire duration of the credit agreement ~~or crowdfunding credit services~~, or several borrowing rates that the creditor ~~or the provider of crowdfunding credit services~~ and the consumer agree on in the credit agreement ~~or crowdfunding credit services~~ for partial periods for which the borrowing rates are determined exclusively by a fixed specific percentage. If not all borrowing rates are determined in the credit agreement ~~or in the agreement for the provision of crowdfunding credit services~~, the borrowing rate shall be deemed to be fixed only for the partial periods for which the borrowing rates are determined exclusively by a fixed specific percentage agreed on the conclusion of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~;
- (10) ‘total amount of credit’ means the ceiling or the total sums made available under a credit agreement ~~or under crowdfunding credit services~~;
- (11) ‘durable medium’ means any instrument which enables the consumer to store information addressed personally to him or her in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (12) ‘credit intermediary’ means a natural or legal person who is not acting as a creditor or notary and not merely introducing, either directly or indirectly, a consumer to a creditor, and who, in the course of his or her trade, business or profession, **derives a benefit from the activity** ~~for a fee~~, which may take a pecuniary form or any other agreed form of financial consideration:
- (a) presents or offers credit agreements to consumers;
  - (b) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to in point (a); or

- (c) concludes credit agreements with consumers on behalf of the creditor;
- (13) ‘pre-contractual information’ means the information ~~that~~ **which is provided before the consumer is bound by a credit agreement or offer and which** the consumer needs **in order** to be able to compare different credit offers and take an informed decision on whether to conclude the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~;
- (14) ‘profiling’ means any form of automated processing of personal data as defined in Article 4, point (4), of Regulation (EU) 2016/679;
- (15) ‘means of distance communication’ mean any means of distance communication as defined in Article 2, point (e) of Directive 2002/65/EC;
- (16) ‘tying practice’ means the offering or the selling of a credit agreement ~~or crowdfunding credit services~~ in a package with other distinct financial products or services where the credit agreement ~~or crowdfunding credit services~~ are not made available to the consumer separately;
- (17) ‘bundling practice’ means the offering or the selling of a credit agreement ~~or crowdfunding credit services~~ in a package with other distinct financial products or services where the credit agreement ~~or crowdfunding credit services~~ are also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with those other products or services;
- (18) ‘advisory services’ means personal recommendations to a consumer in respect of one or more transactions relating to credit agreements ~~or crowdfunding credit services~~ and that constitute a separate activity from the granting of a credit ~~and from the~~ and from the activities of a credit intermediary as defined in point (12);
- (19) ‘overdraft facility’ means an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account;

- (20) ‘overrunning’ means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility;
- (21) ‘linked credit agreement’ means a credit agreement ~~or crowdfunding credit services~~ where
- (a) the credit or services in question serve exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, and
  - (b) those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself or herself finances the credit for the consumer or, if it is financed by a third party, where the creditor ~~or provider of crowdfunding credit services~~ use the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement ~~or in the crowdfunding credit services~~;
- (22) ‘early repayment’ means the full or partial discharge of the consumer’s obligations under a credit agreement ~~or crowdfunding credit services~~ **in advance of the due date agreed**;
- (23) ‘crowdfunding platform’ means a crowdfunding platform as defined in Article 2(1)(d) of Regulation (EU) 2020/1503.
- ~~(24) ‘revolving credit facility’ means a form of credit agreement issued by the creditor that provides the consumer with the ability to draw down or withdraw funds, repay funds, and withdraw funds again;~~
- (25) ‘debt advisory services’ means personalised assistance of a technical, legal or psychological nature provided by independent professional operators in favour of consumers who experience or might experience difficulties in meeting their financial commitments;

#### *Article 4*

##### **Conversion of amounts expressed in euro into national currency**

1. For the purposes of this Directive, those Member States who convert the amounts expressed in euro into their national currency shall initially use in that conversion the exchange rate prevailing on the date of entry into force of this Directive.
2. Member States may round off the amounts resulting from the conversion referred to in paragraph 1, provided that such rounding off does not exceed EUR 10.

#### *Article 5*

##### **Obligation to provide information free of charge to consumers**

Member States shall require that, when information is provided to consumers in accordance with this Directive, such information is provided without charge to the consumer.

#### *Article 6*

##### **~~Non-discrimination~~**

~~Member States shall ensure that the conditions to be fulfilled for being granted a credit do not discriminate against consumers legally resident in the Union on ground of their nationality or place of residence or on any ground as referred to in Article 21 of the Charter of Fundamental Rights of the European Union, when those consumers request, conclude or hold a credit agreement or crowdfunding credit services within the Union.~~

## CHAPTER II

### **INFORMATION TO BE PROVIDED PRIOR TO THE CONCLUSION OF THE CREDIT AGREEMENT ~~OR OF THE AGREEMENT FOR THE PROVISION OF CROWDFUNDING CREDIT SERVICES~~**

#### *Article 7*

##### **Advertising and marketing of credit agreements ~~and crowdfunding credit services~~**

Without prejudice to Directive 2005/29/EC, Member States shall require that any advertising and marketing communications concerning credit agreements ~~or crowdfunding credit services~~ are fair, clear and not misleading. Wording in such advertising and marketing communications that may create false expectations for a consumer regarding the availability or the cost of a credit shall be prohibited.

#### *Article 8*

##### **Standard information to be included in advertising of credit agreements ~~and crowdfunding credit services~~**

1. Member States shall require that advertising concerning credit agreements ~~or crowdfunding credit services~~ which indicates an interest rate or any figures relating to the cost of the credit to the consumer include standard information in accordance with this Article.

This obligation shall not apply where national law requires the indication of the annual percentage rate of charge in advertising concerning credit agreements ~~or crowdfunding credit services~~ which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph.

2. The standard information shall be easily legible or clearly audible, as appropriate, and adapted to the technical constraints of the medium used for advertising and shall specify in a clear, concise and prominent way, ~~by means of a representative example~~, all of the following elements:
- (a) the borrowing rate, fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer;
  - (b) the total amount of credit;
  - (c) the annual percentage rate of charge;
  - (d) where applicable, the duration of the credit agreement ~~or crowdfunding credit services~~;
  - (e) in the case of a credit in the form of deferred payment for specific goods or services, the cash price and the amount of any advance payment;
  - (f) where applicable, the total amount payable by the consumer and the amount of the instalments.

In specific and justified cases where the medium used to communicate the standard information referred to in the first subparagraph does not allow the information to be visually displayed **at all or in an easily legible way**, points (e) and (f) in that subparagraph shall not apply.

**2a. The information listed in paragraph 2 shall be specified by means of representative example and Member States shall adopt criteria for determining a representative example.**

3. Where the conclusion of a contract regarding an ancillary service relating to the credit agreement ~~or crowdfunding credit services~~ is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed, and the cost of that service cannot be determined in advance, the standard information shall, together with the annual percentage rate of charge referred to in paragraph 2, point (c), specify in a clear, concise and prominent way the obligation to enter into that contract.

## *Article 9*

### **General information**

1. Member States shall ensure that clear and comprehensible general information about credit agreements ~~or crowdfunding credit services~~ is made available to consumers by creditors or, where applicable, by credit intermediaries ~~or providers of crowdfunding credit services~~, at all times on ~~paper or on another~~ a durable medium **or in electronic form**.
2. The general information referred to in paragraph 1 shall include at least the following:
- (a) the identity, geographical address, telephone number and email address of the issuer of the information;
  - (b) the purpose for which the credit may be used;
  - (c) the possible duration of the credit agreements ~~or crowdfunding credit services~~;
  - (d) types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;



- (e) a representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the annual percentage rate of charge;
- (f) an indication of possible further costs, not included in the total cost of the credit to the consumer, to be paid in connection with a credit agreement ~~or crowdfunding credit services~~;
- (g) the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments;
- (h) a description of the conditions directly relating to early repayment;
- (i) a description of the right of withdrawal;
- (j) indication of ancillary services the consumer is obliged to acquire in order to obtain the credit or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor; and
- (k) a general warning concerning possible consequences of non-compliance with the commitments linked to the credit agreement ~~or crowdfunding credit services~~.

## Article 10

### Pre-contractual information

1. Member States shall require that the creditor and, where applicable, the credit intermediary ~~or the provider of crowdfunding credit services~~ provide the consumer with the pre-contractual information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement ~~or crowdfunding credit services~~ on the basis of the credit terms and conditions offered by the creditor ~~or by the provider of crowdfunding credit services~~ and, where applicable, the preferences expressed and information supplied by the consumer. Such pre-contractual information shall be provided to the consumer at least one day before he or she is bound by any credit agreement or offer; ~~or by any agreement or offer for the provision of crowdfunding credit services.~~

In case the pre-contractual information referred to in the first subparagraph is provided less than one day before the consumer is bound by the credit agreement or offer; ~~or by any agreement or offer for the provision of crowdfunding credit services~~, Member States shall require that the creditor and, where applicable, the credit intermediary ~~or the provider of crowdfunding credit services~~ **provide the pre-contractual information before the consumer is bound by the credit agreement or offer and** send a reminder, on ~~paper or on another a~~ durable medium, to the consumer of the possibility to withdraw from the credit agreement ~~or crowdfunding credit services~~ and of the procedure to follow for withdrawing, in accordance with Article 26. That reminder shall be provided to the consumer, at the latest, **one day seven days** after the conclusion of the credit agreement, ~~of the agreement for the provision of crowdfunding credit services~~, or the acceptance of the credit offer.

2. The pre-contractual information referred to in paragraph 1 shall be provided on ~~paper or on another a~~ durable medium by means of the Standard European Consumer Credit Information form set out in Annex I. ~~All the information provided in the form shall be equally prominent.~~ The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he or she has supplied the Standard European Consumer Credit Information.

3. The pre-contractual information referred to in paragraph 1 shall specify all of the following elements, **displayed on the first page of the SECCI and in a prominent way**:

*[points (a) and (b) moved to new paragraph 3a, points (a) and (b)]*

- (c) the total amount of credit ~~and the conditions governing the drawdown~~;

- (d) the duration of the credit agreement ~~or crowdfunding credit services~~;

**(da)** the borrowing rate, or all borrowing rates if different borrowing rates apply in different circumstances; *[moved from beginning of paragraph 3, point (f)]*

**(db)** the annual percentage rate of charge and the total amount payable by the consumer; *[moved from beginning of paragraph 3, point (g)]*

- (e) in the case of a credit in the form of deferred payment for specific goods or services and in the case of linked credit agreements, the specific goods or services and their cash price;

*[points (f) to (l) moved to new paragraph 3a, points (d) to (j)]*

- (m) **costs in the case of late payments, i.e.** the interest rate applicable in case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;

*[points (n) and (o) moved to new paragraph 3a, points (k) and (l)]*

- (p) the existence **or absence** of a right of withdrawal;

*[points (q) to (v) moved to new paragraph 3a, points (m) to (r)]*

*[The last subparagraph moved to new paragraph 3a, last subparagraph]*

**3a. The pre-contractual information referred to in paragraph 1 shall specify all of the following elements starting on the second page of the SECCI:**

- (a)** the type of credit; *[moved from paragraph 3, point (a)]*

- (b)** the identity, geographical address, telephone number and email address of the creditor as well as, where applicable, the identity, geographical address, telephone number and email address of the credit intermediary ~~and of the provider of crowdfunding credit services involved~~; *[moved from paragraph 3, point (b)]*
- (c)** the conditions governing the drawdown; *[moved from paragraph 3, point (c)]*
- (d)** the conditions governing the application of **the borrowing rate or of each borrowing rate when different borrowing rates apply in different circumstances** and, where available, any index or reference rate applicable to each initial borrowing rate, as well as the periods, conditions and procedures for changing each borrowing rate; *[moved from paragraph 3, point (f), with changes]*
- (e)** the annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example mentioning all the assumptions used in order to calculate that rate; Where the consumer has informed the creditor ~~or the provider of crowdfunding credit services~~ of one or more components of his or her preferred credit, such as the duration of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~ and the total amount of credit, the creditor ~~or the provider of crowdfunding credit services~~ shall take those components into account; *[moved from paragraph 3, point (g)]*
- (f)** where a credit agreement ~~or crowdfunding credit services~~ provide different ways of drawdown with different charges or borrowing rates and the creditor uses the assumption set out in Part II, point (b), of Annex IV, an indication that other drawdown mechanisms for the relevant type of credit agreement ~~or crowdfunding credit services~~ may result in higher annual percentage rates of charge; *[moved from paragraph 3, point (h)]*
- (g)** the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement; *[moved from paragraph 3, point (i)]*

- (h)** where applicable, the charges for maintaining one or several compulsory accounts recording both payment transactions and drawdowns, the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement ~~or crowdfunding credit services~~, and the conditions under which any of those charges may be changed; *[moved from paragraph 3, point (j)]*
- (i)** where applicable, any costs payable by the consumer to a notary on conclusion of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~; *[moved from paragraph 3, point (k)]*
- (i)** the obligation, if any, to enter into an ancillary service contract relating to the credit agreement ~~or the crowdfunding credit services~~, where the conclusion of such a contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed; *[moved from paragraph 3, point (l)]*
- (k)** a warning regarding the consequences of missing or late payments; *[moved from paragraph 3, point (n)]*
- (l)** where applicable, the sureties required; *[moved from paragraph 3, point (o)]*
- (m)** the right of early repayment, and, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined; *[moved from paragraph 3, point (q)]*
- (n)** the consumer's right to be informed immediately and free of charge, pursuant to Article 19(2), of the result of a database consultation carried out for the purposes of assessing his or her creditworthiness; *[moved from paragraph 3, point (r)]*
- (o)** the consumer's right, as set out in paragraph 8, to be supplied, on request and free of charge, with a copy of the draft credit agreement, ~~or of the draft agreement for the provision of crowdfunding credit services~~, provided that the creditor at the time of the request is willing to proceed to the conclusion of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~ with the consumer; *[moved from paragraph 3, point (s)]*

**(p)** where applicable, an indication that the price was personalised on the basis of automated processing, including profiling; *[moved from paragraph 3, point (t)]*

**(q)** where applicable, the period of time during which the creditor or the provider of crowdfunding credit services is bound by the pre-contractual information provided in accordance with this Article; *[moved from paragraph 3, point (u)]*

**(r)** the possibility of having recourse to an out-of-court complaint and redress mechanism for the consumer and the methods for having access to it. *[moved from paragraph 3, point (v)]*

Where the credit agreement or the crowdfunding credit services references a benchmark as defined in Article 3(1), point (3), of Regulation (EU) 2016/1011 of the European Parliament and of the Council<sup>21</sup>, the name of that benchmark and of its administrator and its potential implications on the consumer shall be provided by the creditor or, where applicable, the credit intermediary or the provider of crowdfunding credit services, to the consumer in a separate document, which may be annexed to the Standard European Consumer Credit Information form. *[moved from paragraph 3, last subparagraph]*

~~4. At the same time as the Standard European Consumer Credit Information form is provided to the consumer, the creditor and, where applicable, the credit intermediary or the provider of crowdfunding credit services, shall provide the consumer with the Standard European Consumer Credit Overview form set out in Annex II, containing the following pre-contractual information:~~

~~(a) the total amount of credit;~~

~~(b) the duration of the credit agreement or of the agreement for the provision of crowdfunding credit services;~~

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<sup>21</sup> Regulation (EU) 2016/1011, of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

~~(c) the borrowing rate, or all borrowing rates if different borrowing rates apply in different circumstances;~~

~~(d) the annual percentage rate of charge and the total amount payable by the consumer;~~

~~(e) in the case of a credit in the form of deferred payment for specific goods or services and in the case of linked credit agreements, the specific goods or services and their cash price;~~

~~(f) costs in the case of late payments;~~

5. Information displayed in the Standard European Consumer Credit Information form ~~and in the Standard European Consumer Credit Overview form shall be consistent.~~ It shall be clearly legible and take into account the technical constraints of the medium on which it is displayed. Information shall be displayed in an adequate and suitable way on the different channels.

Any additional information which the creditor may provide to the consumer shall be given in a separate document which may be annexed to the Standard European Consumer Credit Information form ~~or the Standard European Consumer Credit Overview form.~~

6. By way of derogation from paragraph 3, in the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to Article 3(3), point (b), second indent, of that Directive shall include at least the elements referred to in paragraph 3, points (c), (d), (e), ~~(f) and (i)~~ **and paragraph 3a, points (d) and (g)** of this Article, together with the annual percentage rate of charge illustrated by means of a representative example and the total amount payable by the consumer.

7. **By way of derogation from paragraph 1, if** ~~if~~ the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with this article, the creditor and, where applicable, the credit intermediary ~~or the provider of crowdfunding credit services~~ shall provide the consumer with the Standard European Consumer Credit Information form ~~and the Standard European Consumer Credit Overview form~~ immediately after the conclusion of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~.
8. Upon request from the consumer, the creditor and, where applicable, the credit intermediary ~~or the provider of crowdfunding credit services~~ shall, in addition to the Standard European Consumer Credit Information form ~~and the Standard European Consumer Credit Overview form~~, provide the consumer free of charge with a copy of the draft credit agreement, ~~or of the draft agreement for the provision of crowdfunding credit services~~, provided that the creditor at the time of the request is willing to proceed to the conclusion of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~ with the consumer.
9. In the case of a credit agreement ~~or crowdfunding credit services~~ under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement, ~~in the agreement for the provision of crowdfunding credit services~~ or in an ancillary agreement, the creditor and, where applicable, the credit intermediary ~~or the provider of crowdfunding credit services~~ shall in the pre-contractual information referred to in paragraph 1 include a clear and concise statement that such credit agreements ~~or crowdfunding credit services~~ do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement ~~or crowdfunding credit services~~, unless such a guarantee is given expressly.



10. This Article shall not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity. This is without prejudice to the creditor, or where applicable, credit intermediary or provider of crowdfunding credit services' obligation to ensure that the consumer receives the pre-contractual information referred to in this Article.

### Article 11

#### **Pre-contractual information with regard to credit agreements referred to in Article 2(5) or (6)**

1. For credit agreements referred to in Article 2(5) or (6), the pre-contractual information referred to in Article 10(1) shall, by way of derogation from paragraph 2 of that Article, be provided on ~~paper or on another~~ **a** durable medium by means of the European Consumer Credit Information form set out in Annex III. ~~All information provided in that form shall be equally prominent.~~ The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he or she has supplied the European Consumer Credit Information.
2. For credit agreements referred to in Article 2(5) or (6), the pre-contractual information referred to in Article 10(1) shall, by way of derogation from paragraph 3 of that Article, ~~specify~~ **provide** all of the following elements, **displayed on the first page and in a prominent way**:

*[points (a) and (b) moved to new paragraph 2a, points (a) and (b)]*

- (c) the total amount of credit;
- (d) the duration of the credit agreement;
- (e) the borrowing rate, **or all borrowing rates if different borrowing rates apply in different circumstances**; *[the rest of the text moved to new paragraph 2a, point (c)]*

(f) the annual percentage rate of charge **and the total amount payable by the consumer**; *[the rest of the text moved to new paragraph 2a, point (d)]*

**(fa) in the case of a credit in the form of deferred payment for specific goods or services and in the case of linked credit agreements, the specific goods or services and their cash price**; *[same text as in Art. 10, paragraph 3, point (e)]*

*[points (g) to (j) moved to new paragraph 2a, points (e) to (h)]*

(k) **costs in the case of late payments, i.e.** the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;

*[points (l) to (o) moved to new paragraph 2a, points (i) to (l)]*

**2a. For credit agreements referred to in Article 2(5) or (6), the pre-contractual information referred to in Article 10(1) shall, by way of derogation from Article 10(3), provide all of the following elements starting on the second page of the SECCI:**

**(a)** the type of credit; *[moved from paragraph 2, point (a)]*

**(b)** the identity, geographical address, telephone number and email address of the creditor as well as, where applicable, the identity, geographical address, telephone number and email address of the credit intermediary ~~and of the provider of crowdfunding credit services involved~~; *[moved from paragraph 2, point (b)]*

**(c)** the conditions governing the application of ~~that~~ **the borrowing** rate, any index or reference rate applicable to the initial borrowing rate, the charges applicable from the time the credit agreement is concluded, and, where applicable, the conditions under which those charges may be changed; *[moved from paragraph 2, point (e), with changes]*

**(d)** the annual percentage rate of charge, illustrated by means of representative examples mentioning all the assumptions used in order to calculate that rate; *[moved from paragraph 2, point (f)]*

- (e)** the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement; *[moved from paragraph 2, point (g)]*
- (f)** the conditions and procedure for terminating the credit agreement; *[moved from paragraph 2, point (h)]*
- (g)** the right of early repayment, and, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined; *[moved from paragraph 2, point (i)]*
- (h)** where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time; *[moved from paragraph 2, point (j)]*
- (i)** the consumer's right to be informed immediately and free of charge, pursuant to Article 19(2), of the result of a database consultation carried out for the purposes of assessing his or her creditworthiness; *[moved from paragraph 2, point (l)]*
- (j)** where applicable, an indication that the price was personalised on the basis of automated processing, including profiling; *[moved from paragraph 2, point (m)]*
- (k)** where applicable, the period of time during which the creditor is bound by the pre-contractual information provided in accordance with this Article; *[moved from paragraph 2, point (n)]*
- (l)** the possibility of having recourse to an out-of-court complaint and redress mechanism for the consumer and the methods for having access to it. *[moved from paragraph 2, point (o)]*

3. ~~At the same time as the European Consumer Credit Information form is provided to the consumer, the creditor and, where applicable, the credit intermediary, shall provide the consumer with the Standard European Consumer Credit Overview form set out in Annex H.~~

4. Information displayed in the European Consumer Credit Information form ~~and in the Standard Consumer Credit Overview form shall be consistent. It~~ shall be clearly legible and take into account the technical constraints of the medium on which it is displayed. Information shall be displayed in an adequate and suitable way on the different channels.
5. By way of derogation from paragraph 2, in the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to Article 3(3), point (b), second indent, of that Directive shall include at least the elements referred to in paragraph 2, points (c) to (f) and ~~(f)~~ **paragraph 2a, point (i)**, of this Article.
6. Upon request from the consumer, the creditor and, where applicable, the credit intermediary shall, in addition to the European Consumer Credit Information ~~and the Standard European Consumer Credit Overview form~~, provide the consumer free of charge with a copy of the draft credit agreement, provided that the creditor at the time of the request is willing to proceed to the conclusion of the credit agreement with the consumer.
7. **By way of derogation from paragraph 1, if** ~~If~~ the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with this Article, the creditor shall immediately after the conclusion of the credit agreement provide the consumer with the European Consumer Credit Information form ~~and the Standard European Consumer Credit Overview form~~ immediately after the conclusion of the credit agreement.
8. This Article shall not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity. This is without prejudice to the creditor, or where applicable, the credit intermediary's obligation to ensure that the consumer receives the pre-contractual information referred to in this Article.

## Article 12

### Adequate explanations

1. Member States shall ensure that creditors and, where applicable, credit intermediaries ~~and providers of crowdfunding credit services~~ are required to provide adequate explanations to the consumer on the proposed credit agreements ~~or crowdfunding credit services~~ and any ancillary services that make it possible for the consumer to assess whether the proposed credit agreements ~~or crowdfunding credit services~~ and ancillary services are adapted to his or her needs and financial situation. The explanations shall include the following elements:
  - (a) the information referred to in Article 10, 11 and 38;
  - (b) the essential characteristics of the credit agreement, ~~crowdfunding credit services or~~ ancillary services proposed;
  - (c) the specific effects that the credit agreement, ~~crowdfunding credit services or~~ ancillary services proposed may have on the consumer, including the consequences of payment default or late payment by the consumer;
  - (d) where ancillary services are bundled with a credit agreement ~~or crowdfunding credit services~~, whether each component of the bundle can be terminated separately and the implications for the consumer of such termination.
  
2. Member States may adapt the requirement referred to in paragraph 1 with regard to the manner in which the explanations shall be given and the extent to which they shall be given to the following:
  - (a) the circumstances of the situation in which the credit is offered;
  - (b) the person to whom the credit is offered;
  - (c) the nature of the credit offered.

*Article 13*

**Personalised offers on the basis of automated processing**

**Without prejudice to Regulation 2016/679**, Member States shall require that creditors, credit intermediaries ~~and providers of crowdfunding credit services~~ inform consumers when they are presented with a personalised offer that is based on profiling or other types of automated processing of personal data.

CHAPTER III

**TYING AND BUNDLING PRACTICES, INFERRED AGREEMENT ~~FOR ANCILLARY SERVICES~~, ADVISORY SERVICES AND UNSOLICITED CREDIT SALE**

*Article 14*

**Tying and bundling practices**

1. Member States ~~may~~ **shall** allow bundling practices but shall prohibit tying practices.
2. By way of derogation from paragraph 1 and without prejudice to the application of competition law, Member States may allow creditors ~~or providers of crowdfunding credit services~~ to request the consumer to open or maintain a payment or a savings account, where the only purpose of such an account is one of the following:
  - (a) to accumulate capital to repay the credit;
  - (b) to service the credit;
  - (c) to pool resources to obtain the credit;
  - (d) to provide additional security for the creditor in the event of default.

3. By way of derogation from paragraph 1 and without prejudice to the application of competition law, Member States may allow tying practices where the creditor ~~or the provider of crowdfunding credit services~~ can demonstrate to the competent authority that the tied products or categories of product offered, on terms and conditions similar to each other, result in a clear benefit to the consumers taking due account of the availability and the prices of the relevant products offered on the market.
4. Member States may allow creditors ~~or providers of crowdfunding credit services~~ to require the consumer to hold a relevant insurance policy related to the credit agreement ~~or crowdfunding credit services~~, taking into account proportionality considerations. In such cases, Member States shall ensure that the creditor ~~or the provider of crowdfunding credit services~~ is required to accept the insurance policy from a supplier different to his or her preferred supplier where such insurance policy has a level of guarantee equivalent to the one the creditor ~~or the provider of crowdfunding credit services~~ has proposed, without modifying the condition of the credit offering to the consumer.

**4a. By way of derogation from paragraph 1, Member States shall not prohibit the tying of an overdraft facility with the consumer's payment account.**

#### *Article 15*

#### **Inferred agreement for the purchase of consumer credit or ancillary services**

1. Member States shall ensure that creditors, credit intermediaries ~~and providers of crowdfunding credit services~~ do not infer the agreement of the consumer for the purchase of any consumer credit or ancillary services presented through default options. Default options include pre-ticked boxes.
2. The agreement of the consumer to the purchase of any consumer credit or ancillary services presented through boxes shall be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of his or her approval to the content and substance associated to the boxes.

*Article 16*

**Advisory services**

1. Member States shall require that the creditor, and where applicable the credit intermediary ~~and the provider of crowdfunding credit services~~ explicitly inform the consumer, in the context of a given transaction, whether advisory services are being or can be provided to the consumer.
  
2. Member States shall require that the creditor, and where applicable the credit intermediary ~~and the provider of crowdfunding credit services~~, before the provision of advisory services or the conclusion of a contract for the provision of such services, provide the consumer with the following information on ~~paper or another~~ **a** durable medium:
  - (a) an indication of whether the recommendation will be based on only their own product range or on a wide range of products from across the market in accordance with paragraph 3, point (c).
  
  - (b) where applicable, an indication of the fee payable by the consumer for the advisory services or, where the amount of such fee cannot be established at the time when the information is provided, the method used for its calculation.

The information referred to in the first subparagraph, points (a) and (b), may be provided to the consumer in the form of additional pre-contractual information in accordance with Article 10(5), second subparagraph.



3. Where advisory services are provided to consumers, Member States shall require that creditors and, where applicable, credit intermediaries ~~or providers of crowdfunding credit services~~:
- (a) obtain the ~~strictly~~ necessary information regarding the consumer's financial situation, preferences and objectives related to the credit agreement ~~or crowdfunding credit services~~, in order for the creditor, credit intermediary ~~or providers of crowdfunding credit services~~ to recommend credit agreements ~~or crowdfunding credit services~~ that are suitable to the consumer.
  - (b) assess the financial situation and the needs of the consumer on the basis of the information referred to in point (a), which shall be up to date at the time of the assessment, taking into account reasonable assumptions as to the risks to the consumer's financial situation over the term of the recommended credit agreement or credit agreements, ~~or crowdfunding credit services~~;
  - (c) consider a sufficiently large number of credit agreements ~~or crowdfunding credit services~~ in ~~their~~ the product range and on that basis recommend a credit agreement or several credit agreements, ~~or crowdfunding credit services~~ from among that product range that is suitable to the consumer's needs, financial situation and personal circumstances;
  - (d) act in the best interests of the consumer; by:
    - (i) informing themselves about the consumer's needs and circumstances; and
    - (ii) recommending suitable credit agreements in accordance with points (a), (b) and (c);
  - (e) give the consumer a record on ~~paper or on another~~ a durable medium of the recommendation provided.

4. Member States may prohibit the use of the terms ‘advice’ and ‘advisor’ or similar terms when the advisory services are being marketed and provided to consumers by creditors or, where applicable, credit intermediaries ~~or providers of crowdfunding credit services~~.

Where Member States do not prohibit the use of the terms ‘advice’ and ‘advisor’ or similar terms, they shall impose the following conditions on the use of the term ‘independent advice’ or ‘independent advisor’ by creditors, credit intermediaries ~~or providers of crowdfunding credit services~~ providing advisory services:

- (a) creditors and, where applicable, credit intermediaries ~~or providers of crowdfunding credit services~~ shall consider a sufficiently large number of credit agreements ~~or crowdfunding credit services~~ available on the market;
- (b) credit intermediaries shall not be remunerated for the advisory services by one or more creditors.

Point (b) of the second subparagraph shall apply only where the number of creditors considered is less than a majority of the market.

Member States may impose more stringent requirements for the use of the terms ‘independent advice’ or ‘independent advisor’ by creditors and, where applicable, credit intermediaries ~~or providers of crowdfunding credit services~~.

5. Member States shall require that creditors and, where applicable, credit intermediaries ~~or providers of crowdfunding credit services~~ to warn a consumer when a credit agreement ~~or crowdfunding credit services~~ may induce a specific risk for the consumer considering his or her financial situation.

6. Member States shall ensure that advisory services may only be provided by creditors and, where applicable, credit intermediaries ~~or providers of crowdfunding credit services~~.

Member States may, by way of derogation from the first subparagraph, allow other persons than those referred to in the first subparagraph to provide advisory services where one of the following conditions is fulfilled:

- (a) the advisory services are provided in an incidental manner in the course of a professional activity that is regulated by legal or regulatory provisions or a code of ethics which do not exclude the provision of those services;
- (b) the advisory services are provided in the context of management of existing debt by insolvency practitioners and that management activity is regulated by legal or regulatory provisions;
- (c) the advisory services are provided in the context of management of existing debt by public or voluntary debt advisory services providers which do not operate on a commercial basis;
- (d) the advisory services are provided by persons that are authorised and supervised by competent authorities.

#### *Article 17*

#### **Ban on unsolicited granting of credit sales**

Member States shall prohibit any sale granting of credit to consumers, without their prior request ~~and~~ explicit agreement.

## CHAPTER IV

### ASSESSMENT OF CREDITWORTHINESS AND DATABASE ACCESS

#### *Article 18*

##### **Obligation to assess the creditworthiness of the consumer**

1. Member States shall require that, before concluding a credit agreement, ~~or an agreement for the provision of crowdfunding credit services,~~ the creditor or, where applicable, the ~~provider of crowdfunding credit services~~ makes a thorough assessment of the consumer's creditworthiness. That assessment shall be done in the interest of the consumer, to prevent irresponsible lending practices and over-indebtedness, and shall take appropriate account of factors relevant to verifying the prospect of the consumer to meet his or her obligations under the credit agreement ~~or the agreement for the provision of crowdfunding credit services.~~
2. The assessment of creditworthiness shall be carried out on the basis of relevant and accurate information on the consumer's income and expenses and other financial and economic circumstances which is necessary and proportionate **to the nature and the risks of the credit for the consumer. This information may include** such as evidence of income or other sources of repayment, information on financial assets and liabilities, or information on other financial commitments. The information shall be obtained from relevant internal or external sources, including **where appropriate, from** the consumer and, where necessary, on the basis of a consultation of a database referred to in Article 19.  
  
The information obtained in accordance with this paragraph shall be appropriately verified, where necessary through reference to independently verifiable documentation.
3. Member States shall require that the creditor ~~or, where applicable, the provider of crowdfunding credit services~~ establishes procedures for the assessment referred to in paragraph 1 and that the creditor ~~or the provider of crowdfunding credit services~~ documents and maintains such procedures.

Member States shall also require that the creditor ~~or the provider of crowdfunding credit services~~ documents and maintains the information referred to in paragraph 2.

4. Member States shall ensure that the creditor ~~or the provider of crowdfunding credit services~~ **is** only ~~makes~~ **able to make** the credit available to the consumer where the result of the creditworthiness assessment indicates that **there is no significant doubt that** the obligations resulting from the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ ~~are likely to~~ **will** be met in the manner required under that agreement.

~~Notwithstanding the first subparagraphs, where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement or the agreement for the provision of crowdfunding credit services are not likely to be met in the manner required under that agreement, the creditor or the provider of crowdfunding credit services may exceptionally make credit available to the consumer in specific and well justified circumstances.~~

5. Member States shall ensure that where a creditor ~~or a provider of crowdfunding credit services~~ concludes a credit agreement ~~or an agreement for the provision of crowdfunding credit services~~ with a consumer, the creditor ~~or provider of crowdfunding credit services~~ shall not subsequently cancel or alter the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ to the detriment of the consumer on the grounds that the assessment of creditworthiness was incorrectly conducted. This paragraph shall not apply where it is demonstrated that the consumer knowingly withheld or falsified the information provided to the creditor ~~or the provider of crowdfunding credit services~~ referred to in paragraph 2.
6. Where the creditworthiness assessment involves the use of profiling or other automated processing of personal data, Member States shall ensure that the consumer has the right to:
  - (a) request and obtain human intervention on the part of the creditor ~~or the provider of crowdfunding credit services~~ to review the decision;

- (b) request and obtain from the creditor ~~or the provider of crowdfunding credit services~~ a clear **and comprehensible** explanation of the assessment of creditworthiness, including on the logic and risks involved in the automated processing of personal data as well as its significance and effects on the decision;
- (c) express his or her point of view and contest the assessment of the creditworthiness and the decision.
7. Member States shall ensure that where the credit application is rejected the creditor ~~or the provider of crowdfunding credit services~~ is required to inform the consumer without delay of the rejection and, where applicable, of the fact that the assessment of creditworthiness is based on automated processing of data.
8. Where the parties agree to change the total amount of credit after the conclusion of the credit agreement, ~~or the agreement for the provision of crowdfunding credit services~~, Member States shall ensure that the creditor ~~or the provider of crowdfunding credit services~~ is required to reassess the consumer's creditworthiness on the basis of updated information before any significant increase in the total amount of credit is granted.
9. Member States **may require** ~~whose legislation requires creditors or providers of crowdfunding credit services~~ to assess the creditworthiness of consumers on the basis of a consultation of the relevant database ~~may retain this requirement~~.

### *Article 19*

#### **Databases**

1. **Databases** Each Member State shall in the case of cross-border credit ensure access for creditors ~~and providers of crowdfunding credit services~~ from other Member States to databases used in that Member State for assessing the creditworthiness of consumers. The conditions for access to such databases shall be non-discriminatory.

2. Paragraph 1 shall apply both to public and private databases.
3. The databases referred to in paragraph 1 shall hold at least information on consumers' arrears in payment.
4. Where the credit application is rejected on the basis of a consultation of a database referred to in paragraph 1, Member States shall require that the creditor ~~or the provider of crowdfunding credit services~~ informs the consumer ~~immediately~~ **without delay** and free of charge of the result of such consultation and of the details of the database consulted.

## CHAPTER V

### FORM AND CONTENT OF CREDIT AGREEMENTS

#### *Article 20*

#### **Form of the credit agreement ~~and of the agreement for the provision of crowdfunding credit services~~**

1. Member States shall require that credit agreements ~~or agreements for the provision of crowdfunding credit services~~ are drawn up on ~~paper or on another~~ **a** durable medium and that all the contracting parties are provided with a copy of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~.
2. Member States may introduce or maintain national rules regarding the validity of the conclusion of credit agreements ~~or agreements for the provision of crowdfunding credit services~~ which are in conformity with Union law.

*Article 21*

**Information to be included in the credit agreement ~~or in the agreement for the provision of crowdfunding credit services~~**

1. Member States shall require that the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ specify in a clear and concise manner all of the following elements:
  - (a) the type of credit;
  - (b) the identities, geographical addresses, telephone numbers and email addresses of the contracting parties as well as, where applicable, the identity and geographical address of the credit intermediary ~~or the provider of crowdfunding credit services~~ involved;
  - (c) the total amount of credit and the conditions governing the drawdown;
  - (d) the duration of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~;
  - (e) in case of a credit in the form of deferred payment for specific goods or services and in the case of linked credit agreements, the specific goods or services and their cash price;
  - (f) the borrowing rate, or all borrowing rates where different borrowing rates apply in different circumstances, the conditions governing the application of each borrowing rate and, where available, any index or reference rate applicable to each initial borrowing rate, as well as the periods, conditions and procedures for changing each borrowing rate;
  - (g) the annual percentage rate of charge and the total amount payable by the consumer, calculated at the time the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ is concluded and an indication of all assumptions used in that calculation;



- (h) the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;
- (i) where capital amortisation of a credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~ with a fixed duration is involved, the right of the consumer to receive, on request and free of charge, at any time throughout the duration of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~, a statement of account in the form of an amortisation table;
- (j) where charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the interest and of any associated recurrent and non-recurrent charges;
- (k) where applicable, the charges for maintaining one or several compulsory accounts recording both payment transactions and drawdowns, the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~, and the conditions under which those charges may be changed;
- (l) the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~ and the arrangements for its adjustment and, where applicable, any charges payable for default;
- (m) a warning regarding the consequences of missing or late payments;
- (n) where applicable, a statement, that notarial fees will be payable;

- (o) where applicable, the sureties and insurance required;
- (p) the existence or absence of a right of withdrawal, the period during which that right may be exercised and other conditions governing the exercise thereof, including information concerning the obligation of the consumer set out in Article 26(3), point (b) to pay the capital drawn down and the interest, and the amount of interest payable per day;
- (q) **where applicable**, information concerning the rights set out in Article 27 as well as the conditions for the exercise of those rights;
- (r) the right of early repayment set out in Article 29, the procedure for early repayment, as well as, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined;
- (s) the procedure to be followed in exercising the right of termination of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~;
- (t) the possibility of having recourse to an out-of-court complaint and redress mechanism for the consumer and the methods for having access to it;
- (u) where applicable, other contractual terms and conditions;
- (v) ~~where applicable~~, the name and address of the competent supervisory authority.

The information referred to in the first subparagraph shall be clearly legible and adapted to take into account the technical constraints of the medium on which it is displayed.

Information shall be displayed in an adequate and suitable way on the different channels.

2. Where paragraph 1, point (i), applies, the creditor ~~and, where applicable, the provider of crowdfunding credit services~~ shall make available to the consumer, free of charge and at any time throughout the duration of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~, a statement of account in the form of an amortisation table.

The amortisation table referred to in the first subparagraph shall indicate the payments owing and the periods and conditions relating to the payment of such amounts.

The amortisation table shall also contain a breakdown of each repayment specifying the capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, any additional costs.

Where the borrowing rate is not fixed or the additional costs may be changed under the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~, the amortisation table shall indicate, clearly and concisely, that the data contained in the table will remain valid only until such time as that borrowing rate or those costs are changed in accordance with the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~.

3. In the case of a credit agreement ~~or an agreement for the provision of crowdfunding credit services~~ under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement, ~~in the agreement for the provision of crowdfunding credit services~~ or in an ancillary agreement, the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ shall, in addition to the information referred to in paragraph 1, include a clear and concise statement that such credit agreements ~~or agreements for the provision of crowdfunding credit services~~ do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~, unless such a guarantee is given expressly.

## CHAPTER VI

### MODIFICATIONS OF THE CREDIT AGREEMENT AND CHANGES IN THE BORROWING RATE

#### *Article 22*

##### **Information regarding the modification of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~**

Without prejudice to other obligations foreseen in this Directive, Member States shall ensure that prior to modifying the terms and conditions of the credit agreement, ~~or of the agreement for the provision of crowdfunding credit services~~, the creditor ~~or the provider of crowdfunding credit services~~ communicate the following information to the consumer:

- (a) a clear description of the proposed changes and, where applicable, the need for consumer consent or **an explanation** of the changes introduced by operation of law;
- (b) the timescale for the implementation of those changes;
- (c) the means for complaint available to the consumer regarding those modifications;
- (d) the time period available for lodging any such complaint;
- (e) the name and address of the competent authority where that complaint may be submitted.

#### *Article 23*

##### **Changes in the borrowing rate**

1. **Where creditors are allowed to change borrowing rates of existing credit agreements,** Member States shall require that the creditor ~~or the provider of crowdfunding credit services~~ inform the consumer of any change in the borrowing rate, on **paper or another a** durable medium, before the change enters into force.

The information referred to in the first subparagraph shall include the amount of the payments to be made after the entry into force of the new borrowing rate and, where the number or frequency of the payments changes, particulars thereof.

2. By way of derogation from paragraph 1, the information referred to in that paragraph may be given to the consumer periodically where all of the following conditions are fulfilled:
  - (a) the parties have agreed on such periodical information in the credit agreement ~~or in the agreement for the provision of crowdfunding credit services~~;
  - (b) the change in the borrowing rate is caused by a change in a reference rate;
  - (c) the new reference rate is made publicly available by appropriate means;
  - (d) the information concerning the new reference rate is also available at the premises of the creditor ~~or of the provider of crowdfunding credit services~~.

## CHAPTER VII

### OVERDRAFT FACILITIES AND OVERRUNNING

#### *Article 24*

#### **Overdraft facilities**

1. Where a credit has been granted in the form of an overdraft facility, Member States shall require that the creditor, throughout the duration of the credit agreement, keeps the consumer regularly informed by means of statements of account, on ~~paper or on another a~~ durable medium, containing the following elements:
  - (a) the precise period to which the statement of account relates;
  - (b) the amounts and dates of drawdowns;
  - (c) the balance from the previous statement, and the date thereof;

- (d) the new balance;
- (e) the dates and amounts of payments made by the consumer;
- (f) the borrowing rate applied;
- (g) any charges that have been applied;
- (h) where applicable, the minimum amount to be paid by the consumer.

2. Where a credit has been granted in the form of an overdraft facility, Member States shall require that the creditor informs the consumer, on ~~paper or another~~ a durable medium, of increases in the borrowing rate or in any charges payable, before the change in question enters into force.

By way of derogation from the first subparagraph, the information referred to in that subparagraph may be given periodically in the manner provided for in paragraph 1 where the following conditions are fulfilled:

- (a) the parties have agreed on such periodical information in the credit agreement;
- (b) the change in the borrowing rate is caused by a change in a reference rate;
- (c) the new reference rate is made publicly available by appropriate means;
- (d) the information concerning the new reference rate is also available at the premises of the creditor.

*Article 25*

**Overrunning**

1. In the case of an agreement to open a current account, where there is a possibility that the consumer is allowed an overrun, Member States shall require that the creditor includes such information in that agreement, in addition the information referred to in Article 11(2), point (e). The creditor shall in any case provide the consumer with that information on ~~paper or another~~ **a** durable medium on a regular basis.
  
2. In the event of a significant overrunning exceeding a period of one month, Member States shall require that the creditor informs the consumer without delay, on ~~paper or on another~~ **a** durable medium, of all of the following:
  - (a) the overrunning;
  - (b) the amount involved;
  - (c) the borrowing rate;
  - (d) any penalties, charges or interest on arrears applicable;

**(da) where applicable, the repayment date.**

In addition, in case of regular overrunning, the creditor shall offer to the consumer advisory services, where available, or redirect consumers towards debt advisory services.

3. This Article shall be without prejudice to any rule of national law requiring the creditor to offer another kind of credit product when the duration of the overrunning is significant.

## CHAPTER VIII

### WITHDRAWAL, TERMINATION AND EARLY REPAYMENT

#### *Article 26*

##### **Right of withdrawal**

1. The Member States shall ensure that the consumer may withdraw from the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ without giving any reason within a period of 14 calendar days.

The period of withdrawal referred to in the first subparagraph shall begin either from:

- (a) the day of the conclusion of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~; or
- (b) the day on which the consumer receives the contractual terms and conditions and information in accordance with Articles 20 and 21, if that day is later than the date referred to in point (a) of this subparagraph.

The deadline referred to in the first subparagraph shall be deemed to have been met if the notification referred to in paragraph 3, point (a), is dispatched by the consumer to the creditor ~~or to the provider of crowdfunding credit services~~ before that deadline expires.

2. Where, in the case of a linked credit agreement, national legislation applicable on [*date of into force of this Directive*] already provides that funds cannot be made available to the consumer before the expiry of a specific period, Member States may, by way of derogation from paragraph 1, provide that the period referred to in that paragraph may be reduced to the same duration as that specific period at the explicit request of the consumer.



3. If the consumer exercises the right of withdrawal, he or she shall take the following measures:
- (a) notify either the creditor ~~or the provider of crowdfunding credit services~~ in accordance with the information given by the creditor ~~or by the provider of crowdfunding credit services~~ pursuant to Article 21(1), point (p), on ~~paper or on another~~ **a** durable medium within the deadline set out in paragraph 1;
  - (b) pay either to the creditor ~~or the provider of crowdfunding credit services~~ provider the capital and the interest accrued thereon from the date on which the credit was drawn down until the date on which the capital is repaid, without any undue delay and no later than 30 calendar days after the dispatch of the notification referred to in point (a).

The interest referred to in the first subparagraph, point (b), shall be calculated on the basis of the agreed borrowing rate. The creditor ~~or the provider of crowdfunding credit services~~ shall not be entitled to any other compensation from the consumer in the event of withdrawal, except compensation for any non-refundable charges paid by the creditor ~~or by the provider of crowdfunding credit services~~ to any public administrative body.

4. Where an ancillary service relating to the credit agreement ~~or to the crowdfunding credit services~~ is provided by the creditor, ~~the provider of crowdfunding credit services~~ or by a third party on the basis of an agreement between that third party and the creditor ~~or the provider of crowdfunding credit services~~, the consumer shall no longer be bound by the ancillary service contract if the consumer exercises the right of withdrawal from the credit agreement ~~or from the agreement for the provision of crowdfunding credit services~~ in accordance with this Article.
5. If the consumer has a right of withdrawal under paragraphs 1, 3 and 4 of this Article, Articles 6 and 7 of Directive 2002/65/EC shall not apply.

6. Member States may provide that paragraphs 1 to 4 of this Article shall not apply to credit agreements ~~or crowdfunding credit services~~ which under national law are required to be concluded through the services of a notary, provided that the notary confirms that the consumer is guaranteed the rights provided for under Articles 10 and 11, and Articles 20 and 21.
7. This Article shall be without prejudice to any rule of national law establishing a period of time during which the performance of the contract may not begin.

#### *Article 27*

#### **Linked credit agreements**

1. Member States shall ensure that a consumer who has exercised the right of withdrawal based on Union law, concerning a contract for the supply of goods or services, ~~she or he~~ shall no longer be bound by a linked credit agreement.
2. Where the goods or services covered by a linked credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for the supply thereof, the consumer shall have the right to pursue remedies against the creditor ~~or the provider of crowdfunding credit services~~ if the consumer has pursued remedies against the supplier but has failed to obtain the satisfaction to which he is entitled according to the law or the contract for the supply of goods or services. Member States shall determine to what extent and under what conditions those remedies shall be exercisable.
3. This Article shall be without prejudice to any national rules rendering the creditor ~~or the provider of crowdfunding credit services~~ jointly and severally liable in respect of any claim which the consumer may have against the supplier where the purchase of goods or services from the supplier has been financed by a credit agreement ~~or crowdfunding credit services~~.

Article 28

**Open-end credit agreements ~~or agreements for the provision of crowdfunding credit services~~**

1. Member States shall ensure that the consumer may **carry out** ~~effect~~ standard termination of an open-end credit agreement ~~or agreement for the provision of crowdfunding credit services~~ free of charge at any time, unless the parties have agreed on a period of notice. Such a period shall not exceed one month.

Member States shall ensure that the creditor ~~or the provider of crowdfunding credit services~~, where agreed in the credit agreement ~~or in the agreement for the provision of crowdfunding credit services~~, may effect **carry out** standard termination of an open-end credit agreement ~~or agreement for the provision of crowdfunding credit services~~ by giving the consumer at least two months' notice on ~~paper or on another~~ **a** durable medium.

2. Member States shall ensure that the creditor ~~or the provider of crowdfunding credit services~~, where agreed in the credit agreement ~~or in the agreement for the provision of crowdfunding credit services~~ may, for objectively justified reasons, terminate the consumer's right to draw down on an open-end credit agreement. The creditor ~~or the provider of crowdfunding credit services~~ shall inform the consumer of the termination and the reasons for it on ~~paper or on another~~ **a** durable medium, where possible before the termination and at the latest immediately thereafter, unless the provision of such information is prohibited by Union or national law or is contrary to objectives of public policy or public security.

*Article 29*

**Early repayment**

1. Member States shall ensure that the consumer is at any time entitled to **full or partial** early repayment. In such cases, the consumer shall be entitled to a **proportionate** reduction in the total cost of the credit **to the consumer**, ~~consisting of the interest and the costs~~ for the remaining duration of the contract. When calculating that reduction, all the costs imposed on the consumer ~~by the creditor~~ shall be taken into consideration.
2. Member States shall ensure that the creditor, in the event of early repayment, is entitled to fair and objectively justified compensation for possible costs directly linked to the early repayment, provided that the early repayment falls within a period for which the borrowing rate is fixed.

The compensation referred to in the first subparagraph may not exceed 1 % of the amount of credit subject to early repayment where the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. Where that period does not exceed one year, the compensation shall not exceed 0,5% of the amount of credit subject to early repayment.

3. Member States shall ensure that the creditor is not entitled to the compensation referred to in paragraph 2 where one of the following conditions is fulfilled:
  - (a) the repayment has been made under an insurance contract intended to provide a credit repayment guarantee;
  - (b) the credit is granted in the form of an overdraft facility;
  - (c) the repayment falls within a period for which the borrowing rate is not fixed.

4. By way of derogation from paragraph 2, Member States may provide that:
- (a) the creditor is only entitled to the compensation referred to in paragraph 2 on the condition that the amount of the early repayment exceeds the threshold set out in national law, which shall not exceed EUR 10 000 within any period of 12 months;
  - (b) the creditor may exceptionally claim higher compensation if the creditor can prove that the loss suffered due to early repayment exceeds the amount determined in accordance with paragraph 2.
5. Where the compensation claimed by the creditor exceeds the loss actually suffered due to the early repayment, the consumer shall be entitled to a corresponding reduction.
- For the purposes of the first subparagraph, the loss shall consist of the difference between the initially agreed interest rate and the interest rate at which the creditor can lend out the amount subject to early repayment on the market at the time of that repayment, and shall take into account the impact of the early repayment on the administrative costs.
6. The compensation referred to in paragraph 2 shall not in any case exceed the amount of interest that the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.

## CHAPTER IX

### **ANNUAL PERCENTAGE RATE OF CHARGE AND CAPS ON RATES AND COSTS**

#### *Article 30*

##### **Calculation of the annual percentage rate of charge**

1. The annual percentage rate of charge shall be calculated in accordance with the mathematical formula set out in Part I of Annex IV. It shall equate on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor or the provider of crowdfunding credit services and the consumer.

2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined, with the exception of any charges payable by the consumer for non-compliance with any of his or her commitments laid down in the credit agreement ~~or in the agreement for the provision of crowdfunding credit services~~ and charges other than the purchase price which, for purchases of goods or services, he or she is obliged to pay whether the transaction is effected in cash or on credit.

The costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of the credit to the consumer unless the opening of the account is optional and the costs of the account have been clearly and separately identified in the credit agreement, ~~in the agreement for the provision of crowdfunding credit services~~ or in any other agreement concluded with the consumer.

3. The calculation of the annual percentage rate of charge shall be based on the assumption that the credit agreement ~~or the agreement for the provision of crowdfunding credit services~~ is to remain valid for the period agreed and that the creditor ~~or the provider of crowdfunding credit services~~ and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement ~~or in the agreement for the provision of crowdfunding credit services~~.
4. In the case of credit agreements ~~or agreements for the provision of crowdfunding credit services~~ containing clauses that allow variations in the borrowing rate or variations in certain charges contained in the annual percentage rate of charge which make them unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~.
5. Where necessary, the additional assumptions set out in Part II of Annex IV ~~may~~ **shall** be used in calculating the annual percentage rate of charge.

Where the assumptions set out in this Article and in Part II of Annex IV do not suffice to calculate the annual percentage rate of charge in a uniform manner or are no longer adapted to the commercial situations in the market, the Commission is empowered to adopt delegated acts in accordance with Article 45 in order to amend this Article and Part II of Annex IV to add the necessary additional assumptions for the calculation of the annual percentage rate of charge or to modify the existing ones.

#### *Article 31*

### **Caps on interest rates, annual percentage rate of charge and the total cost of the credit to the consumer**

1. Member States shall **at least** ~~introduce~~ **set** caps on one or more of the following:
  - (a) interest rates applicable to credit agreements ~~or to crowdfunding credit services~~;
  - (b) the annual percentage rate of charge;
  - (c) the total cost of the credit to the consumer.
- ~~2. Member States may introduce additional caps for revolving credit facilities.~~

## CHAPTER X

### **CONDUCT OF BUSINESS OBLIGATIONS AND REQUIREMENTS FOR STAFF**

#### *Article 32*

### **Conduct of business obligations when providing credit to consumers**

1. Member States shall require that the creditor, the credit intermediary ~~and the provider of crowdfunding credit services~~ act honestly, fairly, transparently and professionally and take account of the rights and interests of the consumers when carrying out any of the following activities:

- (a) manufacturing credit products;
- (b) granting, intermediating or facilitating the granting of credit;
- (c) providing advisory services with regard to credit;
- (d) providing ancillary services to consumers;
- (e) executing a credit agreement ~~or crowdfunding credit services~~.

The activities referred to in the first subparagraph, points ~~(a)~~, (b) and (c), shall be based on information about the consumer's circumstances and any specific requirement communicated by a consumer and on reasonable assumptions about risks to the consumer's situation throughout the duration of the credit agreement ~~or of the crowdfunding credit services~~.

The activities referred to in the first subparagraph, point (c), shall also be based on the information required under Article 16, paragraph 3, point (a).

2. Member States shall ensure that the manner in which creditors remunerate their staff and credit intermediaries and the manner in which credit intermediaries ~~and the provider of crowdfunding credit services~~ remunerate their staff do not impede compliance with the obligation set out in paragraph 1.
3. Member States shall ensure that, when establishing and applying remuneration policies for staff responsible for the assessment of creditworthiness, creditors comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:
  - (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the creditor;



- (b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the creditor, and incorporates measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of accepted applications for credit.
4. Member States shall ensure that where creditors, credit intermediaries ~~or providers of crowdfunding credit services~~ provide advisory services the remuneration structure of the staff involved does not prejudice their ability to act in the consumer's best interest and is not contingent on sales targets. In order to achieve that goal, Member States may also ban commissions paid by the creditor to the credit intermediary.
5. Member States may prohibit or impose restrictions on the payments from a consumer to a creditor, credit intermediary ~~or providers of crowdfunding credit services~~ prior to the conclusion of a credit agreement ~~or of the agreement for the provision of crowdfunding credit services~~.

### *Article 33*

#### **Knowledge and competence requirements for staff**

1. Member States shall ensure that creditors, credit intermediaries ~~and providers of crowdfunding credit services~~ require their staff to possess and keep up-to-date an appropriate level of knowledge and competence in relation to the manufacturing, the offering and the granting of credit agreements ~~or crowdfunding credit services~~, the carrying out of credit intermediation activities, the provision of advisory services ~~or crowdfunding credit services~~. Where the conclusion of a credit agreement ~~or an agreement for the provision of crowdfunding credit services~~ includes an ancillary service, appropriate knowledge and competence in relation to that ancillary service shall be required.
2. Member States shall establish minimum knowledge and competence requirements for the staff of creditors, of credit intermediaries ~~and of providers of crowdfunding credit services~~.

3. Member States shall ensure that compliance with the requirements set out in paragraph 1 is supervised by the competent authorities, and that the competent authorities have powers to require creditors, credit intermediaries and providers of crowdfunding credit services to provide the evidence that the competent authority deems necessary to enable such supervision.

## CHAPTER XI

### **FINANCIAL EDUCATION AND SUPPORT TO CONSUMERS IN FINANCIAL DIFFICULTIES**

#### *Article 34*

##### **Financial education**

1. Member States shall promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to consumer credit agreements. Clear and general information on the credit granting process shall be provided to consumers in order to guide them, in particular those who take out a consumer credit for the first time, and especially on digital tools.

Member States shall also disseminate information regarding the guidance that consumer organisations and national authorities may provide to consumers.

~~This paragraph shall not prevent Member States from providing for additional financial education.~~

2. The Commission shall assess and publish a report on the financial education available to consumers in the Member States and identify examples of best practices which could be further developed in order to increase the financial awareness of consumers.

*Article 35*

**Arrears and forbearance measures**

1. Member States shall require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated. Such forbearance measures shall take into account, among other elements, the consumer's circumstances and may consist in, among other possibilities:
  - (a) a total or partial refinancing of a credit agreement;
  - (b) a modification of the existing terms and conditions of a credit agreement, which may include among others:
    - (i) extending the term of the credit agreement;
    - (ii) changing the type of the credit agreement;
    - (iii) deferring payment of all or part of the instalment repayment for a period;
    - (iv) changing the interest rate;
    - (v) offering a payment holiday;
    - (vi) partial repayments;
    - (vii) currency conversions;
    - (viii) partial forgiveness and debt consolidation.
2. The list of potential measures in paragraph 1, point (b), is without prejudice to rules set out in national law and does not require Member States to provide for all of those measures in national law.

3. Member States may require that, where the creditor is permitted to define and impose charges on the consumer arising from a default, those charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default.
4. Member States may allow creditors to impose additional charges on the consumer in the event of default. In that case Member States shall introduce a cap on those charges.
5. Member States shall not prevent the parties to a credit agreement from expressly agreeing that return or transfer to the creditor of goods covered by a linked credit agreement or proceeds from the sale of such goods is sufficient to repay the credit

#### *Article 36*

#### **Debt advisory services**

1. Member States shall ensure that debt advisory services are made available to consumers **who experience or might experience difficulties in meeting their financial commitments.**

### CHAPTER XII

### **CREDITORS AND CREDIT INTERMEDIARIES**

#### *Article 37*

#### **Admission, registration and supervision of non-credit institutions**

2. Member States shall ensure that creditors, credit intermediaries ~~and providers of crowdfunding credit services~~ that are not credit institutions as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 are subject to an adequate admission process and to registration and supervision arrangements set up by an independent competent authority.

*Article 38*

**Specific obligations for credit intermediaries**

Member States shall require that credit intermediaries:

- (a) indicate, in advertising and documentation intended for consumers, the extent of their powers and whether they work exclusively with one or more creditors or as an independent intermediary;
- (b) disclose to the consumer any fees payable by the consumer to the credit intermediary for services to be provided;
- (c) reach an agreement with the consumer on any fees referred to in point (b) on ~~paper or another~~ a durable medium before the conclusion of the credit agreement;
- (d) communicate any fees referred to in point (b) to the creditor, for the purpose of calculation of the annual percentage rate of charge.

CHAPTER XIII

**ASSIGNMENTS OF RIGHTS AND DISPUTE RESOLUTION**

*Article 39*

**Assignment of rights**

1. Member States shall ensure that the consumer, in the event of assignment to a third party of the creditor's rights under a credit agreement ~~or an agreement for the provision of crowdfunding credit services~~, or of the agreement itself, is entitled to plead against the assignee any defence which was available to him or her against the original creditor, including set-off where such defence is permitted in the Member State concerned.

2. Member States shall require that the original creditor ~~or the provider of crowdfunding credit services~~ inform the consumer of the assignment referred to in paragraph 1, except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the consumer.

#### *Article 40*

### **Out-of-court dispute resolution**

1. Member States shall ensure that consumers have access to adequate and effective out-of-court dispute resolution procedures for the settlement of disputes between consumers and creditors, credit intermediaries ~~or providers of crowdfunding credit services~~ concerning rights and obligations **stemming from credit agreements** established under this Directive, using existing entities where appropriate. Such out-of-court dispute resolution procedures and the entities offering them shall comply with the quality requirements laid down by Directive 2013/11/EU.
2. Member States shall encourage the entities performing the dispute resolution referred to in paragraph 1 to cooperate in order to resolve cross-border disputes concerning credit agreements ~~or crowdfunding credit services~~.

## CHAPTER XIV

### **COMPETENT AUTHORITIES**

#### *Article 41*

### **Competent authorities**

1. Member States shall designate the national competent authorities empowered to ensure the application and enforcement of this Directive ('competent authorities') and shall ensure that they are granted investigating and enforcement powers and adequate resources necessary for the efficient and effective performance of their duties.

The competent authorities shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be creditors, credit intermediaries or providers of crowdfunding credit services.

2. Member States shall ensure that competent authorities, all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. No confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form, except when an exchange or transmission of such information is expressly required by Union or national law.
3. Member States shall ensure that the competent authorities are either or both of the following:
  - (a) competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>22</sup>;
  - (ab) authorities other than the competent authorities referred to in point (a) provided that national laws, regulations or administrative provisions require those authorities to cooperate with the competent authorities referred to in point (a) whenever necessary in order to carry out their duties under this Directive.
4. Member States shall ensure that the authorities designated as competent for ensuring the application and enforcement of this Directive fulfil the criteria set in Article 5 of Regulation (EU) No 2017/2394.

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<sup>22</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

5. Member States shall inform the Commission of the designation of the competent authorities and any changes thereto, and, where there is more than one competent authority on their territory, indicate any division of the respective duties between those competent authorities. The first such notification shall be made as soon as possible and at the latest on two years from the date the Directive enters into force.
6. The competent authorities shall exercise their powers in conformity with national law either:
  - (a) directly under their own authority or under the supervision of the judicial authorities; or
  - (b) by application to courts which are competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful.
7. Where there is more than one competent authority on their territory, Member States shall ensure that their respective duties are clearly defined and that those authorities collaborate closely so that they can discharge their respective duties effectively.
8. The Commission shall publish a list of the competent authorities in the *Official Journal of the European Union* at least once a year, and update it continuously on its website.

## CHAPTER XV

### FINAL PROVISIONS

#### *Article 42*

#### **Level of harmonisation**

1. Insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive unless provided otherwise in this Directive.



2. Where a Member State makes use of the regulatory choices provided for in Article 2(5) and 2(6), Article 8(1), Article 8(2)(c), Article 20(2), Article 26(2) and Article 29(4), it shall inform the Commission thereof as well as of any subsequent changes. Member States shall also take the appropriate measures to diffuse that information amongst national creditors, credit intermediaries, ~~providers of crowdfunding credit services~~ and consumers.

### *Article 43*

#### **Imperative nature of this Directive**

1. Member States shall ensure that consumers may not waive the rights conferred on them by the national measures transposing this Directive.
2. Member States shall ensure that the provisions adopted in order to transpose this Directive cannot be circumvented as a result of the way in which agreements are formulated.
- ~~3. Member States shall take the necessary measures to ensure that consumers do not lose the protection granted by this Directive by virtue of the choice of the law of a third country as the law applicable to the credit agreement or crowdfunding credit services, where the credit agreement or crowdfunding credit services have a close link with the territory of one or more Member States.~~

## Article 44

### Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and of those measures to the Commission by [*OP: please insert date - six months from the transposition deadline*] and shall notify it, without delay, of any subsequent amendment affecting them.
2. Member States shall ensure that when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394, they include the possibility either to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, or both, the maximum amount of such fines being at least 4% of the creditor, the credit intermediary or the provider of crowdfunding credit services' annual turnover in all Member States concerned by the coordinated enforcement action.
3. Member States shall provide that the competent authority may disclose to the public any administrative penalty that is imposed for infringement of the measures adopted pursuant to this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

## Article 45

### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 30(5) shall be conferred on the Commission for a period of five years from xx xx xxxx. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 30(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 30(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

## Article 46

### Review and monitoring

1. The Commission shall undertake, every five years and for the first time five years from the date of application, an evaluation of this Directive. The evaluation shall include an assessment of the thresholds laid down in Article 2(2), point c, and in Part II of Annex IV, and of the percentages used to calculate the compensation payable in the event of early repayment as referred to in Article 29, in the light of economic trends in the Union and the situation in the market concerned.
2. The Commission shall also monitor the effect of the existence of the regulatory choices referred to in Article 42 on the internal market and consumers.
3. The Commission shall report the results of the evaluation and assessment referred to in paragraphs 1 and 2 to the European Parliament and the Council, accompanied, if appropriate, by a legislative proposal.

## Article 47

### Repeal and transitional provisions

Directive 2008/48/EC is repealed with effect from [*OP: please insert date - six months from the transposition deadline*]. ~~However, as regards relations, within the scope of this Directive, between consumers and creditors or credit intermediaries or providers of crowdfunding credit services who qualify as micro, small and medium undertakings as referred to in Article 3 of Directive 2013/34/EU of the European Parliament and of the Council<sup>23</sup>, Directive 2008/48/EC shall continue to apply until [*OP: please insert date - 18 months from the transposition deadline*].~~

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<sup>23</sup> ~~Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).~~

Directive 2008/48/EC shall also continue to apply to credit agreements existing on [*OP: please insert date - six months from the transposition deadline*] until [*their termination*].

However, Articles 23 and 24, Article 25(1), second sentence, Article 25(2) and Articles 28 and 39 of this Directive shall apply to all open-end credit agreements existing on [*OP: please insert date - six months from the transposition deadline*].

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex V.

#### *Article 48*

### **Transposition**

1. Member States shall adopt and publish, by [*OP: please insert date - 24 months from the date the Directive is adopted*] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions. They shall apply those measures from [*OP: please insert date - six months from the transposition deadline*].
- ~~3. However, as regards relations, within the scope of this Directive, between consumers and creditors or credit intermediaries or providers of crowdfunding credit services who qualify as micro, small and medium undertakings as referred to in Article 3 of Directive 2013/34/EU, Member States shall apply those measures from [*OP: please insert date - 18 months from the transposition deadline*].~~
4. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 49*

**Entry into force**

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

*Article 50*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament For the Council*

*The President The President*

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