

2021.12.20. No. 3.3-11/2021/9055N

Good afternoon. We are happy to send you written comments in response to your request.

We conceptually support the approach that the scope of the CCD regulation includes regulation to ensure greater consumer protection when consumer obtain credit through a crowdfunding credit service (but work on regulation and wording still must be done). However, the framework needs to be aligned with the existing Collective Funding framework (*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*), from which scope crowdfunding services in relation to lending to consumers currently are excluded. (In CCD: correct references to the regulation (EU) 2020/1503 are needed, harmonization of the definitions that are used, and discussion on licensing issues in both - business and consumer credit cases - are needed as well). Accordingly, **option 1:** all kind investor protection could be laid down in a Regulation (EU) 2020/1503. It would therefore be necessary to amend the current regulation that excludes from scope crowdfunding services that are provided to project owners that are consumers. Or **option 2:** another solution must be found to regulate the relationship between investors and those crowdfunding service that are offering credit services to consumers, without making changes in the existing regulation (EU) 2020/1503.

For crowdfunding credit providers, the already regulated business model framework should be maintained. Crowdfunding service providers may only propose to individual investors specific crowdfunding projects (*Regulation (EU) 2020/1503 Art.3.4.*). Crowdfunding service providers shall not have any participation in any crowdfunding offer on their crowdfunding platforms (*Regulation (EU) 2020/1503 Art.8.1.*). A crowdfunding service provider shall put in place and maintain arrangements to ensure that project owners accept funding of crowdfunding projects, or any other payment, only by means of a payment service provider in accordance with Directive (EU) 2015/2366 (*Regulation (EU) 2020/1503 Art.10.5.*).

So, the crowdfunding service provider itself (mostly) is not a creditor - it does not collect money and does not lend itself. But in the case of consumer credit, they would assume the obligations of creditors, such as 1) creditworthiness assessment, 2) advertising and pre-contractual information. Investors (who are more in line with the role of “creditor” as real money lenders) should not have those duties due to the specificities of the platform's business model (as investors can be both - professional and non-professional, and that there can be countless investors per project).

In addition, in Latvia we do not currently allow a natural person to grant credit to another natural person (consumer), so we insist that the CCD should retain the right for each Member State to determine whether or not to allow C2C credit models.

Other changes to the compromise text:

1. We appreciate the changes proposed in the compromise text (art.18.4.), which state that it is up to the Member States to regulate nationally whether and in what cases it is possible to grant credit even in case of a negative creditworthiness assessment. This solution is certainly better than the version of the original proposal. At the moment, we do not see in which cases it would be necessary and in favour of the consumer. However, we are pleased to have flexibility for future situations.
2. We do not oppose the proposed clarification in Articles 36 and 6.
3. We support the deletion of the transitional period for SMEs (Articles 47-48).
4. In the definition of “credit agreement”, we invite to make a clarification in (iii), deleting about “other charges”:

(iii) deferred payment of an invoice whereby the trader gives its consumer, time to pay the invoice, free of interest ~~and without any other charges, including penalty charges,~~ as agreed between parties, as set out in the supplier’s invoice or as laid down by law, and this payment shall be executed within 30 days of the issuance of the invoice.

We believe that if the deadline is not met a reasonable contractual penalty for delay is permissible as a discipline measure for the proper performance of civil liability.

We agree to exclude from the scope hiring or leasing agreements (operative leasing) where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement.

Other issue:

We would like to emphasize that we believe CCD requirements should apply to small loans below EUR 200. Consumers must have the same level of protection, and assessing creditworthiness is one of the key aspects of any credit. The creditworthiness assessment should be carried out for any credit, regardless of the amount and cost of the credit. This is especially relevant in the case where the speed of information exchange between creditors and credit reference databases is insufficient and individuals can borrow many small loans in a short period of time (due to system deficiencies).



Council of the European Union
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NOTE

From:	Delegation of Latvia
To:	Working Party on Consumer Protection and Information (Consumer Credits)
Subject:	written comments from Latvia on CCD Presidency compromise text

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