FINTECH LATVIJA
ASOCIĀCIJA

Committee on Internal Market and Consumer Protection

Committee on Economic and Monetary Affairs

*IZ_FLA_08/2022

Re: *Draft Consumer Credit directive*

[1] Fintech Latvia Association (hereinafter – Association) and its members, representing a significant share of market in consumer lending, have reviewed the proposed amendments to the draft Directive on consumer credit (hereinafter – Draft directive) and would like to share our view on some important aspects of the proposals.

[2] While we welcome the effort to bring the regulation in line with the latest developments in fintech industry and consumer crediting, we would like to draw your attention to several aspects of the proposed Draft directive that are posing a risk of removing access to a regulated finance to millions of Europeans who are currently underserved by the finance industry. We see that consequently the unregulated market for credit will become invigorated, pushing citizens out from under the protective umbrella of regulated consumer credit.

[3] Caps (Amendment 94, 95)
The application of caps on interest rates, the annual percentage rate of charge or the total cost of credit risks removing regulated options from citizens who are in the most need of consumer protection. We believe that the price caps should not be a matter for pan-EU regulation given the diversity of markets and currencies across the Member States. The proposed amendments not only intend to cap prices across Europe, but take away an option for the Member States to cap interest rates instead of the APRC or the total cost of credit. The original draft included such an option, wisely, given the number of established regimes that have applied such caps.

There are huge distortions generated by APR formulae when applied to short term loans. As an example, let us take a credit of EUR 1,000 granted for one month, where the consumer incurs the total cost of EUR 160. For a credit with such parameters, the APR is over 500%, even if the actual cost of this credit is 16%.

We note that credit cost caps were introduced in Latvia in 2018. The changes resulted in decrease in number of market participants from 62 licenced market players in second half of 2018 to 46 market

players in first half of 2021[1]. Further decrease is expected in second half of 2021 as according to data of Consumer Rights Protection centre already in first half of 2021 only 42 licensed players were actively participating in the market by issuing new consumer loans. So, we can safely say that the changes led to decrease of the market by 30%. Although increase of licensing fees was also a factor in this result, the negative impact on the competition in the market due to introduction of credit cost caps may not be underestimated.

[4] Creditworthiness assessment provisions (Amendment 69, 70, 71)
We support the approach that there should be strong protections against data collection that might discriminate against groups of people for example based on race, sexual orientation, religion, having a certain illness, etcetera. However, in our view the amendment creates a provision that is overly prescriptive. It should be noted that extremely limited categories of data that may be used to assess a consumer's ability to repay the credit may increase the number of consumers defaulting on loans, because the scoring models based on a more limited set of data would be less effective in predicting the outcome. The recent developments across the markets in successful use of statistical models bringing down default rates and improving access to credit to many people over the last decade are reliant on modern data science and analytics. Any prescriptive rules may reverse this trend and limit competition, especially in the environment governed by cost caps. We are concerned that the proposed limitations may adversely impact lenders' ability to carry out a proper risk assessment.

Where lenders are prescribed in great detail by regulation how to carry out creditworthiness assessment and what prices to charge, there little room for competition remains. It must be noted also, that instruments of increasing the financial literacy alone may turn out not to be a sufficient tool in enhancing responsible behaviour from the consumers' side and in such cases risk based analytical models used in lending by the consumer lenders may bring an additional safeguard for responsible borrowing on the consumers' side.

[5] Prohibition to base credit offers on behavioural data (Amendment 8). Creditworthiness assessments, responsible lending and the ability to serve a consumer's particular needs all depend on relevant data on a consumer's behaviour. This is essentially true of a broad range of financial services and predates the invention of the computer. Consumer behavioural data is hardwired into the creditworthiness assessments that are mandated in Member States across the Union. Credit bureaus, a mandatory point of reference in many countries are all repositories of behavioural data, such as credit repayment discipline that lenders are obliged to refer to. Lenders also have a legitimate interest to consider borrowing patterns.

GDPR is specifically designed to address issues of over-reach, necessary use of data, privacy and the avoidance of prejudicial profiling. This amendment risks confusing matters and contradicting aspects of law well-established and considered elsewhere. Excluding the use of basic behavioural data could lead to lenders making poorer quality decisions and reducing customer protection. Some insight in behavioural data is useful to support responsible lending.

[6] Inclusion of additional insurance or financial products into the APR (Amendment 93). Adoption of the amended version may unreasonably prevent lenders from offering services that are optional, but satisfy important consumer needs. There is no good reason why additional discretionary financial services, such as unemployment insurance, should be part of the APR calculation.

[1] According to data of Consumer Rights Protection Centre of the Republic of Latvia for the respective periods. Please see the reports here: https://www.ptac.gov.lv/lv/media/63/download and https://www.ptac.gov.lv/lv/media/2620/download

[7] Broadening of the scope of the total cost of the credit definition (Amendment 23). The proposed definition may unreasonably prevent lenders from offering competitive products. The inclusion of non-compulsory fees into the total cost of the credit would lead to a situation where lenders would have to present consumers with an incorrect, artificially inflated price of the credit. Consumers would be misled about the total cost of the credit, where in reality they have an option not to pay the whole price.

[8] Endorsement of prohibitions or limitations regarding specific charges or fees (Amendment 96). Member States should not be incentivized to come up with regulations which are too restrictive. Any additional restrictions could push regulated lender out of the business, facilitating illegal lending activities.

[9] Prohibition for providers of credit databases to collect personal data other than data for creditworthiness assessment (Amendment 12). As stated above, Credit bureaus, a mandatory point of reference in many countries are all repositories of behavioural data, such as credit repayment discipline that lenders are obliged to refer to. Lenders also have a legitimate interest to consider borrowing patterns. Likewise, personal data that may not be strictly necessary for creditworthiness assessment, could be a useful tool for consumer protection and fraud prevention.

[10] Lack of steps taken towards development of cross - border provision of services (Article 6 and Article 37). Even though the Draft directive repeatedly addresses the vital need to develop the European Union consumer credit market, including in the cross - border format of consumer credit, unfortunately the proposed text fails in taking any real steps in that direction. The proposed Draft directive (in particular Articles 6 and 37) will continue to hamper the development of the European Union's internal market for consumer credit and cross-border consumer credit within the European Union. In essence, Articles 6 and 37 of the Draft directive will continue to create barriers at national level for the participation of consumer credit undertakings established in other Member States in the domestic market. Such obstacles run counter to the objectives of the Draft directive. The European Union already has a markedly fragmented and unbalanced set of requirements at national level that define licensing requirements for consumer credit companies. In order to address these significant shortcomings of the proposed directive, which is clearly at odds with the aim of the directive, we propose to add the following second paragraph to Article 37 of the proposal for a directive:
"*Member States shall ensure that creditors, credit intermediaries and providers of collective financing credit institutions other than credit institutions within the meaning of Regulation (EU) No 1095/2010 Article 4 (1) (1) of Regulation (EU) No 575/2013, which are duly recognized, registered and supervised in another Member State, shall be allowed to apply a simplified recognition procedure and registration which shall not exceed the obligation to notify the competent authority of the commencement of consumer crediting in that Member State*."

[11] Consumer credit advertising (Article 8). The Directive clearly emphasizes the importance of advertising for consumer credit services in making an informed consumer decision. Given that there are regulations in some Member States of the European Union that significantly restrict consumer credit advertising, it is necessary for the Directive to impose an obligation on Member States at European Union level not to restrict the free movement of consumer credit trough banning consumer credit advertising. Absence of credit advertising translates into lack of understanding of various financial products available on the market by the consumers. Accordingly, we call for the following paragraph 4 to be added to Article 8 of the Draft directive:
"*4. Member States shall not restrict the advertising of credit agreements and collective financing credit services which comply with this Article*."

[12] Joint and several liability of the seller or supplier and the creditor (Article 27). Draft directive provides that "Member States should be able to maintain or introduce national rules on the joint and several liability of the seller or supplier and the creditor" (p. 16 of the proposal document), "if, under Union law, the consumer exercise the right to withdraw from the purchase agreement, the consumer should no

longer have any obligations under the linked credit agreement. " (page 25 of the proposal document). It is not justified to link the liability of the seller or service provider and the creditor by making it joint and several. In practice, the customer is bound by two unrelated contracts for the purchase of the product and crediting the purchase of the corresponding product, which are each provided by separate party. Such provisions shall hamper development different “buy now – pay later” offers. Therefore we are suggesting that Article 27 (3) should be deleted from the Draft directive.

[13] Consumers rights to request information (Article 21). Article 21 (2) of the Draft directive provides that the creditor and the collective finance service provider shall provide the consumer with an amortization table statement free of charge at any time during the term of the credit agreement or collective financing agreement. The creditor and the collective financing service provider must be protected against acts by unscrupulous or malicious consumers which have the effect of placing an undue burden on the creditor or the collective financing service provider. We therefore call for the scope of Article 21 (2) of the Draft directive to be reduced to once within one month for such consumer rights.

[14] Termination of an open-end credit agreement (Article 28). Article 28 of the Draft directive sets different deadlines for the termination of an open-end credit agreement for the consumer and the creditor or provider of collective financing services. In order to strengthen the civil equality of the parties, it is necessary to set the same notice period in case of termination of an open-end credit agreement for both parties - one or two months, respectively, which should be the same for both contracting parties.

[15] Early repayment compensation for small loans (Article 29). Article 29 of the Draft directive provides for the creditor's right to compensation in the event of early repayment of the loan only if the amount repaid early exceeds a threshold not exceeding EUR 10 000 in any 12-month period. The mechanism of such compensation is disproportionate and unfair to creditors who issue loans only within that threshold. It should be noted that the costs associated with issuing a loan to creditors may be similar regardless of the amount issued. In order to promote fair competition between all creditors, we call for the proposed threshold of no more than EUR 10 000 to be removed from the Draft directive, providing for the right to cost-based compensation for all creditors.

[16] Feel free to contact us at info@fla.lv for any further questions or concerns.

Best regards,

Tīna Lūse
Executive director

DOCUMENT HAS BEEN SIGNED ELECTRONICALLY AND CONTAINS A TIME STAMP!