

# Financial Consumer Protection in the Digital Age: Is the 2008 Consumer Credit Directive fit for purpose?

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#### What is responsible lending?

- Lenders should not act solely in their own interests but should also take into account the consumer borrowers' interests and needs in order to prevent consumer detriment:
  - when designing consumer credit products
  - when <u>distributing</u> consumer credit products
  - <u>during the term</u> of the consumer credit agreement
- Taking into account increasing consumer vulnerability in a dehumanised environment, particularly in a time of crisis (e.g. Covid-19 pandemic)

#### The main areas of concern

- The provision of high-cost credit:
  - payday loans
  - credit cards
- Cross-selling: consumer credit products are sold to consumers together with other products, such as payment protection insurance
  - product bundling
  - product tying
- Peer-to-peer consumer lending (P2PL)

### Key drivers of irreponsible consumer lending

#### Market failures:

- information asymmetry between lenders and consumers
- consumer behavioural biases in financial decisionmaking; high profits for lenders

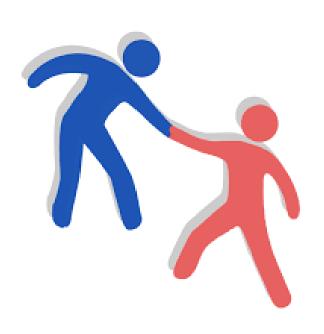
#### Regulatory failures:

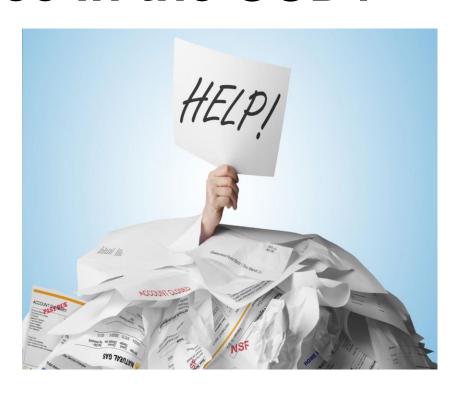
- lack of sufficiently clear and binding responsible lending rules
- enforcement failings
- regulatory arbitrage

## EU regulation of the retail financial markets after the 2007-2008 financial crisis

- Shift away from the information paradigm of consumer protection towards a more protective approach (2014 MiFID II; 2014 Mortgage Credit Directive (MCD)): e.g.
  - product governance and intervention rules
  - a robust duty of responsible lending
- But not in the area of simple consumer credit;
   major limitations of the 2008 Consumer Credit
   Directive (CCD) in ensuring responsible lending

# Acces to credit vs. Consumer protection against overindebtedness: Towards a different balance in the CCD?

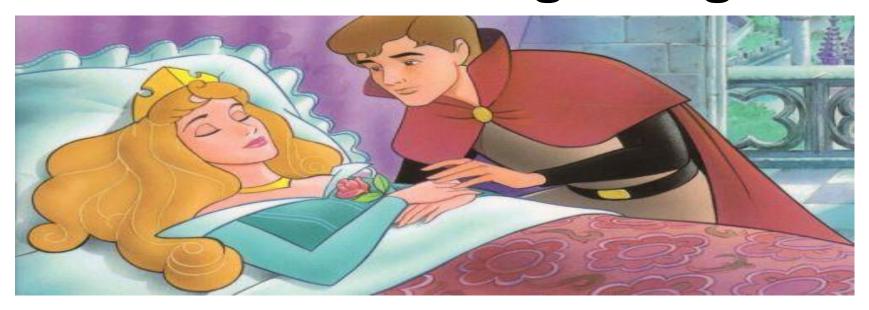




#### Revision of the CCD

- Reconsidering the underlying standard of a reasonably wellinformed, observant and circumspect consumer?
- A wider scope, in particular incl. loans below EUR 200?
- Product governance rules for consume credit products?
- A clear borrower-focused duty to assess the consumer's creditworthiness, incl. a duty to deny credit in case of the negative outcome?
- A duty to ensure the basic suitability of fin. products offered together with consumer credit / consumer credit products?
- Restrictions on cross-selling, in particular product tying?
- Responsible lending obligations for P2PL platforms?
- Safeguards against remuneration policies that may incentivise irresponsible lending?
- 'Aftercare rules' on the treatment of consumer borrowers in financial distress?

## Responsible lending through the CCD in the digital age?



See further O.O. Cherednychenko & J.M. Meindertsma, 'Irresponsible Lending in the Post-Crisis Era: Is the EU

Consumer Credit Directive Fit for Its Purpose?', 2019 Journal of

Consumer Policy, 42 (4), pp. 483-519.