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

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and Consumer Protection*

*'Consumer Protection in the Context of the Digitalisation of Retail Financial
Services (CCD and DMFSD) during the COVID-19 Pandemic', Brussels, 18
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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 distributing consumer credit products
 - during the term 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 irresponsible consumer lending

- **Market failures:**

- information asymmetry between lenders and consumers
- consumer behavioural biases in financial decision-making; 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

Access 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 well-informed, 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.