FRAMEWORK CONTRACT ON EVALUATION, IMPACT ASSESSMENT AND RELATED SERVICES

Study on the Impact of the Legal Choices of the Member States and other Aspects of Implementing the Directive 2008/48/EC on the Functioning of the Consumer Credit Market in the European Union

FINAL REPORT

prepared for the

Executive Agency for Health and Consumers

October 2013

Framework Contract on Evaluation, Impact Assessment and Related Services

Study on the Impact of the Legal Choices of the Member States and other Aspects of Implementing the Directive 2008/48/EC on the Functioning of the Consumer Credit Market in the European Union

Final Report – October 2013

prepared for the

Executive Agency for Health and Consumers

by

Risk & Policy Analysts Limited,
Farthing Green House, 1 Beccles Road, Loddon, Norfolk, NR14 6LT, UK
Tel: +44 1508 528465 Fax: +44 1508 520758
www.rpaltd.co.uk

RPA REPORT – ASSURED QUALITY		
Project: Ref/Title	J812/Consumer Credit	
Approach:	In accordance with the Technical Specifications and associated discussions with the Client	
Report Status:	Final Report	
Report Prepared by:	Tobe Nwaogu, Project Manager, RPA Sophie Upson, RPA Julia Rzepecka, RPA Vania Simittchieva, RPA Clare Bowman, RPA	 Emma Psaila, Milieu Sophie Vancauwenbergh, Milieu Adrien Lantieri, Milieu Małgorzata Olesiak, EPRD
Report approved for issue by:	Pete Floyd, Project Director, RPA	
Date:	22 October 2013	

TABLE OF CONTENTS

ABBREVIATIONS

ADR	Alternative Dispute Resolution
APR	Annual Percentage Rate of charge
CCD	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 (Consumer Credit Directive)
EEA	European Economic Area
EFTA	European Free Trade Association
EU	European Union
FIN-NET	Financial Dispute Resolution Network
MS(s)	Member State(s)
SECCI	Standard European Consumer Credit Information form

1. INTRODUCTION

1.1 Background to Study

Adopted by the European Parliament and the Council in May 2008, Directive 2008/48/EC on credit agreements for consumers (hereafter referred to as the Consumer Credit Directive or CCD) aims to "*facilitate the emergence of a well-functioning internal market in consumer credit*" and to ensure that all consumers in the Community enjoy "*a high level of protection*" of their interests. The CCD replaces Directive 87/102/EEC on consumer credit and creates a harmonised set of rules within core areas of the credit market among EU Member States (MSs). MSs were obliged to transpose the CCD into their national law by 11 June 2010.

Risk & Policy Analysts (RPA) with support from its partners, Milieu and EPRD, has been contracted by the European Health and Consumers Agency (EAHC) to support the assessment of the degree to which the legal choices adopted by MSs on specific elements of the CCD impact the fulfilment of the Directive's principal objectives, namely:

- fostering an internal credit market in the EU and, in particular, in relation to cross-border competition and credit provision; and

- providing a high level of consumer protection with regard to consumer credit.

Against this background, the study has been divided into two parts

- *Part 1: Consumer Credit Directive - Legal Choices exercised by Member States*: Part 1 investigates the details of the manner in which particular MS used the options foreseen in the Directive and their reasons and context.

- *Part 2: Consumer Credit Directive – Consequences*: Part 2 focuses on the possible consequences of the legal choices of the MSs, focussing on effects with respect to the internal credit market and the protection of consumers.

1.2 Structure of this Report

The remainder of this report has been organised as follows:

- Section 2 presents an **overview of the Consumer Credit Directive**;

- Section 3 sets out the **methodological approach to the study**;

- Section 4 provides a **horizontal analysis** of the legal choices adopted by Member States and the clarification of various terms and concepts in the CCD. For each legal choice, it sets out the manner in which it has been adopted and implemented and the consequence(s) of the national transposition of the legal choices. In this context, it is important to note that the legal analysis covers amendments to national legislation up to mid-March 2013 and the assessment of impacts is based on information provided by stakeholders up to June 2013;

- Section 5 assesses the measures Member States have taken in order to ensure that consumers do not lose their rights under the Directive because the credit agreement contains a **choice of law provision** stating that the legislation of a third country must be applied;

- Section 6 deals with **penalties and enforcement**, focussing on the rules applicable to infringements of the CCD which have been laid down by Member States;

- Section 7 examines the **extension of the scope of the CCD** either partially or fully to credits not covered by the Directive by Member States;

- Section 8 considers how Member States have chosen to transpose the provision on **out-of-court dispute resolution**;

- Section 9 sets out the measures taken by particular Member States to ensure **responsible lending**;

- Section 10 sets out the key **conclusions** of the analysis of legal choices and clarification of key terms/concepts in the CCD; and

- Section 11 provides a list of **references** consulted.

2. Overview of the Consumer Credit Directive

2.1 Background

The first Consumer Credit Directive (Directive 87/102/EEC) was passed before consumer credit was widely available across Europe and when the range of consumer credit products was comparatively simple (Vandone, 2009). It was limited in scope and based on minimum harmonisation, granting Member States (MS) the freedom to introduce more restrictive consumer protection mechanisms. This approach resulted in MSs adopting different provisions which had impacted on the competition among creditors in the EU and undermined the availability of cross-border credit. Over time, it became apparent that the provisions of the Directive were not sufficient to provide enough consumer protection in the evolving financial markets.

Building upon the first Directive, the European Parliament and Council adopted in 2008 the Consumer Credit Directive (CCD) 2008/48/EC which seeks to *facilitate the emergence of a well-functioning internal market in consumer credit* and to ensure that all consumers in the EU enjoy a high level of protection of their interests. Member States were obliged to transpose the CCD into their national law by 11 June 2010.

The new CCD achieves its stated objectives through full harmonisation of those core areas that are within its scope. Conversely, Recital 10 of the CCD also makes it clear that MSs may, in accordance with EU law, apply provisions of the CCD to areas not covered by its scope.

2.2 Chapter I – Subject Matter, Scope and Definitions

Article 1: Subject Matter

Article 1 refers to the purpose of the Directive, which is to harmonise certain aspects of the law, regulations and administrative provisions of the MS concerning credit agreements for consumers.

Article 2: Scope

Article 2(1) establishes that the CCD will apply to credit agreements (as defined below). It covers credit agreements in value between €200 and €75,000 and will only apply to credit contracts on which interest is paid.

Credit agreements in the form of overdraft facilities and where the credit needs to be repaid within one month are excluded from the scope. The CCD provisions will also not apply to mortgages. Article 2(2) lists the exclusions from the CCD, as follows:

a) mortgage lending or other comparable security;
b) acquisition or retention of land or property rights;
c) credit agreements totalling less than €200 and more than €75,000;

d) hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down;
e) overdrafts, where credit must be repaid within one month;
f) where credit is granted free of interest and without any other charges and agreements that must be repaid within three months only with *insignificant charges*;
g) credit agreements granted by employers to employees under favourable conditions which are not available to the public generally;
h) credit agreements concluded with investment firms or credit institutions to allow investors to carry out certain transactions;
i) credit agreements that result from a settlement in court or other statutory authority;
j) credit agreements which relate to deferred payment, free of charge of an existing debt;
k) where consumer must deposit an item with the creditor as security and where liability is strictly pledged to that item; and
l) credit agreements granted to restricted public under a statutory provision with a general interest purpose, at favourable rates comparable to the market.

Article 2(5) provides an exemption for organisations established for the mutual benefit of its members, does not make profits, fulfils a social purpose, etc. MSs may decide that certain organisations that provide credit should not have the burden of complying with all of the provisions of the CCD[1]. MSs may exempt from the application of the CCD organisations:

a) that have been established for the mutual benefits of the members;
b) whose profits benefit members and no other person;
c) that fulfil a social purpose required by domestic legislation;
d) that receives and manages the savings of, and provides sources of credit to, its members only; and
e) that provides credit on the basis of an annual percentage rate of charge which is lower than that prevailing on the market or subject to a ceiling laid down by national law; and whose membership is restricted by geographic location or by employer.

Article 2(6) provides the MSs with the legal choice to apply only certain Articles[2] to credit agreements, in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement and:

- the agreement is likely to avert legal proceedings concerning the default; and
- the consumer would not be subjected to less favourable terms than those outlined in the initial agreement.

[1] These organisations may only need to comply, in respect of credit agreements, with CCD Articles 1-4, 6, 7, 9, Article 10(1) (a-h), Article 10 (2), Article 10 (4) and Articles 11, 13 and 16 – 32.

[2] Articles 1-4, 6, 7, 9, 10 (1), Article 10 (2) (a – i; l and r), Article 10 (4), Articles 11, 13, 16, and 18 – 32.

Article 3: Definitions

For the purpose of the CCD, the key definitions include:

- *consumer*, defined as natural persons acting for purposes which are outside of their trade, business or profession;
- *creditor*, a natural or legal person who grants or promises to grant credit in the course of his trade or profession;
- *credit agreement*, whereby a creditor grants a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for long-term contract agreements for provisions of services;
- *credit intermediary* means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for example, for a fee, helps consumers in the process of applying for a credit or concludes credit agreements on behalf of the creditor;
- *annual percentage rate of charge* means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit;
- *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;
- *fixed borrowing rate* means that the creditor and the consumer agree in the credit agreement on one borrowing rate for the entire duration of the credit agreement or on several borrowing rates for partial periods using exclusively a fixed specific percentage;
- *linked credit agreement* means a credit agreement where the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service; and
- *total amount of credit* means the ceiling or the total sums made available under a credit agreement.

2.3 Chapter II – Information and Practices Preliminary to the Conclusion of the Credit Agreement

Article 4: Standard Information to be Included in Advertising

Credit advertisements that include any interest rate or figures relating to the cost of the agreement must include *standard information*. The standard information must be presented in a *clear, concise and prominent way* by means of a representative example. Necessary elements of standard information to be used in advertising of consumer credits include:

a) borrowing rate (fixed or variable or both), together with any charges included in the total cost of the credit;
b) total amount of credit;
c) annual percentage rate of charge;
d) duration of the credit agreement (if applicable);
e) in the case of a credit in the form of deferred payment for a specific good or service, the cash price and the amount of any advance payment; and
f) total amount payable by the consumer and the amount of the instalments (if applicable).

Article 4(1) provides that MSs are obliged to include standard information in any advertising concerning credit agreements which indicates an interest rate or any figures relating to the cost of the credit. This obligation does not apply where the national legislation requires the indication of the APR in advertising which does not indicate an interest rate or any figures relating to any costs of the credit to the consumer.

Article 4(2)(c) provides that for credit agreements that have an overdraft facility and the credit needs to be paid either on demand or within three months. MSs may exclude creditors from the requirement to provide an annual percentage rate of charge in standard information in advertising.

Article 5: Pre-contractual Information

Article 5(1) provides that the information concerning credit agreements must be provided *in good time* to the consumer before the consumer is bound by any credit agreement.

More prescriptive than the advertising provision, pre-contractual information must be provided by means of the Standard European Consumer Credit Information form (SECCI) that is set out in Annex II of the CCD. The information that needs to be presented to the consumer at the pre-contractual stage includes:

a) type of credit;
b) identity and geographical address of the creditor;
c) total amount of credit and associated conditions;
d) duration of credit agreement;
e) in the case of a credit in the form of deferred payment for a specific good or service and linked credit agreements, that good or service and its cash price;
f) borrowing rate;
g) annual percentage rate of charge and the total amount payable by a consumer, illustrated by a representative example, which takes into account all assumptions used in order to calculate the rate;
h) amount, number and frequency of payments to be made by the consumer;
i) any extra charges deriving from the credit agreement;
j) existence of costs payable to notary (if applicable);
k) obligation to enter into an ancillary service contract relating to the credit agreement, in particular an insurance policy;

l) interest rate applicable in the case of late payment and any associated charges (if applicable);
m) warning regarding the consequences of missing payment;
n) sureties required, if applicable;
o) existence or absence of a right of withdrawal;
p) right of early repayment;
q) consumer's right to be informed about the process of assessing his creditworthiness;
r) consumer's right to receive a free of charge a copy of the final draft credit agreement;
s) period of time during which the creditor is bound by the pre-contractual information.

Article 5(6) calls for the MSs to ensure that creditors and credit intermediaries provide *adequate explanations* to the consumer. MSs may decide on the extent of assistance given to the consumers.

Article 6: Pre-Contractual Information Requirements for Certain Credit Agreements in the Form of an Overdraft Facility

Article 6 refers to pre-contractual information requirements for certain credit agreements that a credit provider has to share with a consumer enabling the consumer to compare different offers. Article 6(1) provides that MS may decide to require creditors to provide this information to consumers by means of SECCI, however, this is optional as long as the requirements of this article are met.

Article 6(2) provides that MSs may decide that the APR may not need to be provided in the pre-contractual information for credit agreements in the form of an overdraft facility and where the credit has to be paid on demand or within three months.

Article 7: Exemptions from the Pre-contractual Information Requirements

Article 7 provides that Articles 5 and 6 do not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity. However, this provision is without prejudice to the creditor's obligation to ensure that the consumer receives the pre-contractual information.

Article 8: Obligation to Assess the Creditworthiness of the Consumer

Article 8(1) states that the creditor must assess the creditworthiness of the consumer on the basis of *sufficient information*. This is to be obtained from the consumer directly or by means of access to relevant databases, whichever is most appropriate.

Article 8(2) requires MSs to ensure that if the parties agree to change the total amount of credit, the creditor updates the financial information and assess consumer creditworthiness before any *significant increase* in the total amount of credit.

2.4 Chapter III – Database Access

Article 9: Database Access

MSs must ensure that creditors from other MSs can access database in that MSs for the purpose of assessing the creditworthiness of consumers. If the credit application is rejected on the basis of consultation of a database, the creditor must inform the consumer immediately.

2.5 Chapter IV - Information and Rights concerning Credit Agreements

Article 10: Information to be Included in Credit Agreements

Article 10 lists the information that must be included in the credit agreement (see Table 2.1). Unlike Article 5, there is no prescribed method by which this information must be presented, only that it has to be clear and concise, and it should be drawn up on paper or another durable medium.

Table 2.1: Information to be included in Credit Agreements (Article 10(2)CCD)	
a)	type of credit;
b)	identity and geographical address of the creditor;
c)	duration of credit agreement;
d)	total amount of credit and associated conditions;
e)	in the case of a credit in the form of deferred payment for a specific good or service and linked credit agreements, that good or service and its cash price;
f)	borrowing rate; and the conditions governing the application of this rate;
g)	APR and the total amount payable by a consumer;
h)	amount, number and frequency of payments to be made by the consumer;
i)	if a credit agreement with a fixed duration is involved, consumers have right to receive a statement of the account in the form of an amortisation table;
j)	if charges and interest are to be paid without capital amortisation, consumer shall receive a statement showing the periods and conditions for the payment of the interest and any associated charges;
k)	any extra charges deriving from the credit agreement;
l)	interest rate applicable in the case of late payment and any associated charges;
m)	warning regarding the consequences of missing payment;
n)	a statement for notarial fees, if applicable;
o)	sureties and insurance required, if any;
p)	existence or absence of a right of withdrawal and associated conditions;
q)	information concerning the rights resulting from linked credit agreements;
r)	right of early repayment and associated rules;
s)	procedure to be followed in exercising the right of termination of the credit agreement;
t)	whether or not there is an out-of-court compliant and redress mechanism for consumer and access to it, if applicable;
u)	other contractual terms, if applicable; and
v)	name and address of the competent supervisory authority, if applicable.

Article 10(1) confirmed that the national legislation of MSs pertaining to the conclusion of credit agreements will prevail, provided it conforms to EU law.

Article 10(5)(f) provides the legal choice for the MSs where APR may not need to be included in the credit agreements in the form of an overdraft facility and where the credit has to be paid on demand or within three months.

Article 11: Information concerning the Borrowing Rate

Article 11 concerns the borrowing rate and the provision of information on changes in the borrowing rate to the consumer.

Article 12: Obligations in connection with Credit Agreement in the form of an Overdraft Facility

Article 12 concerns the obligations of the credit provider to the consumer, if a credit agreement is offered in the form of an overdraft facility. The consumer should be informed regularly by means of a statement of account, containing several provisions that are provided in Article 12.

Article 13: Open-end Credit Agreements

Article 13 refers to the rights of the creditor and the consumer, under which, the open-end credit agreement may be terminated and the right of the creditor to terminate the consumer's right to draw down for justified reasons.

Article 14: Right of Withdrawal

Consumers have a period of 14 days in which they can withdraw from a credit agreement without giving any reason. The period of withdrawal begins either from the day of the conclusion of the credit agreement or from the day the consumer receives the contractual terms and conditions in accordance with Article 10.

MSs were given an option [Article 14(2)] of reducing the 14 day right of withdrawal period for linked credit agreements, provided national legislation at the time of the entry into force of CCD already provided that funds cannot be made available to the consumer before the expiry of a specific period.

MSs were also given an option to exclude credit agreements which by law are required to be concluded through a notary, provided that consumers are guaranteed the rights provided in Articles 5 and 10 [Article 14(6)].

Article 15: Linked Credit Agreements

Article 15 refers to linked credit agreements. Under Article 15(2), where the goods or services covered by a linked credit agreement are not supplied, or are supplied in part, or are not in conformity with the contract. In such cases the consumer has the right to pursue remedies against the creditor. MSs must decide the extent and the conditions for the exercise of those remedies.

Article 16: Early Repayment

A consumer has the right to repay obligations under a credit agreement fully or partially at any time, which entitles him to a reduction in the cost of the credit. Creditors are entitled to fair and objectively justified compensation for possible costs directly linked to early repayment, provided that the early repayment falls within a period for which the borrowing rate is fixed.

MSs were given an option [Article 16(4)] to ensure that a creditor is entitled to receive fair and objective compensation from a consumer following early repayment of the total costs of the credit. With regard to this compensation, MSs may stipulate that:

- such compensation may be claimed by the creditor only if the amount of early repayment exceeds the threshold defined by national law, which should not exceed €10,000 within any period of 12 months (Article 16(4)(a)); and

- a creditor may exceptionally claim higher compensation if he can prove that the loss actually suffered from early repayment exceeds the limits under Article 16 (2). Equally, a consumer can claim a reduction in compensation if the sum claimed by the creditor exceeds the loss actually suffered (Article 16(4)(b)).

Article 17: Assignment of Rights

Article 17 refers to the rights of a consumer if a credit agreement was assigned to a third party.

Article 18: Overrunning

Article 18 refers to the obligations of a creditor to provide the consumer with certain information in case of overrunning.

2.6 Chapter V – Annual Percentage Rate of Charge

Article 19 and Annex I Calculation of the Annual Percentage Rate of Charge

Part I of Annex I contains the mathematical formula that must be used to calculate the APR. Article 19 works in conjunction with Annex I, listing the assumptions to be used to calculate the APR. Part II of Annex I was amended in November 2011 by Directive 2011/90/EU which provided additional assumptions for the calculation of the APR. Where necessary, additional assumptions set out in Part II of Annex I may be used to calculate the APR of a credit agreement. This is applicable when, for instance, the credit agreement gives the consumer freedom of drawdown, the possibility of different types of drawdown and/or there are limitations with regard to the amount and period of times for drawdowns, among other conditions).

2.7 Chapter VI – Creditors and Credit Intermediaries

Article 20: Regulation of Creditors

Article 20 refers to the obligation of MSs to ensure that the creditors are supervised by a body or authority independent from financial institutions.

Article 21: Certain Obligations of Credit Intermediaries vis-a-vis Consumers

Article 21 refers to the obligation of MSs to ensure that certain requirements (as provided in Article 21) are met by credit intermediaries.

2.8 Chapter VII – Implementing Measures

Article 22: Harmonisation and Imperative Nature of this Directive

Article 22 refers to the imperative nature of the Directive and that the MSs should ensure that consumers do not receive less protection due to national provisions.

Article 22(4) specifically refers to the MSs' obligation to ensure consumer protection in situations where the credit agreements have a choice of law provision stating that the legislation of a third country must be applied.

Article 23 – Penalties

Article 23 refers to the obligation of MSs to provide rules on penalties applicable to infringements of the national provisions transposing the Directive.

Article 24 Out-of-court Dispute Resolution

Article 24 refers to the obligation of MSs to introduce out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements.

Article 25: Committee Procedure

Article 25 refers to the Committee procedure.

Article 26: Information to be supplied to the Commission

Article 26 requires MSs to inform the Commission about the regulatory choices contained in the Directive.

Article 27: Transposition

Article 27 refers to the rules, for the Commission and the MSs, concerning the transposition of the Directive.

Article 28: Conversion of Amounts

Article 28 refers to the conversion of amounts expressed in euro into national currency.

2.9 Chapter VIII – Transitional and Final Provisions

Article 29 – Repeal

Directive 87/102/EEC is repealed with effect from 11 June 2010.

Article 30 – Transitional measures

Article 30 refers to the transitional measures.

Article 31 – Entry into Force

Article 31 refers to the entry into force of the Directive 20 days after its publication.

Article 32 – Addressees

Article 32 confirms that the Directive is addressed to the MSs.

3. APPROACH TO STUDY

3.1 Overview

This Section summarises the methodological approach adopted for this study. It highlights the main factors which have influenced the approach to the study, the data collection and analysis, as well as the key aspects which must be borne in mind in understanding the study findings and conclusions.

This study has been divided into two parts:

- Part 1 of the study focussed on the **legal choices** exercised by the MSs. The aim of Part 1 was to identify whether the 30 countries of relevance (EU-28, Iceland and Norway) exercised the legal choices and/or clarified the terms/concepts set out in the Directive (or not). This involved a review of the transposing legislation and administrative acts used to transpose the CCD in the national legislation.

- Part 2 of the study focused on the possible **consequences** of the legal choices and clarification of terms/concepts of the MSs in terms of impacts on the internal credit market and the protection of consumers. The approach to the analysis of impacts involved five main steps:
  - Step 1: Identification of impacts and countries of relevance
  - Step 2: Literature review
  - Step 3: Consultation (online survey and telephone interviews)
  - Step 4: Assessment of impacts (consequences) of legal choices
  - Step 5: Conclusions

These steps are discussed in detail in Section 3.2 below.

3.2 Approach to Assessing Consequences of Legal Choices

3.2.1 Step 1: Identification of countries of relevance to each legal choice

This Step focussed on identifying which countries have exercised the legal choices and clarified the relevant terms/concepts in their national legislation, based on the analysis undertaken during Part 1 of the study.

It was considered that where a country has not exercised a given legal choice, it is unlikely that stakeholders would be able to provide information on how they may have been affected if that particular legal choice had instead been taken (i.e. it would be inherently difficult for stakeholders to comment on a (hypothetical) situation which did not occur). For this reason, the focus of this study has been on those situations where a MS actively decided to transpose a particular provision (i.e. a ‘positive’ legal choice), rather than situations where a MS decided not to. For the MSs that have made 'positive' legal choices, the analysis aims to identify whether positive impacts (benefits) or negative impacts (costs) have resulted from the choices made. Unavoidably, this approach could lead to implicit conclusions being drawn about the countries that have not taken up each legal choice (i.e. if, by making a positive legal choice, there are benefits, then implicitly, countries that have not made the choice are foregoing benefits). Please note that the analysis undertaken for this study does not confirm whether or not this is the case. While it is most certainly the case that, in some countries, the regulator and associated stakeholders considered the drawbacks of exercising a legal choice to outweigh the benefits and, as such, declined the opportunity to exercise the legal choice, it should be borne in mind that whether a MS did (or did not) make use of a legal choice may have little to do with their overall assessment of the benefits and costs (as shown in Table 3.1 below). Similarly, for the terms and concepts, some MSs may have had a greater motivation to interpret the terms/concepts based on their national situation.

Table 3.1: Factors Influencing MS Decision to Exercise Legal Choice or Clarify Terms
Based on the information obtained during this study, it would appear that there are many factors which played a significant role in determining the extent to which MSs exercised a legal choice. These factors *inter alia* include: • the *overarching policy approach* of each MS at the time when the CCD was transposed. For example, in Luxembourg, the approach taken was '*the entire Directive, nothing but the Directive*' (*toute la Directive, rien que la Directive*); • the *structure and robustness of the existing legal and non-legal framework* for consumer credit and the *time available for transposition.* For newer MSs, with no existing consumer credit legislation (or with specific provisions not covered in the legal system), it was easier to take up significant portions of the CCD coherently. For MSs with (sometimes extensive) pre-existing legislation, there was considerably more time taken up in discussions during the transposition of the CCD; • the *overall legal framework of the MS.* For example, in Slovenia, stakeholders were of the view that clarifying terms and concepts was necessary to ensure the effective enforcement of the Directive; in the Slovenian legal system loosely defined concepts are difficult to enforce as case-law precedent is underdeveloped. This could suggest that for MSs with extensive case-law (or greater trust in the legal system to define such issues the need to clarify particular terms and concepts in the national transposition was not considered to be pressing.

3.2.2 Step 2: Literature review

Step 2 involved a systematic review of recent literature relating to the EU credit industry, implementation of the CCD and its impacts at the EU and MS levels. The literature review considered:

- the legal framework for consumer credit agreements at the EU and MS level and related background material;
- existing studies, reports and guides about the market and the regulation;
- online sources of data and statistics provided by organisations such as the European Central Bank, National Central Banks and financial regulators as well as the OECD and Eurostat;

- ex-ante evaluations of the CCD (where available at a MS level); and
- websites of consumer credit providers available on the Internet, covering all 30 countries, including credit providers in the banking industry, specialized credit companies, car dealers and stores.

The literature review was approached from a number of angles. Firstly, general information regarding consumer credit and the consumer credit markets across the EU was reviewed. Secondly, information on the specific impacts of the CCD was researched - this involved searching for data on the implementation of the CCD and the impacts of its transposition generally at the EU and MS levels. A thematic approach was also undertaken which looked at specific issues related to the CCD in each of the 30 countries studied and at the EU level. This covered points such as the structure of the market and level of competition, level of cross-border activity, trends and changes in the volumes of credit and sizes of loans and the choice of credit products available to the consumer.

In addition to this, the literature review was also developed and guided based on whether the consequences or impacts (from the uptake of a legal choice or clarification of a term/concept) would relate to the internal credit market and/or the protection of consumers (taking into account responses to the online survey). For instance, clarification of the term 'significant overrunning' is likely to impact primarily on consumer protection (rather than the internal credit market) and, as such, the focus of further data collection and collation focused on the impact of this provision in terms of consumer protection in the three countries which clarified or provided guidance as to what is meant by 'significant overrunning'. The information obtained from these countries provided a guide as to whether there are actual problems associated with the legal choices and the impacts of efforts to further clarify these legal choices in national legislation/guidance.

Despite the above, it was the case that a large amount of the literature was written before the CCD and discusses what might happen when the CCD is transposed (i.e. written pre-CCD), but in some cases, it was not clear whether the CCD was transposed in the way that was described in these documents. Also, while it was easier to obtain information for some countries, it was less so for others; for instance, while some countries (e.g. Poland) conducted impact assessments before transposition this was not the case in all EU MSs. Finally, for some aspects, there was limited information available in the literature; for instance, relating to credit agreements (as defined by Article 2(3) CCD) and impacting on the legal choices relating to provision of information on APR in advertising (Article 4(2)(c) CCD), pre-contractual information (Article 6(2) CCD) and in the credit agreement (Article 10(5)(f) CCD) for credit agreements under Article 2(3) CCD.

3.2.3 Step 3: Consultation

For the purposes of this study, consultation was undertaken with public authorities, credit providers, consumer representatives, research institutes, industry associations and complaints gathering bodies across 30 European countries. In the first place, an online survey which ran from February to April 2013 and was hosted on Survey

Monkey (www.surveymonkey.com) was used. Telephone interviews were also held with selected stakeholders in each MS between April and June 2013. For the telephone interviews, country-specific questions[3] were developed, which were transformed into an interview guide, to be used in gathering information from stakeholders (in each country) regarding the legal choices made and the clarification of terms/concepts.

In line with the Specifications, interviews were undertaken with between five and eight stakeholders across the 30 countries, with the exception of four countries. Due to extremely positive feedback to the request for interviews, nine interviews were held in both Denmark and the UK, while in Ireland and Luxembourg, three and four interviews respectively were held. In Luxembourg, credit providers were of the view that information provided by their industry association and other representatives would be sufficiently informative and representative for the study. In Ireland, over 20 organisations were contacted, but only four were willing to provide information. In some countries, stakeholders who were either unwilling or unable to participate in a telephone interview agreed to submit an extended written response to questions from the Interview Guides.

In total, 289 responses were received from stakeholders through the online survey and/or telephone interviews, broken down as follows:

- 85 public authorities;
- 70 credit providers;
- 37 consumer organisations/representatives;
- 61 industry associations;
- 24 complaints, disputes or consumer rights bodies;
- 5 research institutes; and
- 7 'other' stakeholders, where this includes academics, law firms, national independent experts, etc.

Table 3.2 provides a comprehensive breakdown of the respondents by country and stakeholder group.

3 While the original intention was to provide stakeholder-specific questions, information obtained during the literature review, legal analysis and online survey indicated that a country-specific approach would be more appropriate.

Table 3.2: Summary of Respondents to Consultation - Online Survey and Interviews

	Public Authority	Credit Provider/ Bank	Consumer Organisation/ Representative	Industry Association	Complaints Disputes or Consumer Rights Bodies	Research Institute	Other	Total per Country
AT	3	4		1	5			**13**
BE	3	3	3	1		1		**11**
BG	4	5					1	**10**
CY	2	1	3				1	**7**
CZ	5	2		2	3			**12**
DE	1	7	2	2			1	**13**
DK	4	1	1	3	2			**11**
EE	5	1	1	1	1			**9**
EL	3		2	2				**7**
ES	3	5		2			1	**11**
FI	4	1		2	1	1		**9**
FR	1	1	2	5			2	**11**
HR	3	1	1	1		2	1	**9**
HU	4	2	3	1				**10**
IE	3	2		2	2			**9**
IS	4		1	1				**6**
IT	1	8	2	3				**14**
LT	3	4		2	1			**10**
LU	2	2	1	1				**6**
LV	1	1	2	1				**5**
MT	1	1	1	2	2			**7**
NL	2	2	1	3	1	1		**10**
NO	4			2	1			**7**
PL	2	5	1	2				**10**
PT	2	1	3	3	1			**10**
RO	2	3	1	4				**10**
SE	4	1		3	2			**10**
SI	4	1	4					**9**
SK	4	2	1	2	1			**10**
UK	1	3	1	7	1			**13**
TOTAL	**85**	**70**	**37**	**61**	**24**	**5**	**7**	**289**
Per cent	29%	24%	13%	21%	8%	2%	2%	100%

The results presented in this study are largely based on information provided by knowledgeable stakeholders in each of the 30 countries, supplemented with information from the literature review. It should be noted that, while many stakeholders could explain the general impacts of the CCD in terms of consumer protection and the internal credit market, it was not always possible for stakeholders to link observed effects to specific provisions of the legislation. Of those stakeholders who were able to provide information on a general provision of the CCD, even a smaller subset knew about the specific legal choice in question. For example, stakeholders generally were aware of Article 2(6) CCD and could comment on it but were unaware of the impacts of the specific legal choice (the fact that some Articles of the CCD (including the need to assess the credit worthiness of the consumer) do not apply to such credit agreements). On the whole, while stakeholders were very knowledgeable about the particular issues in their MS, **it was not always the case that they were always accurate in their understanding of the CCD**. Some stakeholders were mistaken about which legal choices were implemented in their countries, while others were incorrect about which impacts could be attributed to the CCD, as opposed to national legislation.

As with all consultation exercises, it is important to bear in mind that stakeholders may present biased views (whether intentionally or not). Where possible, further research has been undertaken to validate the opinions and facts expressed by individuals during consultation. Furthermore, where possible, the impacts mentioned by stakeholders have been cross-checked with other stakeholders and qualified using literature review. All minutes taken during consultation have been proof-read and confirmed as accurate (to the best of the stakeholders knowledge) by the stakeholders participating in the call.

3.2.4 Step 4: Analysis of Impacts

The aim of this task was to set out clearly all impacts (in terms of the functioning of the internal consumer credit market and consumer protection) identified as being attributable to the legal choices of each MS in implementing the CCD, as well as all impacts attributable to enforcement of the Directive as a whole.

This involved three key steps:

- firstly, collating all the information obtained from the literature review, the online survey and telephone interviews in each country;
- secondly, providing a country-specific assessment of the impacts of the CCD's transposition for each MS (based on the above information); and
- finally, carrying out a horizontal summary of the impacts of the CCD across the 30 countries, drawing on the country-specific assessments.

It is important to bear in mind that there are a number of key factors which have impacted on the approach to the analysis. These factors include:

- **The pre-CCD situation,** which represents the baseline against which all impacts need to be considered. Effectively, for any given legal choice, the impacts will depend upon whether the pre-CCD situation was the **same**, **worse than** or **better than** the pre-CCD situation for that specific provision (legal choice).

- **Same**: Prior to the transposition of the CCD, many MSs already had extensive consumer credit legislation in place, as the previous Directive was a minimum harmonisation Directive (for example, Germany, Finland, Norway, Slovenia, the UK). Invariably, during the development of the CCD, some of the most progressive aspects of various MSs existing legislation were incorporated into the legal text of the CCD. This means that, for some countries, the situation prior to the transposition of the CCD - whether in a legal, administrative or economic sense - was maintained after the CCD by exercising the legal choice. In situations where the status quo was effectively maintained, **it is not logical to attribute any benefits or costs to the transposition of the CCD** (even though some stakeholders argued that such benefits/costs did accrue).

- **Worse than**: In some MSs, it has been suggested that the transposition of the CCD led to a less favourable situation for consumers and creditors when compared to the situation that existed before the CCD. For example, in Ireland, some stakeholders were of the view that the SECCI form is less transparent and/or understandable than the pre-contractual information which was provided before the CCD. Unfortunately, within the context of this study, it has not been possible to verify objectively whether the pre-contractual information provided pre-CCD in Ireland is indeed better or worse than the SECCI form. In the UK, following transposition of the CCD, advertisements for credit were required to include a 'representative APR', with this being the rate offered to at least 51% of credit applicants. Pre-CCD, advertisements for credit (with some exceptions) had to include a 'typical APR', with this being the APR offered to a minimum of 66% of credit applicants. On this basis, a number of stakeholders also considered the CCD to be responsible for a backward step in terms of consumer protection, because fewer consumers will be guaranteed to get the rate advertised (Kukiewicz, 2012). While the threshold point of 51% does not directly originate from the CCD, due to the nature of the transposition, it should be understood that many stakeholders considered impacts attributable to this choice to be due to the CCD. Where known, all such situations have been noted and highlighted in the analysis.

- **Better**: For some countries and/or legal choices, the CCD resulted in a clear improvement relative to the previous situation. In some cases, this was because there was no existing legislation in place dealing with the specific aspects covered by the CCD, in other cases, the CCD brought additional clarity to the existing legal situation.

During consultation (particularly the telephone interviews), significant efforts were made to ascertain the pre-existing situation in each MS in order to assess the value added by the CCD. While this was possible in some countries, in other countries, it was not easy to identify stakeholders who were knowledgeable about the pre-CCD situation, as well as the rationale behind the transposition (or non-transposition) of certain aspects of the CCD.

- **The anticipated (or theoretical) benefits versus actual (noticeable) benefits**: For many countries and legal choices, the situation after the transposition of the CCD was expected to be better than before the CCD, based on a comparison of the legal frameworks in place both pre- and post-CCD. In practice, however, it was found that potential costs and benefits anticipated by regulatory authorities in taking up a legal choice were not always realised in practice. For instance, although the CCD grants creditors the legal right to claim compensation from consumers in the case of early repayment (Article 16(4)), it appears that credit providers often choose not to utilise this provision, e.g. for reputational and public relations purposes. Several factors have contributed to the discrepancy between anticipated (or theoretical) benefits and those which have actually been observed. These include: the short period of time that has elapsed between the transposition of the CCD and the undertaking of this study, the pre-existing situation in MSs, the influence of market developments (particularly the financial crisis), the level and effectiveness of enforcement, consumer behaviour (e.g. due to a lack of financial knowledge), etc. For these reasons, we have identified not only the actual/observable benefits (which have clearly been taken forward), but also those which are anticipated. It is possible that a future review may find that some of the anticipated benefits become observable in the coming years.

- **Time elapsed since the transposition of the CCD**: During consultation, many stakeholders were of the view that it is still too early to establish the actual impacts of the CCD, seeing as the CCD has only recently been transposed into national legislation in some countries and there was a low level of awareness of certain CCD provisions in some MSs. Even if problems/disputes relating to the CCD or national transposing measures have arisen, insufficient time has elapsed for such cases to have been brought to the courts. In some MSs court cases can take several years to come through the legal system and most credit contracts run over a number of years; hence, to date, only a relatively small number of credit agreements have been issued in line with the CCD. As a result, for a number of CCD provisions/legal choices, no impacts have been identified at present.

- **Influence of market developments**: In attributing impacts directly to the CCD, it is important to ensure that there are no underlying factors which may be (more) responsible for the effects observed. Unfortunately, during the course of this study, it was found that various exogenous factors prevented certain impacts from being attributed directly (or indirectly) to the CCD. The main factor identified in this regard (in both the literature review and by stakeholders) was the financial crisis. Indeed, many stakeholders noted that, due to the financial crisis, the structure of the European credit market changed significantly. While the discussions leading up to adoption of the CCD were undertaken during a period of economic boom, the actual transposition and implementation of the CCD coincided with the financial crisis. In simple terms, the behaviours and motivations of both credit providers and consumers changed significantly during this time. In this context, some stakeholders noted that the financial crisis has probably masked some of the benefits which would otherwise have been attributable to the CCD. For example, any impacts on lending activity attributable to the CCD have been eclipsed by the wide-spread deleveraging trend resulting from the economic crisis.

In this context, it is important to bear in mind that the consumer credit market in Europe is neither uniform nor homogenous and there is a significant difference between MSs in terms of the level of development of the credit market, the prevalence of consumer credit, the types of consumer credit products offered as well as the types of products favoured/preferred by consumers. Financial products which are common in some European countries are non-existent in others (e.g. deferred debit cards). At the same time, the consumer credit market is constantly changing and new products and innovations on existing ones are becoming increasingly available as a result of economic growth, changes in the attitudes of consumers, financial innovation and deregulation and increasing competition (EC, 2009). These changes are also occurring at the MS level; for example, in the UK increases in the price of gold and more wide-spread advertising have led to an increase in the number of pawnbroking agreements and the need for consumer protection in these situations. These factors can also serve to accentuate or mask the impacts of the CCD.

- **Influence of consumer or organisational behaviour**: In some cases the anticipated outcomes of the CCD have not always been observed due to consumer behaviour. In terms of assessing impacts in terms of consumer protection, it is important to note that the decisions made by consumers will often be strongly dependent upon their levels of financial literacy. It is therefore difficult to establish the impact of legal choices which rely on the provision, or non-provision, of information. A good example relates to information provision on the APR. If it is assumed that consumers understand what is meant by APR and are able to use this information to compare credit offers, then deciding not to provide information on the APR to consumers may mean that some benefits have been foregone. If consumers are unable to understand what is meant by an APR and, choose to ignore it, then the non-provision of this information might lead to no impact on consumers. However, if consumers do not understand what is meant by APR and become confused when it is provided, then the non-provision of APR may avoid consumer detriment.

- **Behaviour of credit providers**: unforeseen decisions/behaviours on the part of credit providers. For example, although the CCD grants creditors the legal right to claim compensation from consumers in the case of early repayment (Article 16(4)), it appears that credit providers often choose not to utilise this provision. In this instance, the anticipated benefits may not translate to actual benefits accrued in practice. Also, it is important to note that any benefits of the CCD will only be realised in cases where creditors actually comply with the transposing legislation. In some countries (e.g. the Czech Republic), there is a significant black market in consumer credit, in which creditors often fail to comply with national rules. In some cases, it has been suggested that enforcement activity has a greater effect on the impacts of the CCD than individual provisions of the Directive. For instance, in Cyprus, the EU Consumer Credit Sweep (2011) is seen to have affected responsible lending practices more than the specific CCD provisions.

- **Impacts attributable to the CCD versus impacts attributable to extending the scope of the CCD in MSs.** In some instances, MSs have gone beyond the scope of the CCD; for example, several countries have decided to extend the scope of application of the CCD to mortgage credit. Furthermore, some countries have also deviated from the legal text of the CCD, e.g. by adding additional requirements. For example, in Germany, the transposition of Article 6(2) deviates from the CCD by applying additional conditions for the exclusion of the APR in pre-contractual information concerning credit agreements under Article 2(3) CCD. Similarly, in Belgium, stakeholders suggested that national legislators "gold-plated" the CCD, for example, by adding additional information requirements to the SECCI form. In these situations, it has been made clear that the impacts identified in these situations do not apply solely to the CCD, but to the nature of transposition.

- **Legal ambiguity and misunderstanding**: In some cases, there was some misunderstanding of which aims of the CCD are achieved through the transposition of which provisions. For instance, the SECCI form was not intended to satisfy the requirement for adequate explanations – although some authorities and stakeholders claimed it did. As shown below, Article 6(1) (on SECCI) and Article 5(6) (on adequate explanations) have different aims:

  - ***Article 5(1) and 6(1) CCD*** *requires the creditor to provide the consumer with the* <u>*information needed to compare different offers*</u> *in order to take an* <u>*informed decision on whether to conclude a credit agreement*</u>*. MSs are free to require this information to be provided by means of the Standard European Consumer Credit Information (SECCI) form set out in Annex III CCD.*

  - ***Article 5(6) CCD*** *requires creditors and credit intermediaries to provide* <u>*adequate explanations*</u> *to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is* <u>*adapted to his needs and to his financial situation*</u>*. MSs may adapt the manner in which and the extent to which such assistance is given, as well as by whom it is given.*

  In these cases, we have tried to ensure that impacts are correctly attributed in line with the intention of the relevant CCD provision.

- **Weighing up costs and benefits (net impacts)**: One of the key challenges of this study has been identifying whether net impacts have been positive, negative or neutral. Where quantitative information in a standard unit of measurement (e.g. monetary values) is not available, it is very difficult to weigh up positives on the one hand with negatives on the other. Assessing net impacts is particularly difficult where costs accrue to one group of stakeholders, but benefits accrue to another. For example, where benefits in terms of consumer protection are associated with additional costs for credit providers, it is rarely possible to offset one impact against another. A further difficulty is that there is sometimes a time lapse between costs and benefits arising. Many provisions will have up-front costs, with benefits accruing over the longer term. In some cases, costs have already been observed (e.g. due to creditors having to conform to the new regulation), but benefits have not yet been observed in practice (e.g. because consumers are not yet fully aware of their new rights). Furthermore, regarding administrative costs (e.g. for SECCI), a key methodological issue relates to whether they represent an administrative cost or an administrative simplification (which means benefits) or both. Regardless, quantitative information on administrative costs was not provided by stakeholders during the course of this study.

3.2.5 Step 5: Conclusions

This Step focussed on developing conclusions relating to the consequences or impacts of the legal choices of the MSs, taking into account the impact of enforcement on the legal choices and the functioning of the internal market in consumer credit and on the degree of consumer protection. In developing these conclusions, it is important to recognise that the methodology adopted for the study, the extent of information obtained from consultation and the findings of the analysis in Section 4 invariably determine the robustness, extent and nature of the conclusions which could be drawn from the work undertaken.

In this context, it is important to note an important caveat relating to the impacts on the internal credit market which have been identified in this study. By definition, the ‘internal market’ of the EU refers to a single market across the EU-28. In both the online survey and telephone interviews, stakeholders were asked about the consequences of the legal choices of the MSs on the internal market and the vast majority of stakeholders responded accordingly (indicating positive, negative or no impacts on the internal market). In analysing the responses, it became clear that respondents may have provided information based on national experiences, even though the focus of the questions was on the internal credit market, rather than the domestic (or national) credit market. This is understandable and logical as most respondents will be unaware of impacts in countries other than their own as, for the most part, the stakeholders interviewed represented organisations operating at a national level. Consequently, it is the case that most stakeholders would be highlighting experiences at the national level, rather than the internal market (EU-28) level. For this reason, please note that, in drawing conclusions regarding the impacts of the clarification of terms/concepts, any impacts relating to the internal market actually refer to the domestic credit market. For the legal choices, where impacts on the internal credit market have been identified, this is on the basis that – even if these impacts have been identified in a domestic market - they are likely to affect other EU countries, cross- border aspects or at least the interfaces between national markets and the EU market as a whole. Also, considering that a few of the stakeholders interviewed operate in a number of countries (with some stakeholders being knowledgeable about impacts beyond their national markets), we consider that drawing conclusions regarding impacts on the internal credit market are appropriate for the legal choices.

Finally, it is worth noting that the nature of the findings of the study did not easily yield to an analysis of quantitative impacts, for various reasons. In some cases, while credit providers noted that costs were incurred as a result of the CCD, none of them was able to provide specific quantitative information on the administrative burden incurred as a result of this choice. For some, this was because the costs were minimal, while for others, these changes were imbedded in wider operational changes and, as such, were difficult to discern.

The conclusions can be found in **Section 10**.

4. HORIZONTAL ANALYSIS

4.1 Exercise of Regulatory Choices under Article 27(2)

4.1.1 Background

Directive 2008/48/EC on credit agreements for consumers (CCD) is a full harmonisation Directive. This means that, in those aspects regulated by the CCD, MSs may not maintain or introduce, in their national law, provisions diverging from those laid down in the Directive. However, some provisions of the CCD are optional, in that MSs can choose whether or not to implement their requirements.

According to Article 26 CCD, where a MS makes use of any of the regulatory choices referred to in Article 2(5) and 2(6), Article 4(1), Article 4(2)(c), Article 6(2), Article 10(1), Article 10(5)(f), Article 14(2) and Article 16(4), it must inform the Commission of these, as well as of any subsequent changes, and must take the appropriate measures to diffuse that information amongst national creditors and consumers. Article 27(2) CCD requires the Commission to monitor the effect of the existence of the regulatory choices listed in Article 26 CCD on the internal market and consumers.

This section summarises the findings of an analysis of the transposing measures in each of the 28 EU MSs, Iceland and Norway with the aim of identifying whether the 30 countries analysed exercised the regulatory choices set out in the Directive and the impacts of these for consumers and the internal credit market. The shaded box below sets out the key questions to be addressed under Section 4.1, based on the Study Specifications.

Q1. Did the countries in question exercise the regulatory choices under Article 27(2) CCD, and if yes, in what manner and to what effect on the internal market and consumers?

1.1. Credit agreements concluded by an organisation established for the mutual benefit of its members (Article 2(5) CCD);

1.2. Credit agreements providing for arrangements to be agreed by the creditor and the consumer in respect of deferred payment or repayment methods (Article 2(6) CCD);

1.3. National rules requiring the indication of the annual percentage rate of charge in advertising concerning credit agreements which do not indicate an interest rate or any figures relating to any cost of credit to the consumer (Article 4(1) CCD);

1.4. The annual percentage rate of charge in advertising concerning credit agreements under Article 2(3) CCD (Article 4(2)(c) CCD);

1.5. The annual percentage rate of charge in pre-contractual information concerning credit agreements under Article 2(3) CCD (Article 6(2) CCD);

1.6. National rules regarding the validity of the conclusion of credit agreements (Article 10(1) CCD);

1.7. The annual percentage rate of charge in credit agreements under Article 2(3)

CCD (Article 10(5)(f) CCD);

1.8. The right of withdrawal in the case of linked credit agreements under Article 3(n) CCD (Article 14(2) CCD);

1.9. The right of early repayment and the compensation claimed by the creditor (Article 16(4) CCD).

4.1.2 Credit agreements concluded by an organisation established for the mutual benefit of its members (Article 2(5) CCD)

CCD Provision

According to Article 2(5) CCD, MSs may decide that certain organisations that provide consumer credit should not have the burden of complying with all of the provisions of the CCD. Such exemptions may be applied to an organisation which:

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

According to the second paragraph of Article 2(5) CCD, MSs may exempt, from the application of some of the provisions of the CCD, credit agreements concluded by such an organisation where the total value of all existing credit agreements entered into by the organisation is insignificant in relation to the total value of all existing credit agreements in the MS in which the organisation is based. The total value of all existing credit agreements entered into by all such organisations in the MS has to be less than 1% of the total value of all existing credit agreements entered into in that MS.

The last paragraph of Article 2(5) CCD requires MSs to annually review whether the conditions for the application of any such exemption continue to exist. They must take action to withdraw the exemption where they consider that the conditions are no longer met.

Legal Choice

Article 2(5) CCD provides MSs with the legal choice to decide which specific organisations qualify under Article 2(5), so long as they comply with the criteria clearly laid down in the Article.

MSs may decide that these organisations only need comply with Articles 1- 4, 6, 7, 9, 10(1), 10(2) (a - h) and (l), 10(4) and Articles 11, 13 and 16 – 32. This means that such organisations are not required to provide detailed pre-contractual information as set out in Article 5 to the consumer (a simplified pre-contractual information requirements as set out under Article 6 would apply) or assess the creditworthiness of the consumer (Article 8). The consumer does not have the right of withdrawal (Article 14). Such organisations are also not required to comply with Article 12, which relates to obligations in connection with credit agreement in the form of an overdraft facility.

Transposition of Legal Choice

The Table below summarises the countries that have used the legal choice above. It indicates whether:

- The legal choice is transposed in the national law — √
- The legal choice is not transposed in the national law — X

Table 4.1: Legal choices under Article 27(2) CCD - credit agreements concluded by an organisation established for mutual benefit of members (Art. 2(5))

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	X	X	√	X	X	X	X	X	X	X	X	X	X	√
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	√	X	√	X	X	X	X	X	√	X	X	X	√

Overall, six MSs (Cyprus, Ireland, Lithuania, Latvia, Romania and the UK (England and Wales, Scotland and Northern Ireland)) exercised the legal choice provided in Article 2(5) CCD.

Regulatory Context or Perspective

For this legal choice, there are differences between MSs in terms of the manner in which the option provided in Article 2(5) CCD was transposed:

- In **Cyprus**, there is no particular definition and/or list of organisations which qualify under Article 2(5) CCD in the transposing legislation[4]. The requirement in the last paragraph of Article 2(5) CCD (relating to an annual review of whether the conditions for the application of the exemption continue to exist) has not been transposed; the national law simply states that the exceptions will cease to apply when the terms are no longer met.

[4] See Articles 3(4) and 3(5) of the Law on Consumer Credit Agreements (Cyprus).

- In **Ireland**, the transposing law applied only limited provisions of the CCD (equivalent to those listed in Article 2(5) CCD) to credit union type organisations[5]. This exemption from full compliance with the CCD was afforded because credit providers had expressed concerns about their readiness with regard to complying with the CCD. This exemption (and legal choice) was withdrawn on 11 December 2011.

- **Lithuania** has not made use of the condition provided for in the second paragraph of Article 2(5) CCD (relating to lending which is insignificant in relation to the total value of all existing credit agreements) in the transposing legislation[6]. The national law of Lithuania also does not explicitly transpose the requirement in the last paragraph of Article 2(5) CCD (relating to an annual review of whether the conditions for the application of the exemption continue to exist). Practically, such a review should be carried out, as Article 40 of the national law requires informing the European Commission about the legal choice under Article 2(5) CCD; however, the transposing provision does not require revision each year of '*whether the conditions for the application of any such exemption continue to exist*' and does not require measures to be taken '*to withdraw the exemption where they consider that the conditions are no longer met'*.

- In **Latvia**, the national legislation uses the term 'member benefit organisations' and the definition of such organisations is provided by Article 2(8) R1219[7]. The requirement in the last paragraph of Article 2(5) CCD (relating to an annual review of whether the conditions for the application of the exemption continue to exist) has not been transposed.

- **Romania** has not made use of the condition provided for in the second paragraph of Article 2(5) CCD (relating to lending which is insignificant in relation to the total value of all existing credit agreements). Romanian law[8] also does not transpose the requirement in the last paragraph of Article 2(5) CCD (relating to an annual review of whether the conditions for the application of the exemption continue to exist).

- The **UK** exercised this legal choice by continuing an existing exclusion of student loan agreements and credit granted by credit unions under the Consumer Credit (Except Agreements) Order 1989. Gibraltar has not exercised this legal choice.

In terms of context, it is important to bear in mind that, for those 24 countries that have not taken up this exemption, it is certainly not the case that these 'social' organisations (as defined under Article 2(5) CCD) do not exist or operate. This

---

5 See Regulation 3(4) and 3(5) of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010) & (S.I. 549 of 2012) (Ireland).

6 See Article 3 and Article 40 in Law No. XI-1253 of the Republic of Lithuania on Consumer Credit of 23 December 2010, as replaced by Law No. XI-1684 of 17 November 2011 (Ireland).

7 See Articles 2(8), 28, 29, 31 and 42 of Regulations of the Cabinet of Ministers No 1219 "Consumer Credit Regulations (Latvia).

8 See Article 5 in Government Emergency Ordinance no. 50/2010, as approved with amendments by Law no. 288/2010 and as further amended by Government Emergency Ordinance no. 73/2012 (Romania).

implies that there is a fundamental difference in opinion between those MSs which decided to take up this exemption and those which did not. Presumably, for some of the MSs that have not exercised this legal option, the authorities consider the benefits resulting from all credit providers complying with the same requirements under the CCD to surpass any special benefits provided by these organisations. This paradox is best illustrated by Ireland, which afforded credit union type organisations an initial exemption from the requirements of the CCD, but which ultimately required credit union type organisations to become compliant with the CCD. In Ireland, a significant amount of retail lending comes from credit unions and, as such, the authorities decided that it was important to bring these types of organisations under the scope of application of the CCD for the purposes of consumer protection.

Consequences of Transposition of Legal Choice

Anticipated benefits of legal choice

Based on the information obtained from consultation and literature reviews, it appears that there are three main benefits which were anticipated as a result of exercising this legal choice:

- firstly, that organisations which provide a source of affordable credit to consumers are able to do so with a reduced administrative burden;
- secondly, that organisations which serve a social function and have been set up to benefit a defined set of 'members' are able to continue to serve this function; and
- thirdly, to ensure that consumers (including those that may otherwise be excluded from access to credit) have the option to borrow from relatively responsible sources at relatively affordable rates. Article 8 (on the obligation to assess the creditworthiness of the consumer) does not apply to these organisations.

For the MSs that exercised this legal choice, it is reasonable to assume that they consider that the benefits which these organisations provide would be reduced if additional costs and responsibilities (in particular, those relating to providing detailed information to the consumer[9]) were imposed on these organisations as a result of compliance with all Articles under the CCD.

Awareness of legal choice and/or impacts

Figure 4.1 sets out the views of stakeholders that responded to the online survey across the 30 European countries on providing exemptions from the CCD for organisations that meet the criteria under Article 2(5).

[9] See Article 5 relating to pre-contractual information and Article 12 relating to obligations in connection with credit agreement in the form of an overdraft facility. Note that Article 6 provides a simplified list of pre-contractual information requirements.

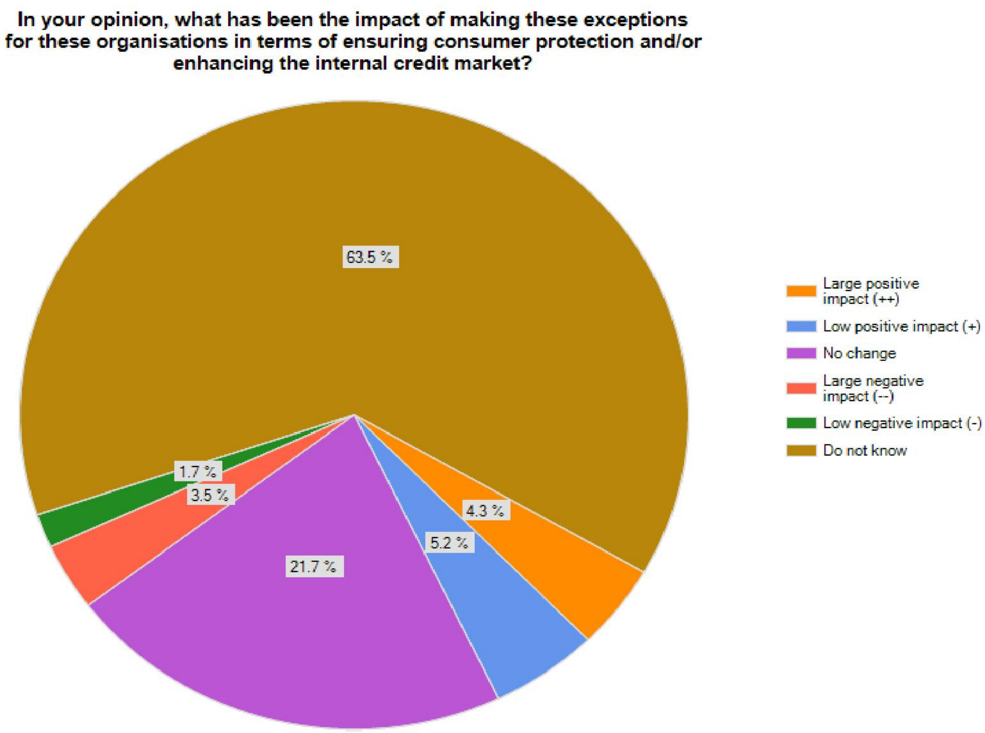

Figure 4.1: Results of the online survey on providing exemptions from the CCD for organisations which provide credit and were established for the mutual benefit of their members

As indicated in the Figure above, the vast majority of respondents (over 60%) were not aware of any impacts associated with exempting such organisations from certain requirements of the CCD; this view is entirely logical considering that only six countries have exercised this legal option. Around 20% of respondents were of the view that exempting such organisations from certain requirements of the CCD has not resulted in any impact on the internal credit market or on consumers. Only 10% of respondents consider the impact to have been positive, while 5% of respondents consider the impact to have been negative.

In the six countries that exercised the legal choice, many stakeholders who participated in the telephone interviews were also unaware of the practical application of this legal choice in their MS and of any impacts which could be directly attributable to it. Hence, the actual extent of benefits to consumers in Cyprus, Ireland, Lithuania, Latvia, Romania and the UK is unknown.

Positive impacts from legal choice

Two main positive impacts have been identified as a result of this legal choice:

1. Organisations established for the mutual benefit of their members appear to serve as a less aggressive/cheaper alternative to some other types of credit providers (e.g. payday loans, door-step credit). By exempting these organisations from compliance with all provisions of the CCD (particularly those likely to result in an increased administrative burden), these organisations are able to provide

competitive financial products[10] which increase consumer choice and help to restrict the penetration of more expensive types of credit. This is considered to be positive both in terms of the **internal credit market** (with respect to the structure of the credit market and the typically smaller sizes of loans available to consumers from these organisations) and in terms of **consumer protection** (presumably information provided at the pre-contractual and contractual stages by these organisations is of better quality and the level of satisfaction experienced by consumers using credit unions is higher[11]), particularly in countries such as the UK and Cyprus.

2. It has also been argued that because the exemptions are granted for organisations which fulfil an important "social" role, taking up this legal choice (and thereby reducing the administrative burden for these organisations) helps to ensure that they are able to provide credit to consumers who would otherwise be unable to receive credit (i.e. improving financial inclusion).

While the actual impact of this provision is inarguably small, due to the fact that very few organisations qualify under this provision and the credit/loan amounts involved are small (in line with the second paragraph of Article 2(5)), this does not negate the fact that the impact of this provision on the internal credit market and consumer protection is positive for the reasons set out above.

Negative impacts from legal choice

Potentially negative aspects identified as a result of this legal choice include:

- issues relating to fairness and equity between credit providers and the creation of a non-level playing field between credit providers across EU countries;
- the undermining of maximum harmonisation as a legislative principle;
- issues relating to the ease of enforcement for authorities (presumably, it is easier to monitor and enforce compliance with a standard set of rules, rather than different rules for different credit providers); and
- issues relating to the level of legal clarity for consumers (consumers could become confused due to different levels of information being provided by different types of credit providers).

It is worth noting that Romania and Lithuania have not made use of (or transposed) the condition provided for in the second paragraph of Article 2(5) CCD (relating to lending which is insignificant in relation to the total value of all existing credit agreements). In Romania, it was suggested that, not making use of this condition, could potentially lead to large amounts of unsecured credit being outside the full application of the CCD, thereby increasing the potential for instability in the credit market (it was noted that the better regulated this market, the better it would function and the more stable it would be)[12].

[10] It appears that credit unions in the UK make a loss when providing loans of less than £1,000 (~€1,100) owing to the administrative costs involved (See http://www.bbc.co.uk/news/business-23459932)

[11] This view was expressed by public authorities, consumer protection bodies and credit unions.

[12] This view was expressed by industry and consumer organisations.

In Ireland, it was noted that bringing these organisations under the scope of application of the CCD (i.e. after the exemption ceased to exist) had resulted in an additional burden on member and/or consumer-owned organisations and had resulted in unfair competition between credit providers in different MSs (e.g. when compared with similar organisations in the UK)[13].

Uncertainties

There is some **uncertainty** as to whether positive (or indeed, negative) impacts on the internal market and/or consumer protection can be specifically attributed to this legal provision for a number of reasons[14]:

1. In some countries (e.g. the UK), the exclusion of these organisations maintained the situation which existed prior to the CCD and, as such, the CCD did not actually result in a change from the status quo.

2. While it is true that these exempted organisations provide a less aggressive and cheaper alternative to some other types of credit providers, it is less clear that the typical profile of borrowers (i.e. typical income levels, levels of financial literacy, social standing, etc.) from these organisations is the same as that for other sources of credit, or that such organisations necessarily compete directly with these lenders. In other words, it is not necessarily the case that if credit unions, for example, were not in existence, their members would obtain their loans from payday loan companies.

3. Also, while it has been argued that the uptake of this legal choice means that certain (vulnerable) consumers are able to benefit from cheaper credit, it could equally be countered that compliance with the full CCD for these consumers will be of a greater benefit (rather than exempting them, bearing in mind that there are still risks associated with credit unions running into financial difficulty (BBC, 2013). Also, looking into the future, if there is indeed a shift of borrowers from 'non-social' sources of credit to these 'social organisations', there is a change in the risk profile of the customers of these organisations, which impacts on their own long-term viability.

4.1.3 Credit agreements providing for arrangements to be agreed by the creditor and consumer in respect of deferred payment or repayment methods (Article 2(6))

CCD Provision

Article 2 CCD establishes the scope of the CCD.

- **Article 2(6) provides MSs with the legal choice to apply only certain Articles of CCD to credit agreements, in respect of deferred payment or repayment**

13 This view was expressed by credit providers.

14 This view was particularly expressed by consumer organisations, as well as credit providers.

methods, where the consumer is already in default on the initial credit agreement and:

- such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
- the consumer would not be subjected to less favourable terms than those outlined in the initial agreement.

In the case of credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months, only the Articles under Article 2(3) will apply.

Legal Choice

Article 2(6) provides MSs with the legal choice to apply only CCD Articles 1-4, 6, 7, 9, Article 10 (1), Article 10 (2) (a – i; l and r), Article 10 (4), Articles 11, 13, 16, and 18 – 32 to credit agreements in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement (as defined under Article 2(6)).

Effectively, it gives MSs the option to decide that creditors are not required to provide detailed pre-contractual information as set out in Article 5 to the consumer (a simplified pre-contractual information requirements as set out under Article 6 would apply) or assess the creditworthiness of the consumer (Article 8). The consumer does not have the right of withdrawal (Article 14) if already in default on the initial credit agreement. In these cases, Article 12 relating to obligations in connection with credit agreements in the form of an overdraft facility, Article 15 relating to obligations in relation to linked credit agreements and Article 17 relating to assignment to a third party of the creditor's rights under the credit agreement are not applicable. Furthermore, MSs can decide to exempt creditors from the obligation to specify the information set out in Article 10(2)(j)(k)(m–q)(s-v) in the credit agreement.

Transposition of Legal Choice

The Table below summarises the countries that have used the legal choice above. It indicates whether:

• The legal choice is transposed in the national law	√
• The legal choice is not transposed in the national law	X

Table 4.2: Legal choices under Article 27(2) CCD - credit agreements providing for arrangements to be agreed for deferred payment or repayment methods (Art. 2(6))

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	√	X	√	√	√	√	X	√	√	X	X	√	X	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	√	√	√	√	√	X	X	√	√	√	X	√	√	X

Overall, 18 countries (Belgium, Croatia, Cyprus, Czech Republic, Denmark, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Spain) used the option provided for in **Article 2(6) CCD** to apply only certain provisions of the CCD 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 creditor is already in default on the initial credit agreement and where the conditions in Article 2(6)(a) and (b) CCD are satisfied.

Consequences of Transposition of Legal Choice

Anticipated benefits of legal choice

Prior to the CCD, the pre-existing law in many MSs made it possible for a consumer to temporarily suspend his/her payment obligations by concluding a debt deferral or repayment agreement, without this involving any additional bureaucracy. Apart from paying maturity-related costs (in particular, interest) on the amount owed during the period of deferral under such an arrangement, the consumer did not usually incur any further costs.

Article 2(2)(j) excludes from the scope of application of the CCD "*credit agreements which relate to the deferred payment of an existing debt, where this is free of charge for the consumer*". However, where the consumer is in default on the initial credit agreement, there is sometimes a fee charged by the credit provider (e.g. maturity-related costs arising from the longer life of the loan, default interest, etc.). As a result, these credit agreements would fall within the scope of the CCD. A draft assessment of impacts undertaken in the UK in 2006 (House of Lords European Union Committee, 2006) (prior to the CCD) noted that, by imposing additional requirements on debt deferral or repayment agreements of this kind, it could, potentially, make it more difficult for credit providers to offer assistance to customers in cases where they are unable to meet their obligations (House of Lords European Union Committee, 2006).

In this context, it is assumed that the anticipated benefit of this legal choice was to lighten the regulatory burden on credit providers (which would have resulted from the CCD) in cases where the consumer is already in default on the initial credit agreement and, by so doing, encourage creditors to seek a more mutually beneficial solution in which the consumer can defer payment or arrange different repayment methods. Presumably, this would impact positively on **consumer protection**, by encouraging creditors to address the problems consumers may encounter (e.g. due to changes in personal circumstances) and, where possible, avoid over-indebtedness of such consumers.

Awareness of legal choice and/or impacts

In general, **stakeholders were not aware** of the practical application of this legal choice or of any impacts which could be directly attributable to it. Although it was generally considered reasonable to exclude credit providers from certain obligations in cases where a consumer is in default (e.g. Article 8 on creditworthiness), it was not possible to specifically attribute impacts to the national transposition of this legal choice. For some countries (as set out in the country reports), the national transposition of the legal choice did not change the standard business practice of credit providers and this may explain the lack of stakeholder awareness regarding the legal choice and/or impacts.

Another possible explanation could relate to specific national characteristics. For instance, in countries where there are relatively low borrowing and credit default rates (e.g. Malta), the benefit of transposing Article 2(6) CCD would invariably be minimal and stakeholders are unlikely to be aware of its existence. Similarly, in Poland, consumers rarely use consolidated loans[15], rather they opt for secured credit (where consumers have to provide collateral, e.g. property) for which the CCD is not applicable. In Poland, such consolidated credit arrangements are 'niche' products, which are not readily available to consumers as the requirements to qualify for such credits are higher in comparison to those of a standard consumer credit. Due to such national characteristics, the awareness of impacts of the CCD legal choice (and provision) would invariably be low.

Figures 4.2 and 4.3 set out the views of stakeholders that responded to the online survey across the 30 European countries on their awareness of the practical application of the legal choice under Article 2(6) and its impact.

15 One of the options used by consumers who are in default on an initial credit agreement is the use of consolidated loans – where this refers to the replacement of one or more loans with a single loan, often with a lower monthly payment and a longer repayment period. In some countries, these are used in place/as part of an arrangement for deferred payments and, as such, it is reasonable to expect that there may be a relationship between the volume of consolidated loans applied for by consumers and the number of consumes who are in default on the initial credit agreement. However, there is no data to explore such causality.

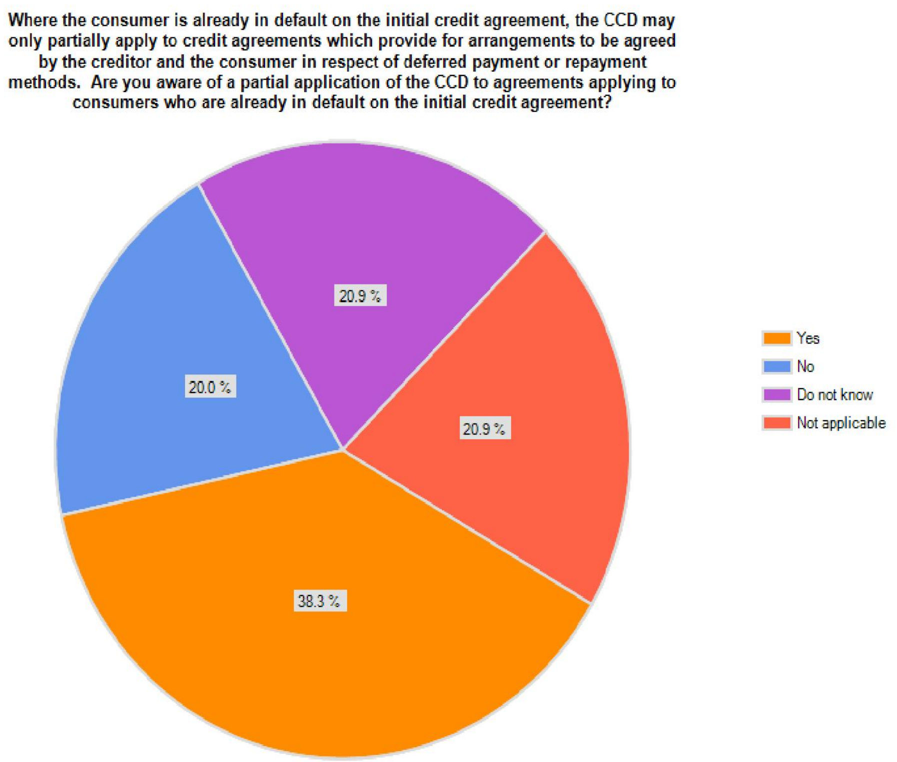

Figure 4.2: Results of online survey on deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement under Article 2(6)

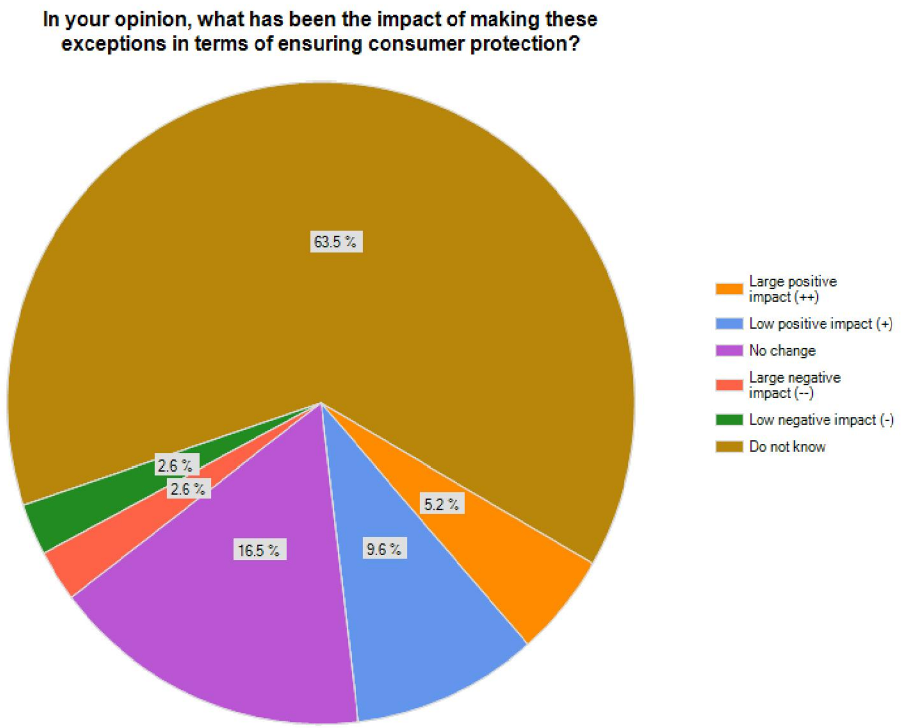

Figure 4.3: Results of online survey on the impacts of the exceptions under Article 2(6) CCD

Positive impacts from legal choice

As can be seen from Figure 4.3, around 15% of respondents indicated that there had been a positive impact in terms of consumer protection as a result of exercising the legal choice under Article 2(6). No further justification for this view was provided in the online survey or telephone interviews (excluding positive views relating to the impact of the actual CCD provision, rather than the legal choice) – except in Latvia.

In Latvia, stakeholders confirmed that, as a result of this particular legal choice, it is now possible for credit providers to provide this type of contract to consumers[16]. Apparently, credit providers pressed for the application of minimum requirements in the case of deferred payments and the authorities did not want to prevent the possibility of applying deferred payment or repayment methods; especially if credit providers were willing to use this type of contract. This takes into account the statistics provided by a consumer body[17] which showed that in the third quarter of 2012, 72% of credit agreements had no payment delays, 12% of credit agreements had payment delays exceeding 90 days and the remainder had payment delays of less than 90 days. With this in mind, it can be seen that taking up this legal choice and encouraging credit providers to seek a more mutually beneficial solution in which the consumer can defer payment or arrange different repayment methods could result in positive impacts for consumers as payment difficulties are being experienced in practice by consumers. It is unclear what proportion of the above delays resulted in deferred payment or repayment methods being required by the consumer (i.e. some consumers prefer to enter the insolvency process than defer payment) or by the credit provider (this CCD provision is new to Latvian legislation and some credit providers had difficulty understanding how it works).

Negative impacts from legal choice

As can be seen from Figure 4.3, around 5% of respondents indicated that there had been a negative impact in terms of consumer protection as a result of exercising the legal choice under Article 2(6). No further justification for this view was provided in the online survey or telephone interviews.

Impact of CCD Provision

Based on the telephone interviews undertaken across the 18 countries that used the option provided for in Article 2(6), it appeared that many stakeholders[18] were not

---

16 Although according to stakeholders' views in Latvia the possibility to provide to consumers 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 creditor is already in default on the initial credit agreement and where the conditions in Article 2.6 (a) and (b) CCD are satisfied) is a consequence of the legal choice, the purpose of the legal choice prescribed by Article 2(6) CCD is not to introduce this type of contract into national legal systems.

17 Of the eight consumers they advise (on average) each day, around two or three are looking for advice on deferred payments or repayment methods.

18 This view was expressed by public authorities, credit providers, consumer representatives, research institutes, industry associations and complaints, disputes or consumer rights' bodies.

aware of the impacts of the legal choice. Indeed, some stakeholders had difficulty in disentangling or differentiating between the impacts of the legal choice (to apply only certain CCD Articles to credit agreements in respect of deferred payment or repayment methods) and the impacts of the Article 2(6) provision (i.e. the impacts of the existence of deferred payment or repayment methods within national systems).

Some stakeholders[19] noted that there are benefits related to the Article 2(6) provision (i.e. the existence of deferred payment or repayment methods within national systems[20]) which:

- enables the consumer (who is already in default) to repay the credit and, in so doing:
  - enables him/her to avoid court proceedings; and
  - prevents him/her becoming subject to terms less favourable than those laid down in the initial credit agreement; and
- ensures that credit providers which lend to such consumers are able to recoup their money in a manner that does not affect their long-term interests.

In some countries (for example, Croatia), it was noted that this provision has had a positive impact in terms of consumer protection because:

- it reduces the number of troubled borrowers with repayment difficulties. When credit providers help consumers who are in difficulty to service their obligations, they benefit from an enhanced reputation and reduced need to use enforcement measures for debt collection;
- it has led to more favourable conditions for consumers who have defaulted on their debt, as new loans granted using this provision are developed/granted with the aim of ensuring that a consumer is now able to pay his/her debt; and
- it has led to greater legal and economic security of consumers and, hence, better relationships and greater trust between consumers and credit providers.

On the other hand, credit providers noted that they had incurred some costs (compared to the pre-CCD situation) as a result of the Article 2(6) provision (not the legal choice *per se*). The increase in documentation and administration is seen as having increased their regulatory burden and, for this reason, some stakeholders indicated that this provision has had some negative impact on the credit market. In Belgium, some stakeholders also considered that this provision did not bring greater clarity into the procedures or facilitate the re-negotiation process.

It is important to note that there are important historical and cultural perspectives which impact on the perception of the impact of this provision.

---

19 This view was expressed by industry associations and consumer organisations, by public authorities and by (legal) experts in banking/finance.

20 As noted earlier, the purpose of the legal choice prescribed by the Article 2(6) is not to introduce this type of contract into national legal systems.

For example, prior to the CCD, no rules for deferred payment existed in some countries (e.g. in Belgium and Cyprus) and there was greater flexibility and simplicity in regulating, managing and postponing payments. From this point of view, the introduction of the Article 2(6) provision is seen to have imposed requirements on credit providers which previously did not exist, regardless of whether the legal choice reduces the administrative burden or not. No specific quantitative information on the administrative burden incurred as a result of this provision was provided by the stakeholders.

Similarly, it was suggested that, in Cyprus[21], compared to the situation prior to the CCD, credit providers in Cyprus were now stricter regarding the length of time during which a consumer can miss payments. It was suggested that this period used to be flexible but has now been shortened to 90 days (this figure is not specified by the CCD). Also, banks are generally willing to re-finance a loan if the consumer has made timely payments on all its instalments and only requested a re-negotiation of the terms during the past three or four payment periods out of a total of 30, for example[22]. By way of contrast, it was indicated that in Belgium this provision[23] is rarely used simply because repayment arrangements are normally granted by a judge and consumers are aware that they will be entered into a 'negative registry' in cases of default, so they make efforts to pay consistently and thus avoid having to make arrangements for deferred payment. The Belgian law considers a consumer to be in default if he/she has missed three payment instalments, whether consecutively or not[24].

In Germany, the transposition of Article 2(6) CCD goes beyond the CCD[25], by specifying that the total amount of credit must be smaller than the residual debt of the original contract. Therefore, for consumers in Germany, it is no longer possible to take out new credit agreements to pay-off existing credit agreements (if this would result in higher levels of debt). This provision was introduced in Germany to deal specifically with the issue of over-indebtedness which was considered a big problem prior to the introduction of the CCD. This has reportedly had a positive impact on consumers, which stakeholders attributed to the CCD.

4.1.4 National rules requiring the indication of the APR in advertising concerning credit agreements which do not indicate an interest rate or any figures relating to any cost of credit to the consumer (Article 4(1) CCD)

CCD Provision

Article 4 CCD requires '*standard information'* to be provided in advertising concerning credit agreements which indicate an interest rate or any figures relating to the cost of the credit to the consumer. The '*standard information*' is required to

21 See Article 3(6)(a) Law on Consumer Credit Agreements (Cyprus).

22 This view was expressed by a credit provider.

23 See Article 3, Para 2, Law on consumer credit (Wet op het consumentenkrediet) (Belgium).

24 This view was expressed by an industry association representing credit providers.

25 See § 495(3) No. 1 of the Civil Code (Germany).

specify in a clear, concise and prominent way, by means of a representative example, the information set out in Article 4(2) and outlined in Table 4.3 overleaf.

Table 4.3: Elements of standard information to be used in advertising of consumer credits
a) borrowing rate (fixed or variable or both), together with any charges included in the total cost of the credit;
b) total amount of credit;
c) **APR** (although, in the case of a credit agreement of the kind referred to in Article 2(3), MSs may decide that the APR need not be provided);
d) duration of the credit agreement (if applicable);
e) in the case of a credit in the form of deferred payment for a specific good or service, the cash price and the amount of any advance payment; and
f) total amount payable by the consumer and the amount of the instalments (if applicable).

Legal Choice

Following from the first paragraph of Article 4(1) (relating to the requirement to include standard information in advertising), the second paragraph of Article 4(1) gives MSs the option to decide that credit agreements which do not indicate an interest rate or any figures relating to the cost of the credit to the consumer, do not need to include '*standard information*' - but need to include information on APR.

In other words, for these credit agreements, Article 4(1) CCD provides MSs with the legal choice to apply national legislation which requires information on APR to be provided in certain advertising of credit agreements, without triggering the requirement for standard information contained in Article 4(2).

Transposition of Legal Choice

The Table below summarises the countries that have used the legal choice above. It indicates whether:

- The legal choice is transposed in the national law √
- The legal choice is not transposed in the national law X

Table 4.4: Legal choices Under Article 27(2) CCD - National rules requiring indication of APR in advertising (Art. 4(1))

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	X	X	√	X	X	X	X	X	X	X	X	X	√	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	X	X	X	X	X	X	X	X	√	X	X	√

4 countries (Cyprus, Hungary, Sweden and the UK (all jurisdictions)) used the exception in the second paragraph of Article 4(1) CCD which states that there is no obligation to include standard information in advertising (otherwise required by Article 4) where national law requires the indication of the APR in advertising

concerning credit agreements which does not indicate an interest rate or figures relating to any cost of credit to the consumer.

Regulatory Context or Perspective

In general, it is worth noting that only four countries used the exception provided in Article 4(1), which means that 26 countries do not require information on APR to be provided in advertising of credit agreements which do not indicate an interest rate or any figures relating to the cost of the credit to the consumer.

Consequences of Transposition of Legal Choice

Anticipated benefits of legal choice

It is important that consumers are protected against unfair or misleading practices, in particular with respect to the disclosure of information by the creditor. In this regard, the Unfair Commercial Practices Directive 2005/29/EC has a role to play. The CCD has an equally important role to play by containing specific provisions on advertising concerning credit agreements (Recital 18). In this context, this legal choice enables MS to maintain a high level of protection for consumers (taking into account the differences in the legal or economic situation at the national level) by regulating information requirements in their national law regarding advertising which does not contain information on the cost of the credit. In so doing, the legal choice ensures the coherence of the CCD with national legislation.

Awareness of legal choice and/or impacts

In general, stakeholders consulted in the four countries that exercised this legal choice were unable to identify specific impacts relating to the transposition of this legal choice. This is possibly[26] because the national legislation requiring the APR to be provided in advertising was already in place in these countries before the implementation of the CCD (e.g. in the UK[27] and Cyprus[28]) and, as such, there has been no real change which could be directly attributed to the CCD. It is also the case that some stakeholders had difficulty in disentangling or differentiating between the impacts of the legal choice and the impacts of the CCD provision (discussed below).

Positive impacts from legal choice

The main positive impact identified as a result of this legal choice is that consumers will always have information on the APR provided in advertising of credit agreements; as a result, consumers will always have the opportunity to compare different offers (even where information on the interest rate, the cost of credit or other 'standard information' is not provided). For such advertisements, credit providers do

26 Due to the limited number and/or quality (reliability) of responses received in some countries, it was not always possible to accurately verify the exact situation which applied in each country prior to the CCD.

27 See UK Consumer Credit (Advertising) Regulations 2004.

28 See Cyprus' national law concerning consumer credit Law N.39(I)/2001 (Part VI; Article 44 and 45).

not need to provide a long list of information which means that the advertisement is short and clear. The key benefit of the APR in such advertisements is, therefore, its simplicity (rather than its ability to convey an all-inclusive message, for which the standard information is necessary) and the fact that it is easily comparable for consumers. This is considered to be a positive impact[29] in some countries (e.g. Hungary).

Impact of CCD Provision

Figure 4.4 sets out the views of stakeholders that responded to the online survey across the 30 European countries on the impacts of national rules relating to APR on consumer protection and the internal credit market. As can be seen from the Figure, over 50% of respondents consider the rules concerning the indication of APR in advertising to have had a positive impact on the internal market and in terms of consumer protection.

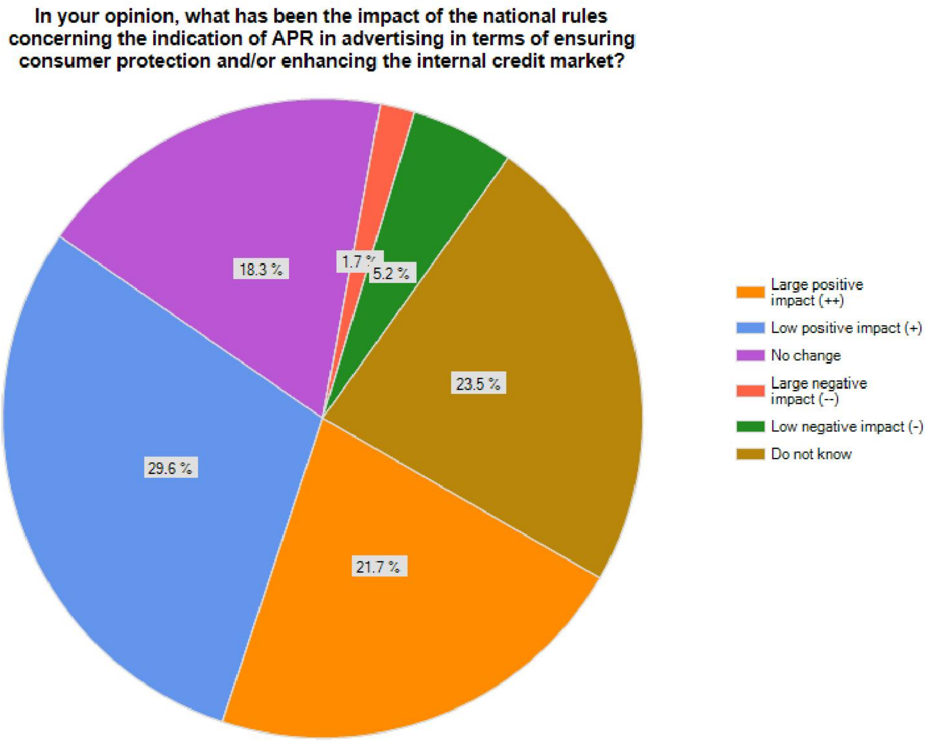

Figure 4.4: Results of online survey on impacts of rules relating to APR

During the telephone interviews, public authorities and consumer organisations, in particular, confirmed that Article 4 had resulted in positive impacts, although the extent of benefits accrued depends on the national situation pre-CCD. For example, in Sweden, prior to the CCD, it was not obligatory for credit providers to indicate the APR in advertising for small loans[30]; however, as a result of the legal choice made use

29 This view was expressed by public authorities and credit providers.

30 According to the previous Swedish Consumer Credit Act, credit agreements involving a total amount of credit less than 1,500 SEK (approx. €175) or where the credit had to be repaid within three months, did not require provision of the APR.

of under the CCD, all credit providers became obliged to disclose the APR (including for small loans such as SMS-loans)[31]. In Hungary, this provision[32] was indicated to have encouraged competition and increased the transparency of the market. This is a result of making products more comparable for consumers and encouraging transparency in the calculation of the total costs.

That said, it was noted that the provision of information on APR has not necessarily had the desired positive effect in terms of consumer protection (i.e. there has been a gap between the anticipated benefits and the actual benefits)[33]. While the provision of standard information has helped to avoid misleading information, there are still some concerns that not all consumers realise that the APR provided in advertising may refer according to the national law, if applicable, only to a 'representative example' and that the advertised rate may not be the rate that they will actually receive. Some stakeholders in the UK and Hungary raised concerns that it is possible that the APR may not be as transparent as was hoped as some credit providers use/manipulate the APR calculation in order to increase market share, attract new clients, increase profit etc. rather than simply to inform the consumer.

Also, it is the case that advertising the APR does not resolve issues relating to consumers' understanding of the APR and individual levels of financial literacy. Recent studies have shown that consumers are lacking financial literacy in many MSs (Europa, 2010). Where financial literacy is a problem, the anticipated benefits of providing information to the consumer will not be fully realised.

4.1.5 The APR in advertising concerning credit agreements under Article 2(3) CCD (Article 4(2)(c) CCD)

CCD Provision

Article 2(3) CCD sets out which Articles will apply in the case of *credit agreements in the form of overdraft facilities and where the credit needs to be repaid on demand or within three months*. These are Articles 1 to 3, Article 4(1), **Article 4(2)(a) to (c)**, Article 4(4), Articles 6 to 9, Article 10(1), Article 10(4), Article 10(5), Articles 12, 15, 17 and Articles 19 to 32.

Article 4 CCD requires '*standard information'* to be provided in advertising concerning credit agreements which indicate an interest rate or any figures relating to the cost of the credit to the consumer. For the credit agreements described under Article 2(3), the '*standard information*' which is to be provided is set out in **Article 4(2)(a) to (c)** and includes:

a) borrowing rate (fixed or variable or both), together with any charges included in the total cost of the credit;
b) total amount of credit; and
c) APR.

31 See Section 7, Consumer Credit Act (SFS 2010:1846) (Konsumentkreditlag (2010:1846)) (Sweden).

32 See Section 4(1), Consumer Credit Act CLXII of 2009 (Hungary).

33 This view was expressed by public authorities, credit providers and industry associations.

Legal Choice

Article 4(2)(c) provides MSs with the legal choice to decide that the APR need not be provided in credit agreements as described under Article 2(3). In other words, MSs have the legal choice to decide that, for credits in the form of an overdraft facility, as covered by Article 2(3) CCD, only information on the *borrowing rate (fixed or variable or both), together with any charges included in the total cost of the credit* and the *total amount of credit* needs to be provided.

Transposition of Legal Choice

The Table below summarises the countries that have used the legal choice above. It indicates whether:

- The legal choice is transposed in the national law √
- The legal choice is not transposed in the national law X

Table 4.5: Legal choices Under Article 27(2) CCD - APR in advertising concerning Article 2(3) credit agreements (Art. 4(2)(c))														
AT	**BE**	**BG**	**CY**	**CZ**	**DE**	**DK**	**EE**	**EL**	**ES**	**FI**	**FR**	**HR**	**HU**	**IE**
X	X	√	X	X	X	√	X	X	√	X	X	X	X	√
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	√	X	√	X	X	√	X	X	X	X	X	√

Eight countries (Bulgaria, Denmark, Ireland, Luxembourg, Malta, Poland, Spain and the UK (England and Wales, Scotland and Northern Ireland)) used the legal option in **Article 4(2)(c) CCD** which allows MSs to decide that the APR need not be provided in advertising for credit agreements in the form of an overdraft facility as covered by Article 2(3) CCD.

Regulatory Context or Perspective

Article 2(3) CCD sets out which Articles will apply in the case of *credit agreements in the form of overdraft facilities and where the credit needs to be repaid within three months or on request*. Table 4.6 below reports the percentage of households holding various types of debt as reported in ECB (2013). As can be seen from the Table, overdraft debt appears to be common in Germany, Cyprus, Slovenia and Netherlands.

Table 4.6: Participation in credit line/overdraft debt by country	
Country	**Credit Line/Overdraft debt**
Belgium	6.2%
Germany	19.8%
Spain	0.6%
France	7.0%
Italy	3.6%

Table 4.6: Participation in credit line/overdraft debt by country	
Country	**Credit Line/Overdraft debt**
Cyprus	24.3%
Luxembourg	7.4%
Malta	6.0%
Netherlands	20.8%
Austria	13.6%
Portugal	3.0%
Slovenia	24.0%
Slovakia	8.0%
Source: ECB (2013)	

Article 6(1) CCD requires the creditor to provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. The APR - *illustrated by means of representative examples mentioning all the assumptions used in order to calculate that rate* - is one of the key types of information which is mentioned as being **relevant for helping a consumer to compare different offers and make an informed decision**.

In general, information obtained from consultation and literature review indicates that opinions relating to the consequences of this legal choice depend significantly upon whether the view is taken that information on the APR in advertising is useful (or not) to the consumer for the specific credit agreements covered by Article 2(3). This may also be influenced by the prevalence of the specific credit agreements covered by Article 2(3) in MSs; this clearly varies significantly as shown in Table 4.6.

Considering that the vast majority of countries (22 in total) have not used this exemption, it can be deduced that the authorities in these countries believe that the APR is important information which must be provided to consumers in advertising for credits agreements covered by Article 2(3). Indeed, 17 of the 22 countries specify that the APR should be provided in advertising, pre-contractual information and in the actual credit agreement for credits agreements covered by Article 2(3), as shown in the Table below.

Table 4.7: Providing the APR in advertising, pre-contractual information and credit agreements for credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months				
No.	**Countries**	**Advertising**	**Pre-contractual Information**	**Credit Agreements**
1.	Austria	✓	✓	✓
2.	Belgium	✓	✓	✓
3.	Cyprus	✓	✓	✓
4.	Estonia	✓	✓	✓
5.	Greece	✓	✓	✓
6.	Finland	✓	✓	✓
7.	France	✓	✓	✓
8.	Hungary	✓	✓	✓

Table 4.7: Providing the APR in advertising, pre-contractual information and credit agreements for credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months				
9.	Iceland	✓	✓	✓
10.	Italy	✓	✓	✓
11.	Lithuania	✓	✓	✓
12.	Latvia	✓	✓	✓
13.	Norway	✓	✓	✓
14.	Portugal	✓	✓	✓
15.	Romania	✓	✓	✓
16.	Sweden	✓	✓	✓
17.	Slovenia	✓	✓	✓
✓ = *Information on APR should be provided*				

On the other hand, it is worth noting that **seven** countries, as shown in the Table below, do not believe that information on APR should be provided to consumers, whether in advertising, pre-contractual information or in the actual credit agreements for credits in the form of an overdraft facility as described under Article 2(3).[34]

Table 4.8: Providing the APR in advertising, pre-contractual information and credit agreements for credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months				
No.	**Countries**	**Advertising**	**Pre-contractual Information**	**Credit Agreements**
1.	Luxembourg	×	×	×
2.	Spain	×	×	×
3.	UK	×	×	×
4.	Poland	×	×	×
5.	Ireland	×	×	×
6.	Denmark	×	×	×
7.	Malta	×	×	×
× = *Information on APR may not be provided*				

For this legal choice, there are also certain aspects regarding the manner in which it has been transposed in the MS which are worth bearing in mind. In **Bulgaria**[35]**,** the national transposition of this provision is broader in scope than the CCD provision, exempting all "*credits for overdraft*" (with no reference to the credit being repaid on demand or within three months). In the **UK**[36] (England and Wales, Scotland and Northern Ireland), the legislation does not require the indication of the APR in overdraft credit agreements (there appears to be no reference to this applying only to credits being repaid on demand or within three months). Gibraltar has not exercised

[34] Table 4.7 and 4.8 show that 24 countries were consistent as regards their view on whether APR is to be provided in advertising, pre-contractual information and credit agreements. The other six countries (BG, DE, CZ, HR, NL and SK) used a mixed approach as shown in Tables 4.12 and 4.15.

[35] See Article 25 (1), Consumer Credit Act promulgated in State Gazette (SG) issue 18/5 March 2010, as amended in SG, issue 58/30 July 2010, last amended and supplemented SG issue 91/20 November 2012

[36] See Consumer Credit (Advertisements) Regulations 2010, Secretary of State Regulation 5

this legal choice. In **Ireland**[37], Regulation 7(3) CCR, provides that the APR does not need to be provided in advertising for overdraft credit agreement, as defined in Regulation 6(1) CCR. As Regulation 6(1) CCR does not exclude those overdraft facilities which have to be repaid on demand or within three months, it would follow that it is not mandatory to provide the APR in advertising for such credit agreements.

Consequences of Transposition of Legal Choice

Anticipated benefits of legal choice

As can be appreciated from the discussion above, it would appear that the credit agreements covered by Article 2(3) are, in the main, 'niche' products which are only used in specific MSs, by specific credit providers and/or consumers. It is, therefore, likely that the anticipated benefits of the legal choice will depend on:

1. **the extent to which these credit agreements are present in a given national market**. As can be seen from Table 4.6, overdraft debt appears to be common in Germany, Cyprus, Slovenia and Netherlands. As shown in Table 4.7, Cyprus and Slovenia believe that information on the APR should be provided in advertising, pre-contractual information and credit agreements for credit agreements covered by Article 2(3). For Germany, information on the APR should be provided only in advertising for these credits, while for Netherlands, the APR should be provided only in advertising and pre-contractual information;

2. **the position of the MS regarding providing information on the APR** as a means of ensuring that consumers are protected against unfair or misleading practices with respect to the disclosure of information by the credit provider. As shown in Table 4.7, 17 countries believe that information on the APR should always be provided to consumers for the credit agreements covered by Article 2(3). On the other hand, as shown in Table 4.8, seven countries do not believe such information should be provided. For the countries in Table 4.8, it is clear that they do not anticipate any benefits resulting from providing information on the APR for the credit agreements covered by Article 2(3); and

3. **the position of a MS on information to be provided in advertising**. In Section 4.1.4, it was shown that four of the 30 MSs have national legislation requiring information on the APR to be provided in advertising of almost all credit agreements[38]. In this context, it is worth noting that three of these four countries (i.e. Cyprus, Hungary and Sweden) also specified that information on the APR must be provided in advertising of the credit agreements covered by Article 2(3). In this sense, there is regulatory consistency regarding the importance ascribed to providing information on the APR in all situations. On the other hand, the UK (while recognising the importance of the APR in advertisements in Section 4.1.4) does not believe that the credit agreements covered under Article 2(3) require this

37 See Regulation 3(2), 7(2)(c), 7(3) and 6(1) European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010) & (S.I. 549 of 2012) (Ireland)

38 Credit agreements which do not indicate an interest rate or any figures relating to any cost of credit to the consumer are required to provide information on APR in these countries.

information to be provided (possibly reflecting the fact that the credit agreements covered by Article 2(3) are rare in the UK).

Considering that the legal choice provides MSs with the option to decide that the APR need not be provided for advertisements for credit agreements under Article 2(3) CCD, it can be deduced that the main anticipated benefit of this legal choice relates to the need to avoid providing confusing information to consumers. In other words, the MSs that have taken up this legal option either believe that, in line with point (1) above, these credit agreements are not valid in their country and, as such there is no need to provide such information to consumers; or that, in line with point (2), such information is not helpful for consumers to make an informed decision.

Awareness of legal choice and/or impacts

Figure 4.5 below sets out the views of stakeholders that responded to the online survey across the 30 European countries on providing the APR in advertisements for credit agreements as covered under Article 2(3). Around 37% of respondents to the online survey indicated that they were aware that, in their country, information on the APR does need not be provided in pre-contractual information and advertising of credit agreements as described under Article 2(3). Around 30% of respondents did not believe that this exclusion applied in their country. Around 13% did not know whether or not information on the APR was to be provided in pre-contractual information and advertising of credit agreements, as described under Article 2(3) in their country and the remaining 19% of respondents considered the question not applicable.

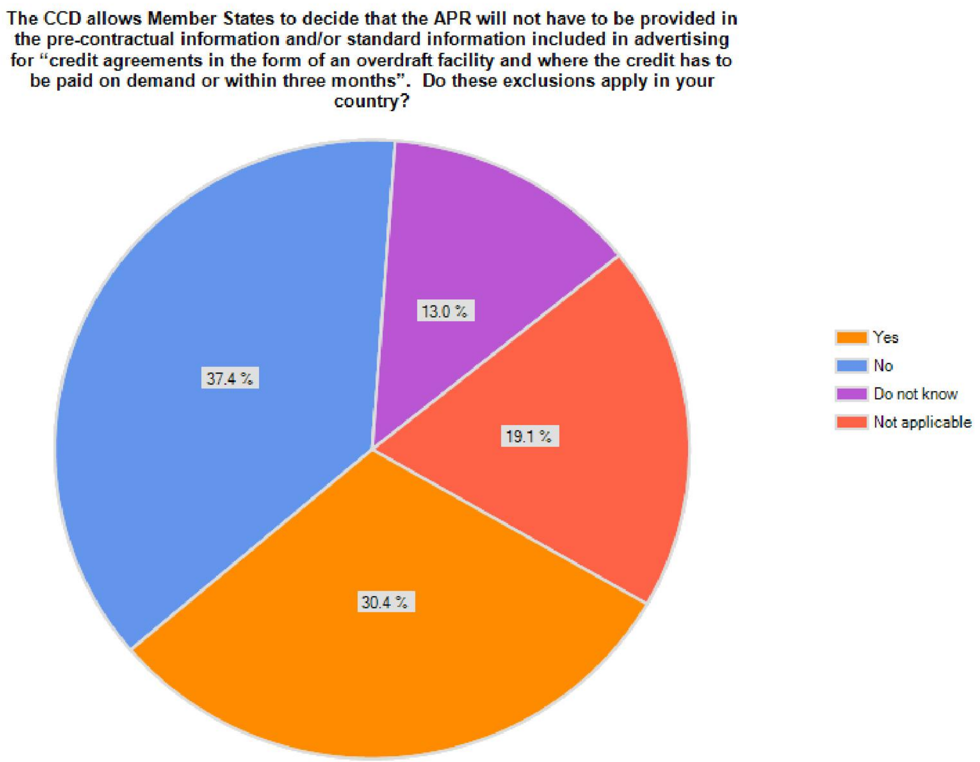

Figure 4.5: Results of the online survey on providing the APR in advertisements for credit agreements as covered under Article 2(3)

Positive impacts from legal choice

The positive impact identified by stakeholders assumes that it is accepted that in specific situations (such as for overdrafts covered by Article 2(3)), information on the APR can be misleading for consumers and, by not providing this information, this legal choice has avoided consumer detriment. Two main reasons why the APR is considered misleading are:

- *fundamental methodological issues*: There are difficulties associated with having to calculate the APR (for advertising purposes) for overdrafts, whose balances fluctuate day-to-day. For overdrafts, the total amount to be paid by the consumer is constantly changing and this makes it difficult to calculate the APR[39]; and
- *unsuitability for specific credit products*: According to some stakeholders, it is questionable how useful the APR is for specific credit products such as overdrafts[40]. The Table below illustrates how high the APR can be for unauthorised overdrafts[41] with a number of UK financial institutions and gives an idea of the APRs which would result if calculated for advertising purposes. If credit providers were required to advertise such rates (e.g. rates over 1,000,000%) which actually represent the cost of such a product on an annual basis, they would run the risk of unintentionally misleading the consumer who does not understand what it actually means and/or how to use it effectively for comparative purposes, as intended by the CCD.

Table 4.9: Example of APR for Overdrafts in the UK (the Cost of Borrowing £200 for 10 Days)[1]

Credit Type / Lender		Cost of Borrowing (£)	APR (%)
Unauthorised Overdraft Charges	Barclays	44	141,849
	Halifax	50	344,421
	HSBC	1	20
	Lloyds TSB	87	53,099,884
	Nationwide	50	344,421
	NatWest/RBS	60	1,441,791
	Santander	50	344,421
Payday Loan	Typical lender	25	7,384
	Wonga	25.77	8,241
Credit Card		11	650

Source: Lythe (2013)
[1] *Note that, despite the exemption from the scope of the CCD of overdraft facilities to be paid within one month, Article 6(5) of the CCD imposes the obligation to provide certain information, which includes the APR, illustrated by means of a representative example at the pre-contractual stage.*

Hence, the uptake of this legal choice has avoided consumer detriment, which would have resulted from many consumers becoming confused by information on APR. For this reason, many authorities and credit providers were of the view that it has been

39 This view was expressed by credit providers and industry associations.

40 This view was expressed by many different types of stakeholders, including credit providers, industry associations and consumer organisations.

41 APR is not to be provided on unauthorised overdrafts, but it should be provided in pre-contractual information for authorised overdrafts to be repaid within a month.

beneficial to exclude the APR from advertisements for these types of credit agreements. Credit providers and industry associations acting on behalf of credit providers noted that, if they were required to undertake these calculations, they would have incurred additional costs for minimal additional benefit. By being able to avoid these costs, credit providers noted that this legal choice has had positive impacts.

Uncertainties and/or negative impacts from legal choice

It has been suggested that, regardless of any failings, the APR needs to be shown for all types of credit product in order to promote transparency and consistency and provide all possible information to the consumer (albeit, recognising that only a small subset of consumers will be able to understand the meaning and implication of the APR)[42]. From this perspective (which is possibly the perspective of the vast majority of countries (22) that have not used this exemption), it could be argued that some benefits may have been foregone and, therefore, negative impacts with respect to consumer protection may have arisen, in terms of the quality of information provided to them at the contractual stage.

This is, however, unlikely to be the case for the eight countries considered. This is for three main reasons:

- in many of these countries, it would appear that **the status quo was maintained** (i.e. it has never been necessary to indicate the APR in advertisements for credit under Article 2(3) CCD). For instance, in the UK and Ireland impacts can neither be attributed specifically to the CCD nor the transposition of the legal choice because it has never been necessary to include the APR in advertising for credit agreements under Article 2(3) CCD;
- in some countries (e.g. Malta and Poland), these credit agreements are not common and generally **the market share for credit agreements under Article 2(3) CCD is small[43]**. In other countries (such as Bulgaria), there has been a general decrease in the number of overdraft credit agreements. For these countries, owing to the small number of credit agreements affected, any impacts are likely to be minimal (if any); and
- generally speaking, **credit providers do not tend to advertise overdrafts** (or more specifically, credit agreements that have to be repaid on demand or within three months)[44]. Where these products are advertised, credit providers sometimes still provide the APR in advertisements, regardless of this exemption (presumably to err on the safe side of the law, as is the case in Poland).

Overall, this exemption appears to have had a positive impact in the specific countries where it has been implemented.

42 This view was mostly expressed by consumer organisations/representatives, but also industry associations, credit providers and public authorities.

43 This view was mostly expressed by credit providers and industry associations representing credit providers.

44 This view was mostly expressed by credit providers, but also by public authorities.

4.1.6 The APR in pre-contractual information concerning credit agreements under Article 2(3) CCD (Article 6(2) CCD)

CCD Provision

Article 2(3) CCD sets out which Articles will apply in the case of *credit agreements in the form of overdraft facilities and where the credit needs to be repaid on demand or within three months*. These are Articles 1 to 3, Article 4(1), Article 4(2)(a) to (c), Article 4(4), **Articles 6** to 9, Article 10(1), Article 10(4), Article 10(5), Articles 12, 15, 17 and Articles 19 to 32.

Article 6 sets out the pre-contractual information requirements for certain credit agreements in the form of an overdraft facility as covered by Article 2(3). Creditors and, where applicable, credit intermediaries, are required to provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. This information must be provided to the consumer in good time and before the consumer is bound by any credit agreement or offer. The Table below sets out the pre-contractual information relevant to credit agreements under Article 2(3) CCD.

Table 4.10: Pre-contractual information that needs to be provided to consumers in the case of credit agreements as referred to in Article 2(3) and for certain specific credit agreements	
a)	the type of credit;
b)	identity and geographical address of the creditor or credit intermediary involved;
c)	the total amount of credit;
d)	the duration of credit agreement;
e)	the borrowing rate; the conditions governing the application of that 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;
f)	**APR**, illustrated by a representative example, which takes into account all assumptions used in order to calculate the rate;
g)	the conditions and procedure for terminating the credit agreement;
h)	where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time;
i)	the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;
j)	the consumer's right to be informed immediately and free of charge, pursuant to Article 9(2), of the result of a database consultation carried out for the purposes of assessing his creditworthiness;
k)	in the case of credit agreements as referred to in Article 2(3), information about the charges applicable from the time such agreements are concluded and, if applicable, the conditions under which those charges may be changed;
l)	if applicable, the period of time during which the creditor is bound by the pre-contractual information.

Legal Choice

Article 6(2) provides MSs with the legal choice to decide that the APR need not be provided in the pre-contractual information for credit agreements in the form of an overdraft facility as described under Article 2(3).

In other words, MSs have the legal choice to decide that for credit agreements as described under Article 2(3), the relevant information to be provided at the pre-contractual stage are as set out in Table 4.10 above, excluding the APR.

Transposition of Legal Choice

The Table below summarises the countries that have used the legal choice above. It indicates whether:

- The legal choice is transposed in the national law √
- The legal choice is not transposed in the national law X

Table 4.11: Legal choices Under Article 27(2) CCD - APR in pre-contractual information concerning Article 2(3) agreements (Art. 6(2))

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	X	X	X	X	√	√	X	X	√	X	X	√	X	√
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	√	X	√	X	X	√	X	X	X	X	√	√

10 countries (Croatia, Denmark, Germany, Ireland, Luxembourg, Malta, Poland, Slovakia, Spain and the UK (England and Wales, Scotland and Northern Ireland)) used the option in **Article 6(2) CCD** allowing MSs to decide that the APR need not be provided in pre-contractual information concerning credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months.

Regulatory Context or Perspective

Considering that the vast majority of countries (20 in total) have not used this exemption, it can be deduced that the authorities in these countries believe that the APR is useful information which must be provided to consumers in pre-contractual information for credits covered by Article 2(3). In this context, it is theoretically possible that consumers in the MSs which have made use of the exemption may be foregoing some benefits.

Table 4.12 compares the countries which do not require information on APR in advertising and those that do not require it in pre-contractual information for credit agreements under Article 2(3) CCD. It is particularly interesting to note that Croatia, Germany[45] and Slovakia believe that information on APR should be provided in advertising; however, these three countries do not believe such information should be provided in pre-contractual information. On the other hand, Bulgaria does not believe information on the APR should be provided in the advertising of these credit

[45] One possible explanation for the German approach is the more detailed rules and scrutiny which applies to advertising.

agreements; however, it requires such information to be provided in pre-contractual information, as can be seen in the Table below.

Table 4.12: Providing the APR in advertising and in pre-contractual information for credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months

No.	Countries	Advertising	Pre-contractual Information
1	Bulgaria	×	✓
2	Croatia	✓	×
3	Germany	✓	×
4	Slovakia	✓	×
5	Luxembourg	×	×
6	Spain	×	×
7	UK	×	×
8	Poland	×	×
9	Ireland	×	×
10	Denmark	×	×
11	Malta	×	×

× = Information on APR may not be provided
✓ = Information on APR should be provided

At a MS level, some specific aspects of the transposition of interest include:

- Although **Germany** exercised this legal choice, the corresponding provisions deviate from the CCD by stating that the APR is not necessary if the lender does not charge any other fees except for the borrowing rate and if the period for the borrowing rate is not shorter than three months. The German transposition effectively appears to apply additional conditions which are not set out in the CCD[46].

- The **UK**[47] (England and Wales, Scotland and Northern Ireland) does not require the indication of the APR in overdraft credit agreements (there appears to be no reference to this applying only to credits being repaid on demand or within three months). Gibraltar has not exercised this legal choice.

Consequences of Transposition of Legal Choice

Anticipated benefits of legal choice

Recital 23 CCD recognises that, in order to avoid placing an excessive burden on creditors or, where applicable, credit intermediaries, it is appropriate to restrict the pre-contractual information requirements of the CCD, taking into account the specific character of specific types of credit agreements. This recognises that there is a balance

46 See § 491a(1) Civil Code (Bürgerliches Gesetzbuch) and Article 247 Introductory Act to the Civil Code § 10(1)(3) (Einführungsgesetz zum Bürgerlichen Gesetzbuche)

47 See Regulation 10 and 11 of The Consumer Credit (Disclosure of Information) Regulations 2010, SI 2010/1969

to be found between ensuring an adequate level of consumer protection and placing an excessive burden on creditors. In this context, it is assumed that the anticipated benefit of this legal choice is to avoid placing an excessive burden on credit providers, which would benefit consumers.

Awareness of legal choice and/or impacts

In general, many stakeholders who provided information for this study were either not aware of any impacts resulting from this legal choice or believed that there have been **limited (if any) impacts** on the internal credit market or on consumers as a result of this legal choice.

Around 37% of respondents to the online survey indicated that they were aware that, in their country, information on the APR does need not be provided in pre-contractual information and advertising of credit agreements as described under Article 2(3). Around 30% of respondents did not believe that this exclusion applied in their country. Around 13% did not know whether or not information on the APR was to be provided in pre-contractual information and advertising of credit agreements, as described under Article 2(3) in their country and the remaining 19% of respondents considered the question not applicable.

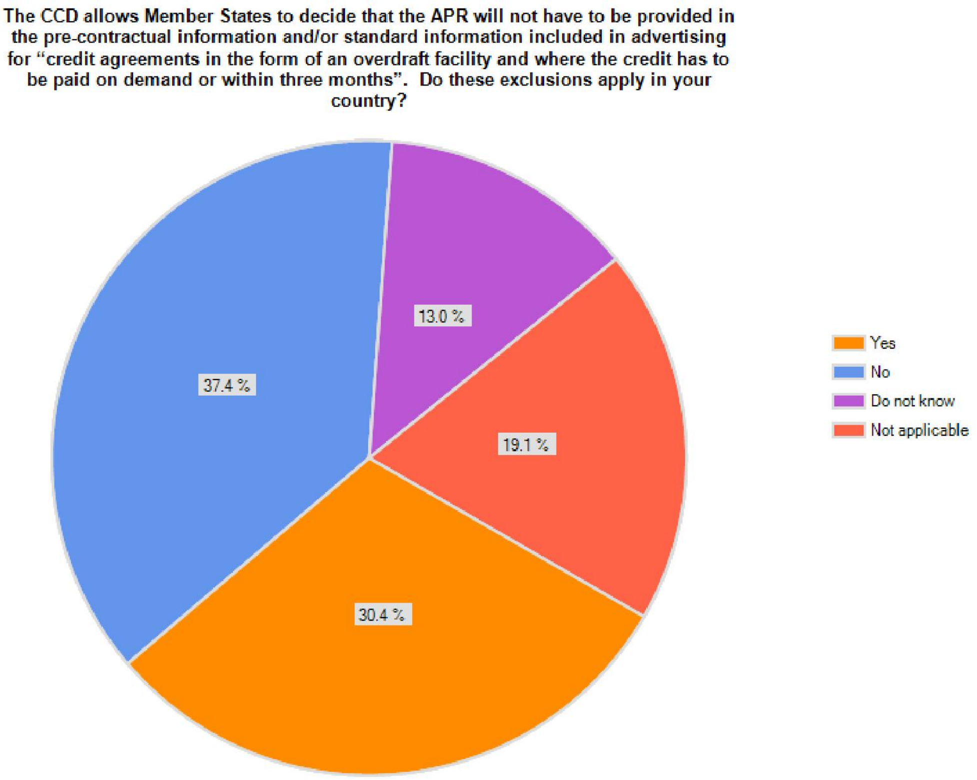

Figure 4.6: Results of the online survey on providing APR in advertisements for credit agreements as covered under Article 2(3)

Positive impacts from legal choice

During consultation, credit providers and industry associations noted that, if they were required to calculate the APR for credit agreements under Article 2(3), they would have incurred additional costs for minimal additional benefit. By being able to avoid these costs, credit providers noted that this legal choice has had **positive impacts on the internal credit market**.

In the countries which exercised this legal choice, the main reason for not requiring information on the APR is that many consumers do not really understand the meaning of an APR (as shown in a UK Survey by uSwitch (uSwitch, 2011) or consider it to be important for decision making (as shown in an EC Survey in Malta (EC, 2013)). In the UK survey, when asked "*what does representative APR mean*?", 32% said it is the rate that is representative of your balance, 25% correctly answered that it is the rate the majority of customers get; 17% said it is the average rate of the entire customer base; 23% said don't know; and 3% said the rate that is representative of your income.

Similarly, it is also possible that consumers may not realise how useful the APR could be. In a recent EC survey, only 38% of 18-35 year olds in Malta considered the APR to be an important factor when choosing credit. In comparison, 68% considered the interest rate to be important and 55% thought that the size of the repayments is important. An information campaign was launched in Malta to make consumers better aware, *inter alia*, of the importance of APR. Having in mind the level of financial education of the consumers, it was considered (in some countries) that providing information on the APR which may not be understood and may actually be distracting for the consumer (in some cases[48]) and could prove to be more problematic to a consumer than not providing any information at all; hence, taking this legal choice has avoided consumer detriment. Overall, where the financial literacy of consumers is a problem, it is the case that the anticipated benefits of providing information on the APR to the consumer will not be fully realised in any case.

Stakeholders in Spain and Malta also pointed out that, despite the fact that this information was not required by law, information on the APR can easily be obtained from other sources. For instance, in Malta, if consumers want to know the APR, they can ask the credit provider in branch. In addition, several of the banks in Malta provide APR calculators on their websites for use by consumers. Also, even though not required in the legislation, the Bank of Spain places a requirement on creditors to provide APR information in credit agreements in the form of an overdraft facility.

Uncertainties and/or negative impacts from legal choice

Some benefits may have been foregone as a result of transposing this legal choice. In Croatia, for example, it was noted that providing information on the APR could reduce the possibility of irregular repayments and avoid potential disputes with the credit provider (even if, in practice, the APR does not directly result in any of these outcomes).

48 In particular, this view was expressed by stakeholders in Germany.

4.1.7 The APR in credit agreements under Article 2(3) CCD (Article 10(5)(f) CCD)

CCD Provision

Article 2(3) CCD sets out which Articles will apply in the case of *credit agreements in the form of overdraft facilities and where the credit needs to be repaid on demand or within three months*. These are Articles 1 to 3, Article 4(1), Article 4(2)(a) to (c), Article 4(4), Articles 6 to 9, Article 10(1), Article 10(4), **Article 10(5)**, Articles 12, 15, 17 and Articles 19 to 32.

Article 10 sets out the information that must be included in the credit agreement. There is no prescribed method by which this information must be presented; however, it has to be clear and concise, and it should be drawn up on paper or another durable medium. The Table below sets out the information to be included in the credit agreement as set out under Article 10.

Table 4.13: Information that needs to be included in the credit agreement in the case of credit agreements as referred to in Article 2(3)	
a)	the type of credit;
b)	the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;
c)	the duration of the credit agreement;
d)	the total amount of the credit and the conditions governing the drawdown;
e)	the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;
f)	the annual percentage rate of charge and the total cost of the credit to the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate as referred to in Article 19(2) in conjunction with Article 3(g) and (i) shall be mentioned; Member States may decide that the annual percentage rate of charge need not be provided;
g)	an indication that the consumer may be requested to repay the amount of credit in full on demand at any time;
h)	conditions governing the exercise of the right of withdrawal from the credit agreement; and
i)	information concerning the charges applicable from the time such agreements are concluded and, if applicable, the conditions under which those charges may be changed.

Legal Choice

Article 10(5)(f) provides MSs with the legal choice to decide that the APR need not be included in credit agreements in the form of an overdraft facility, as described under Article 2(3). In other words, MSs have the legal choice to decide that for such credit agreements, the relevant information to be provided in the credit agreement are as set out in Table 4.11 above, excluding the APR. However, the total cost of credit and all the assumptions applied for its calculation still have to be provided.

Transposition of Legal Choice

The Table below summarises the countries that have used the legal choice above. It indicates whether:

• The legal choice is transposed in the national law	√
• The legal choice is not transposed in the national law	X

Table 4.14: Legal choices Under Article 27(2) CCD - APR in Article 2(3) credit agreements (Art. 10(5)(f))

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	X	X	X	√	√	√	X	X	√	X	X	X	X	√
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	√	X	√	√	X	√	X	X	X	X	√	√

11 countries (Czech Republic, Germany, Denmark, Luxembourg, Spain, Ireland, Malta, the Netherlands, Poland, Slovakia and the UK (England and Wales, Scotland and Northern Ireland)) used the **Article 10(5)(f) CCD** option allowing MSs to decide that the APR need not be provided in information concerning credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months.

Regulatory Context or Perspective

More generally, considering the number of countries which have applied this exemption, compared with the number of countries which applied the exemptions under Article 4(2)(c) and Article 6(2), it can be deduced that:

- Four MSs believe that providing information on the APR in advertisements is more important than providing such information in credit agreements (i.e. Czech Republic, Netherlands, Germany and Slovakia).
- Only one country (Croatia[49]) required information on the APR to be provided in advertising and in credit agreements, but not in the pre-contractual information. Although no explanation has been received for this, this approach did not receive wide support amongst Croatian stakeholders.
- Germany[50] and Slovakia[51] required information on the APR to be provided in advertising but not in pre-contractual information or credit agreements. Presumably, this reflects national concerns regarding the appropriateness of the

49 See Article 10, paragraph 5 Consumer Credit Act of 19 June 2009 OJ No. 75/09, and Consumer Credit Act of 28 September 2012, OJ No 112/12 (Croatia)

50 See § 492(2) Civil Code (Bürgerliches Gesetzbuch) and Article 247 Introductory Act to the Civil Code § 10(3) (Einführungsgesetz zum Bürgerlichen Gesetzbuche) (Germany)

51 See §10 ss.1 Act No. 129/2010 on consumer credit and other credits and loans provided to consumers and on amendments of certain acts (CCA) (Slovakia)

APR for individual overdrafts, when compared to APRs used in advertising which can still reflect 'representative' or 'typical' rates.

- No country required information on the APR to be provided in pre-contractual information, but not in the credit agreement or advertising.

In **Germany**, this option is transposed into § 492(2) Civil Code in conjunction with Article 247 Introductory Act to the Civil Code § 10(3). However, the German provision deviates from the CCD by stating that the APR is not necessary if the lender does not charge any other fees except for the borrowing rate and if the period for the borrowing rate is not shorter than three months[52]. This is not fully in line with the CCD as Germany has effectively applied additional conditions beyond those foreseen in the Directive. In the **UK** (England and Wales, Scotland and Northern Ireland) it is not necessary to indicate the APR in overdraft credit agreements (not just those as described under Article 2(3)). Gibraltar has not exercised this legal choice.

The Table below compares the countries which do not require information on APR in advertising, pre-contractual information and in credit agreements for these types of financial products. Compared to Sections 4.1.5 and 4.1.6, Cyprus and Ireland do not require the APR to be provided in the *advertising* or *pre-contractual information* for these types of credit agreements; however, they specified that information on the APR must be provided in the credit agreements.

Table 4.15: Summary of National Transposition Relating to Providing the APR in Advertising, Pre-contractual Information and Credit Agreements for credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months

No.	Countries	Advertising	Pre-contractual Information	Credit Agreements
1	Bulgaria	×	✓	✓
2	Croatia	✓	×	✓
3	Czech Republic	✓	✓	×
4	Netherlands	✓	✓	×
5	Germany	✓	×	×
6	Slovakia	✓	×	×
7	Luxembourg	×	×	×
8	Spain	×	×	×
9	UK	×	×	×
10	Poland	×	×	×
11	Ireland	×	×	×
12	Denmark	×	×	×
13	Malta	×	×	×

× = Information on APR may not be provided
✓ = Information on APR should be provided

52 See § 492(2) Civil Code (Bürgerliches Gesetzbuch) and Article 247 Introductory Act to the Civil Code § 10(3) (Einführungsgesetz zum Bürgerlichen Gesetzbuche) (Germany)

More generally, considering that eleven countries have applied this exemption, it can be deduced that a number of authorities do not believe that the APR is important information which must be provided to consumers in credit agreements for overdrafts.

Consequences of Transposition of Legal Choice

Anticipated benefits of legal choice

The anticipated benefits of this legal choice are very similar to those provided in Section 4.1.5 and Section 4.1.6.

Awareness of legal choice and/or impacts

In general, many stakeholders that provided information for this study were either not aware of any impacts resulting from this legal choice or believed that there have been **limited (if any) impacts** on the internal credit market or on consumers as a result of this legal choice. A number of reasons for this view have been provided:

- Firstly, many consumers do not understand the meaning of the APR (as shown in surveys in Malta (EC, 2013) and UK (uSwitch.com, 2011)). In some countries (e.g. the UK and Germany), it was noted that the APR can be difficult to understand, is effectively dispensable and may actually be distracting for the consumer (in some cases)[53].

- Secondly, in some cases, information on the APR can be easily obtained from other sources. For instance, even though not required in the legislation, the Bank of Spain has a requirement to provide information on the APR in credit agreements in the form of an overdraft facility. In Malta, several of the banks also provide APR calculators on their websites for use by consumers.

- Thirdly, it was queried how helpful the APR really is for specific products such as overdrafts and in countries where an interest rate cap (or other cap on overdraft fees) applies. For example, in the Netherlands, it has been noted that it is less important that the APR is indicated for overdrafts (than it is for certain other types of credit) because they are subject to an interest rate cap of 15%.

More broadly, it is fundamentally difficult to quantitatively assess the impacts of non-provision of information. By definition, the information has not been provided and, as such, consumers are unlikely to be aware of how they would have acted in a theoretical situation. This is particularly the case in countries where this exemption mirrored the existing legal situation (i.e. maintained the status quo). Also, it is difficult to distinguish the impacts of non-provision of information on APR from other influencing factors (e.g. the financial situation of the debtor, the financial knowledge of the debtor, the impacts of the financial crisis on borrowing, etc.).

[53] This view was expressed by a range of stakeholders, including credit providers and consumer organisations/representatives.

Positive impacts from legal choice

For the countries that have transposed this provision, this legal choice has had a **positive impact** – as it has avoided additional costs being incurred by credit providers for minimal additional benefit[54]. Also, if it is accepted that, in specific situations, information on the APR cannot reflect the manner in which the consumer will use the overdraft and thus be misleading, then this provision has avoided consumer detriment that may have arisen as a result of confusion caused by a lack of clarity.

Uncertainties and/or negative impacts from legal choice

On the other hand, providing for this exemption has resulted in less information being available to consumers (i.e. some benefits may have been foregone and, therefore, negative impacts may have occurred)[55]; however, the extent to which these benefits have been foregone in practice is actually minimal due to the reasons set out above (i.e. some consumers do not understand what is meant by an APR and this information can be obtained via other sources). In addition, credit providers are still required by the CCD to provide the annual rate of interest (or borrowing rate) in credit agreements. As such, it is not the case that no relevant information is being provided to consumers.

4.1.8 National rules regarding the validity of the conclusion of credit agreements (Article 10(1) CCD)

CCD Provision

According to the Article 10(1), credit agreements should be drawn up on paper or on another durable medium and all the contracting parties should receive a copy of the credit agreement. Article 10(2) lists the information that must be included in the credit agreement.

Legal Choice

According to the second paragraph of Article 10(1), Article 10 shall be without prejudice to any national rules regarding the validity of the conclusion of credit agreements which are in conformity with EU law. Therefore MSs have the possibility to maintain or introduce national rules regarding the validity of the conclusion of credit agreements, provided they are in conformity with EU law.

Transposition of Legal Choice

The Table below summarises the countries that have used the legal choice above. It indicates whether:

[54] This view was expressed by credit providers and industry associations representing credit providers.

[55] This view was expressed by consumer organisations/representatives.

- The legal choice is transposed in the national law √
- The legal choice is not transposed in the national law X

Table 4.16: Legal choices Under Article 27(2) CCD - National rules regarding the validity of the conclusion of credit agreements (Art. 10(1))

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
√	√	√	√	√	√	√	√	√	√	√	√	√	√	√

All 30 countries took the option given by the Article 10 (2) CCD to maintain or introduce national rules regarding the validity of the conclusion of credit agreements, provided they are in conformity with EU law. Accordingly, the general national civil law rules for the validity of contracts apply. The national reports also indicate that generally electronic signatures are valid for the conclusion of credit agreements in all 30 MSs.

Consequences of Transposition of Legal Choice

Anticipated benefits of legal choice

As noted in Recital 30, the CCD does not regulate contract law issues relating to the validity of credit agreements. The legal choice is, therefore, intended to ensure that in this area, MSs are able to maintain or introduce national provisions which are in conformity with EU law. For instance, MSs may regulate the legal regime governing the offer to conclude the credit agreement, in particular when it is to be given and the period during which it is to be binding on the credit provider. In this context, the anticipated benefit of this legal choice is mainly to ensure coherence between national legislation, the CCD and other EU Law.

Positive impacts from legal choice

In general, all 30 countries have used this legal choice to establish that an electronic signature can be accepted as a valid form of concluding a credit agreement.

Before electronic signatures were introduced, all contracts had to be signed, shipped (or faxed), and filed in paper format. Each step in this process uses up time and money and, as such is effectively slower and more expensive compared to electronic communication. Considering the day to day functioning of society and industry, the benefits for organisations and consumers of electronic signatures include (DTI, nd)[56]:

- information arriving instantaneously, regardless of distance;
- reduced costs – no stamps, postal services, envelopes, fax machine or even paper;

[56] DTI (nd): **Electronic signatures factsheet**, available from www.berr.gov.uk/files/file34339.pdf

- information can move directly from person to person, or between organisations without involving any other person or service;
- information is clearer and can be forwarded without any disruption to the quality (e.g. poor quality fax copies).

Electronic signatures also have benefits relating to potentially enhanced security (with digital encryption technology which is more tamper-proof than paper signatures). A digital signature negates the need for repetitive signing of documents, speeds up the contract process as each step in the process can be authenticated and easily accessed by all parties to the contract and eliminates lag time caused by geographical distance. Electronic signatures also reduce the cost of working on contracts that are never finalised because of circumstances that changed during a lengthy contract negotiation process, as well as the financial impacts of human error (e.g., signing mistakes). Other costs include those associated with paper, copying, packaging, and shipping (Contract Logix, 2012).

Table 4.17: Forms of Electronic Signature

Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 (the electronic signature directive) specified three forms of electronic signature (Europa, 2011):

1. The **Basic Electronic signature** – data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

2. The **Advanced Electronic Signature** which must meet the following requirements:
   - uniquely linked to the signatory;
   - capable of identifying the signatory;
   - created using a means that the signatory can maintain under their sole control;
   - linked to the data to which it relates in such a manner that any subsequent change in the data is detectable.

3. The **Qualified Certificate** which must include:
   - an indication that it is issued as a qualified certificate;
   - the identification of the certification service provider;
   - the name of the signatory;
   - provision for a specific attribute of the signatory to be included if relevant, depending on the purpose for which the certificate is intended;
   - signature verification data corresponding to creation data under the control of the signatory;
   - an indication of the beginning and end of the period of validity of the certificate;
   - the identity code of the certificate; and
   - the advanced electronic signature of the issuing certification service provider.

The extent to which the benefits (of allowing electronic signatures to conclude a consumer credit agreement) would apply to each MS vary and depend on the specific legal framework in each MS and the frequency of use of the electronic signature in the specific MS. Indeed, different types of electronic signatures are in use in different EU MSs.

Information obtained from consultation indicates that the electronic signatures available for concluding credit agreements range from relatively basic methods such as in Latvia and the UK, to more advanced approaches (e.g. bank IDs) in countries such as Norway, and more complex measures in countries such as Germany. The approaches taken by each country are summarised below.

In **Latvia**, a new consumer is identified and authenticated, by transferring 0.01 LVL to the account of the credit provider alongside a personal code and name. In this way, the credit provider can prove that the consumer exists and the money is going to the correct account. According to stakeholders this is not a substitute for the electronic signature, the consumer still 'signs' an agreement in a web page and the transfer of 0.01 LVL is a security measure to ensure the consumer has access to their bank account. In the **UK** (excluding Gibraltar), basic and advanced electronic signatures are used. By deciding to allow electronic signatures, the UK was trying to acknowledge technological developments in the market, by allowing credit agreements to be concluded remotely. Consumers also wanted to conclude transactions online and the aim of allowing electronic signatures was to facilitate the ease of doing business, both for consumers and for lenders. While it was noted by one stakeholder that allowing electronic signatures would have been of benefit to consumers overall, it was also noted that consumers now have access to online pay-day lenders, who promise to deliver credit to consumers within a very short period of time (~15 minutes).

In **Norway**, electronic signatures are now extremely common; it is estimated that approximately 70% of the Norwegian population (over 15) have a BankID (Finance Norway, 2012). Consumers can get a 'Bank ID'[57] free of charge from their bank and it enables them to sign online. One stakeholder noted that as a result of the common usage of the BankID, it is easier for consumers to access credit institutions in other parts of the country, which makes the credit market more accessible. In Norway, the BankID system is a cross-sectoral platform with only one identification required to access banks, public services etc. The BankID system is considered a positive advancement in Norway for credit providers and there is pressure from the stakeholders to make the provision of services fully electronic. Stakeholders have also noted that this could reduce costs for the credit providers and could be also good for consumers who want to be able to conclude credit agreements electronically.

In **Germany**, when electronic signatures were first introduced, the cost of the qualified electronic signature was considered to be relatively expensive (€30) and was often cited as a significant deterrent to uptake (eGovernment News, 2004). Since 2004, the cost of obtaining the qualified electronic signature has decreased, and on application for a new German Electronic ID card, consumers are able to activate the electronic ID function (which activates the qualified electronic signature) free of charge. To activate the signature at a later date costs consumers €6. However, consumers do have to pay for a valid signature certificate which is then loaded onto the ID card (through the use of a chip). Consumers also need to purchase a reader with an integrated PIN pad to be able to use the qualified electronic signature and have software that enables the card to communicate with the computer (Bundesdruckerei, 2013). Therefore, it is possible that although use of the qualified electronic signature

57 Electronic signatures are possible in Norway through the use of the Bank ID system – more information available at: https://www.bankid.no/Dette-er-BankID/BankID-in-English/This-is-how-BankID-works/

has been slow to date, it may increase as the new electronic ID cards are rolled-out. Beyond this, it has been suggested that consumers are wary of using electronic signatures due to security reasons.

Finally, it is important to note that despite the progress made in some countries, in many countries (e.g. Cyprus, Malta, the Czech Republic, etc.), electronic signatures are rarely used for different reasons. In some countries (e.g. Bulgaria), there are financial costs associated with electronic signatures, which appears to be prohibitive to their use. In other countries (e.g. Italy) creditors are wary of allowing consumers to use electronic signatures due to security reasons. In Greece, creditors are awaiting a Ministerial Decision to issue technical rules on how to deal with electronic signatures. In some of these countries, electronic signatures and electronic credit agreements have been valid for some time prior to the transposition of the CCD (and rules are set out under other legislative tools). Overall, the actual benefits of this legal choice have not been on the same scale as the anticipated benefits.

Uncertainties

At present, the reality across Europe is that, most credit agreements still take a paper form – in spite of the widespread adoption of the electronic signature in some EU MS and the development of systems to support the electronic signature. In Germany, it was indicated during consultation that the use of written contracts is important in maintaining high levels of consumer protection, particularly when considering the negative experiences that have been associated with electronic provision of credit, such as SMS credit, which is widely available in the Nordic countries. In this context, written contracts are argued to be particularly beneficial to the consumer. This is because the need to have written contracts slows down the process of receiving credit allowing consumers to reflect on the contract and realise the importance of the contract, allowing consumers to 'cool down' and reflect on the decision. This is not present when credit is applied for electronically, as the time from application to receiving funds is very short. The requirement of a written contract provides time for the provision of full and lasting documentation of the contract.

Overall, it is uncertain how the situation will progress into the future for electronic signatures as it depends on the type of electronic signature employed and the costs of implementing these. In this context, it is worth noting that, in 2012, the European Commission proposed new rules to enable cross-border and secure electronic transactions in Europe. The proposed regulation will ensure people and businesses can use their own national electronic identification schemes to access public services in other EU countries where e-IDs are available (Europa, 2012).

4.1.9 The right of withdrawal in the case of linked credit agreements under Article 3(n) CCD (Article 14(2) CCD)

CCD Provision

Article 14(1) CCD gives consumers the right to a period of 14 calendar days in which to withdraw from a credit agreement without giving any reason. Article 14(1) specifies that the period of withdrawal shall begin either from the day of the conclusion of the credit agreement (Article 14(1)(a)) or from the day on which the consumer receives the contractual terms and conditions and information in accordance with Article 10, if that day is later than the date referred to Article 14(1)(a) (Article 14(1)(b)).

Legal Choice

Article 14(2) CCD provides MSs with the legal choice to reduce the 14-day right of withdrawal period for linked credit agreements (as defined in Article 3(n)), provided that:

- national legislation at the time of the entry into force of the CCD already stated that funds cannot be made available to the consumer before the expiry of a 'specific period'; and
- the reduction to this 'specific period' is at the explicit request of the consumer.

Transposition of Legal Choice

The Table below summarises the countries that have used the legal choice above. It indicates whether:

• The legal choice is transposed in the national law	√
• The legal choice is not transposed in the national law	X

Table 4.18: Legal choice under Article 27(2) CCD - Right of withdrawal in case of linked credit agreements (Art. 14(2))

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	X	X	X	X	X	X	X	X	X	X	√	X	X	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	X	X	X	X	X	X	X	√	X	√	X	X

Overall, three countries (France, Romania and Slovenia) used the exception in **Article 14(2) CCD** regarding linked credit agreements as defined in Article 3(n) CCD.

Regulatory Context or Perspective

In some cases, national legislation in the MSs already provided that funds could not be made available to the consumer before the expiry of a specific deadline. In these cases, consumers may wish to ensure that they receive the goods or services they have purchased early. This legal choice therefore provides the option, if the consumer explicitly wishes for early receipt of goods or services (purchased via a linked credit agreement) to reduce the deadline for the exercise of the right of withdrawal to the same deadline before which funds cannot be made available.

France has exercised this legal choice in the way described below[58].

With regard to **Article 14(1) CCD on the consumer's right to withdraw**:

- Firstly, it is important to note that, in French law, the period of withdrawal runs from the acceptance of the creditor's offer, not from the day of the 'conclusion of the credit agreement' as provided for by the CCD. Whilst the creditor's offer is accepted by the borrower when both parties effectively sign the credit agreement, this does not correspond to 'conclusion of the contract' as the credit agreement is not yet considered as perfect (*contrat synallagmatique parfait*). A credit agreement only becomes perfect when (i) the borrower's right of withdrawal can no longer be used (see below) and (ii) the lender has notified the granting of the credit (see below). Until the agreement is perfect, the parties are not bound to each other by law.

- According to Article L.311-12 of the Consumer Code, the borrower may withdraw within **fourteen days** of accepting the offer (as provided for in Article 14 CCD)[59]. In order to facilitate the use of this right, the French legislation requires a detachable slip to be attached to each credit agreement[60]. According to Article L.311-15 of the Consumer Code, if a borrower decides to withdraw from a credit agreement after he/she has received the funds, the borrower will have to refund the creditor and pay any interest accrued since the date the credit was given. The borrower has **30 days** from the date of notification of withdrawal to refund the creditor the principal debt together with any interest.

- According to Article L.311-13 CC, of the Consumer Code, there are several ways in which a lender can confirm granting the credit to the borrower. First of all, once an offer has been accepted by the borrower, the creditor has **seven days** to confirm the granting of the credit. Secondly, delivering the money after this period also counts as a confirmation as long as the borrower him/herself still wishes to enter into the credit agreement. Without the lender's confirmation, the borrower's acceptance of the credit agreement is considered void. Moreover, no payment may be made from the creditor to the borrower <u>before</u> the expiration of a seven day period starting from the borrower's acceptance of the credit offer[61].

- As a result of, the time overlap between these two requirements (i.e. the possibility for the creditor to refuse to grant the credit for seven days after the offer's acceptance and the borrower's fourteen day right of withdrawal after the offer's acceptance), it can be considered that the consumer is left only with a **seven day** withdrawal period. [62]

58 See Articles L.311-36 and L311-36, Consumer Code (France)

59 It was indicated during consultation that the right of withdrawal was extended from 7 days to 14 days, as a result of the CCD.

60 Article R.311-4 of the Consumer Code provides for this slip's model.

61 Article L.311-14 of the Consumer Code.

62 The consumer may still make use of his seven day right of withdrawal under the delivery of goods or provision of services agreement (cf. Article L.121-20 of the Consumer Code). This period starts running from the delivery of goods or provision of services

With regard to linked credit agreements and Article 14(2) CCD on the option to reduce the length of time available for the consumer's right to withdraw.

- Linked credit agreements add an extra right of withdrawal for the borrower/buyer under the contract for the goods or services purchased[63]. This right should be distinguished from the borrower's right of withdrawal under the credit agreement[64].

- The requirements set up by the French law for the credit agreement to be perfect apply to linked credit agreements. Moreover, Article L.311-35 states that the seller is not required to fulfil the obligation to deliver or supply goods or services until the credit agreement is perfect. As a result, the seller bears all costs and risks of early delivery of the goods or supply of the services[65].

- In addition, Article L.311-36 specifies that, for linked credit agreements, the contract of sale or service is automatically terminated without compensation if (1) the lender has not informed the seller of the granting of credit within **seven days** of the borrower's acceptance of the credit offer or (2) if the borrower has, in the same period of seven days, exercised his right of withdrawal.

- Prior to the transposition of the CCD provisions into French Law, Article L.311-24 of the Consumer Code provided for the possibility for a borrower to make an express, written, dated and signed request for the immediate delivery of goods or provision of services in which case the right of withdrawal period under the credit agreement expired upon delivery of the goods or provision of the services without being able to exceed seven days or be under three days[66]. After the transposition of the CCD provisions, French law retained a similar possibility of immediate delivery of goods or provision of services[67]. Under Articles L.311-35 and L.311-36 of the Consumer Code, (1) the lender needs to inform the seller of the granting of the credit as described above, however, (2) the right of withdrawal period under the credit agreement expires upon delivery of the goods or provision of the services without being able to exceed fourteen days or be under three days, and additionally (3) the right of withdrawal under the credit agreement only terminates the contract of sale or services when it is exercised within three days of the borrower's acceptance of the credit offer.

63 In France, this approach effectively provides consumers with two opportunities after the conclusion of a linked credit agreement to consider their decision: the first opportunity is for the consumer to survey the market in the event that there is a better or more advantageous credit offer available and the second opportunity is to give the consumer time to rescind on a purchase which may have been made impulsively

64 The consumer may still make use of his seven day right of withdrawal under the delivery of goods or provision of services agreement (cf. Article L.121-20 of the Consumer Code). This period starts running from the delivery of goods or provision of services

65 Article L.311-35 of the Consumer Code.

66 Article L.311-24 of the Consumer Code was created by Law n° 93-949 of the 26 July 1993.

67 Article R.311-9 of the Consumer Code provides for this request's model.

France has therefore made use of the option under Article 14(2) CCD according to its former legal exception applicable to linked credit agreements whereby, rather than requesting the immediate availability of the credit agreement's funds, the borrower can request immediate delivery of the goods or provision of services. Whilst different to the Directive's wording (i.e. that "national legislation at the time of the entry into force of this Directive already provides that funds cannot be made available to the consumer before the expiry of a specific period"), the transposition of Article 14(1) CCD has been made relevant to the preceding French legal context.

Although **Romania** has exercised this legal choice (see Government Emergency Ordinance no. 50/2010, Article 58(1)[68]), national legislation providing that funds cannot be made available to the consumer before the expiry of a specific deadline has not been identified and, moreover, the national provision does not link the reduction of the 14-day term to the explicit request of the consumer. Note that Maravela and Leaua (nd) clarify that while the Romanian legislator did not expressly provide that the 14 day period can be reduced to a certain term (provided by the local legislation for the availability of the funds); it simply provided that the 14 day term is not applicable in case of the linked credit agreements, which is granted exclusively for acquiring assets or services (with some exceptions provided by the law), or in case of leasing agreements. Maravela and Leaua (nd) therefore conclude that it could be argued that the relevant text from the Romanian legislation is not in compliance with the CCD, since the option was not taken in full.

Slovenia has exercised this legal choice. Article 17(1) ZPotK-1[69] allows the consumer to request the shortening of the 14 day withdrawal period to three days in the case of a linked credit agreement. However, it would appear that this shorter period was not provided for in the national legislation at the time of entry into force of the CCD, and, as such, Slovenia should not have made use of this option. Information obtained from consultation indicates, prior to the transposition of the CCD in Slovenia, consumers did not have any right of withdrawal from a linked credit agreement after he/she had drawn down funds to purchase a good/service, which typically took place within a day of signing the credit agreement.

---

68 According to GEO 50/2010, Article 58(1) (English Translation), "*the consumer shall have a period of 14 calendar days in which to withdraw from the credit agreement without giving any reason. This term shall not apply to the linked credit agreement, granted exclusively for purchase of goods and services, except for the situation provided in Articles 63 to 65, as well as to the leasing agreement*". Articles 63 to 65 of the national law regulate the special rules of the right of withdrawal in case of linked credit agreements.

69 ZPotK-1, Article 17(1) (*English Translation*) states that: "*A consumer may withdraw from a credit agreement without stating any reasons when he has already drawn down the credit, within 14 days from the conclusion of the credit agreement or from the day he receives information under Article 10(3) and (5) when this day is later than the day the credit agreement was concluded. For linked credit agreements, the deadline for withdrawing from the agreement may be reduced to three days at the express demand of the consumer*".

Consequences of Transposition of Legal Choice

<u>*Anticipated benefits of legal choice*</u>

This legal choice provides consumers with the opportunity to receive the goods or services they have purchased early. It also allows for coherence with the existing national legislation already in place in MSs before the transposition of the CCD.

<u>*Awareness of legal choice and/or impacts*</u>

Figure 4.7 sets out the views of stakeholders that responded to the online survey across the 30 European countries on the impacts of changes to the right of withdrawal rules for linked credit agreements. As can be seen, many stakeholders were unaware of any specific impacts on the internal credit market and/or consumers as a result of this legal choice; this view is entirely logical considering that only three countries have made use of this legal option. Stakeholders in the three countries that exercised this legal choice noted that their national legislation had made changes to the right of withdrawal period (14 days) in line with this exemption.

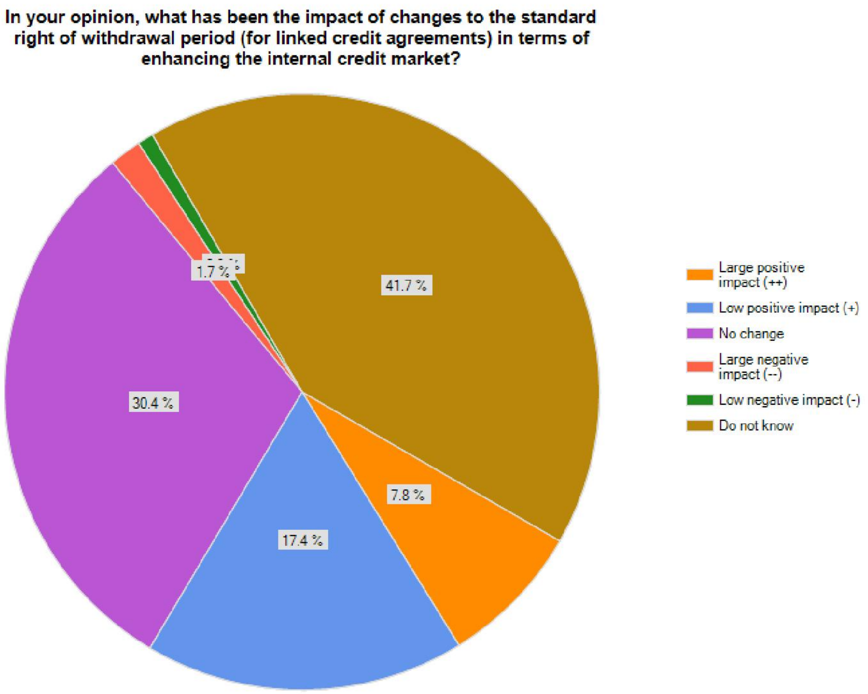

Figure 4.7: Results of online survey on right of withdrawal in case of linked credit agreements

<u>*Positive impacts from legal choice*</u>

In practice, the benefits of this legal choice will depend on the pre-existing situation in each MS. In this case, the legal situation which existed prior to the CCD is not clear; particularly, as regards whether this legal choice was correctly and/or rightfully implemented in the three countries considered[70].

70 Due to the limited number and/or quality (reliability) of responses received in some countries, it was not always possible to accurately verify the exact situation which applied in each country prior to the CCD.

Overall, a number of benefits for consumers have been identified as a result of this legal choice:

- firstly, it recognises that, in certain countries (and for certain products), the consumer and/or credit provider may be disadvantaged by a double (and longer[71]) waiting period, compared to other MSs – and, as such may be benefit from an option for a shorter withdrawal period;

- secondly, by specifying that this request has to be made by the consumer, it ensures that the consumer is not pressured to reduce his/her waiting period. At the same time, it allows consumers who are sure of their purchase to proceed more quickly by requesting a shorter time. For instance, in Slovenia, consumers are able to request a shortening of the withdrawal period from 14 days to 3 days; in such cases, the credit providers and service providers have to come to an agreement on how to operate; and

- finally, the legal choice helps ensure regulatory consistency with existing legislation in the MS and provides more legal clarity for credit providers (than existed before).

<u>*Uncertainties and/or negative impacts from legal choice*</u>

It has been suggested that giving consumers the freedom to withdraw from a credit contract can lead to abusive behaviour by the consumer and that this can have a detrimental effect on credit providers[72]. This would imply that, in France, where the period for the right of withdrawal was extended, there could have been greater negative effects on credit providers; however, whether or not this effect has actually been observed is uncertain.

4.1.10 The right of early repayment and the compensation claimed by the creditor (Article 16(4) CCD)

CCD Provision

Article 16 CCD deals with early repayment. **Article 16(1)** specifies that the consumer has the right to repay his/her obligations under a credit agreement fully or partially at any time. In such cases, the consumer is entitled to a reduction in the total cost of the credit, where such reduction consists of the interest and the costs for the remaining duration of the contract.

At the same time, **Article 16(2)** states that, in the event of early repayment of credit, the creditor is entitled to fair and objectively justified compensation for possible costs directly linked to early repayment of credit provided that the early repayment falls

[71] The first waiting period relating to the time provided in national legislation after which the funds are released and the second waiting period relating to the 14 days as set out in the CCD. This period starts from the signature of the contract, not from the moment funds are released (Art 14(1)).

[72] As noted by industry associations representing credit providers.

within a period for which the borrowing rate is fixed. It specifies that such *compensation may not exceed 1%* of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. If the period does not exceed one year, the *compensation may not exceed 0.5 %* of the amount of credit repaid early.

Article 16(3) deals with circumstances in which compensation for early repayment cannot be reclaimed, as follows:

a) if the repayment has been made under an insurance contract intended to provide a credit repayment guarantee;
b) in the case of overdraft facilities; or
c) if the repayment falls within a period for which the borrowing rate is not fixed.

Legal Choice

Article 16(4) CCD provides MSs with the legal option to make two further stipulations:

- firstly, that such compensation may be claimed by the creditor only if the amount of early repayment exceeds the threshold defined by national law, which should not exceed €10,000 within any period of 12 months (Article 16(4)(a));

- secondly, that a creditor may exceptionally claim higher compensation if he can prove that the loss actually suffered from early repayment exceeds the limits under Article 16(2). Equally, a consumer can claim a reduction in compensation if the sum claimed by the creditor exceeds the loss actually suffered (Article 16(4)(b)).

If the compensation claimed by the creditor exceeds the loss actually suffered, the consumer may claim a corresponding reduction. In this case, 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 repaid early on the market at the time of early repayment, and shall take into account the impact of early repayment on administrative costs.

Transposition of Legal Choice

Most countries used either one or both of the **Article 16(4) CCD** options in relation to compensation for early repayment claimed by the creditor:

- 18 countries (Austria, Croatia, Cyprus, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Norway, Slovakia, Slovenia and the UK (all jurisdictions)) transposed Article 16(4)(a) CCD concerning the creditor's right to compensation for early repayment on condition that the amount of the early repayment exceeds the threshold defined by national law;
- 9 countries (Bulgaria, Cyprus, Denmark, Lithuania, Luxembourg, Malta, the Netherlands, Spain and the UK (only Gibraltar)) transposed Article 16(4)(b) CCD

concerning the creditor's right to exceptionally claim higher compensation for early repayment;

- 5 countries (Cyprus, Lithuania, Luxembourg, Malta and the UK (Gibraltar)) made use of both options; and
- 8 countries (Belgium, Czech Republic, Estonia, Germany, Iceland, Portugal, Romania and Sweden) did not use either of the options.

The Table below summarises the countries that have exercised the legal choice above. It indicates whether:

• The legal choice is transposed in the national law	√
• The legal choice is not transposed in the national law	X

Table 4.19: Legal choice under Article 27(2) CCD - Right of early repayment and creditor's compensation (Art. 16(4)(a))

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
√	X	X	√	X	X	X	X	√	X	√	√	√	√	√
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	√	√	√	√	√	X	√	√	X	X	X	√	√	√

Table 4.20: Legal choice under Article 27(2) CCD - Right of early repayment and creditor's compensation (Art. 16(4)(b))

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	X	√	√	X	X	√	X	X	√	X	X	X	X	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	√	√	X	√	√	X	X	X	X	X	X	X	√

<u>Article 16(4)a</u>

Effectively, the legal choice under **Article 16(4)(a)** requires that, where national legislation specifies a threshold below which compensation cannot be claimed, this national threshold will apply, as long as it does not exceed €10,000 within any period of 12 months.

In practice, this implies there are three groups of countries:

a) <u>Group A</u>: MSs that have set the compensation threshold at €10,000;
b) <u>Group B</u>: MSs that have set the compensation threshold between €680 and around €10,000; and
c) <u>Group C</u>: MSs that have not set a compensation threshold (i.e. these MS have not taken the legal option).

For **Group (A) MSs that have set the threshold at €10,000**, there is no possibility to claim compensation for early repayments of below €10,000 within any period of 12 months. For credit providers in countries in this group, it is the case that they would have lesser[73] scope to claim compensation, compared with stakeholders in Groups (B) and (C). Indeed, depending on the national legislation in these countries pre-CCD, some credit providers may find that they are worse off post-CCD – if they had the possibility to claim compensation previously without any thresholds applying. Countries in Group A are as follows:

- **Austria** has only transposed the legal choice under Article 16(4)(a) CCD. Although the transposing law does not stipulate a fixed amount of compensation, it stipulates that compensation must be 'fair and objectively justified'. The right to compensation only applies if the amount of the early repayment exceeds **€10,000** within a period of 12 months.

- **Croatia** has only transposed the legal choice provided in Article 16(4)(a) CCD. The creditor may claim compensation only on the condition that the amount of the early repayment exceeds the threshold of 75,000.00 Kuna (around €10,000) within 12 months.

- In **Cyprus**, Article 16(5)(a) LCCA transposes Article 16(4)(a) CCD by providing that creditors may claim damages only when the amount of early repayment exceeds **€10,000** in any 12 month period. Article 16(3) LCCA provides that higher compensation may be claimed for costs that have a direct relationship with the early repayment, provided that the latter is effected during a period when the debit interest is stable. This amount cannot exceed 1% of the part of the credit repaid early if the period between early repayment and agreed term of the contract exceeds one year. If this period is less than one year, then the damages that the creditor is entitled to cannot exceed 0.5% of the part repaid early.

- **Greece** has only transposed the legal choice in Article 16(4)(a) CCD by providing that the creditor may claim compensation on condition that the amount of early repayment exceeds €10,000 within any period of 12 months.

- **Finland** has only transposed the legal choice in Article 16(4)(a) CCD. The threshold in the transposing legislation is €10,000 within a year.

- **France** has only transposed the legal choice provided for by Article 16(4)(a) CCD. The threshold in the transposing legislation is €10,000 within a year.

- **Ireland** has only transposed the legal choice in Article 16(4)(a) CCD. Regulation 19(5) states that compensation is payable on the condition that the amount of early repayment exceeds €10,000 within any period of 12 months.

- **Italy** has only transposed the legal choice in Article 16(4)(a) CCD. The threshold in the transposing legislation is €10,000 within a year. The transposing provision

[73] The average personal loan in Europe in 2011 was €9,452, while the average credit at the point of sale was just €1,315.

states that compensation can only be claimed if the amount of credit repaid early corresponds to the entire debt still outstanding.

- **Luxembourg** has transposed both Article 16(4)(a) and Article 16(4)(b) CCD. The threshold in the transposing legislation is €10,000 within any period of twelve months.

- **Latvia** has only transposed Article 16(4)(a) CCD. According to Article 73(1) R1219, the creditor does not have the right to claim compensation for early repayment if the amount repaid early does not exceed LVL 7,000 (~€10,000) within a period of 12 months.

- In **Slovenia**, the legal choice provided for under Article 16(4)(a) CCD has been transposed by Article 19(4) ZPotK-1 which provides that the creditor may demand the compensation only if the amount of early repayments in 12 months exceeds €10,000. The option under Article 16(4)(b) CCD has not been used by Slovenia.

- **Slovakia** has only transposed Article 16(4)(a) CCD. The creditor is entitled to compensation for costs only if the amount of early repayment exceeds €10,000 within 12 months.

- In the **UK**, England and Wales, Scotland and Northern Ireland have made use of the legal choice under Article 16(4)(a) CCD, but not of the option under Article 16(4)(b). The creditor can only claim actual loss suffered if the amount of the repayment exceeds £8,000 (~**€10,000**) over a 12-month period, provided that this is fair and objectively justified and does not exceed 1% or 0.5% of the amount repaid early. The law does not provide the option to allow exceptional compensation.

  Gibraltar exercised the legal choice in Article 16(4)(a) CCD by providing that compensation for early repayment cannot be claimed if the amount of early repayment does not exceed **€3,000** within any period of 12 months. Gibraltar also exercised the legal choice provided in Article 16(4)(b) CCD by stating that the creditor may claim higher compensation if he proves that the loss suffered from early repayment exceeds the amount determined under Section 16(2).

For **Group (B) MSs that have set the threshold between €680 and €10,000**, there is no possibility to claim compensation for early repayment below the lower threshold; however, above the lower threshold, compensation equivalent to 0.5 % or 1% of the amount of credit repaid will apply. For many countries in this group, it is unlikely that the CCD would have had any impacts, specifically in those countries where the lower threshold was already in place in national legislation which existed prior to the CCD. Countries in Group B include:

- **Hungary** has only made use of the legal choice in Article 16(4)(a) CCD. The creditor can claim compensation only if the early repayment exceeds HUF 200,000 (approximately **€680**).

- In **Lithuania**, Article 17(2) CCL provides that the creditor is entitled to claim compensation only on condition that the amount of the early repayment does not exceed LTL 8000 (**€2,317**) within any period of 12 months.

- **Malta** transposed the legal choice in Article 16(4)(a) through Regulation 16(5) CCR. Regulation 16(5) transposes Article 16(3) CCD setting out the three cases in which compensation for early repayment cannot be claimed. To these three cases, the national law adds a fourth, namely, if the amount of early repayment does not exceed **€3,000** within any 12-month period (Article 16(5)(d) CCR). Therefore, if the repayment is less than **€3,000** within any 12-month period, the creditor cannot claim compensation for early repayment.

- In **Poland**, Article 50(1) CCA transposes Article 16(4)(a) CCD. It provides that the creditor may reserve a right to claim compensation in the case of early repayment of credit if the amount of the early repayment due to be paid in the following 12 months exceeds three times the average monthly salary in the enterprise sector. This obligation corresponds to the requirement of the CCD that states that the creditor may claim compensation provided that the amount of the early repayment exceeds the threshold defined by national law. The average monthly salary in the enterprise sector for December 2012 was PLN 4,107.95 (which is, approximately €1,100). Consequently, according to Article 50(1) CCA, if the amount of the credit to be repaid by a consumer within the next 12 months is more than **€3,300** (3 months x €1,100) and the consumer repays the credit earlier, the creditor can claim compensation. The threshold defined by Article 50(1) CCA does not exceed €10,000 within any period of 12 months.

- **Norway** has made use of the legal choice provided for in Article 16(4)(a) CCD, but the exception is a more restricted version than that of the Directive. The creditor may only claim compensation if the total credit exceeds 50,000 Kroner (approximately €6,250) and if the consumer has been informed about the rights of the creditor in this respect before the agreement was entered into. Article 16(4)(b) has not been transposed.

For **Group (C) MSs that have not set a threshold**, there is the possibility to claim compensation for early repayment for all credits (or loans) given to a consumer. For all credits/loans advanced, compensation equivalent to 0.5 % or 1% of the amount of credit repaid will apply. Depending on the national legislation in these countries pre-CCD, credit providers in the countries should benefit from the Article 16(2) provision, specifically where the previous legislation did not allow any opportunity for early repayment. The countries in this group are those marked (x) in Table 4.19 above and include: Belgium, Bulgaria, Czech Republic, Germany, Denmark, Estonia, Spain, Iceland, Netherlands, Portugal, Romania and Sweden.

Article 16(4)b

Under **Article 16(4)(b)**, MSs may allow creditors the option to claim higher compensation if the creditor can prove that the loss actually suffered from early repayment exceeds the limits under Article 16(2).

Using a hypothetical early repayment of €10,000, Article 16(2) allows credit providers to claim a maximum compensation of €50 (0.5% of the amount of credit repaid early), if the period of time between the early repayment and termination of the credit agreement is less than one year. If the period of time exceeds one year, the maximum compensation claimable would be €100 (1% of the amount of credit repaid early). Effectively, the legal choice under **Article 16(4)(b)** requires a credit provider to prove that the loss actually suffered from early repayment is above €50 or €100, as appropriate (using the hypothetical scenario). Assuming the credit provider makes a claim for €200 compensation, Article 16(4)(b) allows the consumer to claim a reduction in compensation if they consider that this sum (of €200) claimed by the creditor exceeds the loss actually suffered.

The majority of the nine countries that transposed this legal option did so in a literal manner and, where this was not the case, no information has been received to suggest implementation is otherwise. For instance, in Denmark, the last paragraph of Article 16(4) has not been transposed in Danish law. However, in the preparatory works[74], it is stated that a loss under §26(4) of the Danish Act shall be calculated in exactly the way prescribed by the last paragraph of Article 16(4) CCD. There is no indication as to why this is left out of the Danish law text, but the precise parallel in the preparatory works should ensure conforming application.

Consequences of Transposition of Legal Choice

Anticipated Benefits

In giving MSs the right to set a threshold amount beyond which compensation may be payable, Recital 40 CCD notes that such a threshold should, for instance, take into account the average amount of consumer credits in their market. In this context, the anticipated benefit of this provision was presumably to ensure that national characteristics are taken into account in ensuring that neither consumers nor creditors are disadvantaged in cases of compensation.

Awareness of legal choice and/or impacts

Figure 4.8 sets out the views of stakeholders that responded to the online survey across the 30 European countries on the impacts of CCD provisions on the right of early repayment and the compensation claimed by the creditor (Article 16(4) CCD).

[74] The entire collection of preparatory works can be found here: http://www.ft.dk/samling/20091/lovforslag/L91/index.htm (only in Danish).

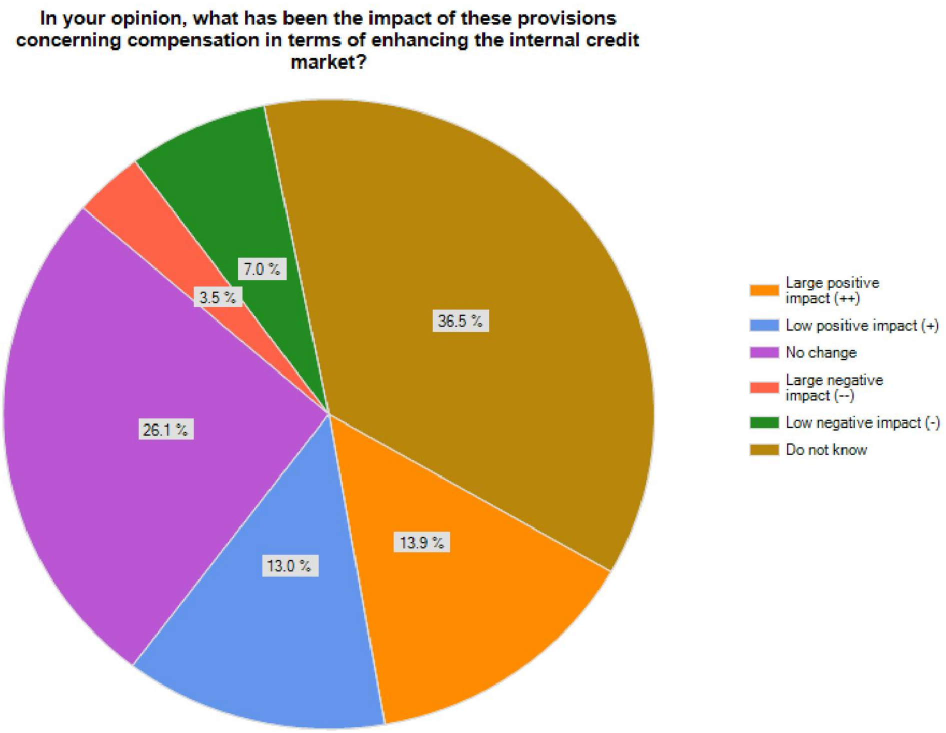

Figure 4.8: Results of online survey on the right of early repayment and the compensation claimed by the creditor (Article 16(4) CCD)

As can be seen from the Figure, most stakeholders (over 60%) were either not aware of any impacts resulting from this legal choice or believed there had been no change from the situation which existed prior to the CCD. Around 25% of stakeholders believed there had been positive impacts on the internal credit market, while 10% believed there had been negative impacts on the internal credit market.

In particular, stakeholders participating in the telephone interviews were unable to provide information in relation to the impacts attributable to the transposition of Article 16(4)(b).

<u>*Positive impacts from legal choice*</u>

The consequences of this legal choice are influenced by two key factors: (1) the regulatory and/or market situation which existed prior to the CCD; and (2) the actual behaviours and/or actions of consumers and credit providers, having now been given a legal basis to claim for a reduction in the cost of credit or compensation respectively.

In terms of the regulatory and/or market situation which existed before the CCD, the benefits associated with this provision would differ by country, as well as by credit provider within each country. In this context, it is important to understand that, some credit providers, regardless of the legal situation which existed or exists, do not wish to claim for compensation for reputational and strategic reasons (e.g. to encourage repeat business from customers). Similarly, some consumers may either be unaware of the national law which is in place or may be intimidated by the institutions they deal with, such that they do not claim for a reduction in the cost of credit (even when they are entitled to this). Hence, there appears to be an important difference which exists between the regulatory situation (i.e. the legal provisions in MS law) and the standard business practice of companies in the area of claiming compensation from consumers. Unfortunately, there is insufficient information to provide a full description of the nuances and situation which existed in each country prior to the CCD.[75]

Information obtained from consultation and literature review confirms that the benefits which were anticipated as a result of this provision vary on a case- or country-specific basis. Impacts also vary according to whether MSs transposed Article 16(4)(a), Article 16(4)(b) or both.

In terms of the countries which transposed Article 16(4)(a), in relation to the national threshold for compensation, three scenarios have been identified:

- Countries or cases where the transposition of Article 16(4)(a) is seen as **beneficial for consumers**, in terms of the fact that the approach to calculating the amount of compensation which credit providers can claim from consumers for early repayment of debt is now more transparent. In theory, this view should be most pronounced in countries where credit providers previously had the power to determine how much compensation would be paid by consumers (although the information collected has not allowed these to be identified during this study)[76] and/or where compensation was being claimed by credit providers for repayments lower than the thresholds established after transposition of the CCD (e.g. Slovakia). In this situation, the benefit of the provision is that consumers not only receive a reduction in the cost of credit, where appropriate, but also that credit providers do not charge consumers excessively for early repayment.

- Countries or cases where the transposition of Article 16(4)(a) is seen as **beneficial for credit providers**, in terms of ensuring that credit providers are not in a disadvantaged position from early repayment of loans by consumers. This view is more pronounced in countries where credit providers were not allowed to claim compensation for early repayment prior to the transposition of the CCD (e.g. Slovenia and Latvia). It may also be beneficial in countries where there is a cultural aversion to carrying debts (e.g. Malta) and/or where the financial crisis has resulted in consumers reducing their debt burden (e.g. the UK, Ireland and many other countries). In this situation, the benefit of this provision is that credit providers are able to claim compensation from consumers for any costs incurred due to early repayment, taking into account the national thresholds. However, the extent of this benefit will depend on a number of factors at the national level. For instance, in Austria, prior to the CCD, consumers could pay back credit without any compensation being claimed by creditors, independent of whether the interest

[75] Due to the limited number and/or quality (reliability) of responses received in some countries, it was not always possible to accurately verify the exact situation which applied in each country prior to the CCD.

[76] This is not to say that this situation did not exist. Stakeholders in the 12 countries which transposed Article 16(4)(a) were not aware of a higher threshold for compensation existing in their MS before the transposition of the CCD.

was fixed or variable. As a result of the CCD, credit providers can now request compensation for the early repayment of credits with a fixed interest rate; however, as most of the credit agreements in Austria have a variable interest rate, the actual benefit to credit providers in Austria is minimal and Austrian consumers have not experienced any notable impacts from the change.

- Countries or cases where this legal requirement is seen as a **benefit for both credit providers and consumers**, taking into account both perspectives above. This view is more pronounced in countries where the transposition of the CCD has resulted in greater legal clarity for both credit providers and consumers in cases of early repayment (e.g. Lithuania, UK).

Taking the above into account, it can be appreciated that stakeholders across the vast majority of countries (that took up the Article 16(4)(a) legal choice) considered the national transposition of this provision to have had a **positive impact on consumer protection and/or the internal credit market, in particular, relating to the legal clarity it provides for both credit providers and consumers**.

In terms of impacts arising from the transposition of Article 16(4)(b), in relation to credit providers' rights to exceptionally claim higher compensation, limited information is available.

It should be noted that it is likely that the vast majority of consumer credits in Europe are of an insufficiently high value to trigger the right for credit providers to claim compensation. As indicated in the Table below, the average personal loan in Europe in 2011 was €9,452, while the average credit at the point of sale was just €1,315. As a result, it is probably relatively unusual for credit providers to make use of this legal right.

Table 4.21: Average loan size by type of loan (2011)

	Average loan (2011)	Average loan (2010)
Personal loans	€9,452	€9,478
Revolving credit (incl. credit cards)	n/a	n/a
Credit at the point of sale	€1,315	€1,260
Of which consumer goods including electronics and household appliances	No data	€1,291
New consumer cars	€14,729	€13,487
Used consumer cars	€11,165	€10,696

Source: Eurofinas (2010); Eurofinas (2011)

Some credit providers may have passed on the opportunity to claim financial compensation for early repayment, despite being legally entitled to do so. In some cases, credit providers preferred to incur these costs, presumably for reputational reasons (for large credit providers), strategic reasons (cost-benefit of chasing a single consumer) or business reasons (e.g. payday loans rely on repeat business).

Finally, it should be noted that early repayment is relatively uncommon in some countries (e.g. Gibraltar).

Uncertainties

As regards the actual extent of benefits accrued from the legal choice, this is considerably more difficult to prove or quantify (within the context of this study) and is reflected in the views of the vast majority of respondents. Over 60% of respondents to the online survey were not aware of any impacts and/or considered this provision to have resulted in no change. Three main reasons for this view have been put forward:

- firstly, the national transposition of this provision may have discouraged creditors from charging consumers excessively for early repayment; however, the extent to which such deterrence has occurred is difficult to prove, particularly in the absence of detailed information on levels of early repayment prior to and post CCD;
- secondly, some consumers may have received a reduction in the final cost of credit as a result of early repayment; however, it has not been possible to quantify the extent to which this has happened without a comprehensive survey of European consumers. This survey would also need to cover credits taken out since implementation of the CCD and considering that the national transposition in some countries is less than two to three years, it is likely that the results will underestimate the full effects; and
- finally, as mentioned above, some credit providers may have passed on the opportunity to claim financial compensation for early repayment.

It is important to mention that the possibility to obtain compensation from consumers is not always viewed as being a positive impact– a view reflected in the 10% of respondents to the online survey who considered this provision to have had a negative impact and potentially in those countries that have not exercised this legal choice (i.e. compensation is due for all early repayment). Presumably, these stakeholders consider that consumers should never have to pay compensation to creditors and, as such, any provision which involves compensating creditors is to the detriment of consumers. Also, there were some concerns that some credit providers could gain an advantage on the market by not claiming compensation in cases of early repayment (i.e. some credit providers could use this as a marketing tool and this could impact on competition amongst credit providers)[77].

In this context, it must be borne in mind that the issue of early repayment is also an issue of "social costs" and "distributional impacts". From the credit providers' perspective, early repayment represents a loss of income which will be recouped in one form or another whether from: increased interest rates, loan set-up charges, charges levied on other lenders or financial products, etc. Effectively, the credit provider is unlikely to incur any significant costs which cannot be recouped. For the countries where credit providers do not pursue these costs from the early re-payers, it could be argued that the lost revenue is effectively shifted to other borrowers who are keeping to their payment schedule. This raises equity and fairness issues (i.e. to what extent should early re-payers bear the costs of early repayment), which is effectively reflected and addressed in the national laws of each country.

[77] This view was expressed by a credit provider.

4.2 Clarification of Terms/Concepts in the National Laws

4.2.1 Background

The shaded box below sets out the key questions to be addressed under Section 4.2 based on the Specifications.

Q2. Did the countries in question further specify any of the following terms/concepts in national law when transposing the CCD, and if yes, how and to what effect on the internal market and consumers?
2.1. The concept of "insignificant charges" with regard to credit agreements under which the credit has to be repaid within three months (Article 2(2)(f) CCD);
2.2. The concept of "in good time" with regard to the provision of pre-contractual information (Article 5(1) CCD);
2.3. The concept of "adequate explanations" and the provision of assistance by credit intermediaries to the consumer (Article 5(6) CCD);
2.4. The provision of pre-contractual information for certain credit agreements by means of the European Consumer Credit Information form set out in Annex III CCD (Article 6(1) CCD);
2.5. The concept of "sufficient information" with regard to the obligation to assess the creditworthiness of the consumer (Article 8(1) CCD);
2.6. The concept of "significant increase" with regard to the obligation to assess the creditworthiness of the consumer (Article 8(2) CCD);
2.7. The right of withdrawal in the case of credit agreements which by law are required to be concluded through the services of a notary (Article 14(6) CCD);
2.8. The right of withdrawal in the case of linked credit agreements (Article 15(2) CCD).

In the sections below, it is important to note that the specification of the terms/concepts above draws on clarifications that have been made in Member States within the law, in the Explanatory Memorandum to the law, in the legal preparatory works, explanatory notes and similar documents explaining the meaning of the concepts used in CCD.

4.2.2 The concept of 'insignificant charges' with regard to credit agreements under which the credit has to be repaid within three months (Article 2(2)(f) CCD)

Term/Concept

Article 2(2)(f) CCD excludes credit agreements under the terms of which the credit has to be repaid within three months and only **insignificant charges** are payable from the scope of the CCD.

Clarification of Term/Concept

The legal analysis of the national transposing measures showed that most countries[78] have not clarified what amounts to 'insignificant charges', choosing instead to reproduce the concept verbatim in the national provisions transposing Article 2(2)(f) CCD. The Table below indicates whether:

- What is meant by 'insignificant charges' is clarified — √
- What is meant by 'insignificant charges' is not clarified — X
- The concept of 'insignificant charges' is not transposed because Article 2(2)(f) CCD is not (or not fully) transposed — O

Table 4.22: Specification of the Concept of 'Insignificant Charges'

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	√	X	√	O	X	X	X	X	√	√	X	√	O	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	O	X	X	X	√	O	O	X	√	X	√	X	√

Note that some countries clarified the concept of 'insignificant charges' using very similar phrases: for instance, Germany uses 'low costs'[79]; Latvia uses 'insignificant additional charges'[80] and Italy uses 'charges of an insignificant amount'[81]. These are not considered to further explain the concept of 'insignificant charges' and, as such, these countries are marked (x) in the Table above.

Denmark does not clarify the concept of 'insignificant charges' in the transposing legislation, however, the preparatory works point out that the decision whether or not a given charge is insignificant will be based on an individual assessment including the weighing of both the absolute charge and the charge related to the amount of the credit. The preparatory works do not explain to which charges the term 'insignificant' refers.

Lithuania has not clarified or defined the concept of 'insignificant charges' given that it did not transpose Article 2(2)(f) CCD at all. The Czech Republic, Hungary, Norway and Poland have only partially transposed Article 2(2)(f) CCD, in particular, they do not transpose the notion of 'insignificant charges'. These MSs have not excluded credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable from the scope of the transposing legislation.

78 Austria, Bulgaria, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Slovakia and Sweden.

79 See § 491(2) No. 3 das Bundesgesetzblatt (Federal Law Gazette)

80 See Article 8(43) CRPL and Article 22(2) of the Consumer Credit Regulations - Regulations of the Cabinet of Ministers, entitled No. 1219 (transposing Directive 2008/48/EC)

81 See Article 122 of the Consolidated Banking Law (Testo Unico Bancario)

The current law in force in Iceland does not contain the wording 'insignificant charges'[82] with regard to credit agreements to be repaid within three months. It appears that all credit agreements to be repaid within three months, regardless of the amount of charges payable, are excluded from the scope of the national law. However, the draft law presented in Parliament with the aim of fully transposing the CCD stipulates that credit agreements to be repaid within three months and bearing an APR lower than the mean interest rate for savings accounts in accordance with the interest table of the National Bank, are excluded from the scope of the law. Slovakia has not transposed the concept of 'insignificant charges' as any consumer credit that has to be repaid within three months is excluded from the scope of the national law[83].

The discussion below focusses on the countries that have not simply reproduced the concept of 'insignificant charges' in the national law but have clarified it.

Consequences of Clarification of Term/Concept

- **Belgium** defines an insignificant charge as a charge of less than €4.17 a month[84].

  Information provided by stakeholders indicates that the threshold initially specified by law (€50) had to be amended due to the practices of certain creditors. Some credit intermediaries provided payday loans and mini-credits to consumers which were "free of interest and any other charges and had be repaid within three months with insignificant charges" which were close to the threshold amount (e.g. €49.99). By so doing, they were able to remain outside the scope of the legislation. For this reason, the Belgian law was recently amended to specify a threshold of €4.17 per month. This effectively clarifies that the €50 threshold is an annual threshold and ensures that, for most credits within the scope of Article 2(2)(f) CCD, the maximum charge which could be given within a three-month period is €12.51. Overall, stakeholders noted that this provision has proved useful in terms of clarifying the scope of the CCD where it relates to certain financial products.

- **Croatia** defines an insignificant charge as a charge of not more than HRK 30 (approximately €4)[85].

  Stakeholders in Croatia indicated that there have been no visible impacts on the internal credit market or on consumers as a result of this clarification. One reason for this is that the market share for credit agreements as described under Article 2(2)(f) is very small and, as such, this provision or clarification is rarely used in practice.

---

82 See Article 2 of Act on Consumer Credit No. 121/1994. It is noted that a draft law on consumer credit, which aims to fully transpose the CCD, was presented and discussed in Alþingi (Parliament) in its 140th Session but was not adopted due to time constraints. As at February 2013 the bill has undergone the first reading and it is expected that a new law will be adopted in the spring session of Parliament.

83 See §1 ss. 3l of Act No. 129/2010 of Consumer Credit Act (Slovakia)

84 See Article 3, para.1, 3° Law on consumer credit (Wet op het consumentenkrediet) 2010 (Belgium)

85 See Consumer Credit Act of 19 June 2009, O.J. No 75/09 (Croatia) and Consumer Credit Act of 28 September 2012, O.J. No 112/12 (Croatia)

- **Cyprus** uses more specific wording and refers to credit agreements for which the charge payable is less than €10[86].

  Stakeholders in Cyprus suggested that, despite this clarification in the legislation, credit providers seem to impose charges on consumers even where these do not have to be paid. In general, charges are not clearly explained and consumers are often unaware that they are being imposed or that they do not need to be paid. Fundamentally, consumers often lack knowledge about their rights to question such charges; although it was noted, that when challenged, credit providers do (in some cases) agree to reimburse the charges. Overall, while there are clearly benefits from the regulator having specified a limit of €10 in order to avoid ambiguity; in practice, there appear to be fundamental issues regarding enforcement. Indeed, some stakeholders have noted that these charges are still levied on consumers, albeit, under a different name.

- **Finland** clarified the concept of 'insignificant charges' as '*other costs of credit converted to an annual percentage rate of charge do not exceed the amount of interest laid down in Section 4(1) of the Interest Act (633/1982)*'[87]. According to Government Bill 24/2010, it was important to clarify the concept so that the creditor knows beforehand whether or not the Consumer Protection Act will apply to the credit agreements he is offering.

  Stakeholders in Finland indicated that there have been no visible impacts on the internal credit market or on consumers as a result of this clarification. This is primarily due to the fact that this clarification (or approach) was already in the pre-existing legislation (prior to the CCD). Regardless, it was suggested that the inclusion of loans granted by 'instant-loan' providers and the fact that consumers are better protected as a result of this clarification are positive impacts which are a result of the CCD transposition.

- In **the Netherlands**, the explanatory note to the CCD Act states that 'insignificant cost' *means that normal credit with a duration of three months where interest and costs are taken into account, cannot fall under the exception. Insignificant cost means interest as well as any potential other costs regardless of the name. The costs are insignificant if they entail only a very small percentage of the credit. As an example, with a credit of €2,000, a cost of €5 is insignificant. The costs however can also be insignificant in an absolute sense, for example, a small fee for the use of a customer card which has payment functionality.*

- **Romania** clarifies insignificant charges as those charges of up to 0.5% of the total value of the credit agreement[88]. No further details are given by the national law as to the charges which are taken into account for the calculation of this threshold.

---

86 See Article (3)(1)(f), Law on Consumer Credit Agreements of 2010 (LCCA) (Cyprus)

87 See Chapter 7 S. 3(1), Consumer Protection Act (Kuluttajansuojalaki 38/1978), amendment 746/2010 of 27August 2010 (Finland)

88 See Article 2(c), Government Emergency Ordinance no. 50/2010, as approved with amendments by Law no. 288/2010 and as further amended by Government Emergency Ordinance no. 73/2012 (Romania)

Information provided by stakeholders from Romania indicates that, in the past, problems had arisen where the legislation was not specific and unclear. In this context, stakeholders indicated that clarifying the term "insignificant charges" has been beneficial in the sense that it has helped protect consumers from unscrupulous credit providers and, in the long term, could improve the relationship between financial service providers and the beneficiaries of financial services.

- The **Slovenian** transposing provision does not use the term 'insignificant charges', but specifies them as a total cost that does not exceed 0.1% of the total amount of credit and, which in any event, is not higher than €10[89].

  Overall, this explanation is considered to have had a positive impact on both the internal credit market and consumer protection, although the number of credit agreements that are covered is relatively small. For credit providers, the specification of this concept ensures legal clarity and allows for more effective enforcement and monitoring of their activities.

- In **Spain**, the transposing provision specifies that the insignificant charges cannot exceed 1% of the total cost of the credit.[90]

  Stakeholders in Spain indicated that there have been no visible impacts on the internal credit market or on consumers as a result of this clarification. This is due to the fact that the specification used by Spain in the clarification of this concept (1% of the total cost of credit) was in place in previous legislation. Therefore, this specification has maintained the status quo and, according to stakeholders, also maintained a degree of transparency.

- In the **UK**, the law applicable in England and Wales, Scotland and Northern Ireland does not elaborate on the term 'insignificant charges'[91]. However, according to an Explanatory Memorandum to the law, relevant criteria in any assessment might include the amount of the charge, both in absolute terms and relative to the amount of credit or the value of the transaction. They might also include the nature of the product and the circumstances in which it is sold. A particular amount might be deemed insignificant in one context but not in another, for example depending upon the financial circumstances of the borrower. Other factors could include how a charge would work out as a percentage of the amount of credit or the credit limit, or the amount drawn down. It could also be judged by reference to the value of the individual transaction and the number of transactions in any given period. It may also be appropriate to consider charges by reference to other similar or closely competing products on the market; for example, if a charge is payable under one type of agreement, but not another and the products are generally seen by borrowers as substitutable.

---

89 See Article 3(1) point 4, Consumer Credit Act 2010 (Slovenia)

90 See Article 3, Law 16/2011 of 24 June 2011, on credit agreements for consumer as amended by Order ECC/159/2013 of 6 February (Spain)

91 See 1989 Consumer Credit (Exempt Agreements) Order

In the UK, stakeholders were unable to identify any impacts on the internal credit market or on consumers as a result of this clarification. Although stakeholders thought that it is important that the law is not ambiguous in any way, it was not clear that any tangible benefits could be attributed to this provision. Some stakeholders noted that, because the UK had robust consumer credit legislation prior to the transposition of the CCD, the benefit of this clarification is negligible.

4.2.3 The concept of 'in good time' with regard to the provision of pre-contractual information (Articles 5(1) and 6(1) CCD)

Term/Concept

Articles 5(1) and 6(1) CCD require the creditor or credit intermediary to provide the consumer with pre-contractual information **in good time** before he is bound by any credit agreement or offer.

Clarification of Term/Concept

The legal analysis of the national transposing measures showed that most countries have not clarified what 'in good time' means, choosing instead to reproduce the concept verbatim in the national provisions transposing Articles 5(1) and 6(1) CCD[92]. The Table below indicates whether:

- What is meant by 'in good time' is clarified — √
- What is meant by 'in good time' is not clarified — X

Table 4.23: Specification of the concept of 'in good time'

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	X	X	X	X	X	√	X	X	X	X	√	X	X	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	√	X	X	X	√	√	X	X	√	√	X	X	√

Note that some countries clarified the concept using very similar terms which do not explain the concept further: Cyprus uses '*in reasonable time'* (in the provision transposing Article 5(1) CCD) and '*in good time*' (in the provision transposing Article 6(1) CCD)[93], while the Czech Republic uses '*with a sufficient advance*'[94]. These are not considered to further clarify or explain the concept of 'in good time' and, as such, these countries are marked (x) in the Table above.

92 Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary. Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia and Spain.

93 See Articles 5(1) and 6(1), Law on Consumer Credit Agreements of 2010 (LCCA) (Cyprus)

94 See Article 5(1) Consumer Credit Act No. 145/2010 Coll. (Czech Republic)

The concept of 'in good time' is not reproduced in the transposing legislation of Italy[95], Poland[96], Portugal[97], and Slovenia[98]. The transposing legislation of these MSs provides only that the information must be provided before the consumer is bound by the credit agreement or offer or before the conclusion of the contract.

The discussion below focusses on the countries that have not simply reproduced the concept of 'in good time' in the national law but have clarified it.

Consequences of Clarification of Term/Concept

- **Denmark** has not mentioned the concept of 'in good time' in the transposing provisions. Instead, the national law only requires that the information is provided to the consumer before the consumer is bound by the credit agreement[99]. The concept of 'in good time' is addressed briefly in the preparatory works of the transposing legislation where it is stated as a precondition in relation to pre-contractual information that the consumer is allowed sufficient time to consider the information.

  Information from stakeholders indicates that this clarification (i.e. a requirement to provide pre-contractual information before the consumer is bound) was a requirement before the transposition of the CCD and, as such, it would appear that the status quo was effectively maintained. Stakeholders had mixed views regarding whether this was beneficial in terms of consumer protection and the credit market. Stakeholders thought that clarifying this concept in this way was beneficial for consumers because it meant that they could decide for themselves how much time is necessary to fully understand the credit agreement. However, some stakeholders suggested that there may be negative effects on the internal credit market as the lack of a clearer cut-off date means that there were longer time periods for consumers to conclude credit agreements, with this impacting on the total number of credit agreements concluded.

- **France** has not clarified the requirement that pre-contractual information be delivered 'in good time'; however, the interplay of two other requirements of the French legislation can be regarded as providing some clarification. Firstly, Article L.311-7 of the Consumer Code (CC) provides for delivery of pre-contractual information together with a free copy of the offered credit agreement. This indicates that this information should be delivered at the latest when the offer is made. Moreover, Article L.311-6-II mentions that when a consumer requests the conclusion of a credit agreement at the place of sale, then the creditor must ensure that the information is also delivered at the place of sale. Secondly, under Article L.311-11 of the CC, a creditor's offer stands for 15 days during which the creditor may not modify its terms and conditions. This allows the borrower to agree to the

95 See Article 124, Consolidated Banking Law (Testo Unico Bancario) (Italy)

96 See Article 13(1), Consumer Credit Act 2011 (Poland)

97 See Article 6, Consumer Credit Act (Portugal)

98 See Article 6(1), Consumer Credit Act 2010 (Slovenia)

99 See § 7 a (1) and § 7 b(1) Consolidated Act No. 761 of 11 June 2011 on Credit Agreements (Denmark)

offer at any point during this period and, therefore, effectively grants the borrower a 15-day thinking period. As a result, it can be said that pre-contractual information is delivered 'in good time'. As regards pre-contractual information for overdraft credit agreements, the Consumer Code provides for delivery of the information before the conclusion of the credit operation or upon express request by the borrower, and if the creditor is willing to grant the borrower a loan. As a result, this information should be provided at the latest when the offer is made.

In France, stakeholders thought that having a 15-day period during which the credit offer remains valid is more useful for 'point-of-sale' contracts than it is for those completed at a banking institution. The credit offer and contract are provided to the consumer at the same time and the consumer then has the option to take the contract home and sign it at a later stage. However, in practice, consumers do not always take advantage of the 15-day reflection period.

- **Lithuania** has clarified the concept of 'in good time' as '*within a reasonable time period which must be sufficient to familiarise oneself with the information provided*'[100].

  In Lithuania, information from consultation appears to suggest that the interpretation of the concept varies on a case-by-case basis and that, in general, the period of time tends to be relatively short. For some stakeholders, clarification of the concept has had positive impacts, although it is unclear the extent to which this is actually the case.

- **The Netherlands** clarified the concept of 'in good time' in the explanatory note (TK 2009/2010, 32339, no. 3) to the CCD Act providing a general indication as to what the concept 'in good time' covers, noting that what constitutes 'in good time' can vary on a case-by-case basis. The aim is that the consumer is well-informed when taking a decision on entering into a credit agreement. The consumer must, therefore, have enough time to assess the information and, as the case may be, make a comparison on the basis of the information provided between various offers. It would not be reasonable to expect that the average consumer can study the information provided within 10 minutes and forthwith come to a well-balanced judgment. However, a few days would normally be enough in almost all instances.

  In the Netherlands, stakeholders were generally of the view that the clarification of this term has not led to any impacts in terms of consumer protection and the internal credit market, the reason for this being that the pre-existing legislation in the Netherlands already included a provision to this effect.

- **Norway** clarified the concept of 'in good time' in the legal preparatory works which state that 'in good time' implies that the information must be given within such a timeframe prior to the conclusion of the agreement that the consumer is

[100] See Article 5, Law No. XI-1253 of the Republic of Lithuania on Consumer Credit of 23 December 2010, as replaced by Law No. XI-1684 of 17 November 2011 (Lithuania)

enabled to make an informed decision, that is, make a decision in full knowledge of the facts.

In Norway, stakeholders did not think that the national interpretation of this concept has changed the practical situation and so no impact on the internal credit market has been identified. In terms of consumer protection, stakeholders thought that giving consumers 'good time' to consider the information was better than simply providing it 'before' the conclusion of the credit contract (as was the case before the transposition of the CCD). Hence, the clarification of this term may have been beneficial in terms of consumer protection (in some instances). However, one stakeholder indicated that it may not be possible to ensure consumers are provided with the pre-contractual information 'in good time' when taking credit online. Indeed, based on this, the degree of consumer protection afforded by the national transposition may be reduced when considering the online conclusion of credit. Stakeholders also noted that the environment in which credit is taken is changing significantly and that some rules may not apply as effectively, and some benefits may not be as visible in the online environment as in the traditional branch-network environment.

- **Romanian** law has clarified the concept by stating that the information has to be supplied in sufficient time before, but not less than, 15 days before the moment in which the consumer concludes a credit agreement or accepts an offer (that is, the moment in which the consumer becomes contractually bound)[101].

  In Romania, stakeholders noted that the national transposition has had slightly positive impacts in terms of consumer protection and the internal credit market. Creditors may have benefitted from the elimination of a potential source of dispute and consumers would have more time to consider the pre-contractual information and come to an informed decision. Other stakeholders thought that there has been little benefit relative to the pre-existing situation because the right to take away an offer in order to consider it already existed. Furthermore, because the transposing legislation still allows consumers to shorten the period between receiving the pre-contractual information and signing the credit agreement (on request) the actual impact of this provision has been minimal.

- **Sweden** clarified in the preparatory works of the transposing legislation that 'in good time' means that the consumer should have enough time to familiarise himself with the information and to consider it. The preparatory works mention that different consumers might need different amounts of time to familiarise themselves with the conditions in the agreement[102]. Some might already know the conditions through prior agreements, while others might not be familiar with such agreements at all.

101 See Article 11, Government Emergency Ordinance no. 50/2010, as approved with amendments by Law no. 288/2010 and as further amended by Government Emergency Ordinance no. 73/2012 (Romania)

102 Government Bill 2009/10:242 (*Prop. 2009/10:242 New Consumer Credit Act*) p.94

The views of stakeholders were generally split as to the effect of the Swedish clarification of the term. On the one hand, some stakeholders were of the opinion that the transposition has had positive impacts on the internal credit market as well as on consumers. They noted that the Swedish interpretation allows the consumer to consider the information sufficiently without having to leave the premises of the bank or without having to disconnect with an online provider. This is particularly relevant if a consumer already has a similar credit; then they might not need as much time to consider the agreement compared to a consumer who has never entered such a contract before. On the other hand, some stakeholders questioned on the extent to which online credit providers can and do comply with this requirement (bearing in mind that some websites will log the customer out after a given time for security reasons).

- For the **UK**, according to government guidance (BIS, 2010), what constitutes 'in good time' will depend on the precise circumstances of the transaction. In certain retail credit situations, the borrower may wish to proceed straight to the conclusion of the agreement following provision of the pre-contractual information, and the Disclosure Regulations do not preclude that, if it is what the borrower wants to do. However, the borrower must be given adequate opportunity to consider the pre-contractual information (and any accompanying explanation) before being invited to sign the credit agreement. The borrower should be able to pause and reflect on the proposed transaction, and compare it with other credit offers if he wishes, before proceeding. He should not be subjected to pressure to conclude a credit agreement (BIS, 2010).

  In the UK, stakeholders noted that the clarification has had a slightly positive impact in terms of consumer protection and the internal credit market. However, because the requirements of the transposing legislation were already pre-existing, the benefit of clarifying what is meant by in good time has been limited.

4.2.4 The concept of 'adequate explanations' and the provision of assistance by creditors and credit intermediaries to the consumer (Article 5(6) CCD)

Term/Concept

Article 5(6) CCD requires creditors and credit intermediaries to provide **adequate explanations** to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation. MSs may adapt the manner in which and the extent to which such assistance is given, as well as by whom it is given.

Clarification of Term/Concept

The legal analysis of the national transposing measures showed that most countries have not clarified what 'adequate explanations' means, choosing instead to reproduce the concept verbatim in the national provisions transposing Article 5(6) CCD[103]. The Table below indicates whether:

- What is meant by 'adequate explanations' is clarified √
- What is meant by 'adequate explanations is not clarified X

Table 4.24: Specification of the Concept of 'adequate explanations'

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
√	X	X	X	X	X	X	X	X	X	X	X	X	√	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	√	X	X	X	X	√	X	√	X	X	√	√	X	√

Some countries have clarified the concept using very similar terms which do not specify the concept further: 'requisite explanations' (Cyprus)[104]; 'adequate and clear explanations' (Finland)[105]; 'adequate information' (Lithuania); 'adequately enlighten the consumer' (Portugal); 'adequate personalised explanations' (Spain). It is noted that Iceland, Latvia and Luxembourg have not transposed literally the concept of 'adequate explanations'. However, this is implied in the text of the transposing provisions which require the explanations to place the consumer in a position that enables him to assess whether the proposed credit agreement is adapted to his needs and financial situation.

France requires that these explanations be delivered by professionals specifically trained in consumer credit lending and over-indebtedness prevention. Article D.311-4-3 of the Consumer Code, introduced by the 2011 Decree on training, provides the minimum requirements of this training, which includes explanations on the pre-contractual and contractual information, on the essential characteristics, consequences and risks of the credit agreement, orientation of the consumer towards an agreement that satisfies his needs and situation, forewarning on over-indebtedness and risks therein, etc.

The discussion below focusses on the countries that have not simply reproduced the concept of 'adequate explanations' in the national law but have clarified it.

Consequences of Clarification of Term/Concept

- **Austria** provides more detailed rules on the manner in which and the extent to which such assistance is given, as well as by whom it is given, in the particular circumstances of foreign currency credit agreements and credit agreements with repayment vehicles. For example, in the case of a credit with repayment vehicle the creditor must inform the consumer of the risks linked to such a credit (in

103 Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Norway, Portugal, Romania, Slovakia and Spain.

104 See 5(11), Law on Consumer Credit Agreements of 2010 (LCCA) (Cyprus)

105 See Ch. 7 S.13, Consumer Protection Act (Kuluttajansuojalaki 38/1978), amendment 746/2010 of 27August 2010 (Finland)

relation to the credit rates) and explain that the credit agreement or the agreement on the repayment vehicle are no guarantee for the repayment of the total amount used on the basis of the credit agreement; unless such a guarantee is provided. If the agreement on the repayment vehicle is concluded with the creditor or credit intermediary, this information will be complemented by a defined graphic. Furthermore, in the case of a foreign currency credit the pre-contractual information must indicate the exchange rate risk and the risk related to the change of the interests linked with the foreign currency, as well as all additional costs that occur in comparison to a similar credit in Euro. The information on the risks related to the exchange rate and the change of the interests must also be provided graphically.

Although the term “adequate explanations” is transposed literally into the Austrian legislation, pre-contractual information for credit agreements in a foreign currency and credit agreements with a repayment vehicle (e.g. life insurance) have to include additional information that goes beyond the standard pre-contractual information provided for other types of consumer credit. This is because these types of credit are of high risk relative to other types of credit and because, prior to the transposition of the CCD, the volume of these types of credit in Austria was extremely high by international standards, posing a potential systemic risk with regard to financial market stability. Stakeholders explained that it is difficult to assess the influence of this particular provision, because in 2008 the FMA set out regulatory rules according to which it is almost impossible to grant any new credit in a foreign currency.

- **Hungarian law**[106] did not use the concept of ‘adequate explanations’. Instead, the transposing provision lists the information that must be provided by creditors or credit intermediaries. Recommendation 9/2006 of the Hungarian Financial Supervisory Authority also contains principles on the provision of information which detail elements of preliminary customer information and consumer protection for lending to be provided.

  In Hungary, the specification of this concept has had a positive impact on consumer protection, although it has been suggested that the administrative burden on credit providers has increased. In addition, the specification of this term has resulted in better enforcement as it is easier for authorities to monitor and check compliance with the requirements. Stakeholders have also noted that this specification makes it easier to impose penalties on credit providers who are not complying with the requirements. Overall, therefore, the specification in Hungary can be considered to be positive in terms of consumer protection, although on the back of an increase in the burden on credit providers. Also, although this clarification makes it easier for consumers to compare between credit offers, the downside is the large amount of information that consumers need to process before making a decision.

[106] See Section 11 (1)-(4), Consumer Credit Act CLXII of 2009 (Hungary)

- In **Italy**, the Bank of Italy adopted implementing provisions concerning the list of information and the manner and the scope of the explanations that need to be provided to consumers. The implementing provisions state that creditors must fulfil their obligation to provide adequate explanations to the consumer by adopting adequate internal procedures. These procedures should ensure that the consumer is able to contact the creditor or his agent during business hours and obtain, free of charge, explanations on the pre-contractual documents received, the essential characteristics of the product proposed and the possible effects of the conclusion of the contract in terms of economic obligations and consequences of not paying. Creditors must be available for such explanations before concluding the agreement and during the period when consumers can exercise their right of withdrawal. Moreover, consumers should be able to easily obtain information, orally or through distance communication that can also provide for individual interaction with the creditor's staff. The staff tasked with providing the explanations must have appropriate and updated knowledge of the credit agreements offered, of the consumers' rights and of the rules laid down in the Consolidated Banking Law and in the Bank of Italy measures in this field.

  In Italy, stakeholders were of the opinion that the completeness and clarity of information provided to consumers in pre-contractual information has improved as a result of clarifying this concept. The terms and conditions of consumer credit agreements have become more transparent and information is now more uniform, simple and clear. This has helped to improve consumers' ability to compare the cost of different credit offers and has, in turn, led to a reduction in complaints with regard to pre-contractual information, increased trust in creditors and transparency of contracts.

- **The Netherlands** clarified the concept in a specific manner as well as through an explicit cross-reference to Article 5 CCD, by clarifying the information that should be provided in this context. The explanatory note to the national law states that depending on the type of consumer and on the consumer's knowledge and experience, the explanation can in one situation be more extensive than in the other. At times it may be that information on the level, duration or payment of the credit or credit fees cannot be determined upfront, for example, if the consumer has not yet made certain choices or if such information depends on the manner in which parties implement the credit agreement.

  In the Netherlands, stakeholders were unsure what impacts have arisen in terms of the internal credit market as a result of the clarification of this term. Stakeholders did not think it had led to any significant benefits in terms of consumer protection, the reason for this being that it was already common practice to give advice to consumers before they entered an agreement before the CCD. Stakeholders thought that the pre-contractual information offered to consumers now is too complex and extensive; although consumers are now receiving more information than they have in the past, they are still not being offered enough relevant information.

- **Poland** has not directly reproduced the concept of 'adequate explanations'. The transposing provision does not require the explanation to be adequate; it only states that the consumer must be provided with '*clarifications regarding the content of information*'. From the Governmental proposal of the transposing law, it follows that the explanation should constitute an additional support for the consumer, enabling him to take the final decision on the consumer credit agreement (The Government of Poland, 2010)[107].

  In Poland, stakeholders generally thought that the clarification of this concept has had negative implications for credit providers. This requirement has made the process of finalising the credit agreement longer and some credit providers have had to employ more staff despite seeing no changes in the number of credit agreements being concluded or in turnover. Consumers are better equipped with the relevant information, but those who do not read or question the information will not benefit from this legal provision.

- **The Slovenian** provision does not use the term 'adequate explanations' but states that the creditor or the credit intermediary should provide pre-contractual information: in an understandable and clear manner; sufficient to compare different offers and assess the suitability of the credit offered; including verbal or written explanations upon request of the client and including the warning of legal consequences, known and usual risks, and other circumstances.

  In Slovenia, although this clarification has increased the regulatory burden on credit providers, it is indicated to have had a positive impact on both the internal credit market and consumer protection. For consumers, this concept has had a very positive impact as the national legislation specifies the precise explanations that the credit provider needs to give. However, for some stakeholders, better enforcement is required as some explanations are still provided by credit providers in an ambiguous manner.

- The **Swedish** legislation[108] does not transpose the concept of 'adequate explanations' literally but instead refers to '*any clarifications which consumers may require*'. The national legislation does not clarify this concept any further. The preparatory works explain what kind of explanations the creditor should give the consumer. Such explanations can include pre-contractual information that the consumer should be given before entering into a credit agreement, or information about the characteristics of the product and their effects on the consumer, for example, the effects of failure to pay. According to the preparatory work, the provision requiring the creditor to observe good practice means that the creditor must make an effort to ensure that the consumer has understood the important parts of the agreement[109]. The trader must give the consumer the information that the consumer needs to determine whether the credit agreement suits his or her

[107] Proposal on the Consumer Credit Act, Druk nr 3596, Warsaw 15 November 2010, See: http://orka.sejm.gov.pl/Druki6ka.nsf/0/B4B27381EFB96612C12577E400477207/$file/3596.pdf.

[108] See Section 6, Consumer Credit Act (SFS 2010:1846) (Konsumentkreditlag (2010:1846)) (Sweden)

[109] Government Bill 2009/10: 242 p.52, 53.

needs or financial situation, for example giving information on different types of credits or calculating all the charges for the credit. The obligation to provide information is considered as fulfilled when the trader has provided all the information that the respective consumer needs. This means, according to the preparatory works, that the explanations must be tailored to the needs of the consumer on a case-by-case basis. For this reason, the legislator decided not to clarify what kind of information the credit provider must provide the consumer with. Furthermore, the requirement to provide information should be stricter for certain types of credit, for example, where there is a high risk of indebtedness or where the credit is constructed in a way that is hard to understand. The purpose of the requirement to provide the consumer with information is to give the consumer sufficient evidence for him or her to determine whether the credit suits his or her needs and financial situation.

In Sweden, stakeholders did not know what impact the clarification of this term has led to in terms of the internal credit market. Because the concept partly existed prior to the CCD, benefits in terms of consumer protection are likely to have been minimal. Consumers who do not read or question the information provided will not benefit from this legal provision. Also, in practice, some credit intermediaries do not have the vested interest, knowledge and/or competence to provide an adequate explanation or answer relevant questions.

- The **UK** legislation[110] applicable in England and Wales, Scotland and Northern Ireland specifically requires the creditor to provide the borrower with an adequate explanation of the relevant matters (including, for example, how much the borrower will have to pay and features of the agreement that may have an adverse effect the borrower is unlikely to foresee) and to advise the borrower to consider the pre-contractual information. The borrower must be given the opportunity to ask questions about the proposed credit agreement, and must be advised on how to ask the creditor for further information and explanations. The law does not prescribe how detailed the explanations should be, but it does require that the explanations should be adequate to enable the borrower to assess whether a proposed credit agreement is suitable for his needs and financial situation. The requirement is additional to the existing provisions in the Consumer Protection from Unfair Trading Regulations 2008 which require creditors not to omit material information where as a result this is likely to or will cause the average borrower to take a transactional decision they would not otherwise have taken and not to provide such information in a misleading, unclear or untimely manner.

  In the UK, stakeholders had mixed views regarding whether the clarification of this term has led to an increase or decrease in the regulatory burden on creditors. Stakeholders thought that it may not always be practical to provide the information required (e.g. where credit is being sold via telephone). In general, stakeholders reported that the clarification of this term had been beneficial for consumers; however, since creditors were already providing information to consumers prior to

110 See Regulation 3 of the Consumer Credit Directive (EU Directive) Regulations 2010, SI 2010/1010 (UK)

the CCD, this benefit cannot be solely attributable to the Directive. Some stakeholders also noted that enforcement of this requirement has not been very strong and that some creditors have been found to not comply with the law.

4.2.5 The provision of pre-contractual information for certain credit agreements by means of the European Consumer Credit Information form set out in Annex III CCD (Article 6(1) CCD)

Term/Concept

Article 6(1) CCD requires the creditor to provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude certain credit agreements in the form of an overdraft facility and for certain specific credit agreements. MSs are free to require this information to be provided by means of the Standard European Consumer Credit Information (SECCI) form set out in Annex III CCD.

Clarification of Term/Concept

The legal analysis of the national transposing measures showed that many countries have not made its use mandatory for the purposes of Article 6(1). The Table below indicates whether:

- The use of the SECCI form is made mandatory √
- The use of the SECCI form is not made mandatory X

Table 4.25: Mandatory Use of the European Consumer Credit Information form

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	√	√	X	X	X	X	X	X	X	X	X	√	√	√
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	√	√	X	X	√	X	√	X	X	√	√	X

The national transposing measures have correctly transposed the CCD requirement for the information to be provided on paper (sometimes specified as 'in writing') or on another durable medium. However, many of the countries analysed have not made the use of the SECCI form mandatory. They have instead reproduced the form, typically in an Annex, and stated in the provision transposing Article 6(1) CCD that this form may be used for the provision of pre-contractual information for certain credit agreements in the form of an overdraft facility and for certain specific credit agreements (depending on the legal choice exercised in relation to Article 2(5) and (6) CCD). It is noted that in Iceland, the draft law[111] presented in Parliament aimed at fully transposing the CCD requires the information to be provided by means of a

[111] Draft bill for a new Act on Consumer Credit, Document No. 228, Item No. 220. Presented at the 141th Session of the Icelandic Parliament, 2012-2013.

standardised form published in a regulation issued by the Minister. The countries that have made the use of the SECCI form mandatory are: Belgium, Bulgaria, Croatia, Hungary, Ireland, Latvia, Luxembourg, Norway, Portugal, Slovakia and Slovenia.

Consequences of Clarification of Term/Concept

In assessing the consequence(s) of making the SECCI form mandatory, the views of stakeholders reflect three different perspectives, or questions that could be asked.

The first perspective (or question) relates to whether the SECCI form been useful in terms of **achieving its intended purpose** under Article 6(1). In order to answer this question, it would be necessary to establish the purpose of the SECCI form. According to Article 6(1) CCD, the SECCI form is to be used by credit providers to provide the consumer "*with the information needed to compare different offers….*". In 2008, a Eurobarometer Survey showed widespread support for a standard information sheet for comparing the offers of different financial service providers (EC, 2008). Seventy-nine per cent (79%) of European citizens indicated that it would be useful if all financial service providers used a standard information sheet with the same layout in order to allow consumers to compare different prices and offers. This was especially the case among consumers in Sweden, the Netherlands and Denmark, as shown in the Figure overleaf. Against this objective, the vast majority of stakeholders in many European countries agree that the use of the SECCI form under Article 6(1) has had a **positive impact** and achieved its intended purpose of providing credit information on a standard information sheet which allows consumers to compare different prices and offers.

The second perspective (or question) relates to whether the SECCI form has resulted in **actual benefits to the consumer**. This perspective makes a difference between the objective/purpose of the SECCI form and whether this information has been helpful to consumers in taking "*an informed decision on whether to conclude a credit agreement*". The views of stakeholders on this point varied from country to country and by type of stakeholder. In some countries which made the use of the SECCI form mandatory, creditors provided nearly the same information as is provided in the SECCI form (i.e. applicable charges, APR, etc.) to consumers (on request) prior to the transposition of the CCD. In these countries this was either due to existing regulations, best practice guidelines or for reputational reasons. For stakeholders in these countries (e.g. Slovakia), the added benefit of the SECCI form in terms of helping consumers reach an informed decision has been indicated to be minimal (i.e. it did not lead to any significant change to the status quo). Indeed, in some countries (e.g. Belgium and Ireland), stakeholders considered that the SECCI form is more complicated than the information that was previously being provided to consumers and, as such, has resulted in a **low negative impact** in terms of consumer protection. In other countries (e.g. Bulgaria, Croatia, Latvia, Luxembourg and Portugal), however, the SECCI form has been indicated to have resulted in **positive impacts** as such information was either not previously available to the consumer, or was of inferior quality compared to the information conveyed in the SECCI form. The CCD transposition has, therefore, provided important information to the consumer that would assist him/her in making the right decision.

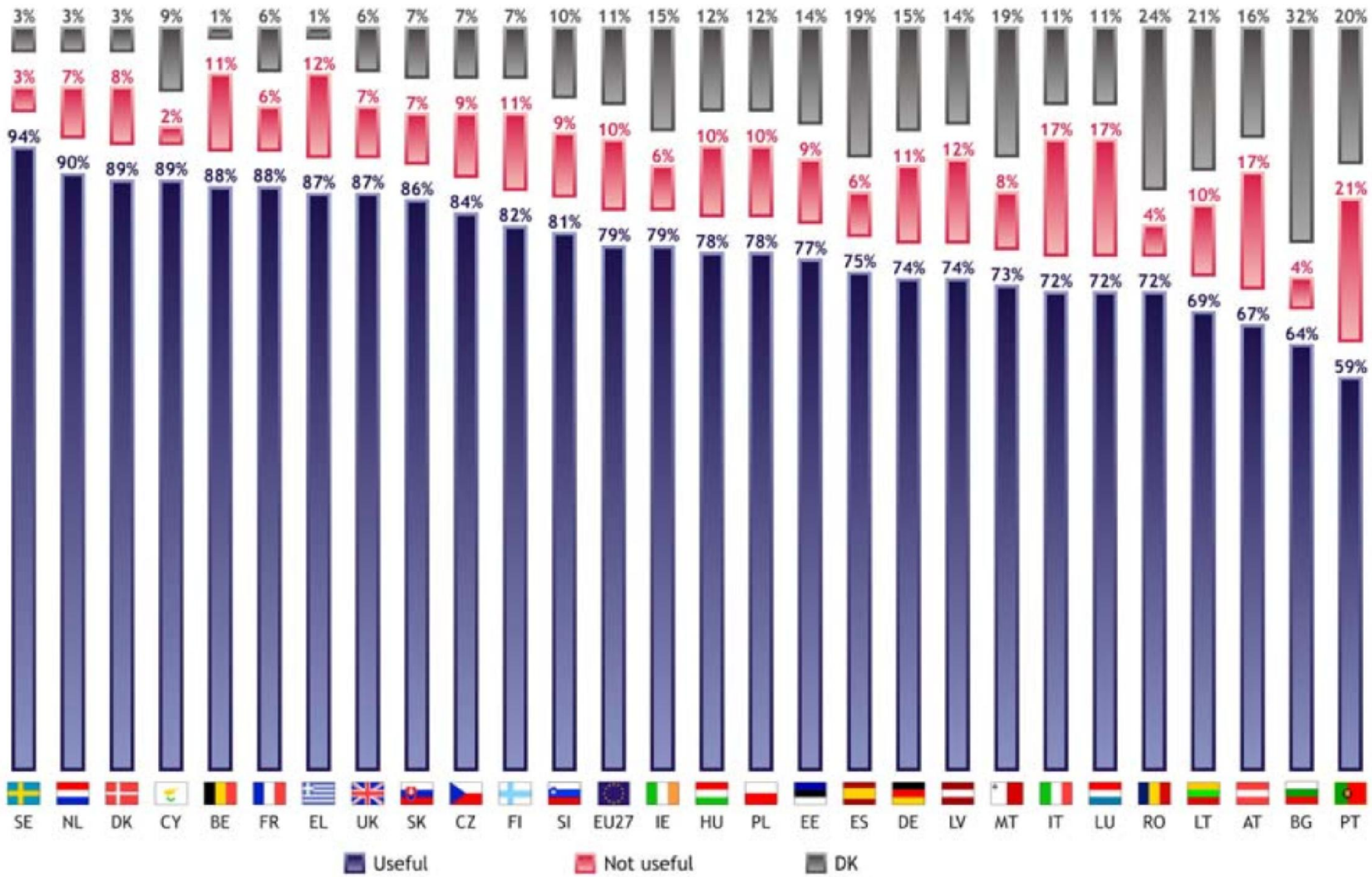

Figure 4.9: How useful or not would it be if all financial services providers used a standards information sheet provided to you in the same layout in order to allow you to compare prices and offers? Source: EC (2008)

Some credit providers also considered the SECCI form to have had minimal impacts on the basis that it is not understandable by the vast majority of consumers. The benefits of the SECCI form have therefore been limited to a minority of stakeholders who are sufficiently knowledgeable in consumer credit/finance. The extent to which this criticism is valid would again depend on who the intended target audience was when SECCI was conceived. The 2008 Eurobarometer survey established that those who had stayed longest in full-time education were the most likely to be in favour of using such a standard form, while those who had already experienced cross-border shopping within the EU were also more notably positive about the usefulness of such a form. This suggests that this information was always going to be useful for a small minority of consumers. Information was not available to establish conclusively whether these specific consumer groups have benefitted from the SECCI form.

The final perspective (or question) relates to whether the **benefits associated with the SECCI form outweigh the costs**. With regard to the third question, while some stakeholders (credit providers) noted that costs were incurred as a result of the SECCI form – e.g. increases in operational costs associated with the integration of the form into business practices, IT changes, changes in internal procedures, etc. - none were able to provide specific quantitative information on the administrative burden incurred as a result of this choice. For some, this was because the costs were minimal, while for others, these changes were embedded in wider operational changes and, as such, were difficult to discern. In some cases, the costs have been specifically linked to 'gold-plating' of the SECCI form by the MSs (e.g. in Belgium), where there is a requirement to attach other information.

On the other hand, some other credit providers noted that this provision has been beneficial to creditors in terms of facilitating the online credit process and, in terms of the benefits resulting from standardisation and uniform representation of information.

Finally, it is important to bear in mind that the majority of countries (19) decided not to make the use of the SECCI form mandatory for the purposes of Article 6. Based on the views expressed by some stakeholders, it can be deduced that the authorities in these countries may have considered that:

- existing means of providing consumers with the information needed to compare different offers were sufficient;
- the information provided in the SECCI form for the purposes of Article 6 is not overly useful for the majority of consumers (either because the information in the form itself is unhelpful, or because consumers lack sufficient financial literacy to understand it); or that
- the administrative burden or additional costs for credit providers were either too high or not justified by the benefits.

In this context, while it is not possible to comment on the specifics of each MS, particularly those who have not been interviewed directly, it is interesting to note that, although consumers in Sweden, the Netherlands and Denmark were keen to have standard information to compare different financial offers according to the

Eurobarometer survey, none of these three countries decided to make the SECCI form mandatory for the provision of pre-contractual information for the needs of Article 6..

Information on the specific countries is summarised below.

- In **Belgium**, stakeholders thought that the standardised provision of pre-contractual information is generally beneficial for consumers. However, several issues were identified. Firstly, there is too much information contained in the form and this discourages consumers from reading and reviewing it carefully. Secondly, consumers only appear to use certain pieces of information (i.e. APR, monthly instalments) when comparing offers and so it is questionable how much added value is delivered from the additional information. Stakeholders thought that the terminology used in the form is too complicated for most consumers. Thirdly, the form is often provided to consumers shortly before signing the credit agreement, which does not allow sufficient time to consider the offer and defeats the purpose of the form. Lastly, due to all the aforementioned reasons, stakeholders thought that mandatory use of the form has resulted in administrative and operational costs without a corresponding benefit.

- In **Bulgaria**, stakeholders thought that use of the SECCI form for overdrafts has not led to any significant administrative cost and has made no difference to business practices because they have always provided this information. While some stakeholders thought that the SECCI form has improved the quality of information provided to consumers and has facilitated the comparison of financial information, others thought that the effectiveness of the SECCI form has been limited by the fact that consumers do not demand to see it. Furthermore, some consumers do not read the SECCI form because it is too long and many do not understand the information contained within it, with this latter point being especially true for credit agreements in smaller amounts provided by non-bank creditors. Overall, no impacts have been identified in terms of consumer protection or the internal credit market.

- In **Croatia**, some stakeholders noted that while credit providers incurred costs as a result of this legal requirement, it was the case that, prior to the CCD, consumers were not receiving adequate information. Overall, the provision of pre-contractual information creates more informed and knowledgeable consumers (who make better decisions) and reduces the risk of default and non-repayment. That said, it was noted that consumers in the Croatian market are not sufficiently familiar with the information in the SECCI form for it to be considerably helpful for the vast majority.

- In **Hungary**, some stakeholders noted that use of the SECCI form had been beneficial in terms of the internal credit market (as there is more competition due to clearer provision of information); however, some creditors have faced difficulty due to the need to adapt templates to forms that would be more appropriate to the regular practice of banks. While the mandatory use of SECCI has made credit offers more comparable, this benefit in terms of consumer protection has been moderated by the fact that consumers generally lack sufficient financial literacy.

Furthermore, many consumers still buy credit based on the experiences of family and relatives, rather than based on the information in the SECCI form.

- In **Ireland**, stakeholders reported that although the mandatory use of SECCI had not led to any significant impacts on the internal credit market, creditors have faced an increased volume of paperwork and some increase in administrative costs. Stakeholders thought that SECCI is too long for consumers and is not read thoroughly. When compared with the pre-existing situation, the SECCI is perceived by some as being less transparent and less useful for consumers.

- In **Luxembourg**, prior to the transposition of the CCD, there were no documentation requirements with regard to pre-contractual information. As such, all stakeholders agreed that the main advantage of SECCI is the standardisation and uniform presentation of information to consumers. While there have been some organisational costs, stakeholders did not think that these represented an administrative burden for lenders; rather, there has been an administrative simplification.

- For **Slovenia**, the mandatory use of the SECCI form for all credit products is considered to have had a positive impact on both the internal credit market and consumer protection. According to stakeholders, as a result of the SECCI form, the conclusion of credit agreements is now easier and more transparent for both consumers and credit providers. However, the SECCI form has increased the administrative burden on credit providers, with particular resistance coming from the non-banking sector. For consumers, the provision of more information before signing a credit contract is considered to be positive although it is possible that, in fact, too much information is provided.

4.2.6 The concept of 'sufficient information' with regard to the obligation to assess the creditworthiness of the consumer (Article 8(1) CCD)

Term/Concept

Article 8(1) CCD requires the creditor to assess the consumer's creditworthiness on the basis of '**sufficient information'**, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.

Clarification of Term/Concept

The legal analysis of the national transposing measures showed that most countries have not clarified what 'sufficient information' means, choosing instead to reproduce the concept verbatim in the national provisions transposing Article 8(1) CCD. The Table below indicates whether:

• What is meant by 'sufficient information' is clarified in the national law	√
• What is meant by 'sufficient information' is not clarified in the national law	X

Table 4.26: Specification of the concept of 'sufficient information'														
AT	**BE**	**BG**	**CY**	**CZ**	**DE**	**DK**	**EE**	**EL**	**ES**	**FI**	**FR**	**HR**	**HU**	**IE**
X	√	X	X	X	X	X	X	X	X	X	X	X	X	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	X	X	X	X	X	X	X	X	X	X	X	√

Some preparatory works to the transposing measures attempt to specify the concept but do not provide details. For example, the preparatory works to the Norwegian legislation specify that the assessment of what is considered to be 'sufficient information' must be considered in relation to the amount of the credit. The Swedish preparatory works specify that for the information to be considered as sufficient, it should be collected, not only from the consumer, but also from other, independent, sources such as through a credit check.

A few countries transposed the obligation to assess the consumer's creditworthiness without using the concept of 'sufficient information' at all (Germany[112], Estonia[113], Hungary[114], Slovakia[115] and Slovenia[116]).

The discussion below focusses on the countries that have not simply reproduced the concept of 'sufficient information' in the national law, but have clarified it.

Consequences of Clarification of Term/Concept

- **Belgium** requires 'complete and correct information' to be requested from the consumer[117]. Moreover, the transposing law ensures that the creditor or credit intermediary look at the consumer's financial circumstances[118]. The creditor is only allowed to conclude the credit agreement when he can reasonably assume that the consumer will be capable of meeting the engagements. This includes a consultation of the database for credits to private persons.

112 See § 509 Civil Code (Bürgerliches Gesetzbuch) and § 18(2) Banking Act (Germany)

113 See Article 403², para 1, Law of Obligations Act (Võlaõigusseadus) – 26 September 2001; RT I 2001, 81, 487 - as amended by the Act on Amendment of Law of Obligations Act and other Acts of 30 September 2010

114 See Section 14(1) and (2) Consumer Credit Act CLXII of 2009, Section 3(1)-(2), Section 4(1)-(5) Government Decree No. 361/2009. (XII.30.) on the conditions of prudent retail lending and creditworthiness examination and Code of Conduct - Principles of fair conduct by financial organizations engaged in retail lending (Hungary)

115 See §7 ss. 1 Act No. 129/2010 on consumer credit and other credits and loans provided to consumers and on amendments of certain acts (Slovakia)

116 See Article 8 (1) and (2) Consumer Credit Act 2010 (Slovenia)

117 See Article 10, Law on consumer credit (Wet op het consumentenkrediet) 2010 (Belgium)

118 See Article 15, Law on consumer credit (Wet op het consumentenkrediet) 2010 (Belgium)

In Belgium, stakeholders indicate that 'complete and correct' information was already required and obtained from consumers. Detailed information is obtained from consumers and through consultations with the Belgian Credit Register. In this respect, the transposing law has not caused any significant changes except for a few additional creditor obligations with regard to registration of certain financial products and preservation of the results of consultations on consumers' creditworthiness.

Stakeholders did note that there is an issue with regard to "sufficient information". It pertains to the practice of certain credit intermediaries offering point-of-sale contracts. It appears that a conflict of interest arises between their desire to sell a good/service and the obligation to assess consumers' creditworthiness. The result is that the latter is not assessed in sufficient detail before the granting of a credit contract.

- For the **UK**, the law applicable to England and Wales, Scotland and Northern Ireland only states that a creditworthiness assessment must be based on 'sufficient information' obtained from the debtor or where necessary, from a credit reference agency[119]. However, the Office of Fair Trading guidance on *Irresponsible lending* (OFT, 2011) provides an indication of factors to consider in assessing information relating to the consumer's creditworthiness: 'all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted.' The following factors can be taken into account: the type of credit being sought; the amount of credit to be provided and the associated cost and risk to the borrower; the borrower's financial situation at the time the credit is sought; the borrower's credit history; the borrower's existing and future financial commitments; the impact of a future change in the borrower's personal circumstances; the vulnerability of the borrower.

  In the UK, under Gibraltar legislation, before the conclusion of an agreement, the creditor must assess the creditworthiness of the consumer by obtaining information from the consumer. This is because there is no credit rating agency in Gibraltar. Stakeholders did not identify any impacts in terms of the internal credit market. While it might have led to a limit on the amount of credit that less creditworthy consumers are able to access, the issue of not paying back credit is not really a problem in Gibraltar. Stakeholders explained that, where problems do arise, creditors will either settle with the consumer out-of-court or pursue consumers through the court system.

[119] See Regulation 5 of the Consumer Credit Directive (EU Directive) Regulations 2010, SI 2010/1010 (UK)

4.2.7 The concept of 'significant increase' with regard to the obligation to assess the creditworthiness of the consumer (Article 8(2) CCD)

Term/Concept

Article 8(2) CCD requires the creditor to assess the consumer's creditworthiness before any *significant increase* in the total amount of the credit.

Clarification of Term/Concept

The legal analysis of the national transposing measures showed that most countries have not clarified what 'significant increase' means, choosing instead to reproduce the concept verbatim in the national provisions transposing Article 8(2) CCD. The Table below indicates whether:

- What is meant by 'significant increase' is clarified √
- What is meant by 'significant increase' is not clarified X

Table 4.27: Specification of the Concept of 'significant increase'

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	X	√	X	X	X	X	X	X	X	X	X	X	X	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	X	X	X	X	X	X	X	X	√	√	X	X

Some countries (Belgium[120], Estonia[121], Portugal[122] and Slovakia[123]) have omitted the word 'significant' or referred to changes to the total amount of the credit generally so that the requirement to assess the consumer's creditworthiness will apply before *any* increase in the total amount of credit is possible.

It is noted that, although currently Icelandic law contains no threshold, the draft law aimed at transposing the CCD establishes the threshold of ISK 500 000 (€3,000).

The discussion below focusses on the countries that have not simply reproduced the concept of 'significant increase' in the national law but those that have adopted a specific threshold upon which the creditor's obligation to assess the consumer's creditworthiness will be triggered.

---

[120] See Article 15, para.4, Law on consumer credit (Wet op het consumentenkrediet) 2010 (Belgium)

[121] See Article Article 403, para. 3, Law of Obligations Act (Võlaõigusseadus) – 26 September 2001; RT I 2001, 81, 487 - as amended by the Act on Amendment of Law of Obligations Act and other Acts of 30 September 2010.

[122] See Article 10, Consumer Credit Act (Portugal)

[123] See §7 ss. 1, Act No. 129/2010 on consumer credit and other credits and loans provided to consumers and on amendments of certain acts (Slovakia)

Consequences of Clarification of Term/Concept

- **Bulgaria** requires a creditworthiness assessment before any increase in the total amount of credit exceeding 25% of the contracted credit amount[124].

  In Bulgaria, no impacts on the internal credit market or on consumers have been identified as a result of this legal choice. Information obtained from consultation and literature review indicates that, in practice, creditworthiness is assessed regardless of the percentage specified in the legislation. Creditworthiness assessments are quite detailed and include verifying the consumer's credit standing as well as their income and employment status. Clarification of this concept may have enabled some creditors (e.g. finance houses) to have access to creditworthiness databases where they did not have access before. However, the Credit Register still does not allow for a thorough creditworthiness check as it does not have information on the monthly instalments an applicant repays.

- **Slovenia** requires a creditworthiness assessment before any increase of more than one fifth (20%) of the initially authorised credit amount[125].

  In Slovenia, the clarification of this concept is considered to have had a positive impact on both the internal credit market and the protection of consumers. It is considered to have reduced the level of risk for all parties involved in the credit agreement and also ensures that all consumers are treated equally.

- In **Sweden**, according to the preparatory works, a 'significant increase' should always be considered in relation to the amount of the credit. An increase of more than 10% should in general be seen as significant. However, if the credit amount is very small, it should be possible to make larger increases in terms of percentage without the obligation of performing a new credit check[126].

  In Sweden, consultation appears to indicate that stakeholders are generally unaware of the obligation to re-assess the creditworthiness of the consumer before any significant increase in the total amount of credit and, as such, stakeholders could not provide information on the impacts of clarifying this concept.

4.2.8 The right of withdrawal in the case of credit agreements which by law are required to be concluded through the services of a notary (Article 14(6) CCD)

Legal Choice

Article 14(6) CCD provides MSs with the possibility to exclude the application of the right of withdrawal in the case of credit agreements which by law are required to be

124 See Article 16(3), Consumer Credit Act promulgated in State Gazette (SG) issue 18/5 March 2010, as amended in SG, issue 58/30 July 2010, last amended and supplemented SG issue 91/20 November 2012 (Bulgaria)

125 See Article 8(3), Consumer Credit Act 2010 (Slovenia)

126 Government Bill 2009/10:242 p.101.

concluded through the services of a notary, provided that the notary confirms that the consumer is guaranteed the rights provided for under Articles 5 (pre-contractual information) and Article 10 (information to be included in the credit agreement).

Clarification of Legal Choice

The legal analysis of the national transposing measures showed that most countries have not made use of the legal choice in Article 14(6). The Table below indicates whether:

• The right of withdrawal does not apply in the case of credit agreements concluded through a notary	√
• The right of withdrawal is not excluded in the case of credit agreements concluded through a notary	X

Table 4.28: Right of withdrawal where credit agreements must be concluded through a notary

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	√	X	X	X	√	X	X	X	X	X	X	√	X	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	√	X	√	X	X	X	X	X	X	X	X	X

The only countries that have made use of the legal choice in Article 14(6) CCD to exclude the right of withdrawal with respect to credit agreements which by law are required to be concluded through the services of notary are Belgium[127], Croatia[128], Germany[129], Luxembourg[130] and Malta[131].

Consequences of Legal Choice

- In **Belgium**, stakeholders explained that this provision is rarely used in practice because it is extremely rare for a consumer credit agreement to be concluded before a notary (this is usually only the case for mortgage credits). Although stakeholders thought that, in theory, this provision should have a negative impact in terms of consumer protection (as the right to withdrawal is good for the consumer from a psychological point of view), consumers rarely (if ever) use their right of withdrawal after signing and finalising a credit agreement. Hence, no impacts in terms of consumer protection or the internal credit market were reported.

[127] See Article 18, para. 5, Law on consumer credit (Wet op het consumentenkrediet) 2010 (Belgium)

[128] See Article 14, para 5., Consumer Credit Act of 19 June 2009, O.J. No 75/09 and Consumer Credit Act of 28 September 2012, O.J. No 112/12 (Croatia)

[129] See § 495(3) No. 2 Civil Code (Bürgerliches Gesetzbuch)

[130] See Article L224-15 (5), Consumer Code (Luxembourg)

[131] See Regulation 14(6), Consumer Credit Regulations (Malta)

- In **Croatia**, stakeholders were split between those who believed that this provision (or exclusion) has had a slightly negative impact and those that believed it had not had any impact. For the former, the key argument was that, at a fundamental level, the ability to withdraw from a contract is useful for consumers because it gives them the ability to change their mind without any major consequences. The loss of this possibility as a result of this provision is, therefore, not a positive development in terms of consumer protection. On the other hand, other stakeholders were of the view that notaries generally focus on the protection of weaker parties (typically, the consumer) and, as such, the interests of the consumer are already protected by default. Some stakeholders also noted that, in practice, the number of contracts concluded through the services of a notary is likely to be small and it is generally unusual for a consumer to withdraw from a contract once the credit has been disbursed. Therefore, any potential impacts relating to this provision (or exclusion) are likely to minimal.

- In **Germany**, consultation has indicated that there has been very little (if any) change in terms of the internal credit market and consumer protection as a result of exercising this legal choice. This is because notaries are not generally used to conclude a consumer credit agreement in Germany. That said, some stakeholders suggested that consumer protection may be compromised (in a very small number of cases) because there is no right of withdrawal from contracts concluded by a notary - it therefore falls on the notary to adequately advise the consumer. However, other stakeholders believe the consumer is adequately protected because notaries are legally bound to properly and sufficiently advise the consumer. In addition, Germany has legislation which requires notaries to provide contracts two weeks in advance of notarisation, which also provides a degree of protection for the consumer.

- In **Luxembourg**, stakeholders explained that this provision is rarely used in practice because it is extremely rare for a consumer credit agreement to be concluded before a notary (this is usually only the case for mortgage credits). This provision of the CCD is, therefore, not used in practice.

- In **Malta**, no impacts on the internal credit market or the protection of consumers have been identified as a result of this provision. Stakeholders have indicated that it is unlikely for notaries to be used for consumer credit (i.e. they are typically used for mortgages and credit agreements which are linked to property). As such, any impacts from this provision would be minimal (if any).

4.2.9 The right to remedies in the case of linked credit agreements (Article 15(2) CCD)

Term/Concept

Article 15(2) CCD provides consumers with the right to pursue remedies against the creditor, where the goods or services covered by a linked credit agreement are not supplied, supplied only in part, or are not in conformity with the contract for the supply thereof, if the consumer has pursued his remedies against the supplier but has failed to obtain satisfaction. MSs must decide the extent and the conditions for the exercise of those remedies.

Clarification of Term/Concept

The legal analysis of the national transposing measures showed that most countries have clarified this concept. The Table below indicates whether:

- Article 15(2) is reflected in the national law — √
- Article 15(2) is not reflected in the national law — X

Table 4.29: Right to Remedies in Linked Credit Agreements

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	√	√	√	√	√	√	√	√	√	√	√	√	√	√

As regards Iceland, the draft law aimed at transposing the CCD reproduces Article 15(2) CCD literally, entitling the consumer to sue the creditor if the consumer has pursued remedies against the supplier first but has failed to obtain the satisfaction to which he is entitled to according to a judgment ordering the supply of the goods or services and does not further clarify or explain the extent and the conditions for the exercise of those remedies. Further details on these can be found in the individual country reports.

Consequences of Clarification of Term/Concept

The consequences of this legal choice are influenced by two key factors: (1) the regulatory and/or market situation which existed prior to the CCD; and (2) the actual behaviours and/or actions of consumers and credit providers, having now been given a legal basis to pursue remedies against the creditor for linked credit agreements. In terms of the regulatory and/or market situation which existed prior to the CCD, the benefits associated with this provision would differ by country as well as by credit provider within the country. Information obtained from consultation and literature review suggests that the benefits which were anticipated as a result of this provision would vary on a case- or country-specific basis.

In general, for most countries, this transposition is seen as a **benefit for consumers**, in terms of the fact that consumers can now pursue remedies against the creditor for linked credit agreements. This view is more pronounced in countries where consumers did not have this possibility previously and/or where consumers were unaware of their rights in relation to linked credit agreements. For instance, in Estonia, stakeholders were of the view that this provision has had a positive impact in terms of providing an additional layer of consumer protection and an additional avenue through which to obtain redress. Quantitative information to back-up this view was not possible to obtain. This is perhaps due to the fact that, in general, most stakeholders are not aware of the right to pursue remedies under Article 15(2), as can be seen from the Figure 4.10 below which shows that less than 50% of respondents to the online survey were aware of this provision.

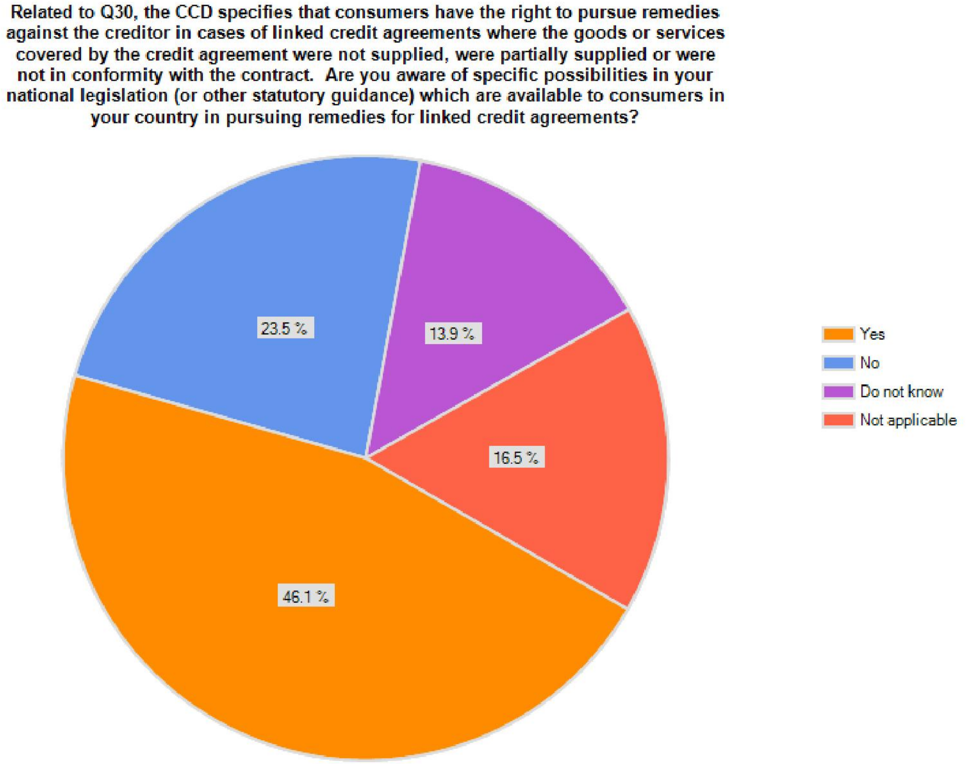

Figure 4.10: Results of the online survey relating to right of remedies (Art 15(2))

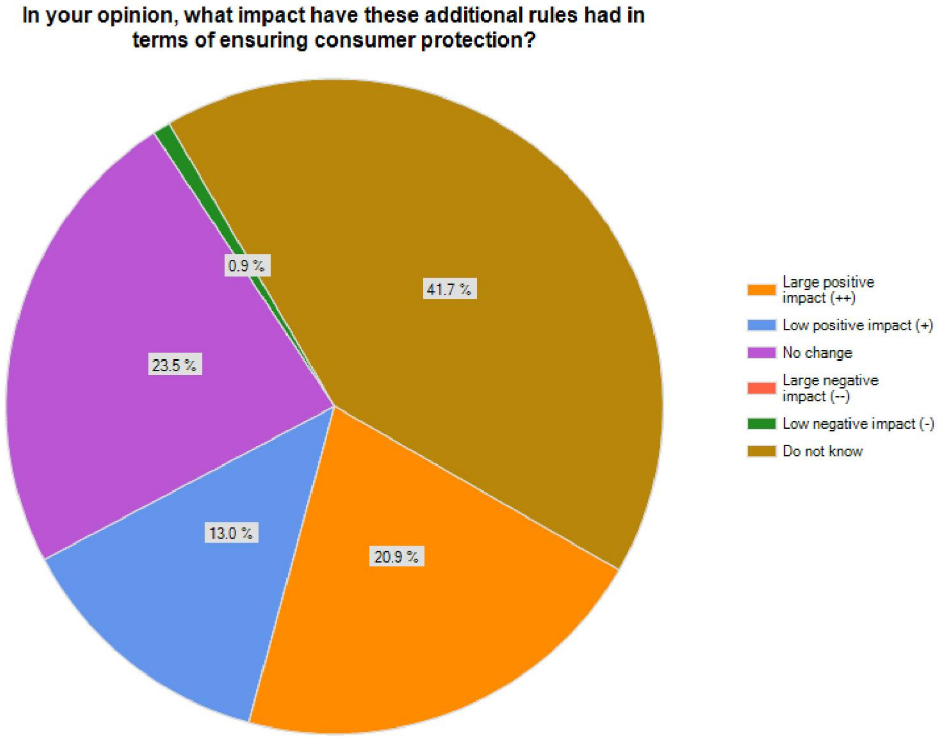

Figure 4.11: Results of the online survey relating to right of remedies (Art 15(2))

Of the subset of respondents that were aware of the applicable rules, over 60% were not aware of any impacts and/or considered this provision to have resulted in any change in terms of ensuring consumer protection (as shown in Figure 4.10).

For a number of countries, no impacts on the internal credit market or the protection of consumers have been identified, while in other countries, stakeholders were uncertain regarding impacts (e.g. Spain). In some cases, this is because the stakeholders were not aware of the legal or market situation or the extent to which consumers actively pursue remedies against credit providers. For instance, while in some European countries, this right is typically used in relation to items bought with a credit card; in Germany, there is a relatively low prevalence of credit cards, particularly when compared with other EU MS, with only 36% of Germans having a credit card (Fox News, 2012). Hence, any benefits from this provision are not likely to be pronounced in Germany, compared with other countries. However, if the use of credit cards in Germany rises, it is possible that the use of this provision will increase. The Figure below shows growth in the use of credit cards as a payment method in Europe between 2008 and 2011.

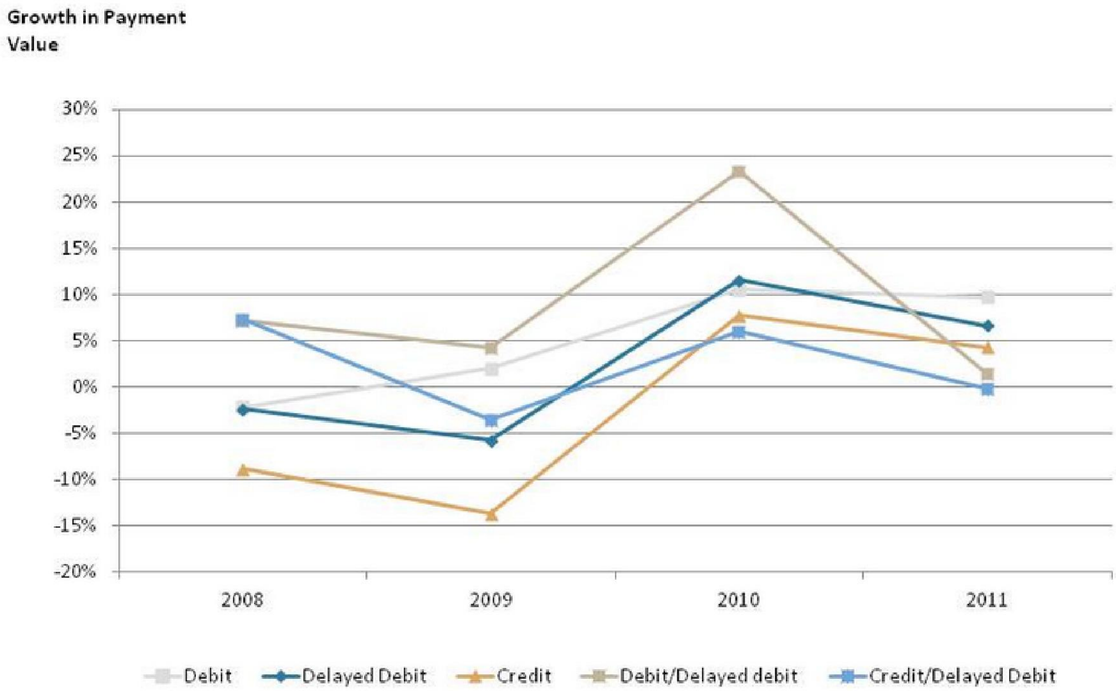

Figure 4.12: Growth in usage of different payment card types in Europe, by transaction value (2008-2011). Source: Mercator Advisory Group (2013)

Similarly, linked credit agreements are not common in Malta. This is because consumers prefer to go directly to the bank to secure credit before purchasing an item and credit providers prefer to have direct contact with the consumer in order to assess the creditworthiness of the consumer (this is necessary because there are no credit agencies or credit databases in Malta). Stakeholders have acknowledged, however, that in theory, the right to remedies gives consumers additional avenues through which to obtain redress.

In general, it was noted that this provision is likely to have **increased costs for credit providers**. While some stakeholders (credit providers) noted that costs were incurred as a result of this legal requirement; none were able to provide specific quantitative information on the administrative burden resulting from this legal choice. There have also been court cases in different MSs relating to this provision and/or the right of withdrawal (e.g. in Greece and the UK) and different MS have tried to clarify these aspects. That said, some stakeholders noted that this provision has made credit providers more careful regarding which companies they liaise with. Indeed, it is noted that, in some countries, some credit providers have also extended the right to remedies for linked credit agreements from credit to debit cards. Presumably, this shows that the credit providers recognise some **benefits** from providing more secure services for consumers linked to this provision.

4.2.10 The term 'significant overrunning' (Article 18(2) CCD)

Term/Concept

Article 18(2) CCD requires creditors to provide consumers with certain information, without delay, on paper or on another durable medium, in the event of a '*significant overrunning*' exceeding a period of one month.

Clarification of Term/Concept

The legal analysis of the national transposing measures showed that most countries have not clarified what constitutes 'significant overrunning'. The Table below indicates whether:

- What is meant by 'significant overrunning' is clarified in the national law — √
- What is meant by 'significant overrunning' is not clarified in the national law — X

Table 4.30: Specification of the concept of 'significant overrunning'

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	√	X	X	X	X	X	X	X	X	X	X	X	X	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	X	X	X	X	X	X	X	X	√	X	X	X	√

As can be seen from the Table, most countries chose to reproduce the concept verbatim in the national provisions transposing Article 18(2) CCD. Slovenia[132] and Slovakia[133] have omitted the word 'significant' with the effect that the obligation to inform the consumer without delay will apply in the case of *any* overrunning.

132 See Article 13(1)(1), Consumer Credit Act 2010 (Slovenia)

133 See §18 ss. 2, Act No. 129/2010 on consumer credit and other credits and loans provided to consumers and on amendments of certain acts (Slovakia)

UK legislation (England and Wales, Scotland and Northern Ireland) refers to 'significant overdrawing'[134] and specifies that an overdraft is considered as significant in any of the following three circumstances: (a) the account-holder is liable to pay a charge for which he would not otherwise be liable; (b) the overdraft or excess is likely to have an adverse effect on the debtor's ability to obtain further credit; or (c) it otherwise appears significant with regard to all the circumstances.

On the other hand, Belgium and Romania adopted specific thresholds:

- Belgian law[135] refers to an overrunning that reaches at least €1,250.
- Romanian law[136] refers to an overrunning of the credit limit value of at least 15%.

It is also noted that the draft law of Iceland aimed at fully transposing the CCD establishes the threshold of ISK 30,000 (€200) for a significant overrunning.

The discussion below focusses on the countries that have not simply reproduced the concept of 'significant overrunning' in the national law, but those that have clarified it.

Consequences of Clarification of Term/Concept

In theory, clarification of this term should bring legal clarity regarding creditors' obligations in the case of an overrunning. This, in turn, should allow for a greater level of legal compliance (due to easier enforcement), eliminate a potential source of dispute and should help to avoid consumer detriment (in cases where there is an overrunning).

In Belgium, information obtained during consultation indicates that this provision applies to tacitly accepted overdraft facilities. Stakeholders in Belgium indicated two key benefits from this provision with regard to consumer protection. The first relates to the legal clarity for both the creditor and consumer which facilitates regulatory compliance. The second relates to the perceived psychological barrier established by this amount; in other words, consumers are disinclined to reach 'overrunning' once they see that the threshold is being approached. It was also noted that, in practice, consumers with lower incomes are protected against excessive overrunning early in the pre-contractual phase because the assessment of creditworthiness will stop the creditor from granting this financial product to consumers who are likely to encounter problems later. Overall, the specification of this term is considered to have a positive effect on consumer protection in Belgium. However, it must be noted that, prior to the transposition of the CCD, all overrunning was strictly forbidden. As such, the clarification of the term (despite establishing a specific amount) may have encouraged consumers to incur more debt and thus increase their indebtedness.

134 See Regulation 22, the Consumer Credit (EU Directive) Regulations 2010, SI 2010/1010 (UK)

135 See Article 60, Law on consumer credit (Wet op het consumentenkrediet) 2010 (Belgium)

136 See Article 57, Government Emergency Ordinance no. 50/2010, as approved with amendments by Law no. 288/2010 and as further amended by Government Emergency Ordinance no. 73/2012 (Romania)

In Romania, stakeholders were generally of the view that the clarification of this concept had a positive impact in terms of consumer protection, given that Romanian consumers are less experienced in the field of consumer finance, compared with consumers in some other EU countries.

Stakeholders in the UK did not (or could not) identify any impacts in terms of the internal market and/or consumer protection as a result of their national legislators' decision to clarify the term "significant overrunning". It is likely that this finding reflects the fact that there have been other key developments in the UK relating to overdrafts (including OFT investigations, test court cases and a Supreme Court ruling) over the last few years, which have had a more pertinent impact on how banks charge for overdrafts and the concept of significant overdrawing than the CCD.

5. CHOICE OF LAW PROVISIONS

5.1 Background

Article 22(4) CCD requires MSs to take the necessary measures to ensure that consumers do not lose the protection granted by the CCD by virtue of the choice of the law of a third country as the law applicable to the credit agreement, if the credit agreement has a close link with the territory of one or more MSs. The shaded box below sets out the key questions to be addressed in this Section based on the Specifications.

> Q3. What measures have Member States taken in order to ensure that consumers do not lose their rights under the Directive because the credit agreement contains a choice of law provision stating that the legislation of a third country must be applied (Article 22.4)?

5.2 Measures Taken by Member States

The Table below indicates whether:

- Article 22(4) CCD is specifically transposed — √
- Article 22(4) CCD is not transposed — X

Table 5.1: Choice of Law

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
√	√	√	√	X	√	X	√	√	√	X	X	√	√	√
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	X	√	√	√	√	√	√	√	√	√	√	X	√	X

Almost all the countries analysed have adopted specific measures to transpose Article 22(4) CCD on the choice of law in credit agreements in order to ensure that the rights of consumers, as provided for by the CCD, are protected. However, in a few countries no specific measures were identified. The Czech Republic, Denmark, Finland, France, Iceland, Italy, Slovenia and the UK have not prescribed any specific measures to ensure legal protection of consumers where the law of a third country applies to credit agreements. Note however that:

- the **Czech Republic** has not yet transposed Article 22(4) CCD, this requirement will be transposed by the new Act on Private International Law (No. 91/2012 Coll.). In particular, Article 87(2) of the Act states that where the consumer contract is closely connected with the territory of a MS of the European Union, the consumer cannot be deprived of the protection granted to him by the Czech law if the legal proceedings take place in the Czech Republic, even if the law applicable to the contract is not that of a MS of the European Union. This Act will enter into force on 1 January 2014. Until that date, no rules are in force in the Czech Republic dealing with the provisions on choice of law;

- in **France**, the legislation has not transposed the choice of law provision of Article 22(4) CCD in the consumer credit chapter of the Consumer Code (CC). However, a similar provision is provided Article L.121-20-15 of the CC; and

- in **Slovenia**, Article 22(4) was not transposed into the ZPotK-1. However, other more generic provisions may come into effect depending on the circumstances. These provisions however do not constitute a direct transposition of the CCD as they would not only apply to matters concerning consumer credit.

For Denmark, Finland, Italy and the UK, no provision transposing Article 22(4) CCD has been identified in the domestic legal order. Similarly, in Iceland, the current law does not contain any explicit provisions on measures to ensure legal protection of consumers where the law of a third country applies to the credit agreement. The draft law presented in Parliament with the aim of fully transposing the CCD, does not contain explicit provisions to this end either.

6. PENALTIES AND ENFORCEMENT

6.1 Background

The rules on penalties applicable to infringements are crucial to enforcement. Article 23 CCD requires MSs to lay down penalties for infringements of the national provisions transposing the CCD. The penalties must be effective, proportionate and dissuasive. The shaded box below sets out the key questions to be addressed in this Section based on the Specifications.

Q4. What rules on penalties applicable to infringements have the Member States laid down (Article 23), how often have these rules been applied in practice and what has the outcome been?

6.2 Measures taken by Member States

The Table below describes the applicable penalties attached to infringements of the national provisions transposing the CCD in each country analysed. It identifies administrative sanctions, criminal law sanctions and the civil law consequences of infringements of national consumer credit legislation.

12 of the 30 countries analysed, namely, Austria, Belgium, Denmark, Finland, France, Hungary, Ireland, Luxemburg, the Netherlands, Norway, Poland and the UK have provided for specific criminal sanctions for violation of the consumer credit legislation. Of these countries, nine have identified specific offences which may lead to imprisonment. In addition, in nearly all MSs, severe violations, such as major fraud, will in any case be subject to imprisonment on the basis of general criminal law provisions.

Table 6.1: Penalties	
Country	**Applicable Penalties**
AT	• Civil law consequences: general provisions of the Civil Code. • Administrative sanctions: fine of up to €10,000 for all infringements of the transposing legislation. • Criminal sanctions: imprisonment of up to six months and a fine of up to 360 daily units (the level of payment in relation to one daily unit depends on various circumstances, e.g. the income of the perpetrator; one daily unit is minimum €4 and maximum €5000).
BE	• Civil law consequences: nullification of the agreement or its provisions and reduction of the consumer's obligations by judicial decision. • Administrative sanctions: withdrawal or suspension of the recognition of creditors or credit intermediaries. • Criminal sanctions: imprisonment of eight days to one year and a fine of €26 to €100,000 (given the indexation in the Belgian sanctioning system: from €156 to €600,000. These sanctions can be accompanied by the confiscation of unlawful profits, the definitive or temporary prohibition from carrying out the transactions regulated by the transposing law or the posting or publication of the judgment.
BG	• Civil law consequences: the consumer can unilaterally terminate the agreement and seek a remedy for the loss of profit under the rules dealing with non-fulfillment of the credit agreement. • Administrative sanctions: fines, the amount of which depends on the type of offender (natural or legal person) and on whether there is a repeated violation (in this case the amount is doubled). The amount of the fines ranges from BGN 700 and 5000 (approximately €350 to €2,500) for natural persons and BGN 1500 to BGN 10 000 (approximately €750 to €5,000) for sole traders and legal persons.
CY	• Civil law consequences: general provisions of the Civil Code. • Administrative sanctions: up to 5% of the turnover of the offender which in no case will exceed a maximum of €500,000 per year that once imposed may be collected as a civil debt. In case of the infringement of a subsequent court order: the sanction takes a quasi-criminal form as it can result in imprisonment.
CZ	• Civil law consequences: credit agreement can be assumed to be reimbursed at the applicable discount rate issued by the Czech National Bank if the creditor fails to provide the information required by law. • Administrative sanctions: fines of up to CZK 5 million (€200,000); CZK 2 million (€80,000) in case of failing to assess the consumer's creditworthiness.
DE	• Civil law consequences: general provisions of the Civil Code. • Administrative sanctions: fine up to €25,000 or orders from the Federal Financial Supervisory Authority to financial institutions and their senior managers to stop or prevent violations of regulatory provisions.
DK	• Civil law consequences: If the creditor has informed the consumer of a lower annual percentage rate of charge than he intended to apply, he may only charge the consumer to the extent of the notified charge. If the creditor has failed to provide the consumer with the required information concerning charges when concluding the agreement, the consumer will as a maximum pay the creditor the credit amount with an annual interest rate corresponding to the official interest rate of *Danmarks Nationalbank* plus five per cent. • Administrative sanctions: fine. The amount of the fines is not specified in the legislation. This will be decided on a case-by-case basis applying a proportionality assessment to each individual violation and offender. In addition, violations of the transposing law may result in a revocation of the right to do business involving the conclusion of credit agreements. • Criminal sanctions: fine. If the offender does not acknowledge the administrative fine and hence refuses to pay, the fine will be issued as a criminal penalty.
EE	• Civil law consequences: general provisions of the Law of Obligations Act. These include, among others, requiring the performance of an obligation contained in the agreement, compensation for damage, withdrawal from or cancellation of the contract. • Administrative sanctions: fines ranging from 100 to 200 fine units for natural persons (a fine unit is the base amount of a fine and is equal to €4) and up to €3200 for legal persons.

Table 6.1: Penalties	
EL	• Civil law consequences: general provisions of the Civil Code. • Administrative sanctions: fines from €500 to €1,000,000 as well as the temporary suspension of the creditor's business for a period between three months and one year in the case of repeat offending. When determining the penalty to be imposed, the Minister can take into account, amongst others: the gravity of the offence, the risk of loss to the consumer, the loss caused to the consumer and any restitution thereof, the measures taken to prevent the infringement in the future, the degree of cooperation with the Ministry during investigation and control, the need for general and specific prevention and any repeat infringement of the present decision and of the consumer protection legislation in general.
ES	• Civil law consequences: reduction of the obligations in the credit agreement, such as reduction to the statutory interest rate or to the cash price of the credit. Failure to comply with written form leads to the cancellation of the contract. • Administrative sanctions: minor infringements up to €3,0005.06, serious infringements between €3,005.07 and €15,025.30, or up to five times the value of the goods or services subject to the infringement, and very serious infringements between €15,025.31 and €601,012.10, or up to five times the value of the goods or services subject to the infringement. In addition, in the event of very serious infringements: the temporary closure of the establishment, facility or service, for a maximum period of five years. Non-compliance with certain provisions of the transposing law is punishable as a serious offence, which may imply the application of a fine of up to the larger amount of 1 per cent of its capital or €300,000; the revocation of authorisation of the institution; a public reprimand published in the Official State Gazette.
FI	• Civil law consequences: the creditor is entitled, in certain cases, to claim an instalment that has not otherwise become due, to repossess the goods sold or to enforce another specific sanction due to delayed payment on the part of the consumer or other breach of contract. • Administrative sanctions: imposition of a conditional fine with a prohibition order, public notification, penalty fees and measures aimed at restricting the functioning of creditors and cancelling their licence. At the regional level, penalties include: prohibition, request, warning, conditional fine, or the cancelling of the creditor's licence fully or partially for the maximum period of six months. • Criminal sanctions: fine or imprisonment for up to one year, prohibiting the creditor from continuing with the unlawful activities and conditional fine ordered by the Market Court, as a pressure mechanism connected to the prohibition. The law does not specify the amounts of fines.
FR	• Civil law consequences: loss of the right to the interests (reduction of the obligations to the cash price of the credit). • Criminal sanctions: most infringements are subject to a criminal fine of €1,500. Exceptionally, fines of €30,000 apply for non-compliance with a number of consumer credit provisions that are not a direct transposition of the CCD's provisions.
HR	• Civil law consequences: general provisions of the Croatian Civil Obligations Act. • Administrative sanctions: fines from €700 to €30,000.
HU	• Civil law consequences: claim for compensation; modification of the decisions of the Hungarian Financial Supervisory Authority and Financial Arbitration Board. • Administrative sanctions: warning; order for the cessation of the infringement or the prohibition of any further infringement, notification of the Authority of the measures carried out to eliminate infringements; ban, restriction or imposition of conditions regarding the pursuit of the activity or the supply of services involved in the infringement; consumer protection fine. The amount of the fine can consist of five per cent of the annual net sales revenue or fixed amounts, depending on the gravity of the offence. The Financial Arbitration Board can issue a binding decision or recommendation and make the name of the offender public. • Criminal sanctions: imprisonment of up to five years.

Table 6.1: Penalties	
IE	• Civil law consequences: general provisions of civil law. • Administrative sanctions: caution, direction to refund money and or pay a monetary penalty (not exceeding €5 million for a company and not exceeding €50,000 for a natural person); disqualify the person from being involved in financial services for a period and direct payment of the Central Bank's cost in investigating. It must publish the details of any findings that indicate that a creditor is in breach of the national law. • Criminal sanctions: maximum fine of €3,000 and/or up to 12 months imprisonment for minor infringements and a maximum fine of €100,000 and/or up to three years imprisonment for more serious infringements.
IS	• Civil law consequences: liability for damages in accordance with the general tort rules. • Administrative sanctions: per diem fines of ISK 10 000 (€59) to ISK 100 000 (€588). The draft law presented in Parliament however increases the amount of the fines from ISK 100 000 (€588) to ISK 10 million (€59,000).
IT	• Civil law consequences: general provisions of the Civil Code. • Administrative sanctions: fines ranging from €2,580 to €258,225 for natural and legal persons.
LT	• Civil law consequences: general provisions of the Civil Code. • Administrative sanctions: fine of LTL 1000 (€290) to LTL 30000 (€8689) for infringements of the provisions of Law on Consumer Credit. However, a fine up to LTL 120 000 (€34 754) may be imposed on a person who repeatedly commits infringements, i.e. on whom a fine set out in the Law on Consumer Credit had already been imposed during the preceding one year period.
LU	• Civil law consequences: any contractual clause in violation of the CCD transposing provisions is declared null and void. • Criminal sanctions: imprisonment from eight days to five years and/or a fine of €251 to €50,000.
LV	• Civil law consequences: general provisions of the Civil Code. • Administrative sanctions: fines of €36 to €14,229; decision imposing the cessation of the violation and the performance of specific activities to rectify the impact thereof; publication of the decision on the home page of the Consumer Rights Protection Centre and in the official Gazette of the Government of Latvia.
MT	• Civil law consequences: order for the restitution of any money or property given by the consumer. • Administrative sanctions: daily fine of not less than €130 and not more than €230 for each day of non-compliance, or a fine of €1,000 to €45,000, order or decision or take any measure deemed appropriate in terms of the Consumer Affairs Act.
NL	• Civil law consequences: dissolution of the contract or parts thereof. • Administrative sanctions: ranging from €10,000 to €4,000,000. Matters such as size, proportionality, seriousness of the offence, the actions taken when the infringement became known, etc. can have an effect on the amount of the administrative fine. When the AFM issues an administrative fine or a non-compliance penalty this fact is published. • Criminal sanctions: imprisonment and fines in case of fraudulent operations.
NO	• Civil law consequences: discretionary rules that modify or limit obligations/ liability; termination/ cancellation of the contract or declaring the agreement void or inoperative. • Administrative penalties: imprisonment and fines, including coercive fines, and administrative orders that an act may be stopped or remedied. • Criminal sanctions: imprisonment of up to three months and fines.
PL	• Civil law consequences: creditor will be deprived of the right to charge the consumer with interest and other credit charges specified in the credit agreement, with the exception of costs of credit security. • Criminal sanctions: fine. The amount of the fine for those offences is not specified. The general rule of the Petty Offences Code is that the fine cannot be less than PLN 20 (€5) or higher than PLN 5000 (€1,300).

Table 6.1: Penalties	
PT	• Civil law consequences: nullification of the credit agreement; non-enforceability of certain provisions. • Administrative sanctions: fine up to €500,000. Additional sanctions include the seizure and loss of the object and the publication of the final decision.
RO	• Civil law consequences: restitution of illegally collected amounts and modification of the credit agreement in order to be brought in line with the infringed provisions. • Administrative sanctions: fines ranging from €2,200 to approximately €22,000.
SE	• Civil law consequences: general provisions of civil law. • Administrative sanctions: fine ranging from €590 to €5,900,000 and not exceeding 10 per cent of the credit institution's turnover for the previous financial year, interim orders, warnings, prohibitions, revocation of a licence, rectification, termination of activity, liquidation and conditional fees.
SI	• Civil law consequences: right to unilateral termination of the agreement for the consumer and nullification of the agreement in accordance with general civil law provisions. • Administrative sanctions: fines from €1,250 to €150,000. The transposing law allows the sanctions to be proportional to the offences and their seriousness.
SK	• Civil law consequences: the consumer credit will be regarded as without any interest or other charge. • Administrative sanctions: fines up to €140,000; publication of all decisions on the website of the enforcement body.
UK	• Civil law consequences: unenforceability of the credit agreement or of specific provisions. • Administrative sanctions: penalty of up to £50 000 (€57,500) and the revocation of the credit licence. • Criminal sanctions: fines range from £50 to £400 (€60 to €460) combined or not with imprisonment from one to two years.

6.3 Frequency of Use

Information obtained from consultation with stakeholders across 30 European countries suggests that penalties resulting from the infringement of the rules of the CCD have not been applied often in practice in the majority of countries analysed. Indeed, in many countries (e.g. Austria, Croatia, Ireland the UK, etc.) stakeholders have indicated that the imposition of penalties for breaches of the CCD is in fact 'rare'.

Various reasons have been put forward by regulatory authorities, industry representatives and other stakeholders to explain why penalties are not imposed more often in practice. The main ones are as follows:

- **The mere presence of penalties is a sufficient deterrent**. In some countries (e.g. Norway and Ireland) it has been indicated that the fact that penalties are in place and that there is the possibility of these penalties being applied is sufficient deterrent for credit providers to act in compliance with the law. In other countries (e.g. Luxembourg and Portugal), it was indicated that severe sanctions would be issued in the event of non-compliance due to the sensitivity of the consumer credit market; for this reason, the law is sufficiently respected by credit providers. In countries where the supervisory authorities have the power to remove the licence of the credit provider (e.g. in Lithuania, Latvia, and Norway), it was also noted that this acts as a significant deterrent to infringement of the rules of the CCD. In Poland, the consumer credit legislation provides an opportunity for consumers to use a *free credit* if the consumer finds any administrative/legal mistakes in the credit agreement, after the signature. A similar situation exists in France where credit providers lose the right to receive any interest on a loan due to contractual 'abnormalities' (e.g. the absence of required information in the contract or in the pre-contractual information). In such cases, the consumer does not pay any interest or fees on the credit and as a result the credit provider does not make any profit on the amount given to the consumer. This also acts as a deterrent against non-compliance.

- **The supervision activities of authorities ensure that the market is functioning efficiently**. In some countries, it has been suggested that the fact that penalties have not been applied often is the result of a 'well-functioning' regulatory environment. For instance, in Hungary, it is considered that the low application of penalties shows that the overall regulatory environment is functioning well.

- **A preference by authorities for dialogue and use of penalties as a last resort**: In some of the countries analysed, penalties are imposed only as a last resort and dialogue and warnings are used in the first instance to allow credit providers to rectify their behaviour. In such countries, it can be deduced that the level of penalties imposed does not directly correspond to the level of infringement of the CCD in that country (i.e. a low level of penalties does not strictly mean a low level of infringement). For instance, in some countries (e.g. Cyprus and Lithuania), the supervisory authorities try to reach an amicable solution with credit providers before penalties are imposed. This means that the supervisory authorities will typically give warnings to the credit provider and use penalties (or fines) only if warnings are not heeded. In Latvia, it appears that sanctions were used more frequently in the past but emphasis has now switched to giving companies the possibility to change their behaviour before imposing any sanctions or penalties. Finally, in Finland, the process of issuing sanctions is considered to be slow by some stakeholders because consumer protection authorities are obliged to hold discussions with the lender first and only if these discussions fail, would the matter be referred to a Market Court.

- **Credit providers have a natural preference to avoid penalties for reputational and other reasons**; hence, there is no need to use penalties. For some credit providers it would appear that the potential damage to their reputation is a sufficient threat to discourage non-compliance with the CCD. For example, in Austria, it is claimed that penalties and sanctions are not an incentive for credit providers but the potential loss of reputation (and also the associated loss of business) is encouragement enough to follow the law. This is also the case in Italy, where there has been thorough supervisory activity and sanctions have been applied. As a result, credit providers now make the effort to avoid sanctions as their reputation is more important, this was also noted by credit providers in Latvia.

That said, in some countries, there appears to be a clear desire for more frequent use of penalties. For instance, in Iceland, it has been suggested that penalties are currently not commonly used but that they could be used more often in order to prevent credit providers from violating the rules. This suggests that in Iceland a higher level of enforcement of the requirements of the CCD may be needed, but this is expected to change with the implementation of the Draft bill for a new Act on Consumer Credit. In this context, it is possible (even if not acknowledged) that in a number of other countries, a lack of adequate supervision and monitoring has resulted in non-compliance with the CCD going unnoticed and unpunished.

An exception to the rare use of penalties was identified in Czech Republic and Romania. In the Czech Republic, based on information provided by stakeholders, penalties are used quite frequently (although statistics have not been provided to support this). According to stakeholders in the Czech Republic, the penalties that are applied are, more often than not nowhere near close to the high-end of the range of available sanctions and are, therefore, not sufficiently dissuasive. That said, sanctions have been more frequently applied by the CTIA (Czech Trade Inspection Authority) on non-bank credit providers whereas the CNB (Czech National Bank) had not imposed any sanctions on banks with regards the CCD. In Romania, stakeholders also indicated that fines are used quite often; however there is apparently a trend for the National Association for Consumer Protection (NACP) and its subordinated commissariats to apply fines as close to the upper limit as possible, without first warning the credit provider that it is breaching the law. It is possible that there are other countries that administer penalties regularly which have not been identified while undertaking this study.

6.4 Outcome

Figure 6.1 provides the views of stakeholders on their awareness of the rules in their national legislation for infringement of the CCD.

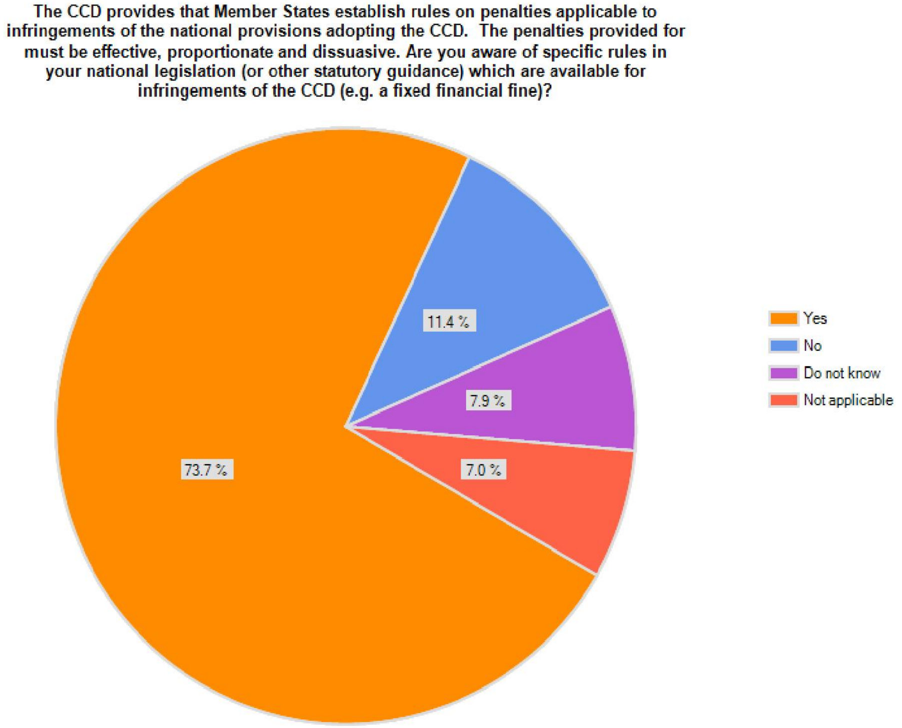

Figure 6.1: Results of Online Survey on Awareness of Penalties

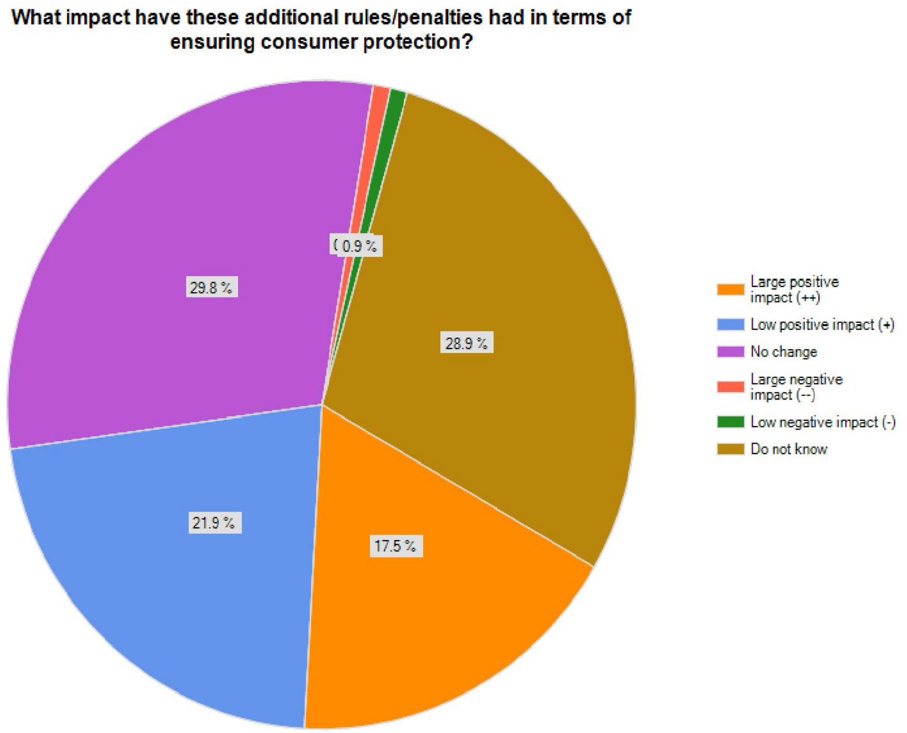

Figure 6.2: Results of Online Survey on Impacts of Penalties on Consumer Protection

As can be seen from Figure 6.1, the vast majority of respondents to the online survey are aware of the penalties for non-compliance with the CCD. Indeed, approximately 75% of respondents are aware of the specific penalties that are in place in the national legislation for infringement of the CCD.

Figure 6.2 shows that around 60% of respondents are either not aware or do not consider that there have been any impacts on consumer protection as a result of these penalties. This is because in many of the countries analysed there has not been any change to the framework of penalties used since the transposition of the CCD and the penalties are only applied rarely in practice. As a result, according to range of stakeholders in a number of MSs, there have been no significant impacts on either the degree of consumer protection or on the functioning of the internal credit market. This has been noted particularly in Denmark, Estonia, Finland, Latvia and Malta. This does not, however, mean that the penalties are ineffective. For most MSs, the sanctions provided by national law are considered effective, proportionate and dissuasive. In most of them, the sanctions are comparable to those in similar areas of law and act as an efficient tool to dissuade irresponsible lending and to remedy irregularities.

Nevertheless, in a few countries, potential problems were identified. For instance, in Cyprus, sanctions are considered effective, proportionate and dissuasive for those creditors in the banking sector, but not for creditors in the non-banking sector. In Germany and Iceland, the levels of the penalties are considered too low to be effective, proportionate and dissuasive. In Germany, administrative sanctions are set out in two provisions: § 10(2) No. 6 of the Ordinance on Price Information and § 18(2) in conjunction with § 6(3) of the Banking Act. As the sanctions are limited to these two provisions it is not evident that they are effective, proportionate and dissuasive as required by Article 23 CCD. In Denmark, the amount of the sanction is not fixed by law, attributing greater discretion to a judge when imposing a sanction. This raises a general concern regarding legal uncertainty but, on the other hand, it caters for an effective use of fines as a sanction because it allows for an individual assessment of both the severity of the violation and the economic advantage for the offender when determining the fine. Generally (and especially when addressed at legal persons), fines imposed pursuant to special law in Denmark are set at a level that aims at serving both as an appropriate sanction against the offender and at having a general dissuasive effect. In Italy, taking into account the economic situation, the higher penalties might be effective, proportionate and dissuasive if applied to natural persons such as employees. On the other hand they might not be effective, proportionate and dissuasive if applied to legal persons working in this field.

Around 40% of respondents believe that there have been **positive impacts on consumer protection** as a result of these penalties. In some countries changes have been made, or are in the process of being made, to the framework of penalties used. For example, in Iceland, penalties were increased recently to reflect inflation and in Sweden there has been a new bill concerning penalties for SMS loan providers. Also, in France a draft bill was reviewed by the French National Assembly[137] which would strengthen the penalties provided by the law.

6.5 Enforcement and the CCD

Based on information obtained from consultation and literature review, it is clear that the level of enforcement of the CCD and the type of enforcement activity carried out by supervisory authority varies from country to country. While in some countries, annual inspections are undertaken (e.g. in Belgium, Romania and Norway), in other countries, ad-hoc or random inspections are carried out as a result of consumer complaints and for other reasons (e.g. Slovakia and Finland). Thematic inspections of credit providers are also undertaken which can focus on, for example, particular sectors of the market or particular credit products. Box 1.1 below provides a summary of the enforcement activities in a number of the countries considered.

Box 6.1: Examples of Enforcement Activities

In **Belgium**, between two and five general sectoral inspections are conducted per year. Inspections are also undertaken based on consumer complaints.

In **Bulgaria**, inspections are undertaken based on, for example, advertisements by credit providers or consumer complaints.

In **Norway**, on-site inspections are carried out by the Financial Supervisory Authority. Discretionary inspections are conducted where those credit providers with the most problems are inspected first and larger organisations are generally inspected before the others. Thematic inspections are also carried out which look at specific areas (for example in 2012 credit card providers were the focus of the thematic inspection and all credit card providers had to complete and return a questionnaire). On average, 50 bank and non-bank credit providers are subject to inspection each year.

In **Romania**, periodic (annual) thematic controls are undertaken to verify the way in which credit providers comply with legislative provisions. They are launched either following several complaints or at the initiative of the supervisory authority. Thematic controls have resulted in legal action.

In **Poland**, the public authority (UOKIK) responsible for enforcement of consumer credit regulation can undertake inspections, for example, on the basis of consumer complaints or if the President of UOKiK believes that collective consumer interests are threatened. For example, in recent years, UOKIK has undertaken specific regulatory controls on credit providers in the area of standard consumer credit contracts and advertisement; fees charges by the non-bank credit providers and advertisement of consumer credits offered by non-bank providers were undertaken.

In **Portugal**, the Banco de Portugal is responsible for the enforcement of the regulations on credit providers. It conducts inspections of credit providers which includes ‘distance’ inspections (for example, monitoring the websites of credit providers), onsite inspections and mystery shopping exercises.

---

137 The comment refers to “*Le Projet de Loi Hamon sur la Consommation*” which was adopted during the course of this study and became known as ‘La Loi Hamon’. It addresses various aspects of the legal framework for credit, including credit cards, revolving credit, the creation of a ‘positive’ credit registry, as well as other relevant aspects not included in the Loi Lagarde.

In terms of the effectiveness, information obtained from consultation indicates that there are some countries where stakeholders report that there is a 'strict' level of enforcement of the requirements of the CCD; for example, Belgium, Bulgaria and Italy. In Belgium, inspections are conducted annually which has contributed to a strict level of enforcement of the CCD and stakeholders believe this is sufficiently strict. In Bulgaria, a stakeholder noted that the level of enforcement for the banks is sufficiently strict, although this may not be the case when considering the extent of enforcement applied to other non-bank credit providers. In Italy, a stakeholder noted that the Bank of Italy conducts 'intense' supervisory activities which have resulted in a regular and strict enforcement of the rules.

On the other hand, there are some countries where stakeholders suggested that even more stringent enforcement of the requirements of the CCD would be of benefit (e.g. Cyprus and Malta). In some cases, other institutions monitor the effectiveness of enforcement activities in a given MS. For instance, in the UK, the UK Parliament's Public Accounts Select Committee recently published a report (2013) which is critical of the OFT's approach to the supervision and enforcement of consumer credit – particularly in relation to pay day lending but also more generally. It branded the OFT's approach to enforcement as 'passive'[138].

Similarly, at the EU level, the European Commission undertook a Consumer Credit Sweep which checked 565 websites offering consumer credit (Europa, 2012b). Of the 565 websites checked in 2011 30% passed the initial check; the remaining 393 needed further investigation. One year later:

- 57 websites were considered compliant;
- 18 websites were no longer active;
- 194 websites were corrected following action by the national authority; and
- 124 websites were still the subject of administrative or legal proceedings.

In addition to the typical enforcement activities, there are also national specificities which influence the approach to enforcement and the perception of its effectiveness. For instance, in some countries it has been observed that different levels of enforcement occur for banking and non-banking credit providers (e.g. Estonia, Bulgaria and the Czech Republic). In the Czech Republic there is separate monitoring and enforcement of banks and non-bank credit providers. The Czech National Bank supervises the banking sector and rarely imposes sanctions, while the Czech Trade Inspection Authority is responsible for the supervision of the non-banking sector and applies sanctions regularly. In Estonia, it has been noted that there is insufficient and ineffective monitoring of the payday loans industry particularly, while in Bulgaria the banks are adequately supervised but the level of enforcement for other credit providers has been questioned.

Also, in some countries there are also problems with enforcement of credit providers which operate on the 'black' or 'grey' markets. For example, in Slovenia there have

[138] http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/consumer-credit-report/

been problems when trying to enforce the law on credit providers who operate without a licence. A public authority noted that it has been particularly difficult to impose penalties or ban such providers as they do not have licenses and it is difficult to track their credit flows. Indeed, in the Czech Republic, where the same problem exists, a stakeholder stated that because the authorities are unable to deal with the unlicensed providers who operate on the black market, they focus their supervisory activities on the licensed credit providers. In the Czech Republic an industry association observed that inadequate enforcement is one of the main problems of the national transposition of the CCD. However, enforcing the rules on 125,000 credit providers would be extremely difficult – especially when the majority are unlicensed and do not have the necessary documentation etc. In Croatia, it has also been noted that there have been enforcement difficulties with credit providers who provide services without authorisation.

7. EXTENSION OF SCOPE

7.1 Background

The CCD applies to credit agreements as set out under Article 2(1) CCD. Article 3(c) CCD defines a credit agreement as '*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*'.

Article 2(2)(a)–(l) CCD lists those credit agreements that are excluded from the scope of the CCD, as follows:

a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to 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;

c) credit agreements involving a total amount of credit less than €200 or more than €75,000;

d) 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; such an obligation shall be deemed to exist if it is so decided unilaterally by the creditor;

e) credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;

f) credit agreements where the credit is granted free of interest and without any other charges and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable;

g) credit agreements where the credit is granted by an employer to his employees as a secondary activity free of interest or at annual percentage rates of charge lower than those prevailing on the market and which are not offered to the public generally;

h) credit agreements which are concluded with investment firms as defined in Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (1) or with credit institutions as defined in Article 4 of Directive 2006/48/EC for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section C of Annex I to Directive 2004/39/EC, where the investment firm or credit institution granting the credit is involved in such transaction;

i) credit agreements which are the outcome of a settlement reached in court or before another statutory authority;

j) credit agreements which relate to the deferred payment, free of charge, of an existing debt;

k) 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;

l) 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 and at interest rates not higher than those prevailing on the market.

This section analyses whether the scope of application of the CCD has been extended by any of the countries analysed by applying the CCD either partially or fully to credits not covered by the Directive. In particular, it identifies whether the countries analysed chose to apply the CCD requirements either partially or fully to credits specifically excluded from the scope by Articles 2(2) (c) to (l) CCD. The shaded box below sets out the key questions to be addressed in this Section based on the Specifications.

Q5. Did the particular Member States extend the scope of application of the Directive by applying the CCD either partially or fully to credits not covered by the Directive (except mortgage credits)? In particular, have Member States chosen to apply the Directive either partially or fully to credits specifically excluded from the scope (Article 2.2., letters (c) — (1))? In the case of a partial application of the CCD to Directives outside its scope, which articles have been directly applied by the Member States and which articles have been modified in some form and why?

7.2 Exclusions from Scope of CCD by Member States

Article 2(2)(c) CCD

Denmark, Estonia, Finland, Hungary, Latvia, the Netherlands, Norway, Romania, Slovenia and Sweden have not transposed Article 2(2)(c) CCD. This means that the transposing legislation of these countries is not limited to credit agreements involving a total amount of credit less than €200 or more than €75,000. Similarly, although currently Iceland excludes credit agreements for amounts lower than ISK 15,000 (€100) from the scope of the national law, the draft law aimed at transposing the CCD, does not exclude credit agreements involving less than €200 or more than €75,000 from its scope.

Austria and Germany have excluded credit agreements involving a total amount of credit of less than €200 from the scope of the national law but do not set a ceiling for credit agreements of more than €75,000. As regards agreements involving a total amount of more than €75,000, the Spanish exclusion from scope is only partial as some of the requirements of the transposing law apply also to such agreements.

Belgium has only partially excluded these agreements from the scope of the CCD requirements as certain provisions of the transposing legislation remain applicable. The UK (England and Wales, Scotland and Northern Ireland) partially transposed the exclusion by, in relation to most provisions, referring to agreements exceeding £60,260 (€70,000). Agreements below £120 (€102) are not excluded but may be subject to a light touch if under £50 (€43).

Lithuania and Poland have extended the scope of application of the CCD requirements to credit agreements involving a total amount of credit less than €200. As regards Poland, it is also noted that the upper threshold is below that of the CCD: the scope of the national law is limited to credit agreements involving a total amount of credit not exceeding €55,000. On the other hand, Croatia has increased the upper threshold and excluded credit agreements involving a total amount of credit of more than 1,000,000 Kuna (approximately €150,000) from the scope of its law.

Article 2(2)(d) CCD

Austria, Sweden and the UK have not transposed Article 2(2)(d) CCD. This means that their transposing legislation applies also to 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.

In Estonia, hiring agreements are not excluded from the scope of the transposing regulations. However, the CCD requirements on the right to early repayment contained in Article 411 of the Law of Obligations do not apply to leasing contracts which do not prescribe the obligation of the consumer to purchase the object of the contract. The exclusion from scope is therefore very limited. Similarly, Iceland also makes partial use of the exclusion in Article 2(2)(d) CCD by excluding hiring agreements but not leasing agreements from the scope of the national law. No change is foreseen in the draft law.

The exclusion from scope is only partially applied by Latvia as it would seem that these agreements are not excluded from the obligation to assess the creditworthiness of the consumer provided by Article 8 CCD. Similarly, Italy has only partially transposed the exclusion so that only certain provisions of the transposing legislation are not applied to the agreements described in Article 2(2)(d) CCD.

Article 2(2)(e) CCD

Austria, Germany, Denmark, Estonia, Finland, Italy, Norway, Sweden and the UK have not transposed Article 2(2)(e) CCD. This means that their transposing legislation extends the scope of application of the CCD requirements to credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month.

Belgium, Poland and Spain have partially excluded these credit agreements from the scope of their laws as some of the CCD requirements remain applicable. Latvia has not excluded Article 2(2)(e) credit agreements from the scope of its law. However, the obligation to assess the creditworthiness of the consumer does not apply in case of overdraft credits which have to be repaid within one month.

Article 2(2)(f) CCD

Lithuania has not transposed Article 2(2)(f) CCD. This means that Lithuanian legislation applies also to credit agreements where the credit is granted free of interest and without any other charges and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable.

A number of countries have partially transposed the exclusion from scope in Article 2(2)(f) CCD. Sweden has only excluded the application of certain provisions of the transposing law with respect to Article 2(2)(f) credit agreements. In Belgium, the exclusion applies to credit agreements granted free of interest, where the credit has to be repaid within two months and for which the fees charged are less than €4.17. The Estonian law does not exclude credit agreements where the credit is granted free of interest and without any other charges from its scope. On the other hand, in the Czech Republic, Finland, Hungary, Latvia, Norway and Poland credit agreements where the credit is granted free of interest and without any other charges are excluded from the scope of the transposing legislation but credit agreements which have to be repaid within three months and only insignificant charges are payable are not excluded. As regards Portugal, the second part of the exclusion applies only to the cases where the agreement is not concluded with a credit institution or a finance company. If the agreement is concluded with a credit institution or a finance company the national law will apply.

French legislation excludes credit agreements where the credit is granted free of interest and without any other charges only when the credit has to be repaid within three months. The French transposition of this exclusion is therefore narrower than provided for under the CCD and a larger number of agreements would fall under the consumer credit provisions of the Consumer Code.

UK legislation (England and Wales, Scotland and Northern Ireland) excludes credit provided without interest or any other charges from its scope only when the total number of payments does not exceed four over a period not exceeding 12 months from the date of the agreement and it excludes interest-free credit repayable within three months with only insignificant charges, when the total number of payments does not exceed one over a period not exceeding three months from the date of the agreement.

Article 2(2)(g) CCD

Denmark, Italy, Sweden and the UK have not transposed Article 2(2)(g) CCD. The transposing legislation of these countries applies also to credit agreements where the credit is granted by an employer to his employees as a secondary activity free of interest or at annual percentage rates of charge lower than those prevailing on the market and which are not offered to the public generally.

Belgium has partially excluded these credit agreements from the scope of its transposing legislation as some of the CCD requirements remain applicable. France excludes operations mentioned in Article L.511-6(3) of the Monetary and Financial Code from the scope of the consumer credit chapter of the Consumer Code. This Article mentions companies that make an advance on an employee's salary, or companies that give an exceptional loan to an employee for social reasons. The scope of this exclusion is therefore broader than the one provided for under the CCD. Indeed, the French legislation includes advances on an employee's salary, and does not require loans to be made without interest or with an annual percentage rate of charge lower than that prevailing on the market.

Article 2(2)(h) CCD

Austria, Denmark, Finland, Iceland, the Netherlands, Norway and the UK have not transposed Article 2(2)(h) CCD. This means that their transposing legislation applies also to credit agreements which are concluded with investment firms as defined in Directive 2004/39/EC or with credit institutions as defined in Directive 2006/48/EC, where the investment firm or credit institution granting the credit is involved in such transaction.

Belgium and Sweden have partially excluded these credit agreements from the scope of their transposing legislation as some of the CCD requirements remain applicable. In Poland, only agreements concluded with investment firms are excluded from the scope of application of the transposing legislation. Therefore, agreements concluded with credit institutions fall under the scope of the transposing legislation.

Germany has not excluded credit agreements according to Article 2(2)(h) CCD from the scope of the national law. However, rules on objections in the case of connected contracts do not apply to such contracts.

Article 2(2)(i) CCD

Finland, Iceland, Sweden and Slovenia have not transposed Article 2(2)(i) CCD. Their transposing legislation applies also to credit agreements which are the outcome of a settlement reached in court or before another statutory authority. Belgium has not transposed this exclusion because these would be considered as judicial decisions and not agreements and would therefore be automatically excluded from the scope of the CCD requirements. In the UK (England and Wales, Scotland and Northern Ireland) unilateral concessions/court orders fall outside the definition of agreement under national law.

Credit agreements according to Article 2(2)(i) CCD are partly excluded from the scope of the German law. In particular, the provisions on connected contracts, preliminary contract information obligations and the right of withdrawal do not apply to credit agreements which are the outcome of a settlement reached in a court or before another statutory authority.

In general credit agreements described in Article 2(2)(i) CCD are not excluded from the scope of the Estonian national law but certain provisions are not applicable thereto. These relate to some aspects of implementation of the principle of responsible lending, the right of the consumer to withdraw and the right of the creditor to refuse drawdowns.

Article 2(2)(j) CCD

Germany, Estonia, Finland, Iceland, Sweden and the UK have not transposed Article 2(2)(j) CCD. This means that their transposing legislation applies also to credit agreements which relate to the deferred payment, free of charge of an existing debt.

Article 2(2)(j) CCD is only partially transposed by Italy so that certain provisions concerning pre-contractual obligations, the consumer's creditworthiness, the right to withdrawal, non-performance of the supplier and assignment of rights do not apply to credit agreements which relate to the deferred payment, free of charge, of an existing debt in the cases identified by the Credit Committee.

Article 2(2)(k) CCD

Croatia, Denmark, France, Hungary, Iceland, Poland, Sweden, Slovenia and the UK have not transposed Article 2(2)(k) CCD. Their transposing legislation applies also to 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. The exclusion of credit agreements specified in Article 2(2)(k) CCD in Latvia and Norway is only partial, as certain CCD requirements remain applicable.

Article 2(2)(l) CCD

Croatia, Denmark, Finland, France, Norway, Spain and Sweden have not transposed Article 2(2)(l) CCD. Their transposing legislation applies also to 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 and at interest rates not higher than those prevailing on the market.

Belgium has partially excluded these credit agreements from the scope of its transposing legislation as some of the CCD requirements remain applicable. In Estonia these agreements are excluded from the transposing requirements only to a limited extent (it is only the obligation of assessment of creditworthiness that is not applicable as regards agreements described in Article 2(2)(l) CCD).

Summary of Exclusions from Scope

The comparative table on the next page indicates whether the countries analysed have excluded the credit agreements described in Article 2(2)(c) to (l) CCD from the scope of the national transposing legislation.

The table below indicates whether the type of agreement excluded from the scope of the CCD by Article 2(2)(c) to (l) is:

• Excluded from the scope of the national law	√
• Partially excluded from the scope of the national law	√P
• Not excluded from the scope of the national law	X

Bulgaria, Cyprus, Greece, Ireland, Luxembourg, Malta and Slovakia have transposed the exclusions from scope in Article 2(2)(c) to (l) CCD with no modification. In the other countries analysed, some of these exclusions have not been transposed at all (resulting in an extension of the scope of application of the CCD requirements to the relevant type of agreement) or have been only partially transposed (resulting in the partial application of the CCD requirements to the relevant type of agreement). These instances are highlighted in the Table above.

Table 7.1: Exclusions from Scope

CCD exclusions from scope	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IS	IT	LT	LU	LV	MT	NL	NO	PL	PT	RO	SE	SI	SK	UK[139]
Art. 2(2)(c)	√P	√P	√	√	√	√P	X	X	√	√P	X	√	√P	X	√	√P	√	√P	√	X	√	X	X	√P	√	X	X	X	√	√P
Art. 2(2)(d)	X	√	√	√	√	√	√	√P	√	√	√	√	√	√	√	√P	√P	√	√	√P	√	√	√	√	√	√	X	√	√	X
Art. 2(2)(e)	X	√P	√	√	√P	X	X	X	√	√P	X	√	√	√	√	√	X	√	√	√P	√	√	X	√P	√	√	X	√	√	X
Art. 2(2)(f)	√	√P	√	√	√P	√	√	√P	√	√	√P	√P	√	√P	√	√	√	X	√	√P	√	√	√P	√P	√P	√	√P	√	√	√P
Art. 2(2)(g)	√	√P	√	√	√	√	X	√	√	√	√	√	√	√	√	√	X	√	√	√	√	√	√	√	√	√	X	√	√	X
Art. 2(2)(h)	X	√P	√	√	√	√P	X	√	√	√	X	√	√	√	√	X	√	√	√	√	√	X	X	√P	√	√	√P	√	√	X
Art. 2(2)(i)	√	X	√	√	√	√P	√	√P	√	√	X	√	√	√	√	X	√	√	√	√	√	√	√	√	√	√	X	X	√	X
Art. 2(2)(j)	√	√	√	√	√	X	√	X	√	√	X	√	√	√	√	X	√P	√	√	√	√	√	√	√	√	√	X	√	√	X
Art. 2(2)(k)	√	√	√	√	√	√	X	√	√	√	√	X	X	X	√	X	√	√	√	√P	√	√	√P	X	√	√	X	X	√	X
Art. 2(2)(l)	√	√P	√	√	√	√	X	√P	√	X	X	X	X	√	√	√	√	√	√	√	√	√	X	√	√	√	X	√	√	√

139 Gibraltar transposed all exclusions from scope listed in Article 2(2)(c) CCD. England and Wales, Scotland and Northern Ireland have not transposed (or only partially transposed) some of the exclusions.

As regards why certain articles were modified in some form, the main reason given by stakeholders was that extending the scope of the Directive allowed them to include credits which were within the scope of the national law transposing the previous Directive (i.e. to maintain the status quo). This was the case in Norway, Finland and the UK. In Germany, it was noted that their civil law is constructed in a specific way that they needed to include/ exclude these specific credits. Similarly, in Ireland, it was noted that the statutory instrument used to implement the Directive determined how it was transposed. In a few countries (e.g. Poland), it was noted that the scope of the Directive was extended simply because the CCD allowed for this to happen and to address specific regulatory concerns. In Italy, the extensions of scope were provided in order to avoid regulatory arbitrage and level the playing field across all loans (i.e. distortion in the internal credit market is prevented by applying the same rules to credit having the same economic function. This in turn ensures better consumer protection). France included overdraft credit agreements (payable on demand or within 3 months) in order to enhance consumer protection. Latvia extended the scope of the CCD (to credits below €200 and above €75,000) because previously all forms of credit were covered by the same regulation, regardless of the type of credit product involved. In addition, Latvia has never limited the degree of protection offered to consumers based on the amount of credit taken. In Slovenia, credit between €75 and €200 has been included in the scope of the Directive to ensure that loans of a small amount and short repayment period are covered. In Austria, the scope of application of the CCD was extended to credits greater than €75,000, but not to credits of less than €200. Stakeholders explained that this was because the administrative burden and associated costs would not justify the benefits for credit agreements with a value <€200. The scope of application of the CCD was extended to credits >€75,000 because the Austrian transposition of the CCD was also extended to credit agreements in the form of a mortgage.

8. OUT-OF-COURT DISPUTE RESOLUTION

8.1 Background

Article 24(1) requires MSs to ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate.

Article 24(2) requires MSs to encourage these bodies to cooperate in order to resolve cross-border disputes concerning credit agreements.

The shaded box below sets out the key questions to be addressed in this Section based on the Specifications.

Q6. How have Member States chosen to transpose the provision on out-of-court dispute resolution (Article 24) and how effective has this been in practice?

8.2 Manner of Transposition

Article 24(1) CCD

None of the countries analysed have set up new CCD-specific out-of-court dispute resolution mechanisms. Most of them make use of existing bodies for the purposes of settling consumer disputes concerning credit agreements and their resolution out-of-court. These bodies are typically set up by general or framework legislation dealing with consumer affairs or financial services.

Some countries have not included a specific provision on out-court-dispute resolution in the transposing legislation and have considered that existing bodies and mechanisms were sufficient for the purposes of giving effect to Article 24(1) CCD without the need to specifically refer to them in the CCD legislation. These mechanisms are not set up specifically to implement the CCD. They are typically competent to deal with general consumer disputes and not only with those related to consumer credit agreements. For example, the preparatory works for the Danish Credit Agreements Act state that appropriate out-of-court dispute resolution procedures already existed in Danish law. Consequently, no new procedures were introduced when transposing the CCD. The Ministry of Justice referred to the Danish Complaint Board of Banking Services, the Mortgage Credit Complaint Board and the Danish Competition and Consumer Authority as the main venues of out-of-court dispute settlement. The Ministry further pointed out that access to mediation in court also applies to disputes regarding credit agreements. Other examples of existing bodies are the Consumer Disputes Board in Finland, the Common Arbitration Point in Austria and the Financial Services Ombudsman in Hungary.

An interesting example is provided by Belgium where the out-of-court dispute resolution mechanism for consumer credit is a sector-born initiative that has not been set up by law. 'Ombudsfin' is a factual organisation, without legal personality, established through an agreement between representatives of the financial sector, consumer organisations and the government. The organisation is financed by the financial sector and through member contributions. It works around a set of principles, which include independence and transparency.

The transposing legislation of some countries contains a specific provision on out-of-court dispute resolution that provides for the use of existing bodies or mechanisms. For example, Bulgarian law provides consumers with several options for out-of–court dispute resolution concerning credit agreements. They may file complaints to the Commission for Consumer Protection and/or consumer associations, which provide consumers with advice and information about their rights in the use of consumer credit and assist them in the resolution of consumer disputes and complaints, or, submit the complaint directly to the creditor. The transposing law also obliges creditors to elaborate internal rules for dispute resolution and the determination of compensation with respect to consumer complaints related to the provision of consumer credits. Where the creditor does not provide his decision within the timeframe provided for in the law and where the decision of the creditor does not satisfy the consumer, the dispute may be referred to the conciliation committees created under the Consumer Protection Act. The conciliation committees provide assistance for the amicable resolution of disputes.

Other existing bodies specifically referred to in the national laws transposing the CCD are: the Single Operator for Out-of-Court Settlements dealing with disputes of a financial nature (Cyprus); the Consumer Complaints Committee (Estonia); an arbitration body set up at the German Federal Bank (Germany); the Consumer Ombudsman, the Banking and Investment Services Mediator and the Amicable Settlement Committees (Greece); the Consumer Claims Tribunal (Malta) and the Consumer Arbitration System (Spain).

In addition, alternative dispute resolution mechanisms, such as mediation, are available for the settlement of consumer disputes concerning credit agreements.

The transposing provisions in some countries provide for dispute settlement by a body to be set up after the dispute arises. Germany transposed Article 24(1) CCD by stating that the parties to consumer credit agreements can call for an arbitration body to be set up at the German Federal Bank for the purposes of settling disputes arising from the application of the transposing provisions. Bulgaria, France and Slovenia require credit providers to set up their own alternative dispute resolution mechanisms.

Article 24(2) CCD

Only a few of the countries analysed have reflected the CCD's requirement to encourage out-of-court dispute settlement bodies to cooperate in resolving cross-border disputes concerning credit agreements in national legislation transposing the CCD. The comparative table illustrates whether the transposing laws specifically transpose the requirement to encourage the relevant bodies to cooperate in order to resolve cross-border disputes and is followed by a summary of the different approaches identified in the countries analysed.

The table below indicates whether:

• Cooperation in cross-border disputes is specifically required	√
• Cooperation in cross-border disputes is not specifically required	X

Table 8.1: Cooperation in cross-border disputes

AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
X	X	√	√	X	√	X	X	√	√	X	X	X	√	X
IS	**IT**	**LT**	**LU**	**LV**	**MT**	**NL**	**NO**	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**	**UK**
X	√	√	√	X	X	X	X	X	√	X	X	√	X	X

Very few of the countries analysed have included a provision on cross-border disputes in their transposing laws. This may be explained by the fact that this cooperation requirement is more a matter of practical implementation than legal transposition. Nevertheless, some national laws include a specific provision and state which body is competent for cross-border cooperation, for example, the conciliation committees established by the Ministry of Economy, Energy and Tourism (Bulgaria); the Single Operator for out-of-court Settlements (Cyprus); the Hungarian Financial Supervisory Authority (Hungary); the Bank of Lithuania (Lithuania) and the Financial Sector Supervisory Commission (Luxembourg).

The German provision states that the Federal Ministry of Justice will regulate the details of cooperation of the arbitration body set up at the German Federal Bank with similar bodies for out-of-court dispute resolution in other MSs. Italy implemented the requirement through the Bank of Italy 'Provisions on out-of-court dispute resolution system concerning financial and banking operations and services'. In case of cross-border disputes, the Financial Banking Arbitrator can connect the consumer to the competent alternative dispute resolution authorities in other MSs, taking care of the communication between the authorities and the client and providing technical and legal assistance if the clients so require. Spain requires the relevant bodies to cooperate to resolve such disputes through the cross-border out-of-court complaints network for financial services or any other mechanism authorised for this purpose.

When credit providers in Slovenia set up an out-of-court dispute resolution body, they must also provide the rules and procedures for cooperation with other bodies in other MSs (that are competent for out-of-court dispute resolution concerning the provision of consumer credit services) when resolving a particular dispute also falls within the competency of such a body in another EU MS.

Whilst most countries do not have a specific provision reflecting Article 24(2) CCD, many national reports refer specifically to the possibility of mediation and to the national measures transposing Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters which facilitates cross-border mediation with regard to credit agreements. In addition, cross-border cooperation already exists under the Financial Dispute Resolution network (FIN-NET). FIN-NET, launched in 2001 by the European Commission, establishes a network of national out-of-court dispute resolution mechanisms on disputes between consumers and financial services providers in the European Economic Area countries. The network seeks to ensure consumers' accessibility to out-of-court dispute resolution mechanisms in cross-border cases. Out of the 30 countries analysed, only seven (Bulgaria, Croatia, Cyprus, Latvia, Romania, Slovakia and Slovenia) are not part of FIN-NET.

8.3 Effectiveness of Out-of-court Dispute Resolution Mechanisms

Information obtained from stakeholder consultation across the 30 European countries suggests that, in the majority of countries, the existing national procedures for out-of-court dispute resolution are considered effective and meet the needs of consumers. The Figure below sets out the views of stakeholders that responded to the online survey (across the 30 MSs) regarding the impact of out-of-court dispute resolution in terms of consumer protection.

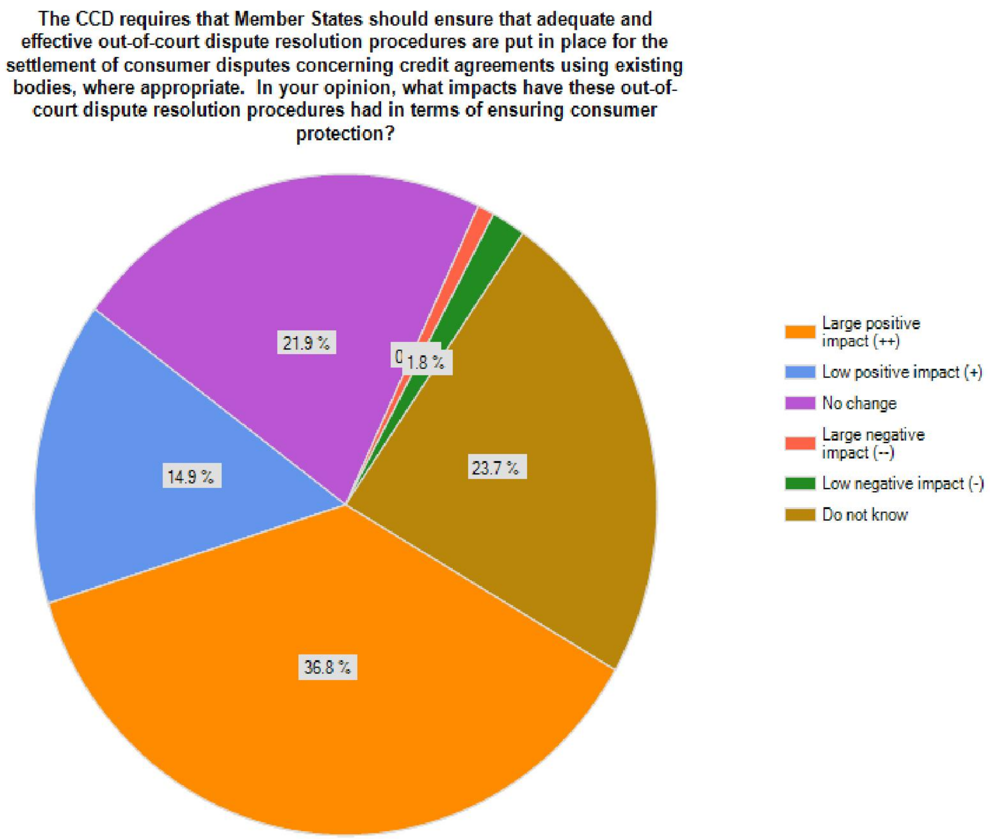

Figure 8.1: Results of online survey on out-of-court dispute resolution

As can be seen from the Figure, over 50% of respondents consider that out-of-court dispute resolution mechanisms have had a positive impact in terms of consumer protection. Around 20% believe there has been no change relative to the pre-CCD situation; this view is understandable considering that many MSs used existing bodies for the purposes of complying with Article 24(1).

Information obtained during consultation indicates that stakeholders considered an out-of-court dispute resolution body to be effective where: there are minimal (if any) costs associated with resolving cases, final decisions are made quickly and such decisions are binding and enforceable.

For example, in Italy, the ABF is popular with consumers and used on a frequent basis mainly because it is free[140] and the procedure is quick compared to proceedings with a civil judge. It was indicated that the ABF is obliged to respond to complaints within 30 days and issue a decision within 60 days. In Luxemburg and Sweden, stakeholders noted the importance of having an alternative scheme for amicable settlement of disputes which charges no supplementary fees; in these countries, there are no required charges before a case is submitted to the relevant bodies. In the Czech Republic, stakeholders noted that the key advantage of the Czech procedures for out-of-court dispute resolution is that it can be used by anyone free of charge. In Iceland, stakeholders indicated that most disputes brought to the Complaints Committee on Transactions with Financial Firms are settled within three months and the impact of the Committee, in terms of providing consumer protection, has been positive - despite its rulings not being binding. In Poland, stakeholders highlighted that the effectiveness of the existing system derives from the fact that if a consumer submits a complaint, it is mandatory for members of the Ombudsman to consider this complaint and then follow the ruling, regardless of the outcome. Some associations representing credit providers in Poland run their own out-of-court resolution schemes where it is mandatory for members to participate in this scheme.

In general stakeholders considered an out-of-court dispute resolution body to be effective where consumers are aware of the possibility to obtain redress (a well-functioning body which is relatively unknown to consumers cannot be considered effective). In this regard, stakeholders in Sweden, Denmark, Finland and Iceland noted that the long-term and continuous existence of out-of-court procedures in the Nordic Countries meant that consumers are fully aware of such procedures and how to address an issue with a credit provider without going to court. In these countries, stakeholders noted that out-of-court procedures are efficient and effective. Such effectiveness is also influenced by other factors, for instance, the fact that industry is more responsible in its dealings in these countries, due to the high level of consumer awareness; the fact that in Sweden, the majority of businesses comply with the final decisions of the Board and that some of the bodies also conduct investigations and publish their results (e.g. in Denmark). On the other hand, in Belgium, stakeholders indicated that not all consumers are aware of the existence of the Ombudsfin (even though it appears to be a respected and effective institution) and, due to lack of information, do not use the service. This is perceived as limiting its effectiveness.

140 There is a €20 fee which is subsequently reimbursed if the consumer is found to be in the right.

Similarly, in Romania, consultation with numerous stakeholders has shown that extrajudicial mechanisms for dispute resolution are still not used very frequently. Consumers rarely come to mediation and do not have sufficient trust in such mechanisms (they are not convinced that mediation would result in a binding agreement for both parties). It has been suggested that mediation in Romania is still in its infancy and, given time, consumers and creditors will gain more experience with the process.

In some countries, there were differing views among stakeholders regarding the effectiveness of the current approach for out-of-court dispute resolution. While some stakeholders in Slovenia were of the opinion that the existing framework for resolving out-of-court disputes is sufficient and has had a relatively high effect in practice; others were of the view that current methods for resolving disputes out-of-court are not utilised enough by consumers and creditors and that the effectiveness of current mechanisms is questionable. In Malta, the Consumer Claims Tribunal has a maximum claim limit of €3,494 and, as such, it is often neither suitable nor effective for consumer credit disputes (hence, not many cases relating to consumer credit have been brought to the Tribunal). One stakeholder noted that it is difficult in Malta to comment on the effectiveness of dispute resolution bodies as consumers are not willing to share such information and will not show copies of the credit agreement (even with personal details removed) as it is considered too private. In the Czech Republic, one drawback noted is that the arbitrarily-defined remit of the Czech Financial Arbitrator does not cover all financial services. For example, its remit does not cover disputes relating to some types of long-term savings accounts (e.g. stavebni sporeni) or payment protection schemes. In some cases, independent reviews have been carried out; for instance, in a 2010 review of consumer protection and financial literacy in Croatia, the World Bank considered that it may be more expedient to consider setting up an independent statutory Ombudsman or its equivalent for the settling of disputes in Croatia. According to the World Bank review, "*In the medium term, it would be more appropriate to have a single dispute settlement body for financial services – including insurance and investment products. It would be more cost efficient and it can also be funded jointly be the government, regulators and the industry*" (World Bank, 2010).

In Germany, one stakeholder was of the view that the current service for out-of-court resolution is not effective. This stakeholder has noted that, as it currently stands, dispute resolution is mainly the responsibility of the banking associations in Germany. The five main banking associations have their own out-of-court dispute mechanisms and all other cases are dealt with by the Bundesbank. However, it has been indicated that there is a level of dissatisfaction among the general public with regard to this out-of-court dispute resolution service. Hence, while it is certainly the case that out-of-court dispute resolution has a 'large positive impact' in terms of consumer protection, mainly because it helps to avoid lengthy and potentially expensive legal cases, this is not necessarily a reflection of the level of satisfaction of consumers with regard to the results obtained. Furthermore, one stakeholder in Germany explained that the neutrality of the out-of-court dispute resolution service currently in place is questionable and suggested that a service which is more independent of the banking sector and their associations may be more appropriate.

Similarly, in the Netherlands, the Complaint Institution Financial Services *(*Kifid) is seen as controversial because it is financed by the financial sector and there is the potential for bias in their decisions. Furthermore, financial service providers can decide whether or not they consider Kifid's judgements to be binding. Having said that, many stakeholders did express the view that Kifid is an effective mechanism.

In Greece, during consultation, some stakeholders pointed out that the Consumer Ombudsman does not work well in practice as it focuses on legal issues and is slow to proceed with consumer complaints.

In some countries, no out-of-court procedures were identified. In Cyprus, the Single Operator for Out-of-Court Settlement of disputes of financial nature was appointed on 1 July 2013. In Latvia, it has been indicated that the CRPC is not an out-of-court resolution service in the classical sense – it is a public authority that makes binding decisions and, by law, it is obliged to defend the interests of consumers. Efforts are currently underway to reform the out-of-court dispute resolution service in Latvia and new legislation in the field of out-of-court dispute resolution has been adopted and with this is the requirement to develop a mechanism. As a result, it is expected that the out-of-court dispute resolution activities of the CRPC will cease.

In Slovenia, stakeholders noted that, although national legislation requires credit providers to establish an out-of-court dispute resolution body, this has not been wholly implemented. While the banking sector has a Conciliation Board (part of the Banking Association) which resolves disputes concerning consumer credit agreements and settles approximately 150 cases per year, the non-banking sector has yet to set up an appropriate body. It was noted that the current situation (whereby credit providers establish a dispute resolution body) is not sufficient and a government body would be more suited to settling disputes for all credit agreements. On the other hand, in France, it was noted that because of the credit providers internal arbitration procedures, only about a hundred cases annually are brought before the mechanism established by the French Association of Financial Companies (ASF). Apparently, credit institutions are in favour of mediation systems and advocate their use, due to the fact that the positive role of these mechanisms in maintaining good client relationships.

In some countries, it was recognised that there is a need to improve the effectiveness of the out-of-court bodies. In Bulgaria**,** the view was expressed that the effectiveness of KZP specifically with regard to consumer credit complaints is compromised due to *inter alia* the voluntary attendance of any dispute resolutions initiated by them. In Spain, one stakeholder noted that the relevant ADR bodies are neither known to consumers nor brought to the awareness of consumers by credit providers. Combined with the fact the bodies are optional, the effectiveness of these organisations is currently limited. In the UK, one stakeholder suggested that it might be useful to have other mechanisms for out-of-court dispute resolution as well as, or instead of, the Financial Ombudsman Service (FOS).

8.4 Cross border

With regard to Article 24(2) relating to cross-border disputes concerning credit agreements, stakeholders were generally of the view that there is a low volume of cross-border credit in many countries and, as a result, disputes related to cross-border credit are relatively rare. Consumers do not take cross-border credit for many reasons including cultural and linguistic differences and due to an inherent preference to take credit from domestic providers.

In some countries (e.g. Germany), cross-border credit is not encouraged. German credit providers will not offer credit to a consumer who does not have their primary residence in Germany. It is not, therefore, possible for the citizens of other EU MSs to look to Germany for credit. It has been noted by stakeholders in Germany that credit providers are unwilling to provide cross-border credit because of the different legal systems at play and the fact that it is difficult for banks to collect any debts should the customer default on their payment duties.

On the other hand, despite the fact that cross-border disputes are not common in Portugal, the Portuguese authorities included a provision on cross-border out-of-court disputes in their national legislation, with the aim of encouraging an internal market for financial services. One stakeholder indicated that the presence of these ADRs could give consumers confidence to purchase from abroad. It was also indicated that FIN-NET in Portugal receives, on average, two to three cross-border complaints per year, normally in relation to payment services (e.g. money transfers).

9. RESPONSIBLE LENDING

9.1 Background

Recital 26 of the CCD states that:

> *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, and the Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so. Without prejudice to the credit risk provisions of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, creditors should bear the responsibility of checking individually the creditworthiness of the consumer. To that end, they should be allowed to use information provided by the consumer not only during the preparation of the credit agreement in question, but also during a longstanding commercial relationship. The Member States' authorities could also give appropriate instructions and guidelines to creditors. Consumers should also act with prudence and respect their contractual obligations.*

The shaded box below sets out the key questions to be addressed in this Section based on the Specifications.

Q7. What, if any, measures have the particular Member States taken to ensure responsible lending, for example, via other measures considered appropriate (see recital 26)?

9.2 Measures Adopted by Member States

Very few of the countries analysed have implemented specific measures to promote responsible lending practices. That said, the effective transposition of the CCD and the use of strict legal provisions to give effect to its requirements is itself considered to foster responsible lending practices. In particular, responsible lending is promoted through the enactment of extensive information requirements, especially adequate explanations, and the obligation placed on creditors to assess the consumer's creditworthiness before concluding a credit agreement or significantly increasing the total amount of the credit.

The purpose of the CCD transposing laws often refers specifically to the protection of consumers by creating equal conditions for obtaining consumer credit as well as promoting responsible behaviour by creditors in providing consumer credit. Creditors and credit intermediaries are placed under an obligation to take all necessary measures to comply with the CCD requirements as transposed into national law. Some transposing laws (for example, Estonia) contain a provision specifically stating that a creditor is obliged to comply with the principle of responsible lending in connection with consumer credits and then require compliance with the CCD requirements on information and creditworthiness assessment. In addition to legislative measures, there are various initiatives in place, notably information activities, aimed at strengthening consumer education and promoting the financial literacy of consumers, for instance, in Croatia, the Czech Republic, Poland, Portugal and Slovakia. The ultimate aim is to facilitate the informed choice of the consumer.

Permitting procedures in place in the countries analysed are also seen as an important aspect of promoting responsible lending. In some countries, creditors and credit intermediaries are required to obtain a licence from the relevant competent authority that will in turn supervise compliance therewith. In fact, a key element in relation to responsible lending is the scrutiny of consumer credit agreements and of relevant practices through the various supervisory authorities responsible for implementing and enforcing the CCD requirements at national level. Failure to comply with the pre-contractual information requirements and other obligations is sanctioned through various measures such as the revocation or suspension of the creditor’s licence or registration, loss of the right to interest for creditors acting unprofessionally, administrative fines, and sometimes even criminal sanctions, for example, where the creditor or credit intermediary acts fraudulently.

The table below highlights some notable measures identified in the countries analysed related to the promotion of responsible lending practices.

Table 9.1: Responsible Lending	
Country	**Measures identified**
FI	Section 13 of the Consumer Protection Act deals specifically with responsible lending. It states that when granting credit, the creditor or credit intermediary is to act responsibly. In particular, the creditor must not: market credit in such a way that the marketing clearly contributes towards weakening the consumer's ability to carefully consider taking out the credit or use the granting of credit as a main marketing argument when marketing other consumer goods.
HU	Rules concerning borrowing capacity, credit evaluation and responsible retail lending are laid down in Government Decree No. 361/2009 (XII.30) on the conditions of prudent retail lending and creditworthiness examination which prohibits creditors from authorising a lending transaction only on asset coverage basis. The creditworthiness and the suitability of receiving credit of a natural person must be assessed during each credit evaluation. The assessment should be based on the income status of the natural person/household and the borrowing capacity calculated on the basis of the income status. Furthermore, Recommendation No. 9 of 2006 (XI. 7) of the Board of the Hungarian Financial Supervisory Authority on the principles of retail crediting and provision of preliminary advice to clients and consumer protection is aimed at increasing the predictability of legal practice and supporting the uniform application of legal regulations. The aim of the recommendation is to define uniform principles and requirements that are advised to be followed by financial institutions in customer relations for retail crediting purposes. The institutions that joined the Code of conduct on the principles of fair conduct by financial organisations engaged in retail lending must comply with its principles during their activities of retail lending and leasing. According to the Code, the Hungarian Financial Supervisory Authority regularly oversees compliance with its provisions and publishes on its website the observations and the ratings established in the course of such inspections. The purpose of the Code is to strengthen the confidence indispensable in the relationship between retail borrowers and creditors. In connection with retail lending, the Code covers the general standards of responsible lending, the general principles of the creditor's pre-contractual conduct, rules on the unilateral modification of the terms and conditions of the contract, procedures related to the treatment of payment difficulties encountered by customers and principles of the responsible creditor's conduct prior to and during execution procedures.
IE	Ireland has taken a number of measures to ensure responsible lending, for example: -The National Consumer Agency is charged with the task of promoting the interests of consumers in relation to the provision of financial services. It provides information in relation to financial services, including information on the costs to consumers and the risks and benefits associated with the provision of those services. It is also charged with the task of promoting education of consumers. -The Central Bank has the power to publish guidance to creditors in relation to its dealings with consumers. These Codes have statutory basis and creditors are obliged to comply with them. -There is legislative reform in the pipeline, which may assist in promoting responsible lending. For instance, the Central Bank (Supervision and Enforcement) Bill 2011 proposes to enhance the enforcement and supervisory powers of the Central Bank including by requiring financial services providers to prepare independent expert reports on regulatory matters. The Bill also proposes enhanced regulation making powers including e.g. the making of Regulations on procedures for identifying monitoring, reporting on risks which a creditor may be exposed to and the management of these risks. The Bill also enables the Central Bank of Ireland to develop credit scores for the register. Currently submission of information to a credit reference agency in Ireland is voluntary and there is no centralised compulsory credit reporting register. According to the Law Reform Commission, the lack of structured credit reporting in Ireland does not promote responsible lending practices (Law Reform Commission, 2009). Therefore, this Credit Reporting Bill will be a welcome development, in enhancing responsible lending in Ireland, if enacted.

Table 9.1: Responsible Lending	
Country	**Measures identified**
IS	Currently, very limited legislation is in place to promote responsible lending and creditors are obliged to assess creditworthiness only in very few circumstances. The Icelandic Consumer Association has called for legislation to promote responsible lending which would oblige creditors to carry out assessment of creditworthiness and for the adoption of clear, realistic indicators, based on real inflation forecasts, to form the basis for such assessment. The Association concluded that such indicators are vital to ensure responsible lending. A government committee established in 2009 concluded that urgent action was needed to improve the financial literacy of Icelandic consumers. The committee established that the general public does not have adequate knowledge of financial terms and services. The committee also concluded that education on finances is very limited in primary and secondary schools. Another important conclusion is that although the APR is to be included in credit agreements, this is not adequately presented to consumers. The scope of the draft law, currently being discussed in Parliament, is broader than that of the CCD as mortgages, credit agreements for amounts lower than €200 and higher than €75,000 and credit agreements to be repaid within three months and bearing an APR higher than the mean interest rate for savings accounts in accordance with the interest table of the National Bank, are not excluded. It is envisaged that the new legislation will significantly improve consumer protection and responsible lending, e.g. through requirements on information and banning loans to consumers who do not fulfil conditions on creditworthiness.
LV	The Latvian transposing legislation specifically prohibits encouraging irresponsible lending in advertisements concerning consumer credit. When determining whether an advertisement encourages irresponsible borrowing, the overall content and the way it is presented, its design and the information provided in the advertisement regarding the credit service which enables the consumer to take an economically justified decision, must be taken into consideration.
RO	Special requirements on crediting of natural persons, aimed at achieving responsible lending, are set out in the regulations issued by the National Bank of Romania, which supervises the banking system in Romania. These regulations are mandatory for creditors/credit intermediaries and refer to various aspects of crediting, such as: maximum indebtedness degree, limitation of the duration of consumer credits (i.e. not related to real estate investments, loan-to-value ratio, minimum advance, determination of the client's revenues, etc). The law in force is Regulations of the National Bank of Romania no. 17/2012 on some crediting conditions (Banca Națională a României, 2012 (in Romanian).
SI	The Slovenian Consumers' Association, the national non-governmental organisation representing consumers' interests, has published in its monthly journal and on its internet site a number of documents on good and responsible lending (http://www.zps.si/index.php). These articles inform the consumer about their rights in accordance with the transposing legislation and other legislation. They also contain information on best practices, and comparisons of different creditors and the services they provide, etc. Under the auspices of the European Coalition for Responsible Crediting, the Consumers' Association has also participated in producing, publishing and enforcing the 'seven principles of responsible lending' (http://www.responsible-credit.net/index.php?id=2516).
UK	*England and Wales, Scotland and Northern Ireland:* The business practices which the Office of Fair Trading (OFT) may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending. The OFT has developed guidance on Irresponsible Lending (http://www.oft.gov.uk/shared_oft/business_leaflets/general/oft1107.pdf) and on the credit licensing regime (http://www.oft.gov.uk/OFTwork/credit-licensing). The guidance on the credit licensing regime sets out how the OFT will suspend consumer credit licences with immediate effect or from a date specified in the notice. It covers the circumstances in which the OFT would be likely to suspend licences and the decision-making processes employed. The OFT will take into account whether the creditor has engaged in irresponsible lending when assessing whether the creditor is fit to hold a licence. The guidance on irresponsible lending includes explanations of credit agreements; assessment of affordability; pre-contractual, contractual and post-contractual issues; handling of default and arrears and regulatory compliance; provides help to the industry assessing information relating to the consumer's creditworthiness. The ability of the court to set aside an agreement, or to amend its terms if there is an unfair credit relationship, may also deter irresponsible lending, as creditors risk having their contractual rights altered if they are found to have treated the borrower unfairly.

10. CONCLUSIONS

10.1 Summary of Findings on Legal Choice

10.1.1 Credit agreements concluded by an organisation established for the mutual benefit of its members (Article 2(5) CCD)

Article 2(5) provides MSs with the legal choice to decide that certain organisations that provide credit should not have the burden of complying with all the requirements of the CCD. MSs have the option to interpret (and define) which organisations qualify under Article 2(5) and these organisations may only need to comply, in respect of credit agreements, with specified CCD Articles. Six (6) MSs (Cyprus, Ireland, Lithuania, Latvia, Romania and the UK (England and Wales, Scotland and Northern Ireland)) exercised this legal choice.

Some stakeholders[141] noted that this legal choice has had a **positive impact on the internal market and consumer protection** as the organisations described in Article 2(5), by benefiting from a reduced administrative burden, appear to serve as a less aggressive and cheaper alternative to some other types of credit provider. They also increase consumer choice and help to restrict the market penetration of more expensive types of credit (e.g. payday loans). Furthermore, some consumers who would otherwise be refused credit are able to obtain relatively affordable credit from these organisations, thereby improving financial inclusion.

Potentially **negative** aspects identified as a result of this legal choice include issues relating to fairness and equity (between credit providers[142]), maximum harmonisation (as a legislative principle), ease of enforcement and legal clarity for consumers (such that different rules would not apply depending on the source of the credit). Furthermore, it has been suggested that, in some MSs (i.e. those which did not transpose the second paragraph of Article 2(5) CCD, relating to lending which is insignificant in relation to the total value of all existing credit agreements), the exclusion of some of these organisations could potentially lead to large amounts of credit being outside the scope of application of the CCD.

Some stakeholders were **uncertain** whether positive (or indeed, negative) impacts could be specifically attributed to this legal choice due to the fact that, in some countries, the exclusion of these organisations effectively maintained the situation that already existed before the CCD (e.g. the UK). Also, in some countries, stakeholders were unaware of the exclusions applicable to these organisations and, as such, the extent of actual benefits to consumers may be minimal or unknown (e.g. in Cyprus and Lithuania).

141 This view was expressed by public authorities, consumer protection bodies and credit unions across the countries that exercised this legal choice.

142 In Ireland, credit unions were initially afforded an extended deadline for complying with the CCD. When this exemption period expired, credit unions faced an additional administrative burden. Furthermore, bringing credit unions under the scope of application of the CCD in Ireland resulted in an uneven playing field when compared with similar organisations in some other countries (e.g. the UK).

10.1.2 Credit agreements providing for arrangements to be agreed by the creditor and consumer in respect of deferred payment or repayment methods (Article 2(6))

Article 2(6) provides MSs with the legal choice to apply only certain Articles to credit agreements, in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement and where:

- such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
- the consumer would not be subjected to less favourable terms than those outlined in the initial agreement.

Effectively, it gives MSs the option to decide that creditors are not required to provide detailed pre-contractual information as set out in Article 5 to the consumer (a simplified pre-contractual information requirements as set out under Article 6 would apply) or assess the creditworthiness of the consumer (Article 8). The consumer does not have the right of withdrawal (Article 14) if already in default on the initial credit agreement. In these cases, Article 12 relating to obligations in connection with credit agreements in the form of an overdraft facility, Article 15 relating to linked credit agreements and Article 17 relating to assignment of rights are not applicable. Also, creditors do not need to specify the information set out in Article 10(2)(j)(k)(m–q)(s-v) in the credit agreement.

The aim of this legal choice is to lighten the regulatory burden on credit providers in cases where the consumer is already in default on the initial credit agreement and, in so doing, encourage credit providers to seek a more mutually beneficial solution in which the consumer can defer payment or arrange different repayment methods. Presumably, this would have a positive impact in terms of consumer protection, by encouraging credit providers to address the problems consumers may encounter (e.g. due to changes in personal circumstances) and, where possible, avoid over-indebtedness of such consumers. 18 countries (Belgium, Croatia, Cyprus, Czech Republic, Denmark, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Spain) exercised this legal choice.

In general, **stakeholders were not aware** of the practical application of this legal choice or of any impacts which could be directly attributable to it. Although it was generally considered reasonable to exclude credit providers from certain obligations in cases where a consumer is in default (e.g. Article 8 on creditworthiness), it was not possible to specifically attribute impacts to the national transposition of this legal choice. For some countries, the national transposition of this legal choice did not change the standard business practice of credit providers which existed prior to the CCD (or there may be other national characteristics, e.g. aversion to credit) which may explain the lack of stakeholder awareness regarding the legal choice and/or impacts. Notably, around 15% of respondents to the online survey indicated that exercising the legal choice under Article 2(6) had resulted in a **positive impact in terms of consumer protection**. Around 5% of respondents indicated that there had been a **negative impact**; however, no reasons to justify these views were obtained during consultation.

10.1.3 National rules requiring the indication of the APR in advertising concerning credit agreements which do not indicate an interest rate or any figures relating to any cost of credit to the consumer (Article 4(1) CCD)

Article 4(1) CCD (first paragraph) requires '*standard information*' to be provided in advertising concerning credit agreements which indicate an interest rate or any figures relating to the cost of the credit to the consumer. The second paragraph of Article 4(1) provides MSs with the legal choice to apply national legislation which requires information on the APR to be provided in advertising of credit agreements (which do not indicate an interest rate or any figures relating to the cost of the credit) without triggering the requirement for 'standard information'.

This legal choice enables MSs to maintain a high level of protection for consumers (taking into account differences in the legal or economic situation at the national level) by regulating information requirements in their national law regarding advertising which does not contain information on the cost of the credit. In so doing, this legal choice ensures that the national transposition of the CCD is coherent with other national legislation. Four countries (Cyprus, Hungary, Sweden and the UK (all jurisdictions)) exercised this legal choice.

In general, stakeholders were unable to identify specific impacts relating to the transposition of this legal choice. This is possibly because national legislation requiring the APR to be provided in advertising was already in place in these countries before the CCD (e.g. in UK) and, as such, there has been no real change which could be directly attributed to the CCD. Furthermore, some stakeholders had difficulty disentangling or differentiating between the impacts of the legal choice (i.e. the option in the second paragraph of Article 4(1), as discussed above) and the impacts of the CCD provision (i.e. the requirement in the first paragraph of Article 4(1) for '*standard information*' - including the APR - to be provided in advertising).

The main positive impact identified as a result of this legal choice is that consumers will always have information on the APR provided in advertising of credit agreements. As a result, consumers will always have the opportunity to compare different offers (even where information on the interest rate, the cost of credit or other 'standard information' is not provided). For such advertisements, credit providers do not need to provide a long list of information, which means that advertisements can be short and clear. The key benefit of the APR in such advertisements is, therefore, its simplicity (rather than its ability to convey an all-inclusive message, for which the standard information is necessary) and the fact that it is easily comparable for consumers. This legal choice is, therefore, considered to have resulted in a **positive impact in terms of consumer awareness** in some countries (e.g. Hungary).[143]

[143] This view was expressed by public authorities and credit providers.

10.1.4 The APR in advertising concerning credit agreements under Article 2(3) CCD (Article 4(2)(c) CCD)

Article 2(3) CCD sets out which Articles will apply in the case of *credit agreements in the form of overdraft facilities and where the credit needs to be repaid on demand or within three months*. Article 4(2)(c) provides MSs with the legal choice to decide that the APR need not be provided in these credit agreements. Eight countries (Bulgaria, Denmark, Ireland, Luxembourg, Malta, Poland, Spain and the UK (England and Wales, Scotland and Northern Ireland)) exercised this legal choice.

Information obtained from consultation and literature review indicates that the credit agreements covered by Article 2(3) are, in the main, 'niche' products which are only used in specific MSs, by specific credit providers and/or consumers. The anticipated benefits of this legal choice will depend on the extent to which these credit agreements are present in a given national market and the position of the MS regarding providing information on the APR and/or advertising.

For the eight countries that have transposed this provision, some stakeholders[144] were of the view that taking this legal choice has had a **positive impact in terms of the internal credit market** and, in some cases, has avoided consumer detriment. Firstly, there have been methodological difficulties associated with having to calculate the APR (for advertising purposes) for overdrafts specifically and, consequently, excluding the APR from advertising for overdrafts is easier for credit providers (credit providers and industry associations noted that, if they were required to undertake these calculations, they would have incurred additional costs for minimal additional benefit). Secondly, many stakeholders questioned how useful the APR is for specific credit products such as overdrafts. If credit providers were required to advertise such rates for overdrafts (which can range from 1,000% to over 1,000,000% in the case of very short term overdrafts), they would run the risk of unintentionally misleading the consumer, who may not understand what it actually means and/or how to use it effectively for comparative purposes, as intended by the CCD. Overall, the positive impact identified by stakeholders assumes (rightly or wrongly) that for overdrafts, this legal choice has avoided consumer detriment which would have resulted from many consumers becoming confused by the APR and potentially making the wrong financial decision (i.e. a financial literacy issue).

On the other hand, it has been suggested that, regardless of any failings, the APR needs to be shown for all types of credit product in order to promote transparency and consistency and provide all possible information to the consumer[145]. From this perspective, it could be argued that some benefits may have been foregone (i.e. negative impacts may have occurred) in the MSs that exercised this legal choice. This is, however, unlikely to be the case for the eight countries concerned, as the market share for credit agreements under Article 2(3) CCD is small (if not non-existent) in these countries and these products are generally not advertised.

144 This view was expressed by many different types of stakeholders, including credit providers, industry associations and consumer organisations.

145 This view was mostly expressed by consumer organisations/representatives, but also industry associations, credit providers and public authorities.

10.1.5 The APR in pre-contractual information concerning credit agreements under Article 2(3) CCD (Article 6(2) CCD)

Article 6(2) provides MSs with the legal choice to decide that the APR need not be provided in the pre-contractual information for credit agreements in the form of an overdraft facility as described under Article 2(3). Recital 23 recognises that, in order to avoid placing an excessive burden on creditors or, where applicable, credit intermediaries, it is appropriate to restrict the pre-contractual information requirements of the CCD, taking into account the specific character of specific types of credit agreements. This recognises that there is a balance to found between ensuring an adequate level of consumer protection and placing an excessive burden on credit providers. In this context, it is assumed that the anticipated benefit of this legal choice is to avoid placing an excessive burden on credit providers. 10 countries (Croatia, Denmark, Germany, Ireland, Luxembourg, Malta, Poland, Slovakia, Spain and the UK (England and Wales, Scotland and Northern Ireland)) exercised this legal choice.

During consultation, credit providers and industry associations noted that, without this legal choice, they would have incurred additional costs for minimal additional benefit. By being able to avoid these costs, credit providers noted that this legal choice has had a **positive impact in terms of the internal credit market** and, in some cases, avoided consumer detriment. In the countries that exercised this legal choice, the main reason for not requiring information on the APR is that many consumers do not really understand its meaning - as shown in a UK Survey by uSwitch[146] where 32% said that the APR is '*the rate that is representative of your balance*'. Providing information on the APR to such consumers – based on incorrect interpretations of what it means - could, in some cases, prove to be more problematic to consumers than not providing any information at all; hence, taking up this legal choice is considered to have avoided consumer detriment. For these countries, it is considered that provision of information on the APR would not particularly help uninformed consumers. It is worth noting that an information campaign has recently (May 2013) been undertaken in Malta and Ireland[147] to enhance borrowers' understanding. Where the financial literacy of consumers is a problem, the benefits of providing information on the APR will not be fully realised in any case.

As with the APR in advertising, it is possible that some benefits may have been foregone (i.e. **negative impacts** may have occurred) in the MSs that exercised this legal choice. However, this is unlikely considering the nature and uptake of the credit agreements covered by Article 2(3) across these EU MSs. Furthermore, it was indicated that, in some MSs (e.g. Malta and Spain), information on the APR can easily be obtained by consumers from other sources (e.g. bank websites) even if it is not required by law.

[146] When asked "*what does representative APR mean*?", 32% said it is the rate that is representative of your balance, 25% correctly answered that it is the rate the majority of customers get; 17% said it is the average rate of the entire customer base; 23% said don't know; and 3% said the rate that is representative of your income. See https://s3-eu-west-1.amazonaws.com/uswitch-press-room//consumers-in-the-dark-about-new-credit-directive.pdf

[147] This campaign is expected to be launched in Spain and Cyprus later in 2013.

10.1.6 The APR in credit agreements under Article 2(3) CCD (Article 10(5)(f) CCD)

Article 10(5)(f) provides MSs with the legal choice to decide that the APR need not be included in credit agreements in the form of an overdraft facility, as described under Article 2(3). However, the total cost of credit should still be provided. 11 countries (Czech Republic, Germany, Denmark, Luxembourg, Spain, Ireland, Malta, the Netherlands, Poland, Slovakia and the UK (England and Wales, Scotland and Northern Ireland)) exercised this legal choice.

Information on the consequences of this legal choice is very similar to that provided in Sections 10.1.5 and 10.1.6. In general, most stakeholders were not aware of any impacts resulting from the legal choices relating to credit agreements covered by Article 2(3). In this context, it is pertinent to note that it is fundamentally difficult to quantitatively assess the impacts of non-provision of information. By definition, the information has not been provided and, as such, consumers and creditors (consulted for this study) are unlikely to be aware of how they would have acted in a theoretical situation. This is particularly the case in countries where the transposition of this legal choice mirrored the pre-existing legal situation. In addition, it is difficult to distinguish the impacts of non-provision of information on the APR from other influencing factors (e.g. the financial situation of the debtor, the financial knowledge of the debtor, the impacts of the financial crisis on borrowing and lending, etc.).

For the countries that exercised this legal choice, some stakeholders (mostly credit providers and industry associations) were of the view that taking up this legal choice has had a **positive impact in terms of a reduced administrative burden** (by avoiding additional costs being incurred by credit providers for minimal additional benefit). Also, if it is accepted that, in specific situations, information on the APR can be misleading, then exercising this legal choice has avoided consumer detriment which would have resulted from many consumers becoming confused by information on the APR and potentially choosing the wrong financial product.

As stated earlier, it is possible that taking up this legal choice has resulted in less information being available to consumers (i.e. some benefits may have been foregone) – particularly taking into account the fact that 17 countries believe information on the APR should be provided to consumers in advertising, pre-contractual information and in the credit agreements for overdrafts covered under Article 2(3). For the countries that exercised this choice, our finding is that such foregone benefits are likely to be minimal for the reasons set out above (i.e. many consumers do not understand what is meant by an APR, credit agreements under Article 2(3) are 'niche' products and the fact that information on the APR can be obtained via other sources). In addition, credit providers are still required to provide other relevant information (e.g. on the annual rate of interest (or borrowing rate) in credit agreements) and, as such, it is not the case that no relevant information is being provided to consumers.

10.1.7 National rules regarding the validity of the conclusion of credit agreements (Article 10(1) CCD)

Article 10(1) provides MSs with the legal choice to introduce or maintain national rules regarding the validity of the conclusion of credit agreements, provided they are in conformity with EU law. All 30 countries exercised the legal choice given by Article 10(2) to maintain or introduce national rules regarding the validity of the conclusion of credit agreements, provided they are in conformity with EU law. Accordingly, general national civil law rules for the validity of contracts apply. All 30 countries decided that electronic signatures should generally be valid for the conclusion of credit agreements.

There are a number of positive impacts associated with the use of electronic signatures. Before electronic signatures were introduced, all contracts had to be signed, shipped (or faxed) and filed in paper format. Each step in this process used up time and money and, as such, was effectively slower and more expensive compared to electronic communication. Furthermore, electronic signatures are potentially also more secure than paper signatures (e.g. due to digital encryption technology).

That said, information obtained from consultation indicates that the actual extent to which the benefits of allowing electronic signatures to conclude a consumer credit agreement accrue in each MS will vary according to the specific legal framework in each MS, the type of electronic signatures being used and the frequency with which electronic signatures are used, as well as the pre-existing situation. Hence, while in some countries (e.g. Latvia, Norway and the UK), electronic signatures are relatively common and **positive impacts on consumer welfare** have been indicated by users (particularly as internet and online activity increases); in other countries, the anticipated benefits have not always been fully realised (for different reasons). In some countries (e.g. Bulgaria), there are financial costs associated with electronic signatures which appear to be prohibitive to their use. In other countries (e.g. Italy), credit providers are wary of allowing consumers to use electronic signatures due to security reasons. In Greece, credit providers are awaiting a Ministerial Decision to issue technical rules on how to deal with electronic signatures.

Of course, there is some **uncertainty** regarding how this impacts on consumers and credit providers. Stakeholders explained that consumers now have access to online sources of credit (including payday lenders) who can promise to deliver credit within a very short period of time (with its attendant problems in future). Some stakeholders (e.g. in Iceland) thought that the use of written contracts is beneficial for consumers because it slows down the process of receiving credit. This allows the consumer to reflect on the contract and come to a more thought-through decision. Furthermore, stakeholders in several countries (e.g. Norway, Poland, Cyprus, Iceland, Denmark and Portugal) noted that a key benefit of a written credit agreement is that it can be taken to court as proof, if needed, by both parties. At present, the reality is that, across Europe, most credit agreements still take a paper form in spite of the widespread adoption of the electronic signature in some EU MSs and the development of systems to support the electronic signature.

10.1.8 The right of withdrawal in the case of linked credit agreements under Article 3(n) CCD (Article 14(2) CCD)

Article 14(1) gives consumers the right to a period of 14 calendar days in which to withdraw from a credit agreement without giving any reason. Article 14(2) provides MSs with the legal choice to reduce the 14 day right of withdrawal period for linked credit agreements, to a lower pre-determined value, provided that:

- national legislation at the time when the CCD entered into force already provided that funds cannot be made available to the consumer before the expiry of a specific period; and
- the withdrawal period is reduced at the explicit request of the consumer.

Three countries (France, Romania and Slovenia) took up the legal choice in Article 14(2) regarding linked credit agreements as defined in Article 3(n).

In general, **stakeholders were not aware** of the practical application of this legal choice or of any impacts which could be directly attributable to it, although a number of benefits may be identified as a result of this legal choice:

- firstly, in certain countries (and for certain products), the consumer and/or credit provider may benefit from having the option to request a shorter withdrawal period;

- secondly, by specifying that this request has to be made by the consumer, it ensures that the consumer is not pressured to reduce his/her waiting period. At the same time, it allows consumers, who are sure of their purchase, to proceed more quickly by requesting a shorter time;

- finally, the legal choice helps to ensure regulatory consistency with pre-existing national legislation and provides greater legal clarity for credit providers (than existed before).

10.1.9 The right of early repayment and the compensation claimed by the creditor (Article 16(4) CCD)

Article 16 specifies that a consumer has the right to repay obligations under a credit agreement fully or partially at any time, which entitles him to a reduction in the cost of the credit. Creditors are entitled to fair and objectively justified compensation for possible costs directly linked to early repayment, provided that the early repayment falls within a period for which the borrowing rate is fixed. Article 16(4) provides MSs with the legal choice to make two further stipulations:

- firstly, that such compensation may be claimed by the creditor only if the amount of early repayment exceeds the threshold defined by national law, which should not exceed €10,000 within any period of 12 months (Article 16(4)(a));

- secondly, that a creditor may exceptionally claim higher compensation if he can prove that the loss actually suffered from early repayment exceeds the limits under Article 16(2). Equally, a consumer can claim a reduction in compensation if the sum claimed by the creditor exceeds the loss actually suffered (according to the definition of loss provided in the Directive) (Article 16(4)(b)).

Most countries used either one or both of the legal choices under Article 16(4):

- 18 countries (Austria, Croatia, Cyprus, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Norway, Slovakia, Slovenia and the UK (all jurisdictions)) transposed Article 16(4)(a) CCD concerning the creditor's right to compensation for early repayment on condition that the amount of the early repayment exceeds the threshold defined by national law;
- 9 countries (Bulgaria, Cyprus, Denmark, Lithuania, Luxembourg, Malta, the Netherlands, Spain and the UK (only Gibraltar)) transposed Article 16(4)(b) CCD concerning the creditor's right to exceptionally claim higher compensation for early repayment;
- 5 countries (Cyprus, Lithuania, Luxembourg, Malta and the UK (Gibraltar)) made use of both options; and
- 8 countries (Belgium, Czech Republic, Estonia, Germany, Iceland, Portugal, Romania and Sweden) did not use either of the options.

In general, stakeholders were not aware any impacts which could be directly attributable to the legal choices set out in Articles 16(4)(a) and 16(4)(b). Information obtained from consultation and literature review suggests that the consequences of MSs' legal choices in this respect are influenced by two key factors: (1) the regulatory and/or market situation which existed prior to the CCD; and (2) the actual behaviours and/or actions of consumers and credit providers, having now been given a legal basis to claim for a reduction in credit or compensation respectively. Impacts also vary according to whether MSs transposed Article 16(4)(a), Article 16(4)(b) or both.

In terms of the countries which transposed Article 16(4)(a) three scenarios have been identified:

- Countries or cases where the transposition of Article 16(4)(a) is seen as **beneficial for consumers**, in terms of the fact credit providers now have to meet more restrictive conditions before they can claim any compensation. In theory, this view should be most pronounced in countries where credit providers previously had the power to determine the threshold at which compensation would be paid by consumers and/or where compensation was being claimed by credit providers for repayments lower than the thresholds established after transposition of the CCD.

- Countries or cases where the transposition of Article 16(4)(a) is seen as **beneficial for credit providers**, in terms of ensuring that credit providers are not in a disadvantaged position from early repayment of loans by consumers. This view is more pronounced in countries where credit providers were not allowed to claim compensation for early repayment prior to the transposition of the CCD (e.g. Slovenia and Latvia). It may also be beneficial in countries where there is a cultural aversion to carrying debts (e.g. Malta) and/or where the financial crisis has resulted in consumers reducing their debt burden.

- Countries or cases where this legal requirement is seen as a **benefit for both credit providers and consumers**, taking into account both perspectives above. This view is more pronounced in countries where the transposition of the CCD has resulted in greater legal clarity for both credit providers and consumers in cases of early repayment (e.g. Lithuania, UK).

The actual impacts of this legal choice are **uncertain**. Due to the limited number and/or quality (reliability) of responses received in some countries, it was not always possible to accurately verify the exact situation which applied in each country prior to the CCD. In general, these impacts are, however, likely to be limited as (a) the vast majority of consumer credits in Europe are of an insufficiently high value to trigger the right for credit providers to claim compensation (i.e. in most cases, the value of early repayment would be below the threshold at which compensation can be claimed); (b) some credit providers pass on the opportunity to claim financial compensation for early repayment, despite being legally entitled to do so; and (c) in some MSs, early repayment is relatively uncommon.

In terms of impacts arising from the transposition of Article 16(4)(b), in relation to credit providers' rights to exceptionally claim higher compensation, limited information on impacts was provided by stakeholders.

10.2 Terms/Concepts

10.2.1 The concept of 'insignificant charges' with regard to credit agreements under which the credit has to be repaid within three months (Article 2(2)(f) CCD)

Article 2(2)(f) excludes from the scope of application of the CCD credit agreements under the terms of which the credit has to be repaid within three months and only **insignificant charges** are payable. Nine MSs (Belgium, Croatia, Cyprus, Finland, Netherlands, Romania, Slovenia, Spain and the UK) have clarified this concept. Cyprus and Slovenia define an insignificant charge as a charge of less than €10. In Spain, insignificant charges cannot exceed 1% of the total cost of the credit; while, in Romania, insignificant charges are those charges of up to 0.5% of the credit agreement's value. In Belgium, it is defined as a charge of less than €4.17 a month, while in Croatia it is a charge of less than €4 (HRK 30). Finland clarified the concept of 'insignificant charges' as '*other costs of credit converted to an annual percentage rate of charge do not exceed the amount of interest laid down in Section 4(1) of the Interest Act (633/1982)*'. The Netherlands and the UK adopt a more qualitative description to clarify the concept.

Stakeholders in Belgium noted that this clarification has had positive impacts in terms of clarifying the scope of the CCD where it relates to certain financial products.

Stakeholders in Croatia agreed that there are clearly benefits from the regulator having specified a limit of €10 in order to avoid ambiguity; however, they noted that, in practice, there appear to be more fundamental issues regarding enforcement. Stakeholders from Romania indicated that, in the past, problems have arisen where the legislation was not specific and was unclear. In this context, stakeholders indicated that clarifying the concept 'insignificant charges' has been beneficial, in the sense that it has helped protect consumers from unscrupulous credit providers and, in the long term, could improve the relationship between financial service providers and the beneficiaries of financial services. In Slovenia, the clarification of this concept has apparently been beneficial because it ensures legal clarity for credit providers and allows for more effective enforcement and monitoring by authorities. Stakeholders in Croatia indicated that the market share for credit agreements as described under Article 2(f) is very small and, as such, this provision or clarification is rarely used in practice. Similarly, stakeholders in Finland noted that this clarification was already in the pre-existing legislation (prior to the CCD).

10.2.2 The concept of 'in good time' with regard to the provision of pre-contractual information (Articles 5(1) and 6(1) CCD)

Articles 5(1) and 6(1) require the creditor or credit intermediary to provide the consumer with pre-contractual information **in good time** before he is bound by any credit agreement or offer. Eight MSs (Denmark, France, Lithuania, the Netherlands, Norway, Romania, Sweden and the UK) have clarified what 'in good time' means.

In countries such as Norway and the Netherlands, information from stakeholders indicates that the clarification of this concept has not led to any changes in the practical situation (in terms of consumer protection) as the pre-existing legislation in these countries already included a provision to this effect. In Lithuania, information from consultation appears to suggest that the interpretation of this concept varies on a case-by-case basis – in which case, it is possible that there may have been some positive impacts, although it is unclear the extent to which this is actually the case. Similarly, in France, there is a 15-day 'reflection' period specified in law, to give consumers time to consider a credit offer (and during which time the credit offer remains valid); however, it appears that, in practice, credit offers and contracts are often provided to consumers at the same time and that consumers often choose not to take advantage of the reflection period (instead deciding to sign the credit agreement relatively quickly without taking it away to consider). In Romania, the concept has been clarified by stating that information has to be supplied in sufficient time before, but not less than, 15 days before the moment in which the consumer concludes a credit agreement or accepts an offer (that is, the moment in which the consumer becomes contractually bound). Stakeholders noted that this clarification has had a positive impact as credit providers have benefitted from the elimination of a potential source of dispute and consumers have more time to consider the pre-contractual information and come to an informed decision. However, it appears that the transposition of this provision (and clarification of this concept) generally mirrors the situation that existed before the transposition of the CCD.

Some stakeholders (e.g. in Norway and Sweden) indicated that it may not be possible to ensure consumers are provided with the pre-contractual information 'in good time' when taking credit online. In this context, it was noted that the environment in which credit is taken is changing significantly and that some rules may not apply as effectively, and some benefits may not be as visible, in the online environment as in the traditional branch-network environment.

10.2.3 The concept of 'adequate explanations' and the provision of assistance by creditors and credit intermediaries to the consumer (Article 5(6) CCD)

Article 5(6) requires creditors and credit intermediaries to provide **adequate explanations** to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation. MSs may adapt the manner in which, and the extent to which, such assistance is given, as well as by whom it is given. Eight MSs (Austria, Hungary, Italy, the Netherlands, Poland, Slovenia, Sweden and the UK) have clarified what the concept 'adequate explanations' means.

In terms of **positive impacts**, stakeholders in Austria have indicated that the clarification of this concept has made it easier for authorities to monitor and check on regulatory compliance (i.e. there is better enforcement). In Italy, stakeholders noted that the pre-contractual information provided to consumers is more complete and clear as a result of clarification. In addition, the terms and conditions of consumer credit agreements are said to have become more transparent and information – more uniform and simple. As consumers are now better able to compare the cost of different credit offers, there appears to have been a reduction in complaints with regard to pre-contractual information, increased trust in credit providers and greater transparency in credit contracts in Italy.

In terms of **negative impacts**, credit providers have pointed to an increase in the administrative burden faced by creditors. For example, in Poland, the process of finalising credit agreements has become longer and credit providers have had to employ more staff, despite there being little change in the number of credit agreements being concluded or in turnover. In addition, stakeholders in the Netherlands and Hungary indicated that the large amount of information consumers need to process (even if not as a result of the CCD) before making a decision is also seen as burdensome. It was noted that, although consumers are now receiving more information than they have in the past (e.g. due to complexity of financial products), the information they receive is not always relevant and is often too complex and/or extensive.

In some countries (e.g. the Netherlands, Slovenia, Sweden and the UK), the concept has been specified in a way which is still ambiguous and open to interpretation and, in some of these countries, the clarification effectively maintained what was common practice before the CCD.

10.2.4 The provision of pre-contractual information for certain credit agreements by means of the European Consumer Credit Information form set out in Annex III CCD (Article 6(1) CCD)

Article 6(1) requires the creditor to provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. MSs are free to require this information to be provided by means of the SECCI form set out in Annex III CCD. Eleven MSs (Belgium, Bulgaria, Croatia, Hungary, Ireland, Latvia, Luxembourg, Norway, Portugal, Slovakia and Slovenia) have made the use of the SECCI form mandatory.

The aim of the SECCI form, as stated in Article 6(1) CCD, is to provide the consumer "*with the information needed to compare different offers in order to take an informed decision*" on whether to conclude a credit agreement. Against this objective, the vast majority of stakeholders in many European countries agreed that the SECCI form has had a **positive impact** and achieved its intended purpose of providing credit information on a standard information sheet which allows consumers to compare different prices and offers. These positive impacts are especially noticeable in countries where such information was not previously available to consumers (e.g. Croatia). Some stakeholders suggested that the mandatory use of the SECCI form has reduced the risk of default or non-payment, facilitated the online credit process and increased transparency and competition in the market.

That said, some stakeholders in some countries (e.g. Ireland) were of the view that the SECCI form for overdrafts is more complicated and less transparent than pre-contractual information forms that were used prior to the CCD. Various stakeholders (including credit providers) also noted that the amount of information contained in the form discourages consumers from reading it in its entirety (e.g. in Belgium). While credit providers noted that costs were incurred as a result of the SECCI form – e.g. increases in operational costs associated with the integration of the form into business practices, IT changes, changes in internal procedures, etc. - none were able to provide specific quantitative information on the administrative burden incurred as a result of this legal choice. For some, this was because the costs were minimal, while for others, these changes were imbedded in wider operational changes and, as such, were difficult to discern. On the other hand, other stakeholders noted that the use of the SECCI form represented an administrative simplification, rather than an administrative burden.

Stakeholders in some MSs (e.g. Croatia, Bulgaria, Belgium and Hungary) were of the view that the benefits of the SECCI form have been moderated by the fact that many consumers do not have sufficient financial literacy to fully understand the information provided in the form. In addition, in some countries (e.g. Bulgaria), creditors were already providing nearly the same information as in the SECCI form (on request) before the transposition of the CCD and so there has been no significant change from the status quo. Some stakeholders also noted that the SECCI form is, in some instances, provided immediately prior to the conclusion of the credit agreement and, as a result, its informational purpose is compromised.

10.2.5 The concept of 'sufficient information' with regard to the obligation to assess the creditworthiness of the consumer (Article 8(1) CCD)

Article 8(1) requires the credit provider to assess the consumer's creditworthiness on the basis of **sufficient information**, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database. Two MSs (Belgium and the UK) have clarified what 'sufficient information' means. In Belgium, the transposing law requires that 'complete and correct information' is requested from the consumer and that the creditor or credit intermediary looks at the consumer's financial circumstances (where this includes a consultation of the database for credits to private persons). The credit agreement can only be concluded when it can reasonably be assumed that the consumer will be capable of meeting the engagements. In the UK, the law states that a creditworthiness assessment must be based on 'sufficient information' obtained from the debtor, where appropriate and, where necessary, from a credit reference agency. Guidance from the OFT specifies that 'all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted.'

In Belgium, stakeholders indicated that 'complete and correct' information was already required and obtained from consumers. In this respect, the transposing law has not caused any significant changes, except for a few additional creditor obligations with regard to registration of certain financial products and preservation of the results of consultations on consumers' creditworthiness. This latter aspect has had a positive **impact on consumer protection**. There were, however, concerns regarding the enforcement of this provision; some stakeholders were of the view that sufficient information is not always obtained by credit providers offering point-of-sale contracts due to a conflict of interest between selling a good/service and upholding legal obligations. As a result, consumer creditworthiness is not always assessed in sufficient detail.

Stakeholders in the UK noted that clarifying what is meant by 'sufficient information' may have led to a limit on the amount of credit offered to less creditworthy consumers in Gibraltar; however, as there are generally no issues with repayment in Gibraltar, the specific effects of this provision are uncertain.

10.2.6 The concept of 'significant increase' with regard to the obligation to assess the creditworthiness of the consumer (Article 8(2) CCD)

Article 8(2) requires the credit provider to assess the consumer's creditworthiness before any **significant increase** in the total amount of the credit. Three MSs (Bulgaria, Slovenia and Sweden) have clarified what 'significant increase' means. Bulgaria and Slovenia require a creditworthiness assessment before any increase of more than 25% and 20% respectively of the contracted credit amount. In Sweden, an increase of more than 10% should, in general, be seen as significant.

In terms of **positive impacts**, stakeholders in Slovenia were of the view that the clarification of this concept has reduced the level of risk for all parties to the credit agreement and ensured that all consumers are treated equally. In Bulgaria, stakeholders noted that, in practice, creditworthiness is assessed regardless of the percentage specified in the legislation and, as such, this clarification has not necessarily changed the status quo. In Sweden, stakeholders were generally unaware of the clarification of 'significant increase' and, as such, could not provide information on its impacts.

10.2.7 The right of withdrawal in the case of credit agreements which by law are required to be concluded through the services of a notary (Article 14(6) CCD)

Article 14(6) provides MSs with the option to exclude the application of the right of withdrawal in the case of credit agreements which, by 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 5 and Article 10. Five MSs (Belgium, Croatia, Germany, Luxembourg and Malta) have exercised this legal choice.

In Belgium, Germany, Luxembourg and Malta, stakeholders explained that this provision is rarely used in practice because it is extremely rare for a consumer credit agreement to be concluded before a notary (this is usually only the case for mortgage credits and credit agreements linked to property). Although stakeholders thought that, in theory, this provision should have a negative impact in terms of consumer protection (as the right to withdrawal is good for the consumer, at the very least, from a psychological point of view), consumers rarely use their right of withdrawal after signing and finalising a credit agreement. Indeed, some stakeholders were of the view that notaries generally focus on the protection of weaker parties (typically, the consumer) and notaries are legally bound to properly and sufficiently advise the consumer; as such, the interests of the consumer are already protected by default.

10.2.8 The right to remedies in the case of linked credit agreements (Article 15(2) CCD)

Article 15(2) provides consumers with the right to pursue remedies against the creditor, where the goods or services covered by a linked credit agreement are not supplied, supplied only in part, or are not in conformity with the contract for the supply thereof, if the consumer has pursued his remedies against the supplier but has failed to obtain satisfaction. MSs must decide the extent and the conditions for the exercise of those remedies. The legal analysis of the national transposing measures showed that all countries, except for Iceland, have clarified this concept.

The consequences of how MSs have clarified this concept are influenced by two key factors: firstly, the regulatory and/or market situation which existed prior to the CCD; and secondly, the actual behaviours and/or actions of consumers and credit providers, having now been given a legal basis to pursue remedies against the creditor for linked credit agreements. There is also the wider issue of the extent to which linked credit agreements are used in each MS and the awareness of stakeholders (in particular consumers) of the possibility provided in their national law to pursue remedies against credit providers.

In terms of **positive impacts**, in most countries, the clarification of this concept is seen as beneficial for consumers in terms of providing an additional layer of consumer protection and additional possibilities for pursuing remedies against the creditor (e.g. in Estonia). This is especially the case in MSs where consumers did not have this possibility previously and/or where consumers were unaware of their rights in relation to linked credit agreements (e.g. Latvia). It was also noted that clarifying this concept in a way that gives consumers (additional) opportunities to pursue remedies has made credit providers more careful regarding the companies they liaise with. As such, it can be said that there has been a related improvement in the services provided to consumers. Some stakeholders (namely, credit providers) have cited an increased administrative burden as a result of the transposition of this concept; however, this impact has not been substantiated quantitatively.

10.2.9 The term 'significant overrunning' (Article 18(2) CCD)

Article 18(2) requires creditors to provide consumers with certain information, without delay, on paper or on another durable medium, in the event of a **significant overrunning** exceeding a period of one month. Three MSs (Belgium, Romania and the UK) have clarified what constitutes a 'significant overrunning'. For example, Belgian law refers to an overrunning that reaches at least €1,250, while Romanian law refers to an overrunning of the credit limit value of at least 15%. The UK adopts a more qualitative description to clarify the concept.

In terms of **positive impacts**, stakeholders in Belgium indicated that clarifying this concept has resulted in increased legal clarity for both credit providers and consumers which, in turn, has facilitated legal compliance. Stakeholders in Belgium also noted that the legally defined threshold (€1,250) establishes a psychological barrier which helps to protect consumers; in other words, consumers are disinclined to reach a state of 'significant overrunning' once they see the established threshold is being approached. Clarification of this concept is also seen as beneficial for consumers with lower levels of financial literacy (e.g. in Romania) due to the simplicity and legal clarity associated with a quantitative figure. In Romania, it appears that some credit providers were already complying with this obligation prior to the CCD (supposedly in line with guidance issued by the National Bank of Romania). In the UK, impacts on the internal credit market and consumers have not been identified; it is possible that this is due to other key developments relating to overdrafts which have occurred over the last few years (including OFT investigations, test court cases and a Supreme Court ruling), which have had a greater impact (than the CCD) on how banks charge for overdrafts and, consequently, the concept of significant overdrawing.

10.3 Choice of Law Provisions

Article 22(4) CCD requires MSs to take the necessary measures to ensure that consumers do not lose the protection granted by the CCD by virtue of the choice of law of a third country as the law applicable to the credit agreement, if the credit agreement has a close link with the territory of one or more MSs. In almost all the countries (22) analysed, specific measures have been adopted to transpose Article 22(4) CCD. However, the Czech Republic[148], Denmark, Finland, France[149], Iceland[150], Italy, Slovenia[151] and the UK have not prescribed any specific measures to ensure the legal protection of consumers where the law of a third country applies to credit agreements.

10.4 Penalties and Enforcement

Article 23 CCD requires MSs to lay down penalties for infringements of the national provisions transposing the CCD. The penalties must be effective, proportionate and dissuasive. 12 of the 30 countries analysed (Austria, Belgium, Denmark, Finland, France, Hungary, Ireland, Luxemburg, the Netherlands, Norway, Poland and the UK) have provided for specific criminal sanctions for violation of the consumer credit legislation.

Consultation with stakeholders across the 30 countries indicates that, in many countries, penalties have not often been applied in practice. In many countries (e.g. Austria, Croatia, Ireland the UK, etc.) stakeholders have indicated that the imposition of penalties for breaches of the CCD is 'rare'. Various reasons have been put forward to explain why penalties are not imposed more often in practice, which include:

- the mere presence of penalties is a sufficient deterrent (e.g. Norway and Ireland);
- the supervision activities of authorities ensure that the market is functioning efficiently (e.g. Hungary);
- a preference by authorities for dialogue and use of penalties as a last resort (Cyprus, Lithuania, Latvia, Finland); and
- credit providers have a natural preference to avoid penalties for reputational and other reasons (e.g. Austria, Italy, Latvia).

However, in some countries, there appears to be a desire for more frequent use of penalties. In Iceland, it has been suggested that penalties are currently not commonly used but they could be used more to prevent violations of the rules.

An exception to the rare use of penalties was identified in the Czech Republic and Romania. In the Czech Republic, penalties are used quite frequently although the penalties applied are often nowhere near close to the high-end of the range of

148 Although the Czech Republic has not yet transposed Article 22(4) CCD, this requirement will be transposed by the new Act on Private International Law (No. 91/2012 Coll.). This Act will enter into force on 1 January 2014.

149 In France, a similar provision is provided Article L.121-20-15 of the Consumer Code.

150 Neither the current law nor the draft law presented in Parliament with the aim of fully transposing the CCD contain any explicit provisions on measures to ensure legal protection of consumers where the law of a third country applies to the credit agreement.

151 In Slovenia, although Article 22(4) was not transposed into the ZPotK-1, other more generic provisions may come into effect depending on the circumstances.

available sanctions. In Romania, fines are used quite often and are typically as close to the upper limit as possible.

In terms of the **outcome** of these penalties, while it is the case that the vast majority of respondents were aware of the penalties for non-compliance with the CCD, the majority were either not aware of any impacts or did not consider that there have been any impacts on consumer protection as a result of these penalties. This is because, in many of the countries analysed, there has not been any change to the framework of penalties used since the transposition of the CCD and the penalties are only rarely applied. However, 40% of respondents believed that there have been positive impacts on consumer protection as a result of penalties. This may be because, in some countries, changes have been made, or are in the process of being made, to the framework of penalties used (e.g. Iceland, Sweden and France).

For most MSs, the sanctions provided by national law are considered effective, proportionate and dissuasive. Nevertheless, in a few countries, potential problems were identified. For instance, in Cyprus, sanctions are considered effective, proportionate and dissuasive for those creditors in the banking sector, but not for creditors in the non-banking sector. In Germany and Iceland, some stakeholders expressed the opinion that the penalties are too lenient to be effective, proportionate and dissuasive.

In terms of **enforcement**, it is the case that the level of enforcement of the CCD and the type of enforcement activity varies from country to country. While in some countries, annual inspections are undertaken (e.g. in Belgium, Romania and Norway), in other countries, ad-hoc or random inspections are carried out as a result of consumer complaints and for other reasons (e.g. Slovakia and Finland). Thematic inspections of credit providers are also undertaken which can focus on, for example, particular sectors of the market or particular credit products. There are some countries where there appears to be a 'strict' level of enforcement of the CCD; for example, Belgium, Bulgaria and Italy. On the other hand, there are some countries where stakeholders suggested that even more stringent enforcement of the requirements of the CCD would be of benefit (e.g. Cyprus and Malta).

There are also national specificities which influence the approach to enforcement and the perception of its effectiveness. For instance, in some countries it has been observed that different levels of enforcement occur for banking and non-banking credit providers (e.g. Estonia, Bulgaria and the Czech Republic). Also, in some countries there are problems with enforcement of credit providers which operate on the 'black' or 'grey' markets.

10.5 Extension of Scope

Bulgaria, Cyprus, Greece, Ireland, Luxembourg, Malta and Slovakia have transposed the exclusions from scope in Article 2(2)(c) to (l) CCD with no modification. In the other countries analysed, some of these exclusions have not been transposed at all (resulting in an extension of the scope of application of the CCD requirements to the relevant type of agreement) or have been only partially transposed (resulting in the partial application of the CCD requirements to the relevant type of agreement).

As regards why certain articles were modified in some form, the main reasons given by stakeholders are summarised below:

- extending the scope of the Directive allowed them to include credits which were previously within the scope of the Directive (i.e. to maintain the status quo). This was the case in Norway, Finland and the UK.

- the law/instrument used in the implementation of the Directive determined the specific transposition (e.g. Germany and Ireland).

- the scope of the Directive was extended simply because the CCD allowed for this to happen and to address specific regulatory concerns (e.g. Poland).

- to ensure consumer protection. For example, in Italy, the extensions of scope were provided in order to level the playing field across all loans (thus preventing distortion in the internal credit market and ensuring better consumer protection); and

- to ensure small credits are covered. For example, in Slovenia, credits between €75 and €200 have been included in the scope of the Directive to ensure that loans of a small amount and short repayment period are covered.

10.6 Out-of-Court Dispute Resolution

Article 24(1) requires MSs to ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate. Article 24(2) requires MSs to encourage these bodies to cooperate in order to resolve cross-border disputes concerning credit agreements.

Most of the countries analysed made use of existing bodies for the purposes of settling consumer disputes concerning credit agreements and their resolution out-of-court. Some countries included a specific provision on out-court-dispute resolution and referred specifically to the resolution mechanism in the legislation, whereas other countries chose not to do this. Additionally, the transposing provisions in some countries provided for dispute settlement by a body to be set up after the dispute arises (e.g. Germany) or, in the case of Bulgaria, France and Slovenia credit providers were required to set up their own alternative dispute resolution mechanisms.

In terms of effectiveness, in the majority of countries, the existing national procedures for out-of-court dispute resolution are considered effective and meet the needs of consumers. Generally, stakeholders considered an out-of-court dispute resolution body to be effective where consumers are aware of the possibility to obtain redress. Stakeholders in Sweden, Denmark, Finland and Iceland noted that the long-term existence of out-of-court procedures meant that consumers are aware of such procedures and how to use them. On the other hand, in Belgium, consumers are generally not aware of the Ombudsfin and similarly, in Romania, extrajudicial mechanisms are not used frequently.

Furthermore, stakeholders considered an out-of-court dispute resolution body to be effective where there are minimal (if any) costs and where final decisions are made quickly and are binding and enforceable.

In some countries, there were differing views among stakeholders regarding the effectiveness of the out-of-court dispute resolution mechanism. For instance, in Malta, the Consumer Claims Tribunal was indicated to have a maximum claim limit of €3,494, which raises questions over its ability to cover the majority of consumer credit disputes. In Germany, one stakeholder was of the view that the current service for out-of-court resolution is not effective because dispute resolution is mainly the responsibility of the banking associations.

In some countries, no out-of-court procedures were identified. For example, in Cyprus, the Single Operator for Out-of-Court Settlement of disputes of financial nature was appointed on 1 July 2013. In Latvia, it has been indicated that the CRPC is not an out-of-court resolution service in the classical sense – it is a public authority that makes binding decisions and, by law, it is obliged to defend the interests of consumers. Furthermore, in Slovenia, stakeholders noted that, although national legislation requires credit providers to establish an out-of-court dispute resolution body, this has not been wholly implemented.

Finally, in some countries, it was recognised that there is a need to improve the effectiveness of the out-of-court dispute resolution bodies. In Bulgaria**,** the effectiveness of KZP specifically with regards consumer credit complaints is compromised due to *inter alia* the voluntary attendance of any dispute resolutions initiated by them. In the UK, one stakeholder suggested that it might be useful to have other mechanisms for out-of-court dispute resolution as well as, or instead of, the Financial Ombudsman Service (FOS).

Cross-border out-of-court dispute resolution

Only a few of the countries analysed have reflected the CCD's requirement to encourage out-of-court dispute settlement bodies to cooperate in resolving cross-border disputes concerning credit agreements in national legislation transposing the CCD (Article 24(2) CCD). This may be explained by the fact that this cooperation requirement is more a matter of practical implementation than legal transposition. Nevertheless, some national laws include a specific provision and state which body is competent for cross-border cooperation (e.g. Bulgaria, Cyprus, Hungary, Lithuania and Luxembourg). However, the fact that there is a low volume of cross-border credit in many countries means that disputes related to cross-border credit are relatively rare.

10.7 Responsible Lending

Very few of the countries analysed have implemented specific measures to promote responsible lending practices. That said, the effective transposition of the CCD and the use of legal provisions to give effect to its requirements is considered to foster responsible lending practices. This is reflected particularly in the need to provide extensive pre-contractual information and the obligation to assess the consumer's creditworthiness before concluding a credit agreement (or significantly increasing the total amount of the credit).

Some countries have adopted legislative measures to promote responsible lending. Some transposing laws (for example, Estonia[152]) contain a provision specifically stating that a creditor is obliged to comply with the principle of responsible lending in connection with consumer credits. While Belgium explicitly states the duty of the creditor to look for the most suitable type of credit (including the amount) for the consumer, Estonia and the UK place indirect (implicit) responsibility on the creditor to ensure the suitability of the credit agreement, i.e. by assessing the consumer's creditworthiness and providing adequate explanations. In addition to legislative measures, there are various initiatives used, notably information activities which aim to improve consumer education and the financial literacy of consumers (for instance, in Croatia, the Czech Republic, Poland, Portugal and Slovakia).

Licencing procedures are also seen as an important aspect of promoting responsible lending. In some countries, creditors and credit intermediaries are required to obtain a licence from the relevant competent authority that will, in turn, supervise compliance. Failure to comply with the requirements and other obligations is sanctioned through various measures, such as the revocation or suspension of the credit provider's licence.

152 Article 403 of the Law of Obligations Act is specifically dedicated to implementing the principle of responsible lending.

11. REFERENCES

Arbuthnot Latham (2012): **The Arbuthnot Latham Deferred Debit Card,** See http://www.arbuthnotlatham.co.uk/Upload/file/deferred%20debit%20card%20guide%20NEW%20FSA%20WORDING%20no%20crop%20marks(2).pdf

Banca Naţională a României (2012): **Regulament nr. 17 din 12.dec.2012 Monitorul Oficial, Partea I 855 18.dec.2012 Intrare în vigoare la 18.dec.2012 Regulament privind unele condiţii de creditare**, available from http://bnr.ro/apage.aspx?pid=404&actId=325595

BBC (2013): **Communisave Credit Union put into Liquidation**, article published 18 July 2013, available from http://www.bbc.co.uk/news/uk-england-23356625

BIS (2010): **Consumer Credit Regulations: Guidance on the regulations implementing the Consumer Credit Directive**, available from http://www.bis.gov.uk/assets/BISCore/consumer-issues/docs/C/10-1053-consumer-credit-directive-guidance.pdf

Bundesdruckerei (2013): **New German ID card**, available from http://www.bundesdruckerei.de/en/1567-new-german-id-card

Contract Logix (2012): **The 3 Main Benefits from Using Electronic Signatures**, available from http://www.contractlogix.com/blog/index.php/2012/01/16/the-3-main-benefits-from-using-electronic-signatures/

DTI (nd): **Electronic signatures factsheet**, available from www.berr.gov.uk/files/file34339.pdf

EC (2013): **Are you thinking about taking consumer credit? (Malta)**, available from http://ec.europa.eu/consumers/citizen/my_rights/consumer-credit/documents/130530_ccd_ei_gene_mt.jpg

EC (2009): **Study on the Calculation of the Annual Percentage Rate of Charge for Consumer Credit Agreements**, study for DG Health and Consumer Protection, available from http://ec.europa.eu/consumers/rights/docs/study_APR_en.pdf

EC (2008): **Eurobarometer 298: Consumer protection in the internal market**, available at: http://ec.europa.eu/consumers/strategy/docs/eurobar_298_report_final_en.pdf

ECB (2013): **The Eurosystem Household Finance and Consumption Survey, Results from the First Wave**, available at: http://www.ecb.int/pub/pdf/other/ecbsp2en.pdf

Eurofinas (2011): **Facts & Figures 2011**, available from http://www.eurofinas.org/index.php?page=key-facts-figures

Eurofinas (2010): **Facts & Figures 2010**, available from http://www.eurofinas.org/index.php?page=key-facts-figures

Europa (2012): **European Commission Press Release: Digital Agenda: new Regulation to enable cross-border electronic signatures and to get more value out of electronic identification in Digital Single Market,** available from http://europa.eu/rapid/press-release_IP-12-558_en.htm

Europa (2012b): **Buying consumer credit on-line: following EU action, over 75% of websites checked now give satisfactory information to clients**, available from http://europa.eu/rapid/press-release_IP-12-1251_en.htm

Europa (2011): **Community framework for electronic signatures**, available from http://europa.eu/legislation_summaries/information_society/other_policies/l24118_en.htm

Europa (2010): **Financial literacy in the spotlight as reaction to the financial crisis**, available from: http://europa.eu/rapid/press-release_IP-10-613_en.htm

Finance Norway (2012): **The Norwegian Financial Industry 2012**, available from http://www.fno.no/pagefiles/11388/(en)download/financial%20industries%202012.pdf

FINFO (2013): **Kredittkort**, available from http://www.finfo.no/kredittkort/

Fox News (2012): **Cash is king in Germany**, available from http://www.foxnews.com/world/2012/07/27/cash-is-king-in-germany/#ixzz228uptGdO

House of Lords European Union Committee (2006): **36th Report of Session 2005-06, Consumer Credit in the European Union:** Harmonisation and Consumer Protection, Volume II: Evidence.

Kukiewicz, J. (2012): **Consumer Credit Directive: 6 new rights**, available at: http://www.choose.net/money/guide/features/consumer-credit-directive.html.

Law Reform Commission (2009): **Consultation Paper – Personal Debt Management and Debt Enforcement,** available from http://www.lawreform.ie/2009/consultation-paper-on-personal-debt-management-and-debt-enforcement.201.html

Le Figaro (2012): La **Banque postale avance les délais du debit différé**, available from http://www.lefigaro.fr/conso/2012/07/11/05007-20120711ARTFIG00273-la-banque-postale-avance-les-delais-du-debit-differe.php

Le Figaro (2011): **Moyens de paiement: la France à deux vitesses**, available from http://www.lefigaro.fr/conso/2011/01/19/05007-20110119ARTFIG00726-moyens-de-paiement-la-france-a-deux-vitesses.php

Lythe R (2013): **How sky-high bank overdraft charges worth 53,000,000% force borrowers into the arms of payday lenders**, article available at **This is Money** Internet Site: http://www.thisismoney.co.uk/money/saving/article-2270230/How-sky-high-bank-overdraft-charges-force-borrowers-use-payday-lenders.html

Maravela M. & Crenguta L. (nd): **National Report – Romania**, available from http://www.zoll.jura.uni-osnabrueck.de/files/National_Report_Romania.pdf

Mercator Advisory Group (2013): **European Card Market 2012 Update**, available at: http://www.mercatoradvisorygroup.com/index.php?doc=International&action=view_item&id=877&catid=14

Moneyextra.com (2007): **Cater Allen launches Visa deferred-debit card**, available from http://www.moneyextra.com/news/cater-allen-launches-visa-deferred-debit-card.html

OFT (2011): **Irresponsible lending – OFT guidance for creditors**, available from http://www.oft.gov.uk/713560/publications/guidance/consumer_credit_act/oft1107#.UgCtmW1kYcs

Splitska Banka (2013): **Deferred debit cards**, available from http://www.splitskabanka.hr/retail-clients/cards/deferred-debit-cards

uSwitch.com (2011): **Consumers In The Dark About New Credit Directive**, report available at https://s3-eu-west-1.amazonaws.com/uswitch-press-room//consumers-in-the-dark-about-new-credit-directive.pdf

Vandone, D. (2009): **Consumer Credit in Europe: Risks and Opportunities of a Dynamic Industry**, Physica-Verlag HD

Visa (2013): **Pay Later**, available from http://www.visaeurope.com/en/cardholders/pay_later.aspx

World Bank (2010): **Croatia, Diagnostic Review of Consumer Protection and Financial Literacy, Volume II comparison against Good Practices**, Report available at: http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTFINANCIALSECTOR/0,,contentMDK:22767187~pagePK:148956~piPK:216618~theSitePK:282885,00.html