

New rules on consumer credit in the EU – Directive 2023/2225

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1. Context

On 30 October 2023, the new Directive on consumer credit agreements, Directive (EU) 2023/2225 was published, commonly referred to as the 2nd Consumer Credit Directive (hereinafter referred to as “**CCD II**”)

CCD II replaces the previous Directive (Directive 2008/48/EC or “**CCD I**”) and aims to adapt the consumer credit regime to consider the new forms of credit available online and the new risks associated with them. This need for revision also arose from the recognition that some aspects of CCD I were transposed differently by the Member States, which needed to be corrected.

2. Main objectives

One of the main aims of CCD II is to achieve greater harmonization regarding consumer credit agreements, through the promotion of a more uniform approach to granting credit to consumers in the various Member States and to ensure an adequate and coherent level of consumer protection throughout the Union.

This harmonization will enhance the development of a cross-border consumer credit market, while creating a more transparent and predictable environment for credit transactions across the EU, making it easier for consumers to understand and compare different offers.

Consumer protection is also a clear priority for the European legislators. To that end, CCD II establishes measures to ensure that consumers are informed in a clear and comprehensible manner about the terms and conditions of credit agreements, enabling them to make informed financial decisions. Consumer protection is essential to guarantee fair relations between financial institutions and consumers, promoting greater confidence in the lending market.

Finally, the CCD II also aims to contribute to reduce over-indebtedness by promoting consumer awareness of the costs associated with granting credit, through the compulsory provision of certain information by credit grantors and credit intermediaries, including in the advertising and marketing of credit agreements. The compulsory assessment of consumers' creditworthiness and the provision of adequate information to consumers about credit agreements and any ancillary services are also a realization of this objective.

3. Adopted measures

The scope of CCD II is broader than that of CCD I. These rules now also apply to:

- Small credit agreements (up to €200);
- Credit agreements without interest or any other charges, also known as Buy-Now Pay-Later (BNPL) credits;
- Credit agreements with a total credit amount of more than €100,000, provided they are not secured by a mortgage or any other equivalent guarantee, nor by any right related to real estate, and the purpose of which is to carry out works on residential property;
- Consumer credit services granted by crowdfunding platforms;

As regards the exclusions from the scope of application of CCD II, the following deviations of CCD II from CCD I should also be highlighted:

- (i) Credit agreements with a total credit amount of more than €100,000 (the previous limit was €75,000)
- (ii) Hiring or leasing agreements where an obligation or an option to purchase the object of the agreement is not laid down either in the agreement itself or in any separate agreement (previously, only the obligation was provided for);
- (iii) Deferred payments whereby:
 - a. a supplier of goods or a provider of services, without a third-party offering credit, gives the consumer time to pay for the goods or services supplied by that supplier or provider;
 - b. the purchase price is to be paid free of interest and without any other charges and with only limited charges payable by the consumer for late payments imposed in accordance with national law; and
 - c. the payment is to be entirely executed within 50 days of the delivery of the good or service.
- (iv) Deferred payments offered by suppliers of goods or providers of services which are not micro, small or medium-sized enterprises, where such suppliers or providers offer information society services, consisting of the conclusion of distance contracts with consumers for the sale of goods or supply of services, in which:
 - a. a third party is neither offering nor purchasing credit;
 - b. the payment is to be entirely executed within 14 days of the delivery of the goods or services; and

- c. the purchase price is to be paid free of interest and without any other charges and with only limited charges payable by the consumer for late payments;
- (v) credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower borrowing rates than those prevailing on the market or free of interest;
- (vi) credit agreements existing on 20 November 2026 (with some exceptions).

It should be noted that CCD II provides that Member States may exempt certain situations from the application of this Directive (e.g. credit agreements in the form of deferred debit cards), restrict the application of certain rules, e.g. in relation to deferred payment, or determine that, in certain situations, certain rules should not apply to credit agreements (i) where the total amount of credit is less than €200; (ii) where the credit is granted without interest and without any other charges; or (iii) where the credit must be repaid within three months and only insignificant charges are levied.

In addition to broadening the scope of application, the new Directive introduces several changes to the current regime, of which the following stand out:

- (i) changes to the information to be provided to consumers before the credit agreement is signed,
- (ii) changes in the advertising rules and
- (iii) changes in the assessment of consumer creditworthiness.

Pre-contractual information must be provided free of charge and must include, in a clear and prominent manner, all the information that is essential for the consumer to make an informed decision. It will be necessary, for example, to inform the consumer of the total amount of the credit, the associated interest rates, the APR (annual percentage rate), the duration of the credit agreement and the consequences in the event of missed or late payments.

With regard to the advertising and marketing of credit agreements, communications that create or are likely to create false expectations about the cost of a credit or the total amount charged to the consumer are prohibited, and institutions granting consumer credit are required to include in advertising a warning equivalent to the following:

"Caution! Borrowing money costs money".

Organizations are also prohibited from encouraging consumers to take out loans when that encouragement is based on the premise that it will improve their financial situation, or equivalent. In addition, consumers will now have to be clearly informed whenever automated processing of personal data is involved for the purposes of personalizing the offers presented to them.

The right of free revocation has also undergone several changes in order to increase consumer protection. In addition to the 14 calendar days to freely revoke the credit agreement without any justification needed, if the consumer has not received all the terms and conditions and all the information associated with the credit agreement in accordance with the new Directive, he now has 12 months and 14 days to revoke the credit agreement from the moment it was concluded. This period does not apply if the consumer has not even been informed of the right of free revocation.

There are also changes to the assessment of consumer creditworthiness. Creditors will be responsible for carrying out this assessment prior to granting credit. The new Directive emphasizes that the processing of the consumer's personal data must comply with the GDPR and that, whenever automated data processing is used in the context of this assessment, the consumer has the right to have the main variables, logic and risks inherent to this processing explained.

In the interests of greater consumer protection, the new Directive prohibits tying and the granting of credit not requested by the consumer.

4. Impact and obligations for credit granting institutions and credit intermediaries

Lenders and credit intermediaries will be obliged to comply with all the rules mentioned above and the others covered by CCD II. Furthermore, lenders and credit intermediaries that are not credit institutions or payment institutions will be subject to an authorization and registration process with the Bank of Portugal. Electronic money institutions will also be exempt from this process.

The new Directive also imposes specific obligations on credit intermediaries, who will have to indicate to consumers the scope of their powers and, if applicable, the remuneration to be paid by the consumer to the credit intermediary for the services provided by the latter. The

amount of this remuneration will also have to be communicated to the creditor for the purpose of calculating the APR.

CCD II also covers crowdfunding credit services providers. If these directly grant credit to consumers, the rules relating to creditors will apply to them. If they are merely facilitating the granting of credit between creditors and consumers, the rules on credit intermediaries apply.

It is also important to point out the need for lenders to implement debt management counselling services for consumers who have or may have difficulties meeting their financial commitments by charging limited fees.

Finally, it is crucial that institutions acting as creditors or intermediaries for consumer credit on a cross-border basis monitor the process of transposing and implementing this new Directive in the various Member States, as harmonization will not be complete and there may be specificities in the national legislation of the Member States.

5. How can we help?

The rules contained in Directive 2023/2225 will only apply from 20 November 2026. Member States have until 20 November 2025 to adopt and publish the provisions necessary to comply with this Directive and must apply them from 20 November 2026. Directive 2008/48 will continue to apply to credit agreements in force until the adoption of the new provisions by the Member States and, as far as these are concerned, it will apply until they expire.

Abreu Advogados has extensive experience in advising credit institutions, financial companies and providers of crowdfunding credit services. In this context, we have a team specialized in Banking and Finance Law that can assist Clients in monitoring and analyzing new legislation that creates obligations in relation to financial entities and in implementing solutions that facilitate compliance with these obligations, particularly those imposed by the measures contained in this Directive.



Thinking about tomorrow? Let's talk today.

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