



Draft Revised Recommendation on Consumer Protection in the field of Consumer Credit

PUBLIC CONSULTATION

21 November – 21 December 2018

Insurance, Private Pensions and Financial Markets Division,
OECD Directorate for Financial and Enterprise Affairs
Paris, France

Context of the public consultation

The G20/OECD Task Force on Financial Consumer Protection (the Task Force) is responsible for developing and updating international policy guidance on financial consumer protection, including the [High-Level Principles on Financial Consumer Protection](#). The Task Force is a sub-committee of the OECD Committee on Financial Markets (CMF).

The Task Force is now [consulting on a draft revised version](#) of the Recommendation on Consumer Protection in the field of Consumer Credit (the Recommendation).

Consumer credit is a vital part of modern financial services and enables consumers to achieve many of their goals and objectives. It is important that consumer credit is provided fairly and responsibly as far as possible to help avoid over-indebtedness and related problems, which are detrimental for both consumers and businesses.

The [current text of the Recommendation](#) was adopted in 1977 and sets out high-level recommendations for Adherents to take measures relating to the protection of consumers in relation to consumer credit transactions.

Since the adoption of the Recommendation, the size and nature of the consumer credit market has grown and changed considerably. There have also been significant developments in the approach to regulating and supervising consumer credit markets in the interests of financial consumer protection. Such developments include adopting measures that not only relate to disclosure and selling requirements, but also seek to promote fairness, responsible conduct and help avoid over-indebtedness.

As a relevant international standard, it is important that the Recommendation is updated in accordance with current regulatory practices and market conditions.

What are OECD Recommendations and how are they used?

OECD Recommendations are adopted by the OECD's governing body, the Council, and result from the substantive work carried out in the Organisation's committees and their subsidiary bodies. Recommendations generally contain high-level policy directions based on agreed good practices and aspirational goals, and serve to highlight the importance of specific work areas in the context of broader international policy-making. They are not legally binding, but practice accords them great moral force as representing the political will of Members and non-Members having adhered to them (Adherents), on whom there is an expectation to do their utmost to fully implement them.

For more information, please consult the online [Compendium of OECD Legal Instruments](#).

Process for development and approval

The draft revised Recommendation has been developed by the Task Force reflecting current and up to date approaches to regulating and supervising consumer credit.

The draft revised Recommendation incorporates input from OECD Members and non-Members participating in the Task Force, provided through official meetings and written comments. Among other things, the draft revised Recommendation has been structured in accordance with the High-Level Principles.

The draft Recommendation is still a work in progress at the OECD and its content may be subject to modification.

Ultimately, the final version of the draft revised Recommendation will be submitted to the CMF for approval and transmission to the OECD Council for adoption.

Invitation to contribute

The draft revised Recommendation is likely to be of interest to financial consumer protection policy-makers, national oversight bodies responsible for consumer credit, consumer credit industry representatives and consumer advocates.

Responses received to the public consultation will be analysed by the OECD and shared with members of the Task Force and the CMF. They will be taken into consideration in developing the final version of the draft revised Recommendation.

Responses will be considered public and may be published on the website subject to compliance with OECD website guidelines. Please indicate clearly if you do not wish your response to be published.

In responding to the consultation, respondents are asked to address the following questions:

1. Do you agree with the draft revised Recommendation?
2. Do you agree with the approach to structure the Recommendation in accordance with the G20/OECD High-Level Principles on Financial Consumer Protection?

Comments and questions

Comments on the draft revised Recommendation will be welcome until **21 December 2018** and should be sent to Miles Larbey, Head of Financial Consumer Protection Unit, OECD (miles.larbey@oecd.org).

CONSULTATION TEXT

DRAFT REVISED OECD COUNCIL RECOMMENDATION ON CONSUMER PROTECTION IN THE FIELD OF CONSUMER CREDIT

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Cooperation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council on High-Level Principles on Financial Consumer Protection (hereafter the High-Level Principles) [[OECD/LEGAL/0394](#)], which have also been endorsed by the G20; the Recommendation of the Council on Principles and Good Practices for Financial Education and Awareness [[C\(2005\)55/REV1](#)]; and the Recommendation of the Council on Good Practices on Financial Education and Awareness relating to Credit [[C\(2009\)62](#)];

HAVING REGARD to the significant developments in the size and nature of the consumer credit market since the adoption of the Recommendation of the Council concerning Consumer Protection in the Field of Consumer Credit [[OECD/LEGAL/0150](#)], which this Recommendation replaces;

CONSIDERING the importance of consumer credit for the financing of purchases of goods and services by consumers and the development of new types of loans and delivery channels which, in certain cases, are outside the scope of regulations promulgated with a view to protecting consumers;

CONSIDERING that consumers are not generally well-informed about the terms and conditions of the loan contracts which they sign and that, in certain cases, they can be at risk of being deceived by misleading or incomplete advertising or presentation of credit terms;

CONSIDERING that the High-Level Principles provide a comprehensive framework for financial consumer protection regimes generally, but that there is a need for a more detailed Recommendation in relation to the specific features and risks of consumer credit;

RECOGNISING that it is necessary to ensure a high standard of consumer information in connection with consumer credit advertisements and consumer credit contracts, and to ensure consumers' economic interests are appropriately protected by prohibiting or regulating in particular the use of certain practices or clauses considered to be abusive or the recourse to the bill of exchange and the promissory note;

RECOGNISING that, as regards the provision of consumer credit, promoting responsible lending practices are important in avoiding, as far as possible, repayment problems and resulting over-indebtedness, and helping credit providers to ensure the suitability of the consumer credit product provided;

RECOGNISING further that it is necessary to ensure respect of fundamental rights as well as the protection of individual privacy of consumers in the framework of consumer credit transactions and to ensure the means of redress available to consumers by providing inexpensive and efficient procedures for solving disputes concerning credit transactions;

CONSIDERING that consumers may be vulnerable in credit transactions due to a combination of their personal characteristics (e.g. disability, age, gender, low income employment, low education or poor

linguistic proficiency), behavioural biases (e.g. overconfidence, information overload, impulsiveness, cognitive limitations) and market conditions (e.g. unemployment) and thus particularly susceptible to detriment;

On the proposal of the Committee on Financial Markets:

Legal, Regulatory and Supervisory Framework

I. RECOMMENDS that Members and non-Members having adhered to this Recommendation (hereafter the “Adherents”) design and implement an **appropriate legal, regulatory and supervisory framework** for financial consumer protection in relation to consumer credit, taking into account the nature, scale and complexity of the consumer credit market and the specificities of the different consumer credit products and market players.

To this end, Adherents should have:

- a) mechanisms in place, such as periodic reviews, to identify and address any gaps to either regulate or supervise consumer credit firms, products and delivery channels.
- b) the necessary tools to control or mitigate significant consumer risks including in relation to harmful, unsuitable and/or complex consumer credit products.

Role of Oversight Bodies

II. RECOMMENDS that Adherents establish one or more **oversight bodies** with a clear mandate to protect consumers, powers to oversee market conduct activities, including powers to issue and enforce decisions or rules by administrative means, to take corrective action where necessary.

To this end, Adherents should ensure that these oversight bodies:

- a) have at their disposal a range of effective measures (including sanctions) for non-compliance by providers of consumer credit and credit intermediaries (including where relevant their authorised agents, noting that where regulated firms outsource activities to agents or other third parties, they should retain appropriate responsibility for the acts and omissions of the third party).
- b) have at their disposal a range of tools including, for example, surveillance, inspection of regulated firms, handling complaints from citizens and investigation powers and have the ability to obtain information from providers of consumer credit and credit intermediaries.
- c) are capable of responding to technological innovation issues and developments effectively, while maintaining appropriate safeguards and consumer protections.
- d) where there are multiple oversight bodies with jurisdiction over consumer credit, ensure appropriate cooperation to help avoid duplication and gaps in oversight.

Equitable and Fair Treatment of Consumers

III. RECOMMENDS that Adherents take the following measures with the aim of ensuring that there is an **equitable and fair treatment of consumers**:

- a) Embed principles of equitable and fair treatment of customers in all requirements regulating the relationship between providers of consumer credit and consumers, including as regards

transparency (before, during and after the point of sale), advertising, advice and other selling practices, remuneration, conflicts of interest, handling of arrears and defaults, and corporate governance.

- b) Prohibit or regulate door-to-door canvassing of loans unconnected with the supply of goods or services.
- c) Provide for a cooling-off period (i.e. a period during which the consumer may withdraw from the contract) in respect of all unsolicited credit sales and provide for a simple and inexpensive procedure whereby the consumer may recover any sums already paid.
- d) Prohibit discrimination on grounds of sex, sexual orientation, marital status, nationality, religion, race or colour when such practices are found to exist in consumer credit transactions.
- e) Prohibit or make null and void unfair contractual terms in consumer credit contracts, including but not limited to the following:
 - i) clauses which require the borrower to give security of manifestly greater value than the amount of his obligations under the credit contract;
 - ii) clauses which enable the creditor in cases where the consumer falls behind in his payments to charge penalty rates of interest violating the applicable laws on usury or other excessive charges;
 - iii) clauses which make the consumer in default of payment liable for excessive debt collection charges;
 - iv) clauses imposing the obligation on the consumer, in the event of early repayment, to pay the full amount of all future charges with no rebate where appropriate.
- f) Establish a limited joint liability of creditor and seller where goods or services are financed by consumer credit but are not supplied or are not in accordance with the sale contract.
- g) Prohibit or regulate the use of bills of exchange and promissory note in consumer credit transactions.
- h) Identify the consumer characteristics (e.g. behavioural biases or vulnerabilities) that have the most effect on the borrowing decisions that consumers make and which measures can be taken to mitigate these effects.
- i) Provide reasonable channels for consumers to submit claims, make complaints, seek redress and not place unreasonable barriers on consumers' ability to switch consumer credit provider or credit intermediary.

Disclosure and transparency

IV. RECOMMENDS that Adherents take measures to ensure that consumers are provided with **adequate information**, irrespective of whether they are dealing with a credit provider or credit intermediary, on the key features of the consumer credit offered or provided, in particular highlighting the fees, charges, penalties and key risks.

To this end, Adherents should:

- a) Require that all information, disclosures and other communications is clear, accurate and not misleading, and is sufficient at all stages of the relationship with the customer. Where

appropriate, information, including technical terms, should be adequately explained to the consumer.

- b) Promote standardised pre-contractual and contractual disclosure where applicable and practicable to facilitate comparison between consumer credit products and services of the same nature.
- c) Embed an understanding, where appropriate, of consumer decision-making and behavioural biases in the development of policies relating to disclosure requirements and/or alternative approaches.
- d) Introduce disclosure requirements to indicate the real cost of credit and/or annual percentage rate of charge for credit in addition to the cash price in the case of instalment sales, or in addition to the total amount of credit, in relation to all specific advertisements and pre-contractual information relating to consumer credit, i.e. those which give details of the consumer credit transaction offered and indicate any elements of the credit cost.

Where relevant, the following elements should also be provided:

- Terms of repayment;
 - Any security that may be required.
- e) Introduce disclosure requirements, in relation to consumer credit contracts, to indicate key information relating to the contract including, but not limited to, the following:
- Names and addresses of all the parties involved and, where applicable, licence or registration details of the credit provider, authorised agent or other credit intermediary;
 - Annual rate of interest and any other charges for credit and, if the law provides for it, any legal possibility of variation in the rate;
 - Amount of credit and/or any credit limits;
 - Total cost of credit and/or annual percentage rate of charge for credit;
 - Terms of repayment (frequency, number and amount of repayments);
 - Statement of the consumer's rights as regards terminating the contract or effecting early repayment without penalty;
 - Clear indication of the cooling-off period, where applicable, and how the consumer may exercise such rights;
 - Particulars of any security required, if relevant and, if the law provides for it, the seller's or the credit institution's right to repossess;
 - Interest rate on arrears and adjustment procedures;
 - Consequences of default and default charges;
 - Availability of complaints handling and redress mechanisms;
 - Where relevant, details of the relevant oversight body;
 - Additionally, in the case of credit contracts for the acquisition of goods or services,

- Existence of a link between the seller and the creditor, where applicable;
- Description of the goods and services;
- Cash price;
- Any differences in the terms offered to cash customers and credit customers;
- Additionally, in the case of credit cards and store cards:
 - Limitation of the financial responsibility of the consumer for unauthorised use of a credit card or store card if lost or stolen.

Financial Education and Awareness

V. RECOMMENDS that Adherents ensure the promotion of financial education and awareness following the guidance developed by the OECD/International Network on Financial Education (INFE) and that clear information on consumer protection, rights and responsibilities relating to credit is easily accessible by consumers. To that effect, Adherents should develop appropriate mechanisms to help consumers, especially consumers who may be vulnerable, develop the knowledge, skills and confidence to make informed choices, know where to go for advice or assistance (including when they have debt problems), and take effective action to improve their own financial well-being.

Responsible Business Conduct

VI. RECOMMENDS that Adherents take measures to promote responsible business conduct by credit providers and credit intermediaries having due regard to the best interest of their customers, and prohibit practices that may be misleading or abusive. Credit providers should be responsible and accountable for the actions of their authorised agents.

To this effect, Adherents could establish measures including but not limited to the following:

- a) Requirements relating to responsible lending in order to reduce the likelihood of repayment problems and resulting over-indebtedness issues and to assist the credit provider to avoid mis-selling, which would require providers of consumer credit to:
 - i) Ensure that a consumer's ability to meet relevant payment obligations is assessed before a transaction is concluded, or before any significant increase in the amount of credit. The assessment should be based on relevant information regarding the consumer, such as income and expenses, and the likely costs and risks of the credit. Credit should not be granted if the credit is clearly not affordable by the consumer or is likely to have a significant adverse effect on their overall financial situation.
 - ii) Ensure that, where relevant, automated credit scoring models comply with data protection requirements, that they appropriately weight all the relevant variables and provide for human intervention, where appropriate, to mitigate against irresponsible or inappropriate lending outcomes or automatic refusals.
- b) Requirements relating to the features and characteristics of particular consumer credit products, which would:
 - i) Require that providers of consumer credit implement adequate processes to ensure that consumer credit products are fit for the targeted groups of consumers.

- ii) Allow oversight bodies to take action (for example through amendments to regulatory or disclosure requirements, prohibitions or the setting of price caps or other limits) regarding the product design or the selling and marketing of certain particularly risky or complex consumer credit products that could significantly affect consumers.
 - iii) Require consumer credit providers or credit intermediaries to take into consideration, as appropriate, the objectives, capabilities, behavioural biases and vulnerabilities of their consumers when designing, marketing and distributing consumer credit products and services or when advising on consumer credit products.
- c) Requirements relating to the treatment of consumers who may be vulnerable or experiencing financial difficulty, which would:
- i) Require consumer credit providers have systems, policies and procedures in place to provide consumers with timely and accurate information about their products, to appropriately evaluate loss mitigation applications and to provide appropriate protections for consumers overdue or falling behind in meeting their repayment obligations.
 - ii) Introduce appropriate protection measures for consumers who are over indebted or who may be particularly vulnerable.
 - iii) Require responsible business conduct covering activities relating to debt collection (for example prohibiting creditors and debt collection agencies from claiming payment of debts from persons other than the consumer, unless there is a legal basis for doing so).

Protection of Consumer Assets against Fraud and Misuse

VII. RECOMMENDS that Adherents take appropriate measures to protect consumers' assets against fraud, misappropriation or other types of misuse.

Protection of Consumer Data and Privacy

VIII. RECOMMENDS that Adherents take appropriate measures to protect the **consumers' data and privacy rights**. This includes consumers' right to know what information has been collected about them by credit reporting agencies, as well as consumer credit providers and credit intermediaries, to challenge it and to have it corrected if erroneous.

To this end, Adherents should

- a) implement appropriate oversight arrangements of credit reporting agencies in order to ensure that the information they hold and disclose is used exclusively for the purpose for which it was collected.
- b) require credit reporting agencies to be made subject to authorisation (which could be withdrawn in the event of abuse), where Adherents provide for administrative supervision of consumer credit transactions.

Complaints Handling and Redress

IX. RECOMMENDS that Adherents take measures to ensure that consumers have access to adequate **complaints handling and redress mechanisms** that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers.

To this end, Adherents should:

- a) Require credit providers and credit intermediaries to provide consumers with clear and understandable information on the complaints handling and redress procedures for internal and external mechanisms, including alternative dispute resolution schemes.
- b) Promote the reporting, analysis and publication of consumer complaints data relating to consumer credit providers, in order to provide information to regulators and supervisors on how to improve market conduct and help identify consumer risks, regulatory gaps, systemic irregularities in the market and to assess the effectiveness of regulatory measures and compliance with laws and regulations.
- c) Establish civil, criminal or administrative sanctions for discrimination on grounds of sex, marital status, religion, nationality, race or colour in the context of consumer credit transactions, and for infringements of relevant regulations.
- d) Give consumers the possibility of bringing a civil action for damages in order to obtain compensation for the loss sustained as the result of the failure of a credit provider or credit intermediary to fulfil its legal commitments.
- e) Extend to consumer associations, if national procedures allow such an extension, the right to take action in the courts in their own name when the collective interests of consumers are harmed.
- f) Where there is no provision for the injunction procedure under civil law, consider whether it would be possible to introduce this procedure into their legislation and enable consumers or consumer associations to have recourse to it.

Competition

X. RECOMMENDS that Adherents promote competitive markets in order to provide consumers with greater choice of consumer credit products and create competitive pressure on credit providers to offer competitive products, enhance innovation and maintain high service quality. Consumers should be able to search, compare and, where appropriate, switch between consumer credit products and providers easily and at reasonable and disclosed costs.

XI. INVITES the Secretary-General and Adherents to disseminate this Recommendation;

XII. INVITES non-Adherents to take into account and adhere to this Recommendation;

XIII. INSTRUCTS the Committee on Financial Markets, through the Task Force on Financial Consumer Protection, to monitor the implementation of this Recommendation and to report thereon to the Council no later than five years from its adoption and regularly every ten years thereafter.