

The Law on Consumer Credit Disclosures

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1. Introduction

The purpose of this note is to review the disclosure rules of Directive [2008/48/EU](#) (the Consumer Credit Directive or **CCD**)², as transposed in the Grand Duchy of Luxembourg (**Luxembourg**). More specifically, the note focuses on disclosures by *creditors to consumers*³ and is divided in three parts: presentation of the legal framework (2), analysis of relevant case law from the Court of Justice of the European Union (**CJEU**) (3), and brief remarks on recent policy developments (4).

2. Legal Framework

To understand the legal framework underlying consumer credit disclosures in Luxembourg, it is important to understand the aims of the CCD and map its provisions to the Luxembourg rules.

2.1 Aims of the CCD

The aims of the disclosure rules of the CCD are to:

- 1) protect consumers against unfair or misleading practices, by providing specific rules on advertising concerning credit agreements, next to the general provisions of Directive [2005/29/EC](#) (the Unfair Commercial Practices Directive or **UCPD**), while giving Member States the freedom to regulate information requirements regarding advertising which does not contain information on the cost of credit⁴; and
- 2) enable consumers to make decisions in full knowledge of the facts, by granting them the right to receive adequate information prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations⁵.

More generally, the disclosure rules of the CCD contribute to 'attaining the objective pursued by [the CCD], which [...] consists in providing [...] full and mandatory harmonization in a number of key areas, which is regarded as necessary in order to ensure that all consumers in the European Union enjoy a high and equivalent level of protection of their interests and to facilitate the emergence of a well-functioning internal market in consumer credit'⁶. It can be inferred from this objective and the rules of the CCD that consumers must not only receive the required information, but also be able to understand such information⁷. In particular, the provided information must be both *formally* and *substantially* transparent. Formal transparency means that the information is made available in accordance with the timing stipulated by the CCD and in a manner which allows the consumer to use that information in their decision-making⁸.

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Substantive transparency means that the information is worded in a way that enables consumers to understand the offered terms and conditions, and in particular their rights and obligations under the credit agreement⁹.

As other EU consumer rules, the CCD's disclosure rules protect the 'average consumer', i.e. a person who is reasonably well informed, reasonably observant and circumspect, taking into account social, cultural and linguistic factors¹⁰. This concept sets a norm for how consumers are purported to behave or should behave and is used to assess the quality of the disclosures¹¹.

2.2 Transposition in Luxembourg Law

The CCD has been transposed in [Chapter 6](#) of the *Code de la Consommation* (LCC)¹². It is worth noting that the CCD is an instrument of full harmonization, leaving no room for the Luxembourg legislator to 'gold-plate' obligations within the scope of the Directive¹³.

Disclosures, especially in the advertising stage, may combine product information with persuasive information elements aimed at convincing the consumer to accept a potential credit offer¹⁴. People can be influenced by the way how information is presented ('framed')¹⁵. This insight can be useful for both creditors designing persuasive information elements¹⁶, as well as regulators seeking to 'nudge' consumers' choices¹⁷. It is worth noting that the CCD primarily deals with mandatory disclosure of product information, i.e. positive information obligations. It does not provide cautionary information obligations (duties to warn the consumer¹⁸) or negative information obligations. In respect of the latter, the CCD refers to the general provisions of the UCPD, which prohibit any unfair commercial practice, such as the provision or omission of information which is misleading or otherwise unfair¹⁹. The UCPD is therefore particularly relevant to evaluate the provision or omission of information in a manner which is formally transparent, but structured in a manner which, in light of the circumstances, materially distorts or is likely to materially distort the economic behavior with respect to the credit. At the same time, Member States are free to introduce specific negative disclosure obligations in respect of consumer credit.

The CCD differentiates the application of disclosure rules by type of credit agreement. The CCD applies less stringent rules to overdraft facilities repayable within three months or on demand, and to credit agreements in the form of overrunning²⁰. Under the Directive, Member States are allowed to impose 'lighter' disclosure regimes on credit agreements concluded by organizations established for the mutual benefit of their members²¹ and credit agreements in respect of deferred payments or repayment methods²². Luxembourg has only made use of the latter option²³. Consequently, [Article L. 224-2](#) LCC provides for three 'lighter' regimes: overdraft facilities, agreements in the form of overrunning and agreements in respect of deferred payments or repayment methods²⁴.

The disclosure rules under the CCD fall in three categories: information preliminary to the conclusion of the agreement (Articles 4-7 CCD), information to be included in the credit agreement (Article 10 CCD) and ongoing information requirements²⁵. The focus of this note is on the former two categories.

Article 4 CCD dictates the standard information to be included in advertising and has been transposed in [Article L. 224-4](#) LCC without including option 4(1) CCD²⁶. The Article applies concurrently with the provisions of Title 2 of Book 1 LCC on unfair commercial practices²⁷. The provisions state that any advertising which contains an interest rate or figures relating to the cost of credit to the consumer, must

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specify certain elements in a clear, concise and prominent way by means of a representative example. In addition to these positive information obligations, the LCC also imposes negative information obligations on advertising. In particular, [Article L. 224-5](#) LCC – inserted after the transposition of the CCD – prohibits certain communications, which the legislator believed to be detrimental to consumers, such as highlighting the ease or speed with which credit may be obtained by consumers in the advertisement²⁸.

Articles 5 and 6 CCD contain rules on pre-contractual information. Article 5 has been transposed in [Articles L. 224-6](#)²⁹ and [L. 224-7](#) LCC, which oblige the creditor (and the credit intermediary) 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. Paragraph (1) of Article L. 224-6 LCC specifies that if the credit is offered on a *lieu de vente*, the creditor must ensure that the consumer receives the information in an appropriate and complete manner on that same location, while safeguarding the confidentiality of the exchange³⁰. Article 6 CCD has been transposed in [Article L. 224-8](#) LCC³¹, which provides a ‘lighter’ regime for overdraft facilities and agreements in respect of deferred payments or repayment methods. The exemption of Article 7 CCD is transposed in [L. 224-9](#) LCC.

Article 10 CCD stipulates which information should be included in credit agreements and is transposed in [Article L. 224-11](#) LCC. Paragraph (1) provides that contracts are drawn up on paper or another durable medium. Paragraph (2) lists a number of information elements, include the duration of the contract and the APRC, which must be provided in a ‘clear and concise manner’ (*de façon claire et concise*). It is noteworthy that the list of information elements not only relates to the terms and conditions of the credit, but also to certain consumers’ rights, such as the right of the consumer to receive on request and free of charge a statement of account in the form of an amortization table.

A key information element to be provided by creditors is the annual percentage rate of charge (APRC or *taux annuel effectif global*), a metric designed to ‘ensure the fullest possible transparency and comparability of offers’³². The APRC is the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, on an annual basis³³. The CCD provides the mathematical formula setting out the calculation method of the APRC in Annex I.I, which is transposed in Article R. 224-3(1)(I) LCC. In order for the APRC to accurately reflect the present value, a number of additional assumptions are necessary, which are set out in Annex I.II CCD and transposed in Article R. 224-3(1)(II) LCC. As the APRC reflects the agreement, its calculation method should remain relevant in light of new retail credit products across national markets. It is therefore not surprising that Annex I.II CCD has been amended twice and that the last revision delegates the power to the European Commission to add or modify the assumptions if they do not suffice to calculate the APRC in a uniform manner or are no longer adapted to the commercial situations in the market.³⁴

Article 23 CCD obliges Member States to lay down penalties for infringements of national provisions transposing the CCD. In Luxembourg, failure to respect the disclosure obligations may lead to civil sanctions and criminal sanctions. Pursuant to [Article L. 224-24](#) LCC, any clause or combination of clauses in a credit agreement concluded in violation of Chapter 6 and its implementing regulations, is considered null and void³⁵. Acting in violation of the disclosure rules governing advertising is punishable by imprisonment for up to three years and a fine of maximum EUR 25 000³⁶. Acting in violation of the pre-contractual disclosure obligations (or intending to do so), as well as failure to provide the information prescribed by Article L. 224-11 LCC after conclusion of the contract, may be punishable by a fine of maximum EUR 10 000.³⁷

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Transposition of Consumer Credit Directive in the Luxembourg Consumer Code

Timing of disclosure	CCD	LCC
Advertising	Article 4	Article L.224-4
Pre-contractual	Article 5 Article 6 (light regime) Article 7 (exemption)	Articles L. 224-6 and L. 224-7 Article L.224-8 Article L. 224-9
Credit agreements	Article 10	Article L. 224-11

3. CJEU Case law

The CJEU has handed down a number of judgments bearing on the disclosure rules under the CCD. No relevant Luxembourg case law has been published.

3.1 The Role of National Courts

In *Radlinger* (C-377/14), the CJEU examined the role of national courts in the enforcement of disclosure obligations. According to the CJEU, providing information - before and at the time of concluding a contract - on the terms of the contract and the consequences of concluding it, is of fundamental importance for a consumer³⁸. Therefore, national courts must examine of their own motion whether EU consumer protection legislation has been infringed, since the system of protection is based on 'the idea that the consumer is in a weak position vis-à-vis the creditor as regards both his bargaining power and his level of knowledge, which leads to the consumer agreeing to terms drawn up in advance by the creditor without being able to influence the content of those terms'³⁹. For this reason, Luxembourg courts are bound to interpret Luxembourg law, so far as possible, in the light of the wording and the purpose of the CCD 'in order to achieve the result sought by the directive and consequently comply with the third paragraph of Article 288 TFEU'⁴⁰.

3.2 Preclusion of Additional Disclosure Obligations

The CJEU has consistently held that the full harmonization nature of the CCD implies that Member States cannot enact national provisions that impose additional disclosure obligations falling in the scope of the CCD.

In two separate cases, the contentious national provisions obliged creditors to include an amortization table *by default* rather than on the consumer's *request*. In *Home Credit Slovakia*, the referring court asked the CJEU whether Article 10(2)(h) and (i) CCD must be interpreted as meaning that a fixed-term credit agreement providing for amortization of the capital in consecutive instalments must include an amortization table and if not, whether they include a Member State from imposing such an obligation under national law⁴¹. The CJEU concluded that the obligation to provide the table only exists upon the consumer's request and that national law cannot impose an amortization table, since such an obligation is going further than the requirement in Article 10(2) CCD⁴². In *Pohotovos*, the referring court asked, essentially, whether Article 10(2)(h) to (j) must be interpreted as precluding national legislation under which a credit agreement must specify the breakdown of each repayment showing, where applicable, capital amortization, interest and other charges⁴³. In its response, the CJEU built on its considerations in *Home Credit Slovakia*, adding that 'any form of structured presentation of the breakdown of the repayment of credit' must be considered a form of 'amortization table' for the purposes of Article 10(2)(i)⁴⁴. The

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CJUE concluded that by Article 10(2), the information to be included in credit agreements is harmonized and that by Article 22(1), Member States cannot maintain or introduce national provisions diverging from the CCD, hence, the CCD precludes national law introducing such a disclosure obligation⁴⁵.

In *Mikrokasa S.A.*, the referring court asked, in essence, whether Article 10(1) and Article 22(1) of CCD are to be interpreted as precluding a provision of national legislation which lays down a calculation method regarding the maximum amount of 'non-interest credit costs' that may be imposed on the consumer in the context of consumer credit⁴⁶. The CJEU considered that the definition of 'total cost of the credit to the consumer' in Article 3(g) CCD is particularly broad, covering all the costs which the consumer is required to pay and which are known to the consumer, except notarial costs. While non-interest credit costs are a subcategory of total cost, the CCD does not lay down harmonized provisions in respect of those costs. Thus, Member States may regulate those costs, but those national provisions cannot conflict with the harmonized areas of the CCD and not impede the aims of providing an equivalent level of protection and a well-functioning internal market in consumer credit. Therefore, according to the CJEU, the CCD does not preclude national provisions regulating non-interest credit costs, *provided* those provisions do not impose additional information obligations⁴⁷.

These cases imply that the provisions of Article L. 224-11(2) may not provide disclosure obligations in addition to the obligations set out in Article 10(2) CCD.

However, if national provisions impose any contractual conditions in connection with the credit, those conditions should be disclosed in the agreement, in accordance with Article 10(2) CCD. In *Profi Credit Polska S.A.*, the referring court asked whether Article 10 precludes a provision of national law which allows a claim of a creditor who is a seller or supplier against a borrower who is a consumer, to be secured by a blank promissory note⁴⁸. The CJEU pointed out that the CCD did not effect harmonization in the use of promissory notes as security, and that Article 22(1) CCD therefore does not apply to that question. The CJEU concluded that a stipulation to issue a blank promissory note in a credit agreement is not precluded by the CCD, *provided* the information requirement of Article 10(2) CCD is complied with, which should be verified by the national court⁴⁹.

3.3 Modalities, Specificity and Sanctions

The CJEU has also considered various modalities of disclosure. According to Article 10(1) CCD, the credit agreement must be set out on paper or another durable medium⁵⁰, but the provision is silent about the number of documents in which the information should be contained. In *Home Credit Slovakia*, the CJEU held that a credit agreement need not necessarily be drawn up in a single document, but all the information referred to in Article 10(2) must be set out on paper or on another durable medium⁵¹. Consequently, Article L. 010-1(3) LCC must be interpreted accordingly. However, the documents must be self-containing, in the sense that creditors cannot include 'iterative references' to statutory provisions to comply with their obligations. In *Kreissparkasse Saarlouis*, the CJEU concluded that Article 10(2)(p) precludes a credit agreement from making reference, as regards the information to be disclosed, to a provision of national law which itself refers to other legislative provisions of the Member State⁵². In that situation, the consumer is not in a position, on the basis of the agreement, to determine the scope of the obligations, check whether all required information is included or whether the period of withdrawal is already begun⁵³. Knowledge and good understanding of the information is also necessary for the proper performance of the contract and the exercise of the consumer's rights⁵⁴. As the creditor is obliged to inform the consumer of the substance of the contractual obligations, it is insufficient to refer solely to

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statutory provisions⁵⁵. For these reasons, such references are precluded. Hence, creditors must list the information required by Article L.224-11(2) LCC in the agreement and cannot merely refer to redirecting clauses of the Code Civil or the LCC⁵⁶.

The CJEU has also discussed the specificity of disclosure in a series of cases. As set out above, Article L. 224-11 LCC - transposing Article 10 CCD - provides that information should be provided in a clear and concise manner. In *Kreissparkasse Saarlouis*, the CJEU held that Article 10(2)(p) CCD must be interpreted as meaning that the information to be specified, in a clear and concise manner, includes information on how the period of withdrawal of Article 14(1) CCD is to be calculated⁵⁷. According to the CJEU, the right to withdrawal is of fundamental importance to the consumer. Therefore, the consumer must be aware of the conditions, time limit and procedures for exercising the right of withdrawal beforehand and the effectiveness of that right would be 'seriously diminished' if the information would be lacking⁵⁸. In *Home Credit Slovakia*, the CJEU was asked to consider whether Article 10(2)(h) CCD of Directive 2008/48 must be interpreted as meaning that it is necessary for a credit agreement to indicate each payment to be made by the consumer by reference to a specific date, or whether a general reference in the agreement enabling the consumer to identify the payment dates is sufficient⁵⁹. The requirement is fairly unequivocal: it does not expressly require the specification of each date, but merely strives to ensure that the consumer knows when repayments are due⁶⁰. Thus, the CJEU concluded that the agreement need not indicate the date of each repayment, provided that the terms of the agreement allow the consumer to ascertain the dates of those payments without difficulty and with certainty⁶¹. This standard should also be applied to Article L. 224-11 LCC.

Finally, the CJEU has also elaborated on Article 23 CCD, more specifically on the proportionality of penalties laid down by Member States. In *Home Credit Slovakia*, the CJEU had to consider whether Article 23 precludes Member States from providing that a credit agreement is deemed interest-free and free of charge, in case of failure to include all the information required under Article 10(2) CCD⁶². The CJEU concluded that such a rule must only be considered proportionate, and thus may only be provided if the omitted information 'covers matters which, if not included, may compromise the ability of the consumer to assess the extent of his liability', (such as the APRC)⁶³. Imposing such a penalty on the omission of information that cannot have a bearing on this ability, is not proportionate⁶⁴. The judiciary should therefore assess the omitted information and the proportionality of the provided penalty on a case-by-case basis⁶⁵.

3.4 Annual Percentage Rate of Charge

As discussed above, calculating the APRC often requires the use of assumptions. In *Home Credit Slovakia II*, the creditor presented the consumer with a range of rates rather than a single rate, as the consumer had 35 days to accept the offer and the APRC was dependent on the date on which the loan would be granted⁶⁶. The CJEU denounced that approach and – building *inter alia* on *Home Credit Slovakia and Pohotovos* – reaffirmed that the APRC should be expressed as a single metric expressing all existing and future commitments agreed by the consumer and by the creditor, in order to ensure consumer protection⁶⁷. The consumer should be able to assess the extent of his or her contractual obligations from a financial point of view and providing an agreement with a missing or incorrect APRC is in violation of Article 10(2) CCD⁶⁸. Furthermore, the CJEU ruled that the additional assumptions laid down in the CCD aid in the

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composition of a single metric and must be followed by the creditor to compute the APRC⁶⁹. Hence, Luxembourg creditors must present consumers with a single number. In this respect, it is useful for creditors to closely follow updates of the additional assumptions as adopted by the European Commission and transposed in Article R. 224-3(1)(II) LCC.

4. Policy developments

The European Commission is in the process of evaluating the CCD. In its inception impact assessment, the Commission indicated the following points as problems to effective consumer protection: (1) the CCD's disclosure requirements do not reflect the growing use of smartphones and tablets in consumer credit contracting; (2) lenders may exploit behavioral biases of consumers to 'nudge' them towards 'unhelpful choices'; and (3) the provided information is too complex to be understood⁷⁰. The Commission considers four alternative policy options: no policy change, non-regulatory measures, targeted legislative action or comprehensive revision of the CCD⁷¹. While a rigorous analysis is out of scope, it is worthwhile to briefly consider these points. Regarding the first point, it would make sense to rationalize the flow of information such that the information is provided at a time, in a format and in an amount which allows the consumer to incorporate it in the decision-making process⁷². The rules need not be top-down. In fact, creditors may be well positioned to use target market data and behavioral insights to design effective disclosures⁷³. In respect of the second point, it would be more appropriate to consider such practices under a more general instrument, such as the UCPD, in order to avoid the risk of diverging sectorial rules⁷⁴. In addition, it would also be beneficial to further investigate the psychological processes underlying behavioral biases and non-psychological factors contributing to suboptimal financial decisions, with a view to integrate the insights in the regulatory assessment of the average consumer standard⁷⁵. Concerning the third point, the focus should be on disclosure effectiveness while striving to both reduce the complexity of provided information and improve financial literacy of consumers, in order to achieve substantive transparency⁷⁶. The published feedback on the inception impact assessment seems to suggest that stakeholders across the internal market are in favor for changes to the regime, some of them advocating for targeted legislative action to reduce the number of disclosure obligations and others recommending comprehensive revision of the CCD⁷⁷. It is therefore likely that the rules applicable to consumer credit disclosures will be updated in the (near) future.

- 1 Attorney (New York), LL.M (Chicago, 2014), legal advisor in Luxembourg. The views expressed herein are solely those of the author.
- 2 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.
- 3 Disclosures by consumers to creditors, such as the information provided for the assessment of consumer creditworthiness, are beyond the scope.
- 4 Recital 18 CCD.
- 5 Recital 19 CCD.
- 6 Case [C-377/14 Radlinger](#) [2016], Digital Reports (Court Reports – general), para. 61.
- 7 Joasia Luzak & Mia Junuzovi, 'Blurred Lines: Between Formal and Substantive Transparency of Consumer Credit Contracts', 2019 *Journal of European Consumer and Market Law* 8(3), 97-107, at 99.
- 8 See Luzak & Junuzovi, *supra* note 7, 99.

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- 9 See Luzak & Junuzovi, *supra* note 7, 99 and the case law discussed in section 3.3.
- 10 Case [C-122/10](#) *Ving Sverige* [2011] OJ C 204 9, paras 22, 23, 71.
- 11 Geert Straetmans, 'Information Obligations and Disinformation of Consumers', 3-96, in: Geert Straetmans (ed.), *Information Obligations and Disinformation of Consumers* (Cham: Springer Nature Switzerland AG 2019), para. 2.2.3.
- 12 [Loi du 8 avril 2011](#) portant introduction d'un Code de la consommation, LexNow ID 15821. With the introduction of the LCC, the law of 9 August 1993 which transposed Directive [87/102/CEE](#) was repealed. See *Avis du Conseil d'Etat* on the Bill introducing a Consumer Code, No [5881A2](#), ChD 2008-2009, 2, LexNow ID 12570.
- 13 Recital 9 CCD and Article 22(1) CCD.
- 14 For example, some companies may deploy relatively aggressive short-term credit marketing campaigns to encourage the use of short-term credit to fund a consumeristic lifestyle, directly contributing to behavioral biases. See OECD, *Short-term Consumer Credit: Provision, regulatory coverage and policy responses*, 2019, at 35.
- 15 Cass Sunstein, 'Nudges.gov: behaviorally informed regulation, in: Eyal Zamir and Doron Teichman (eds.), *The Oxford Handbook of Behavioral Economics and the Law* (Oxford, OUP 2014) 719-746, at 722-723;
- 16 See for example, the results of an investigation of the FCA, <https://www.fca.org.uk/news/press-releases/consumer-credit-firms-must-raise-advertising-standards-says-fca>.
- 17 See Sunstein, *supra* note 15, at 727-733; Straetmans, *supra* note 11, 73-83, for a critical discussion.
- 18 See Olga Cherednychenko and Jesse Meindertma, *Misselling of Financial Products: Consumer Credit*, European Parliament Department on European and Monetary Affairs, IP/A/ECON/2016-17, June 2018, para. 3.2.
- 19 Articles 5(2), 6(1) and 7(1) UCPD, as well as their transposition in [Articles L. 121-2\(2\)](#), [122-1](#), [122-2](#) and [122-3](#) LCC.
- 20 See Article 2(3) and (4) CCD.
- 21 Article 2(5) CCD.
- 22 Article 2(6) CCD.
- 23 European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2008/48/EC on credit agreements for consumers*, COM(2014) 259 final, 14 May 2014, section 3.
- 24 See respectively subs (2), (3) and (4). However, certain agreements are excluded from the scope of the rules, such as overdraft facilities which are repayable within one month (Article L. 224-3(1) LCC).
- 25 Chapters II and III CCD. See also LCC, sections 2 and 3.
- 26 Implementation report, *supra* note 7, section 3.
- 27 See Article L.224-4(3) LCC.
- 28 The Luxembourg legislator deemed the provisions necessary after observing abusive behavior in the sector. See Draft Bill No [6769/00](#) (*Exposé des motifs*), Chambre des Députés, Session ordinaire 2014-2015, 41, LexNow ID 22820.
- 29 The information must be provided by means of the Standard European Consumer Credit Information form, see Article R. 224-1 LCC, which transposes Annex II CCD.

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- 30 This provision, which is not included in the CCD, was inserted after observing that credit intermediaries were providing consumers with incomplete information. See *Exposé des motifs*, supra note 28, 41-42.
- 31 The information must be provided by means of the European Consumer Credit Information form, see Article R. 224-2 LCC, which transposes Annex III CCD.
- 32 Recital 19 CCD. See Articles L. 224-2(h), 224-4(c) 224-6(g), 224-8(f) and 224-11(g) LCC.
- 33 Article 19(1) CCD and [Article L. 224-20](#)(1) LCC.
- 34 See sub 2 of Annex VIII of Regulation (EU) [2019/1243](#), which modifies the CCD to enable the Commission to adopt delegated acts in this regard, as well as Commission Directive [2011/90/EU](#).
- 35 This provision, which is a civil sanction, clearly only applies to disclosure requirements applicable to credit agreements. See also Pierre-Michael de Waersegger, 'Le banquier dispensateur de crédit à la consommation', in: Association luxembourgeoise des juristes de droit bancaire, *Droit Bancaire et Financier au Luxembourg – volume II*, Anthemis Larcier 2014, 949-994, paras 84-85.
- 36 The publisher of the advertisement must also declare himself the lender or credit intermediary and (partially) target the Luxembourg market or advertise through posters in commercial establishments. See [Article L. 224-25](#)(2) LCC.
- 37 See Article L. 224-25(5) LCC.
- 38 Case C-377/14 *Radlinger* [2016], supra note 6, para. 64.
- 39 Case C-377/14 *Radlinger* [2016], supra note 6, paras 62, 63, 66; Joined Cases C-419/18 and C-483/18 *Profi Credit Polska S.A.* [2019], Digital reports (Court Reports - general), LexNow ID [20191107445](#), paras 59 and 69.
- 40 Case C-377/14 *Radlinger* [2016], supra note 6 para. 79.
- 41 Case [C-42/15](#) *Home Credit Slovakia a.s.* [2016], Digital Reports (Court Reports – general).
- 42 Case C-42/15 *Home Credit Slovakia a.s.* [2016], supra note 41, paras 51-59.
- 43 Case [C-331/18](#) *TE v Pohotovos s.r.o.* [2019], Digital Reports (Court Reports – general).
- 44 Case C-331/18, paras 44-51.
- 45 *Ibid.*
- 46 Case [C-779/18](#) *Mikrokasa S.A.* [2020] Digital reports (Court Reports - general - 'Information on unpublished decisions' section), paras 36-48.
- 47 *Ibid.*
- 48 Joined Cases C-419/18 and C-483/18 *Profi Credit Polska S.A.* [2019], supra note 39, paras 41, 59-60.
- 49 *Ibid.*
- 50 The durable medium can also be an e-banking platform. The notion of 'durable medium' has been clarified in Case C-42/15 *Home Credit Slovakia a.s.* [2016], supra note 41, para 35, and further elaborated in *BAWAG v Verein für Konsumenteninformation*, Case C-375-15, paras 42-44. See also Baptiste Aubry and Henri Wagner, Communicating via a durable medium: a moving target', 63 *Bulletin Droit & Banque*, December 2018, 35 et seq.
- 51 Case C-42/15 *Home Credit Slovakia a.s.* [2016], supra note 41, paras 28-45.
- 52 Case [C-66/19](#) *Kreissparkasse Saarlouis* [2020], Digital reports (Court Reports - general - 'Information on unpublished decisions' section), paras 40-49.
- 53 *Ibid.*
- 54 *Ibid.*

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55 *Ibid.*

56 Similarly, Ghislain Poissonnier, 'Crédit à la consommation (rétractation) : reproduction au contrat des règles d'imputation du délai - Arrêt rendu par la Cour de justice de l'Union européenne, 6e ch., 26-03-2020, n° C-66/19', *Recueil Dalloz* 2020, 712.

57 Case C-66/19 Kreissparkasse Saarlouis [2020], *supra* note 52, considerations 33-39.

58 *Ibid.*

59 Case C-42/15 *Home Credit Slovakia a.s.* [2016], *supra* note 41, paras 46-50.

60 Opinion of Advocate General Sharpston re C-42/15 *Home Credit Slovakia a.s.* [2016] (ECLI:EU:C:2016:431), para. 55.

61 Case C-42/15 *Home Credit Slovakia a.s.* [2016], *supra* note 41, para. 50.

62 Case C-42/15 *Home Credit Slovakia a.s.* [2016], *supra* note 41, paras 60-73.

63 *Ibid.*

64 *Ibid.*

65 Similarly, François Boucard, 'La Cour de Luxembourg impose la modulation de la protection de l'emprunteur en matière de crédit à la consommation', *Recueil Dalloz* 2017 p.328.

66 Case C-290/19 *RN v Home Credit Slovakia* [2019], OJ C 68, paras 14-22.

67 Case C-290/19 *RN v Home Credit Slovakia* [2019], *supra* note 66, paras 24-31.

68 Case C-290/19 *RN v Home Credit Slovakia* [2019], *supra* note 66, para. 29. See also Andreas Piekenbrock, 'Die Angabe des effektiven Jahreszinses in Verbraucherdarlehensverträgen – Bankirrtum zu deinen Gunsten. Anmerkungen zu: EuGH, Urt. v. 19.11.2016 – C-42/15; v. 19.12.2019 – C-290/19, Home Credit Slovakia', 133 *Zeitschrift für das Privatrecht der Europäischen Union* 2020(3), 136.

69 Case C-290/19 *RN v Home Credit Slovakia* [2019], *supra* note 66, paras 32-36.

70 European Commission, Inception Impact Assessment, Ares(2020)3256802, 23 June 2020.

71 *Ibid.*

72 See on the (lack of) disclosure effectiveness, among others, Straetmans, *supra* note 11, 62-64; Autorité de régulation professionnelle de la publicité, 'Directive 2008/48/CE [...] - Observations de l'Autorité de régulation professionnelle de la publicité (ARPP, France) en vue de l'évaluation par la Commission européenne de la Directive 2008/48/CE', 27 July 2018; Die Deutsche Kreditwirtschaft, 'Stellungnahme zu den Evaluationsergebnissen der Verbraucher- kreditrichtlinie der Europäischen Kommission vom 25. Juni 2020', 13 August 2020; 28 April 2020, EBF_040976; General Council of the Bar in England and Wales, 'Feedback on Inception Impact Assessment (F547570)', 1 September 2020 accessed via <https://ec.europa.eu/>.

73 See for example, European Banking Authority, 'Draft Opinion of the European Banking Authority on disclosure to consumers of banking services through digital means under Directive [2002/65/EC](#)', EBA-Op-2019-12, 23 October 2019, paras 26-30.

74

Similarly, Autoriteit Consument en Market, *Bescherming van de online consument - Grenzen aan online beïnvloeding*, February 2020, section 2, accessed via <https://www.acm.nl/>.

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75 See for example, Dominika Maison, *The Psychology of Financial Consumer Behavior*, Springer Nature Switzerland AG 2019, 143-183; Civic Consulting of the Consumer Policy Evaluation Consortium, 'The over-indebtedness of European households: updated mapping of the situation, nature and causes, effects and initiatives for alleviating its impact – Part 1: Synthesis of findings', December 2013, chapter 6, accessed via <https://ec.europa.eu/>.

76 Past research suggests that roughly half of the EU population is financially literate and that the other half does not grasp concepts such as compounding of interest, see e.g. OECD, *G20/OECD INFE report on adult financial literacy in G20 countries*, 2017. Also, one study showed that 60% of consumers does not understand the APRC, see European Commission, 'Report from the Commission to the European Parliament and the Council on the implementation of on the implementation of Directive 2008/48/EC on credit agreements for consumers', COM(2014) 259 final, May 2014, para. 7.4.

77 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12465-Consumer-credit-agreements-review-of-EU-rules>

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