



# Consumer Credit Directive CCD 2

**Consultation**

Department of Finance

**Submission from the CCPC**

**October 2024**



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## **Background**

From September to October 2024 the Department of Finance invited submissions on the transposition of the Consumer Credit Directive (CCD) 2.

The majority of the provisions in CCD2 must be transposed on a fully harmonised basis. However, there are a number of provisions in the Directives to which full harmonisation does not apply. Member States are given discretion as to whether and how to apply these provisions.

In this consultation the Department of Finance set out the discretions contained in CCD2. Comments were invited on whether these discretions should be availed of and how they should be availed.

The Competition and Consumer Protection Commission (the CCPC) welcomes the opportunity to respond to the Department of Finance consultation on the Consumer Credit Directive - CCD2. The CCPC has a statutory function under Section 10(3)(a) of the Competition and Consumer Protection Act 2014 to provide advice to policymakers on matters likely to impact on consumer protection and welfare, or competition. The CCPC also has special functions under Section 10(3)(j) of the Act to provide information on financial services, including the associated risks and benefits and to promote the development of financial education and capability. We have responded to financial questions from the consultation reflecting our remit and mandate.

### Question 3

Under Article 2(7), Member States may decide to apply only a limited number of provisions of the CCD2, notably exempting creditors from the obligation to perform a creditworthiness assessment in the case of credit agreements, which provide deferred payment arrangements where the consumer is already in default or is likely to default on the initial credit agreement. Such arrangements are permissible where they are likely to avert the possibility of legal proceedings concerning the default and where the consumer would not be subject to less favourable terms than those laid down in the original credit agreement. This is not to prevent consumers in payment difficulty obtaining a new credit agreement to help them to repay their initial credit. Consumers would be considered likely to default in certain situations. For example - where they lost their job.

#### **Question 3 – Should credit agreements in respect of deferred payments where the consumer is in or likely to be in default be exempt from the specific provisions of CCD2 relating to creditworthiness assessments?**

Yes, in cases of short-term default, or potential default, the creditor should temporarily dispense with the need to assess creditworthiness and work with the consumer to reach a mutually acceptable short term deferred repayment arrangement. This may be an interim arrangement, whereas issuing a new or revised credit agreement will depend on the extent, nature of, and length of time that the consumer faces financial issues.

The consumer who is in financial difficulty should be afforded the necessary supports, including deferred payments. Deferred payments, for example terms of three months, six months or even twelve months where no payments are made, will result in the consumer ultimately paying more per month in a restructured/new credit agreement (e.g. In cases where the consumer pays increased instalment amounts over the same original credit agreement time frame, or where the term is extended with extra interest accruing). Therefore, a consumer following a deferred payment period should be stress tested by lenders to see if they can afford the new (and likely) increased loan repayments on a restructured/new credit agreement. In the event of a new credit agreement, the interest rate should be the same, or less than the original credit agreement so the consumer does not suffer less favourable terms.

During the COVID-19 pandemic deferred payments on credit agreements saw interest continue to accrue on loans. Consideration should be given to freezing interest on deferred credit agreements to allow consumers who are in temporary difficulty regain their financial position.

Deferred payments on loans during the COVID-19 pandemic did not affect the credit rating of consumers. This should be a consideration for consumers who now find themselves in short term difficulty and wish to protect their credit rating.

In general, deferred payments are usually for a short period. Credit providers usually only grant deferred payments due to temporary financial difficulty. The consumer may

need to attend an independent service such as MABS or a Personal Insolvency Practitioner (PIP) to complete a Standard Financial Statement (SFS) that details current financial circumstances. As is the case with Provision 38 of the [Code of Conduct on Mortgage Arrears](#), temporary reduced repayments or deferred payments of 3 months, should be granted while the consumer prepares to present their new financial situation themselves, or with the assistance of the creditor, MABS, a PIP or a financial adviser. This temporary arrangement should not impair a consumer's credit rating, and it will give the borrower and creditor time to assess changed financial circumstances.

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#### Question 4

Article 2(8) provides for some national discretions to be applied to credit agreements that involve a total amount of credit of less than €200; or where the credit granted is free of interest and other charges; or where the credit has to be repaid within three months and only insignificant charges are payable. Member States may decide to exempt such credit agreements from the provisions of CCD2 relating to advertising, pre-contractual information on credit agreements and information to be included in credit agreements.

#### **Question 4 – Should Ireland exempt credit agreements for amounts under €200 or that are interest free or that are repayable within three months from the provisions of CCD2 relating to advertising, pre contractual information on credit agreements, and information to be included in credit agreements?**

No, credit for amounts under €200, that are interest free or repayable within three months should not be exempt from the provisions of the CCD2.

During financial pinch points for consumers throughout the year, for example Christmas or Back to School, consumers may require credit of under €200. Others may need relatively small amounts of credit to pay bills, heat homes or buy food.

[Central Bank Buy Now Pay Later \(BNPL\) research](#) in 2023 found that a portion of BNPL users report using this form of credit to pay for clothing and footwear (41%), cosmetic products (19%), homewares (25%) and even for medical and dental treatment (27%). This use of credit to pay for everyday items is evident from [Experian UK's](#) 2022 data gathered from BNPL lenders which found, that while some consumers use BNPL for high value purchases, 95% of BNPL purchases were for items costing £180 (€215) or less. The average purchase using BNPL was £65 (€77).

These type of credit agreements for lower cost goods and services could be numerous and may be taken out with various credit providers. The consumer may not be able to keep account of the various credit agreements taken out, or indeed be able to pay back the credit in time to avoid charges and penalties. By dispensing with the provisions of CCD2 on advertising and precontractual information for this category of

credit, it may be easier for the consumer to accumulate multiple unmanageable debts.

Some consumers may not know that they are purchasing items or services on credit, given the interest free element and that repayments windows are relatively short - within three months. There is a possibility that other forms of credit, such as credit cards and overdrafts, may be used to pay back these sub €200 borrowings. This can compound difficulties for consumers as they pay interest on top of interest to service these debts.

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### **Question 5**

Article 8(8) of CCD2 provides for Member States to decide whether to prohibit advertisements that they deem to be risky. Specifically advertising that accentuates the ease or speed which the credit can be obtained, that provides for a discount that is conditional on accepting credit, or which offers payment breaks of more than three months for the repayment of instalments.

**Question 5 – Should Ireland prohibit advertising of credit that accentuates the ease or speed which the credit can be obtained, that provides for a discount conditional on accepting credit, or which offers payment breaks of more than three months for the repayment of instalments?**

The CCPC does not see the need to prohibit advertisements that highlight the ease or speed which credit can be obtained. Neither should there be an outright ban on the advertising of credit products that offer payment breaks of more than three months.

The Central Banks' Revised Draft Consumer Protection Code, in Chapter 9, deals extensively with advertisement requirements and standards necessary for consumer protection.

Advertisements that provide for a discount conditional on accepting credit should however be prohibited. Advertising of credit that psychologically influences and biases the financial behaviour of consumers to choose credit as a payment option should be tightly controlled and regulated by competent authorities in Ireland.

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### **Question 6**

Article 12 provides that creditors and, where applicable, credit intermediaries are required to provide adequate explanations to the consumer on specific information regarding proposed credit agreements and ancillary services. This information should be provided free of charge, and special attention should be given to the needs of persons with disabilities or consumers in vulnerable circumstances.

However, Member States may, in justified cases, adapt the requirements for the manner and extent to which the explanations are to be given to the following: (a) the

circumstances of the situation in which the credit is offered; (b) the person to whom the credit is offered; (c) the type of the credit offered.

**Question 6 – Should Ireland adapt any such requirements regarding the manner in which explanations are to be given?**

Yes, in certain circumstances, credit providers should adapt explanations to consider the consumer's vulnerable circumstances and the type of credit that is being offered. Consumers seeking credit may be vulnerable due to their age, circumstances (e.g. financial abuse) or impaired decision making. Credit providers and credit intermediaries should ensure credit offered is not only explained clearly, but understood by all consumers, including those defined as being vulnerable.

The Central Banks' Revised Draft Consumer Protection Code includes welcome obligations on financial service providers to ensure they provide reasonable assistance to vulnerable consumers. However, complex financial products, and their credit agreements, need to be fully understood not only by the vulnerable consumer, but by all consumers.

Most banks have vulnerable customer units, however the withdrawal recently in Ireland of two major banks brought into sharp focus their capacity, and the capacity of their customer facing staff to deal with complex vulnerable customer issues.

Credit providers have a particularly important role in financially safeguarding vulnerable consumers in relation to credit agreements. Staff need to be trained and supported in the provisions of the Assisted Decision-Making (Capacity) Act 2015 to ensure that vulnerable customers are provided with the necessary relevant information to make informed and considered decisions around obtaining credit.

The Central Bank in March 2024 issued [Guidance on Protecting Consumers in Vulnerable Circumstance](#). The CCD 2 regulations in Ireland should consider the needs of vulnerable consumers in the provision of credit and this consideration should be time and issue specific to the circumstances of the consumer.

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**Question 7**

Article 14(2) provides for a derogation from the general prohibition on tying practices, which can induce consumers to enter into credit agreements that are not in their best interest. However, Member States may allow creditors to request consumers to maintain a payment or saving account where the purpose of the account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit or to provide additional security for the creditor in the event of default.

**Question 7 – Should creditors be allowed to require borrowers to open or maintain accounts as part of the credit agreement for the above purposes?**

No. A consumer should be free to choose their own payment or savings account to service a loan. Requiring a borrower to have such accounts is not good for competition and it may leave the consumer with products that they do not need or want.

Due diligence should always be given by the creditor to ensuring that suitability and creditworthiness is performed before issuing credit.

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### Question 8

Article 14(3) provides for a derogation from the general prohibition on tying practices to permit Member States to allow **creditors to require the consumer to have a relevant insurance policy** in order to guarantee repayment of the credit or to insure the value of the security. This is without prejudice to the right of the consumer to choose his or her own insurance provider offering an equivalent level of guarantee as the insurance policy proposed or offered by the creditor.

### Question 8 - Should creditors be allowed to require borrowers to have an appropriate insurance policy as part of the credit agreement for the above purposes?

No. If suitability and creditworthiness checks are performed adequately by credit providers, for many borrowers, there should be no need for this extra security. The requirement to have an appropriate insurance policy should not be a precondition in many cases when providing credit.

The consumer should retain the right to take out their own payment protection insurance on a loan should they choose to do so. If the consumer chooses an insurance policy for a credit agreement, the credit provider should ensure that this policy is suitable for the consumer and tailored to their circumstances. Due attention should be given by the credit provider to ensuring insurance policies are not ineffective and should take care to avoid any mis-selling of payment protection insurance.

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### Question 9

Providing advisory services is an activity that may be combined with other aspects of granting or intermediating credit. Given the importance which consumers attach to the use of the terms 'advice' and 'advisors', Member States may prohibit the use of those terms, or of similar terms, where such advisory services are being provided to consumers by creditors or credit intermediaries. It is appropriate to ensure that Member States impose safeguards where advice is described as independent to ensure that the range of products considered and remuneration arrangements are commensurate with consumers' expectations of such advice.

**Question 9 – Should the use of the terms “independent advice” and “independent advisor” or other similar terms be prohibited where these services are provided by the credit provider or credit intermediary?**

Yes, the use of such terms should be prohibited for credit intermediaries. Credit intermediaries continue to fall outside the Central Bank’s Consumer Protection Code and are currently subject to a very limited statutory authorisation regime. The CCPC continues to advocate that credit intermediaries should be under the supervisory frameworks of the Central Bank of Ireland.

Even if the intention of a credit intermediary is to provide independent impartial advice, this would be very difficult should there be commission or other incentives available from providing a particular credit product to a consumer.

Appropriate periods of time should be set out to allow consumers avail of independent advice, from a provider of their choosing, before they sign a credit agreement.

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**Question 10**

Article 16(6) provides that only creditors and, where applicable, credit intermediaries shall provide advisory services to consumers. By way of derogation from the requirement, Member States may allow other persons to provide advisory services on condition that they are provided under a regulated professional framework; provided by regulated insolvency practitioners; provided by non-commercial public or voluntary debt advisory services or provided by persons authorised and supervised by the competent authority.

**Question 10 – Should Ireland continue to allow persons to provide advisory services on condition that they are provided under a regulated professional framework; provided by regulated insolvency practitioners; provided by non-commercial public or voluntary debt advisory services or provided by persons authorised and supervised by the competent authority?**

Yes. Independent advice by regulated, recognised and authorised services will ensure that consumers continue to avail of protections and impartial assistance, if required, with credit agreements. It is important that any advice received is holistically in the best interest of the consumer and considers their overall financial wellbeing.

Understandably, a credit provider or credit intermediary, while they may be acting in the best interest of the consumer, they will also consider their own financial interest. A regulated independent professional will impartially review the overall financial health of the consumer and offer comprehensive support.

The consumer should at the very least be given the option to avail of independent expert advice whether that be legal, financial or debt advice. Information on relevant advisory services should be provided by credit providers and credit intermediaries at

initiation of the credit agreement, and at every stage of any arrears process. The consumer should be given adequate time to avail of necessary advice, and to consider if this form of credit is the best option for them. The CCPC would welcome consumers being referred to relevant CCPC comparison tools while the consumer considers their credit options.

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### **Question 11**

It is essential that the consumer's ability and propensity to repay the credit is assessed and verified before a credit agreement is concluded. That assessment of creditworthiness should be proportionate and done in the interest of the consumer, to prevent irresponsible lending practices and over-indebtedness, and should take into consideration all necessary and relevant factors that could influence a consumer's ability to repay the credit. As part of the creditworthiness assessment, Member States may require creditors to assess the creditworthiness of consumers on the basis of consultation with the relevant database.

### **Question 11 – Should Ireland continue to require creditors to consult with appropriate databases (The Central Credit Register) as part of the creditworthiness assessment?**

Yes, the Central Credit Register is an appropriate tool to assess creditworthiness and gives the creditor a sound basis to assess suitability. Consideration may need to be given to including credit of less than €500 on the Central Bank's Central Credit Register.

It is of course incumbent on credit providers to also assess creditworthiness and suitability in other areas of a consumer's financial health. This may involve seeking verification of income, future income and determining the expenditure and future contingencies of a credit applicant or joint applicants.

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### **Question 13**

Overdraft facilities are increasingly common forms of consumer credit. Therefore, there is a need to regulate those financial products in order to increase the level of consumer protection and avoid over-indebtedness. There is a danger that consumers will not be able to pay if the creditors decide to request immediate repayments and the CCD2 provides for consumer rights in respect of overdraft facilities and overrunning. Member States may provide for more stringent provisions to protect consumers holding an overdraft. Any such provisions must be in accordance with EU Law.

### **Question 13 – Should there be more stringent consumer protection provisions above those provided for in Article 24 of CCD2?**

Yes, there should be more stringent consumer protection provisions than those set out in Article 24. Article 24 paragraph (3) of the CCD2 requires a creditor to notify the consumer at least 30 days prior to it reducing or cancelling an overdraft facility. This should be extended to at least 90 days to give the consumer adequate time to consider their overdraft position, arrange alternative banking and credit solutions if required, and seek any necessary independent advice.

Paragraph (4) of Article 24 allows for 12 equal monthly instalments repayment of the overdraft facility at no additional cost, but at the borrowing rate applicable to the overdraft facility. 12 months may not be enough for some consumers to repay their overdraft. Consideration should be given to allowing consumers, on foot of an assessment of their financial circumstances, longer than 12 months to pay back their overdraft.

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#### **Question 14**

‘Overrunning’ means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds that exceed the current balance in the consumer’s current account or the agreed overdraft facility. In the event of a significant overrun exceeding a period of one month, the creditor should present the consumer without delay with information on the overrun, including the amount involved, the borrowing rate and any applicable penalties, charges or interest on arrears. In the case of regular overrunning, the creditor should offer the consumer advisory services, where available, to help the consumer identify less expensive alternatives, and redirect the consumer towards debt advisory services. Member States may provide for more stringent provisions to protect consumers holding an overrunning. Any such provisions must be in accordance with EU Law.

#### **Question 14 – Should there be more stringent consumer protection provisions above those provided for in Article 25 of CCD2?**

Yes, there should be more protections for overrunning current accounts.

In relation to withdrawing an overrun facility, a notice period of 90 days, instead of the 30 days outlined in Article 25 (4), should be given to the consumer informing them of the overrun facility withdrawal.

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#### **Question 17**

Under Article 29, the consumer has the right to discharge his or her obligations before the date agreed in the credit agreement. As interpreted by the Court of Justice of the European Union in the [Lexitor](#) ruling, the right of the consumer to a reduction in the total cost of the credit to the consumer in the event of early repayment of the credit includes all the costs imposed on the consumer. The reduction in the total cost of the credit to the consumer should be proportionate to the remaining duration of the credit

agreement and should also include costs which are not dependent on the duration of that credit agreement, including those which are fully exhausted at the time of granting the credit.

By way of derogation, Member States have the right to provide that compensation for early repayment may be claimed by the creditor only on condition that the amount repaid over a 12 month period exceeds a threshold defined by Member States. When fixing that threshold, which should not exceed €10,000, Member States should take into account the average amount of consumer credits in their market.

**Question 17 – Should creditors have a right to compensation for early repayment and, if so, what should the threshold for early repayment be that triggers the right to compensation?**

[NB The threshold is currently set at €10,000 under Regulation 19 para 5 of SI 281 of 2010

Yes, credit providers should have the right to receive compensation on foot of early repayment where relevant.

In the case of early repayment, credit agreements and pre-contractual information should clearly outline how the consumer, and the creditor, will be compensated. There should be more transparency for the consumer in relation to penalties and breakage costs due to early repayment. Information on compensation to the creditor should be presented to the consumer in clear understandable terms in cases of early repayment.

It is up to the competent authority in Ireland to determine this threshold, especially considering the average amount of consumer credits in the Irish market is to be taken into account.

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**Question 18**

**Interest Rate Caps**

The fixing of caps on borrowing rates, on annual percentage rates of charge or on the total cost of the credit to the consumer is a common practice in a number of Member States. Such caps have proven beneficial in protecting consumers and under CCD2, Member States have some discretion to maintain their current legal regime. In an effort to increase consumer protection without imposing unnecessary limits on Member States, adequate measures, such as caps, should exist to effectively prevent abuse and to ensure that consumers are not charged with excessively high borrowing rates, annual percentage rates of charge or total cost of credit to the consumer.

In Ireland, the [Consumer Credit \(Amendment\) Act 2022](#) introduced an interest rate cap on [high cost credit agreements](#) as follows:

- 1% per week simple interest on fixed rate loans, up to a maximum of 48%,

- 2.83% nominal interest on the outstanding balance per month on running accounts.

Also, Section 14 of the [Consumer Protection \(Regulation of Retail Credit and Credit Servicing Firms\) Act 2022](#) introduced a new Part – Part IIA – to the Consumer Credit Act 1995 which provides that, for agreements entered into after the commencement of the 2022 Act, the maximum APR on credit (other than a high cost credit agreement), and hire purchase agreement within the scope of the 1995 Act shall not be greater than 23 per cent.

Finally, the [Credit Union Act 1997](#) states that the interest on a loan shall not at any time exceed one per cent per month on the amount of the loan outstanding at that time. That equates to an annual interest rate of 12% (12.68% Annual Percentage Rate).

However, in April 2024 the Minister for Finance signed legislation (Section 38 of the Credit Union Act, 1997) for the interest rate cap to be increase to 2% per month.

#### **Question 18 – Should Ireland provide for any further prohibitions or limitations regarding specific charges or fees applied by creditors?**

In general, the CCPC opposes the introduction of capping interest rates. Such caps mostly do not achieve the intended outcomes, but instead serve to reduce competition with the cap effectively becoming a target. However, the CCPC agreed with the interest rate cap on high cost credit, as set out in the Consumer Credit (Amendment) Act 2022, on the basis that it believed that the potential for mitigating consumer detriment, particularly for vulnerable consumers, posed by the possibility of increased rates in the future had merit.

The CCPC recommended that the cap on high cost credit be subject to regular review by the Central Bank of Ireland and this provision is within the 2022 Act.

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#### **Question 19**

CCD2 requires creditors and credit intermediaries to act with integrity, transparency and impartiality in the design, promotion and conduct of credit services. Such responsible behaviour should avoid practices that have a negative impact on consumers, and appropriate management of conflicts of interest including those arising from remuneration, as well as to give advice in the best interests of the consumer. Member States shall impose safeguards on creditors and credit intermediaries to ensure that the range of products considered and remuneration arrangements are commensurate with best interests of consumers. This might include a prohibition on commissions paid by the creditor to the credit intermediary.

#### **Question 19 – Should Ireland impose a ban on commissions paid by a creditor to a credit intermediary?**

No, an outright ban on commissions paid by a creditor to a credit intermediary should not be necessary given the proposed requirements to protect consumers as set out in

Regulation 20 of the Central Banks' Revised Draft Consumer Protection Code. However, when the commission model leads to a clear conflict of interest that results in consumer detriment, then the competent authority should intervene as appropriate.

As an example, in 2021 the UK's Financial Conduct Authority (FCA) banned Discretionary Commission Arrangements (DCAs) for the motor finance industry. In June 2024 the Central Bank of Ireland wrote to the motor industry seeking DCAs of motor finance arranged through hire-purchase agreements to cease by 31 July 2024. (The Central Bank defines a DCA to be 'an arrangement whereby a Firm/Product Producer allows a credit intermediary to select the interest rate charged to the consumer and where the commission paid to the credit intermediary by the Firm is linked, either wholly or partially, to the interest rate charged.')

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### Question 21

Given the significant consequences of enforcement proceedings for creditors and consumers and potentially for financial stability, it is necessary that creditors proactively address emerging credit risk at an early stage and put in place necessary measures to ensure that they exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated. When deciding whether it is appropriate to exercise forbearance measures the creditor should take into account the individual circumstances of the consumer, such as his or her ability to repay the credit and his or her reasonable needs for living expenses. The creditor should limit the costs for the consumer in the event of default.

Member States may allow creditors to define and impose charges on consumers arising from a default. However, such charges should be no higher than what necessary to compensate the creditor for costs incurred as a result of the default. In cases where Member States allow such charges on consumers, they shall provide for a maximum cap.

### **Question 21 – Should creditors in Ireland be permitted to impose cost-recouping charges on consumers in default? If yes, then what should the cap on such charges be?**

No, costs should be borne at the expense of the creditor. The court can decide to award costs and interest on judgment debts, should the credit provider wish to pursue this course of action. Before the provider does so however they should endeavour to resolve arrears cases with the consumer at the earliest opportunity to ensure there is no overcharging for consumers in default.

If it is to be decided that there are cost-recouping charges on consumer default, then these costs should be clearly indicated within the credit agreement. There should also be a limit on the charges, and a cap put on their accrual and length of time that they accrue for– i.e. a maximum of 4 monthly surcharges after which time the account will go into late-stage arrears, where accruing interest and charges will cease, and the

final debt will be crystallised. This will reduce the accruing cost for the borrower who is already in financial difficulty. Should the credit provider revert to legal action to recover the debt, which is their right, then the costs of taking such action will be at the creditor's own expense.

The credit provider gives credit at their own risk and should perform the necessary credit worthiness and suitability checks. They are free to set the interest rate it deems necessary to allow for bad debts. The borrower in arrears should not necessarily have their financial difficulty compounded by accruing surcharges and interest, or by costs charged to them by the credit provider to recoup the debt. Credit accounts that are in arrears should not be allowed to accrue interest and charges indefinitely.

**ENDS**



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission

