European Community Consumer Credit Protection Laws:

Similarities and Differences in the United States for Non-Mortgage Credit

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European Community Consumer Credit Protection Laws:
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by John ReVeal

Financial institutions that operate only in the United States (US) or only in the European Union (EU) might be excused for believing that they face unreasonable burdens under local consumer credit protection laws. Broadly speaking, however, the US and EU consumer credit protection laws share many similarities and policy perspectives. This is by no means to suggest that their respective laws are identical, and the nature of the EU means that there will be certain differences among the Member States -- just as there will be differences among the various States within the US.

This article compares the basic consumer protections for non-mortgage credit under EU directives to the consumer protections under US federal law. The aim of this summary is to provide only a very high level comparison. Many details, and perhaps very important details, are omitted. We do not attempt to address the rules that the individual States within the US, or the rules that individual Member States within the EU, might have enacted. We also focus on subjects relating primarily to the lending activity itself.

As a preliminary note, both the EU and US have laws that require a bank charter or license for entities that offer lending products or loans to consumers. While such charters/licenses are also outside the scope of this article, it is worth noting that, in both locations, a chartered bank (or "credit institution," in the EU) is permitted to offer its services across all applicable jurisdictions (although sometimes requiring local approvals), either through interstate banking laws in the US or through "passporting" in the EU. However, the similarities end there because, non-bank lenders licensed in one State in the US have no passporting rights and must obtain the appropriate local credit license in each State in which its customers/debtors are located.

The Respective Legal Systems

A complete summary of the EU legal system is far beyond the scope of this article, but a few general comments might be helpful for the boarder understanding of this comparison of consumer protection laws. The two main sources of EU law are the EU treaties, referred to as the primary law, and the secondary law consisting of legal instruments based on those treaties, such as regulations, directives, decisions and agreements. This article focuses on certain directives. A "directive" is a legislative act that sets out a goal that all EU countries must achieve within a set time frame, but it is up to the individual countries to devise their own laws and

regulations to reach these goals.[1] Directives therefore generally are less specific than “regulations,” which are binding legislative acts that must be applied directly in their entirety across the EU.

The US legal system is comparable to the EU system in that there are federal laws and regulations that apply in every State of the US, but each State is free to enact its own additional laws and regulations. The laws and regulations of the various States within the US generally cannot be inconsistent with federal law or the particular application of that federal law, but States are usually empowered to enact laws that are more protective of consumers.

Some of the key EU directives and related materials impacting non-mortgage consumer credit are:

- Directive 2008/48/EC on credit agreements for consumers, issued 23 April 2008 (“Consumer Credit Directive” or “CCD”)

- Guidelines on the application of the Consumer Credit Directive in relation to costs and the Annual Percentage Rate of Charge, issued 8 May 2012 (“APR Guidance”)

- Directive 2002/65/EC concerning distance marketing of consumer financial services (“Distance Marketing Directive”)

Because each Member State is required to adopt a transposing act or national implementing measure to transpose each directive to national law, the national law adopted by one Member State may differ from that adopted by other Member States. Those differences, however, are generally relatively minor and it is therefore useful to compare the goals set forth in the applicable directives to the federal consumer protection laws of the US.

The primary federal consumer protection laws in the US relating to non-mortgage credit are the Truth in Lending Act (“TILA”), Fair Credit Reporting Act (“FCRA”), Equal Credit Opportunity Act (“ECOA”), Electronic Fund Transfers Act (“EFTA”), and the “holder rule” of the Federal Trade Commission (“FTC”). Except for the FTC’s holder rule, each of these laws is implemented through regulations, which include a majority of the important details. It therefore is important not to focus on the statutes to the exclusion of the regulations. While the same might be said of the EU directives given that each Member State must enact its own laws or regulations to transpose each directive, and those Member States rules can be more detailed than the various directives, we are not attempting in this article to address the laws or regulations that any Member State has actually enacted to implement any directive. Nevertheless, we hope that the reader will find the summaries to provide an informative guide to the broad differences and similarities between EU consumer credit protection law and the federal laws of the US relating to consumer credit.

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[1] European Union Regulations, Directives and other acts: https://europa.eu/european-union/eu-law/legal-acts_en

The Consumer Credit Directive: Non-Mortgage Credit Agreements

The Consumer Credit Directive was adopted by the European Parliament and Council on 23 April 2008 as Directive 2008/48/EC. The stated purpose of the CCD is to "harmonize certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers." The following outlines certain provisions of the CCD and how those provisions parallel or are similar to US consumer credit law and regulation.

As outlined in "Scope" below, the CCD does not apply to credit agreements that are secured by a mortgage or by another comparable security commonly used in a Member State on immovable property (we refer broadly to such other credit agreements in this article and the Table as "mortgage loans"). Mortgage loans in the EU are subject to a separate directive, Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property ("MCD"). Because this article focuses on non-mortgage credit, we do not address the MCD and we disregard provisions of US laws that apply only to mortgage loans.

As noted above, the US and EU consumer credit protection laws share many similarities and policy perspectives. As the Table below outlines, however, there are instances in which US federal law appears to be more burdensome to lenders, and arguably more "pro-consumer," than the CCD. Certain examples include the following:

1. Unlike the CCD, TILA does not exclude very small loans from its scope. That generally makes it more difficult for lenders in the US to engage in micro-lending and payday lending. On the other hand, the CCD applies to larger loans than does the CCD (at least at this time). (See "Scope.")

2. TILA will probably apply to a broader range of overdraft facilities (overdraft lines of credit) than the CCD. Many US legislators and regulators are concerned that overdraft programs include abusive fees and result in debt traps. These concerns are particularly evident in the TILA prohibition on discretionary overdrafts for prepaid cards and the consumer opt-in requirements under the EFTA before consumers may be charged an overdraft fee for payment of an ATM or one-time debit card transaction, for example. (See "Scope.")

3. While the CCD does not apply to certain socially beneficial loans, TILA includes no similar exclusions if the loan otherwise would be subject to TILA. (See "Scope.")

4. While both the CCD and TILA require the creditor to consider the consumer's ability to repay the loan, TILA's specific requirements are much more detailed.

5. TILA regulates credit card accounts much more extensively than does the CCD. For example, creditors generally cannot increase the interest rate or certain fees during the first year the account is opened, and total fees are limited during that first year; penalty fees such as late charges and returned payment fees are limited in amount; if a payment is made that exceeds the required minimum payment, the excess generally must be allocated first to higher interest rate balances; and the consumer has rights to reject certain significant changes in account terms. (See “Certain Additional TILA Terms.”)

There also are instances where the CCD is more protective of consumers as compared to TILA. For example, the CCD grants consumers the right to withdraw from any credit agreement, “without giving any reason,” within 14 days after the later of consummation of the agreement or the day on which the consumer is provided the written credit agreement. TILA provides no comparable rights. (See “Right of Withdrawal.”) In addition, the CCD requires a significant amount of information to be disclosed to consumers before the consumer is bound by the credit agreement. TILA requires certain disclosures before opening of a line of credit or consummation of a closed-end loan, and certain disclosures must be provided with credit card applications or solicitations, but TILA overall reflects a “less is more” approach in this regard and therefore focuses on the information determined by the regulators to be particularly important. (See “Pre-Contractual Disclosures.”) The CCD also limits prepayment penalties, whereas TILA includes no such limits for non-mortgage loans. (See “Prepayment Penalties.”)

Scope	
Consumer Credit Directive	**Truth in Lending Act**
The scope of the CCD is both broader and narrower than TILA. The CCD applies generally to “credit agreements.” Subject to the exceptions outlined below, a “credit agreement” is “an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other financial accommodation.” A “consumer” is a natural person who, in transactions covered by the CCD, is “acting for purposes outside his trade, business or profession.”	Except as outlined below, TILA applies only to “consumer credit.” “Consumer credit” is “credit offered or extended to a consumer primarily for personal, family, or household purposes.” “Credit” is defined as “the right to defer payment of debt or to incur debt and defer its payment.” A “consumer” is a cardholder or natural person to whom “consumer credit” is offered or extended. TILA and the CCD are very similar in these respects, but the practical implications in some instances can vary. For example, while “business purpose” credit generally is not subject to TILA, whether credit extended to a natural person is for consumer purposes or business purposes can depend on various factors.

Scope	
Consumer Credit Directive	**Truth in Lending Act**
	In addition, although TILA generally applies only to consumer purpose credit, certain rules applicable to credit card accounts will apply even to business purpose credit cards.
The CCD does not apply to credit agreements secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property. A separate Mortgage Credit Directive applies to such loans.	TILA applies to consumer mortgage loans, but such loans are not addressed in this survey.
The CCD does not apply to credit agreements of less than EUR 200 or more than EUR 75,000 (approximately $225 to $85,000).	Applies to all consumer loans of $57,200 or less (adjusted annually). This is a significant difference. US consumer credit protection laws make it very difficult to engage in micro-lending given the TILA compliance burdens and risks, and US regulators sometimes are hostile to any form of small, short-term "payday" loans, both of which are subject to TILA.
The CCD does not apply to credit agreements with no interest or other charges, or to credit agreements that must be repaid within three months when only insignificant charges are payable.	TILA has a narrower exception. TILA applies if *either* interest or other finance charges are imposed, *or* the credit is repayable by agreement in more than four installments. (Certain provisions of TILA apply even if the credit is not subject to interest or finance charges, or is not repayable by agreement in more than four installments, if a credit card is involved.)
Member States are authorized to exempt from the CCD credit agreements entered into by certain smaller creditors: "credit agreements concluded by such organizations where the total value of all existing credit agreements entered into by the organization is insignificant in relation to the total value of all existing credit agreements in the Member State in which the organization is based and the total value of all existing credit agreements entered into by all such organizations in the	A person is not subject to TILA as a "creditor" if that person makes no more than 25 covered loans (other than loans secured by a dwelling) in a calendar year.

Scope	
Consumer Credit Directive	**Truth in Lending Act**
Member State is less than 1% of the total value of all existing credit agreements entered into in that Member State."	
The CCD does not apply to credit agreements where credit is extended by an employer to employees "as a secondary activity" if free of interest or at annual percentage rates of charge that are lower than the prevailing market, if not offered to the public generally.	Employer loans to employees are generally covered by TILA. TILA does not take into account whether a person's lending activity is its primary or secondary activity (other than through the 25-loans per calendar year exception noted above).
The CCD does not apply to credit agreements that relate to the "deferred payment, free of charge, of an existing debt." Both this exception and the partial exemption immediately below relate to existing debt. The Court of Justice of the European Union has held that an agreement cannot be considered to be "free of charge" where the consumer agrees not only to repay the total amount of outstanding credit but also interest or charges that are not already provided for in the initial credit agreement, such as the costs of a credit recovery agency. *Verein für Konsumentenformation* (C-127/15).	Whether TILA applies to arrangements such as this generally will depend on whether a new credit agreement is entered into that provides for repayment in more than four installments or that provides for any interest or other "finance charges" (TILA finance charges are discussed in "Annual Percentage Rates," below).
Member States may choose to apply only certain provisions of the CCD to credit agreements that provide for arrangements to be agreed upon by the creditor and consumer in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement and (a) the arrangements would be likely to avert the possibility of legal proceedings concerning such default and (b) the consumer would not thereby be subject to terms that are less favorable than provided in the initial credit agreement. Provisions of the CCD that Member States are not required to apply include, without limitation, the pre-contractual disclosure requirement	As a general rule, TILA requires complete new disclosures if an existing closed-end credit agreement is satisfied and replaced by a new credit obligation, referred to as a "refinancing." TILA does not include an exception that is exactly the same as that in the CCD, but does exempt from the refinancing disclosure requirement a renewal of a single payment obligation with no change in the original terms, a change in the payment schedule as a result of the consumer's default so long as the interest rate is not increased and the new amount financed does not exceed the unpaid balance plus earned finance charges and certain insurance charges, and an agreement involving a court proceeding.

Scope	
Consumer Credit Directive	**Truth in Lending Act**
and certain of the credit agreement disclosure requirements (both discussed further below).	
The CCD does not apply to credit agreements in the form of an "overdraft facility" if the credit must be repaid within one month. Only certain provisions of the CCD apply if the overdraft facility must be repaid on demand or within three months. An "overdraft facility" is an "explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility." <u>Note on current accounts</u>: An important point should be made here regarding "current accounts." In the EU, those accounts are essentially bank accounts maintained for everyday transaction use, typically accessible by debit card or other electronic means, as opposed to a savings account. In the US, "current accounts" are generally referred to as "checking accounts" because most such accounts allow the holder to make payments to third parties using checks, but some checking accounts in the US are "checkless" and can be accessed only by debit card or electronic means.	In the US, "overdraft facilities" are typically referred to as overdraft lines of credit. TILA generally applies to formal agreements to pay overdrafts, without regard to the repayment requirements, if the creditor may impose interest or charge a fee for paying the overdraft. This is another significant difference as compared to the CCD. By excluding overdraft facilities that must be repaid within one month, the CCD arguably provides more flexibility to banking institutions that might want to offer short term overdraft facilities. In addition, overdraft facilities payable on demand or within three months are subject to fewer CCD requirements, whereas TILA applies the same requirements regardless of the number of payments.
Certain provisions of the CCD do not apply to credit agreements in the form of "overrunning." Overrunning means a "tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility." Overrunning encompasses two different situations. One is the payment by the creditor of a debit to a current account (as noted above, this is equivalent to a checking account in the US) notwithstanding that the current account has insufficient funds	As noted in the left column, "overrunning" involves two different situations: discretionary overdrafts and over-limit transactions. These transactions are treated very differently under US federal law. Discretionary overdraft programs for traditional bank accounts are not subject to TILA because of the absence of any written agreement to pay overdrafts. However, TILA generally prohibits the discretionary payment of overdrafts on prepaid card accounts. In addition, under the EFTA, a bank generally

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Consumer Credit Directive	**Truth in Lending Act**
for that debit, where that payment by the creditor was not contractually required (but was "tacitly accepted" by the creditor). This is commonly referred to in the US as a "discretionary overdraft plan" or by some similar term. See below for further information on "Overrunning Disclosures." The second situation involves a consumer with an overdraft facility under which the consumer is granted a credit limit (i.e., a contractual limit on the amount the consumer can borrow using that overdraft facility), but where the creditor pays a debit to the consumer's current account notwithstanding that there are insufficient funds in the current account and that payment of the debit would cause the consumer to exceed the credit limit for the overdraft facility. In the US, this is generally referred to as an "over-limit" or "over-the-limit" transaction.	cannot collect a fee for paying an overdraft on an ATM or one-time debit card transaction unless the consumer is first provided with lengthy disclosures and then affirmatively opts-in to the program. The federal Truth in Savings Act also imposes special periodic statement and advertising disclosure requirements for overdraft services relating to bank deposit accounts. TILA regulates overdraft facilities (overdraft lines of credit) like any other open-end credit arrangement, but does not separately regulate over-limit transactions for such lines of credit. However, TILA does regulate over-limit fees for credit card accounts and, if a prepaid card can access a separate credit facility to pay overdrafts, the card can be treated as a "hybrid prepaid-credit card" and subject to all of TILA's credit card rules (TILA credit card rules are discussed further in "Certain Additional TILA Rules," below).
The CCD does not apply to credit agreements relating to loans "granted to a restricted public under a statutory provision with a general interest purpose," at below market interest rates or on other terms that are more favorable to the consumer than prevailing market terms. Depending on the laws of the various Member States, student loans could qualify for this exception as could other loans offered to a restricted public pursuant to a specific law.	There is no comparable exclusion in TILA. State laws will sometimes provide regulatory relief for lenders making certain loans deemed to be socially beneficial, but TILA applies if the loan otherwise would be covered. At the same time, TILA imposes heightened obligations and restrictions on creditors making certain private education loans.
The definition of "credit agreement" does not include "agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by instalments."	TILA has no such specific exemption. TILA defines "credit" as "the right to defer payment of debt or to incur debt and defer its payment." That broad definition can sometimes cause services contracts, where the consumer pays for the services in arrears, to be subject to TILA. However, if no interest or other finance charges are imposed, such service contracts usually will not be subject to TILA because the consumer ordinarily is required to

Scope	
Consumer Credit Directive	**Truth in Lending Act**
	pay for all services delivered within a specified period in a single periodic payment (TILA applies only if either a finance charge is imposed or the consumer is permitted by written agreement to pay for the credit in more than four installments).

Pre-Contractual Disclosures	
Consumer Credit Directive	**Truth in Lending Act**
Disclosures of credit terms are required "in good time before the consumer is bound by any credit agreement or offer." The purpose of the pre-contractual disclosures is to "provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement." This rule needs to be understood in the context of the consumer's 14-day right to withdraw from a credit agreement. As outlined further below in "Right of Withdrawal," a consumer that exercises this right of withdrawal generally cannot be held liable for any fees or charges other than interest accruing before the withdrawal. The CCD provides for other pre-contractual disclosures for overdraft facilities, certain credit agreements entered into by non-profit organizations with their members, and credit agreements relating to deferred payment or repayment methods where the consumer is already in default. This summary does not further address those disclosure requirements other than to note that the disclosures also are generally designed to allow the consumer to compare different offers.	Except for credit cards and certain private education loans (disregarding mortgage loans, which are not the subject of this article), TILA arguably does not require "pre-contractual" disclosures specifically to facilitate credit shopping. Applications and solicitations for credit cards and certain private education loans must include detailed disclosures of loan terms. On the other hand, TILA generally requires account-opening disclosures before the first transaction is made under any open-end credit plan and a creditor generally cannot collect any fee before the disclosures are provided. The creditor can collect or obtain the consumer's agreement to pay a membership fee, and an application fee if it is excludable from the "finance charge," before delivery of the disclosures, but the consumer can reject the credit plan after receiving the disclosures and then would be entitled to a refund of any paid fees. Once the consumer "uses" the account, which generally means obtaining a credit advance, the consumer cannot then terminate the account and recover fees that have already been incurred. However, TILA imposes no limits on a consumer's ability to terminate an open-end credit account at any time and thereby avoid further fees (though of course the consumer usually will

Pre-Contractual Disclosures	
Consumer Credit Directive	**Truth in Lending Act**
The pre-contractual disclosures must include a significant amount of information. The TILA disclosures described in the column to the right are much more limited (one page disclosures as opposed to the multi-page pre-contractual disclosures under the CCD). This difference is in part a reflection of the philosophy in the US that credit disclosures are more useful if they focus on the key items of interest to most consumers.	be required by the credit agreement to pay all accrued interest and fees and, subject to State laws, the agreement could impose limits on termination of the account). For closed-end credit, certain disclosures are required before the consumer becomes contractually obligated on the loan (referred to as "consummation" of the loan). As a practical matter, a consumer could decide not to consummate the loan, but the consumer still could be liable for certain charges relating to loan processing.
CCD provides a model form for this disclosure, referred to as the "Standard European Consumer Credit Information" disclosure or "SECCI."	TILA also provides model disclosures for open-end account-opening disclosures and for the closed-end disclosures required before consummation of the loan.

Credit Agreement Disclosures	
Consumer Credit Directive	**Truth in Lending Act**
The CCD requires that all of the contracting parties receive a copy of the credit agreement, which must include specific information in a "clear and concise" manner. The CCD does not specify when the credit agreement must be delivered, but the consumer's 14-day right of withdrawal (discussed below) does not begin until the consumer receives the credit agreement.	For open-end credit, account-opening disclosures are required before the first transaction is made under the credit plan, though certain fees may be disclosed after the account is opened but before the consumer agrees to pay the fee. The general TILA disclosure standard is to make the disclosures "clearly and conspicuously," though certain items must be in specific formats. For closed-end credit, disclosures of specified credit terms must be made before consummation of the loan. Those disclosures also must be made clearly and conspicuously and certain disclosures must be in specific formats or more conspicuous than others.

Credit Agreement Disclosures	
Consumer Credit Directive	**Truth in Lending Act**
	Unlike the CCD, TILA does not specifically require delivery of the credit agreement itself, though the agreement could be unenforceable under State laws if not provided to the consumer.
<u>Certain Notable CCD Disclosures</u>: A summary of the specific information that must be included in the credit agreement is beyond the scope of this article. However, a few items are worth noting for comparison to US law. 1. In the case of credit in the form of deferred payment for specific goods or services, the good or service and its cash price. 2. A warning “regarding the consequences of missing payments.” 3. The consumer’s right to a statement of account in the form of an amortization table, in connection with a credit agreement with a fixed duration.	<u>Comparison to TILA</u>: 1. TILA requires a disclosure of goods only if a security interest is being taken in such goods, and then need only describe the goods by type (such as “motor vehicle”). State laws, however, sometimes require more specific information, such as in retail credit agreements (credit extended by the seller). 2. TILA requires no similar warning regarding missed payments. However, under the FCRA, a financial institution that regularly and in the ordinary course of business furnishes information to consumer reporting agencies must inform the consumer in writing that late payments, missed payments, and other defaults may be reflected on the consumer’s credit report. 3. TILA requires periodic statements for open-end credit, but not closed-end credit. Periodic statements for open-end credit are not required to include an amortization table. However, periodic statements for credit cards must include a “minimum payment warning” and information on how long it would take and how much it would cost to pay off the balance as of the statement date if the consumer makes only the minimum required payments.

Overrunning Disclosures	
Consumer Credit Directive	**Truth in Lending Act**
When opening a current account, if there is the possibility that the consumer will be allowed to overrun, the account agreement must include additional disclosures regarding the borrowing rate and charges. In addition, in the event of a significant overrunning exceeding a period of one month, the creditor is then required to provide the consumer a written disclosure of the overrunning, the amount involved, the borrowing rate, and of any applicable penalties, charges or interest on arrears.	As noted in the Scope section above, overrunning can refer to exceeding the credit limit of an overdraft facility or the creditor's tacit acceptance of an overdraft on a current account. In the case of an overdraft line of credit (i.e., overdraft facility), TILA requires disclosure of the APR and certain other financial terms in the same manner as for any other line of credit. TILA does not apply to discretionary overdraft plans (tacit acceptance of overdrafts), as noted above. However, the Truth in Savings Act requires that periodic statements for the deposit account disclose the total dollar amount of all fees imposed on the account for paying or returning unpaid overdraft items, for both the statement period and for the calendar year-to-date.

Annual Percentage Rates	
Consumer Credit Directive	**Truth in Lending Act**
The CCD uses the term "annual percentage rate of charge" or "APRC," whereas TILA uses the term "annual percentage rate" or "APR." The general goal of both the APRC and the APR is to provide a uniform rate disclosure to the consumer so that the consumer can make fair comparisons when shopping for loans. Accordingly, under both the CCD and TILA this number must be calculated in a specific way and include specific charges. An analysis of the mathematics required by these laws is beyond the scope of this survey. We focus instead on certain items that must be included in the APRC or APR.	
"APRC" generally means "the total cost of the credit to the consumer," expressed as an annual percentage of the total amount of credit. The "total cost of the credit" generally means "all the costs, including interest, commission, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs" and certain other excluded charges.	"APR" is likewise a measure of the "cost of credit," expressed as a yearly rate. The costs to be included in the APR calculation are referred to as "finance charges." The "finance charge" generally includes "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit."

Annual Percentage Rates	
Consumer Credit Directive	**Truth in Lending Act**
The treatment of certain charges: 1. The APRC includes "costs of maintaining an account recording both payment transactions and drawdowns … unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded by the consumer." Transposing laws in the Member States sometimes state this as the costs of managing an account on which both payments and drawdowns are booked. The APR Guidance explains that the account referred to in this rule includes both credit and debit accounts, but the payment transactions and drawdowns referred to should be understood as those related to the credit. 2. The costs for using a particular means of payment for payment transactions or drawdowns, such as checks or cards, are included in the APRC. 3. Charges other than the purchase price that the consumer is obligated to pay whether the transaction is effected in cash or on credit are excluded from the APRC. As an example, the APR Guidance refers to vehicle registration costs for a loan to purchase a car. 4. Charges payable by the consumer for non-compliance with the consumer's contractual commitments. Per the APR Guidance, this would include late payment interest or penalties, charges for exceeding the credit limit,	Comparison to TILA: 1. TILA *excludes* from the finance charge and APR the charges for participating in a credit plan, whether assessed on an annual or other periodic basis. On the other hand, charges imposed in connection with a credit feature on a checking or similar transaction account are finance charges and included in the APR to the extent the charge exceeds the charge for a similar account without a credit feature. 2. Any transaction fee imposed on a line of credit is a finance charge included in the APR. This would include, for example, fees for a cash advance (whether by check or otherwise), purchase, or ATM withdrawal. 3. Any charge of a type payable in a comparable cash transaction is excluded from the APR. TILA likewise refers to license fees or registration fees paid by both cash and credit customers as an example of excluded fees. 4. TILA also excludes charges for "unanticipated" late payment, for exceeding the credit limit, or for "delinquency, default, or a similar occurrence."

Annual Percentage Rates	
Consumer Credit Directive	**Truth in Lending Act**
charges for returned payments, and charges for collection of unpaid debts.	

Interest Rate Changes	
Consumer Credit Directive	**Truth in Lending Act**
When applicable, the consumer must be informed of any change in the "borrowing rate" before the change enters into force. The "borrowing rate" is the "interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down." This notice must include the amount of the new required payments and, if the number or frequency of payments change, the particulars thereof. For overdraft facilities, the consumer must be informed of any increase in the borrowing rate or any charges payable before the change enters into force. Note that the rule for other than overdraft facilities is to notify the consumer of any change in the borrowing rate, but for overdraft facilities the notice must be provided before any *increase* in the borrowing rate *or* other charges. This distinction is maintained in the laws of at least some Member States. For all credit agreements, including overdraft facilities, the parties may agree that information concerning changes in the borrowing rate will be provided periodically in cases where the change is caused by a change in a "reference rate," the new reference rate is made publicly available by appropriate means, and the information concerning the new reference rate is available in the premises of the creditor.	TILA generally does not require a change in terms notice when the interest rate increases pursuant to an agreement for changes in the rate according to the operation of a publicly available index that is not under the creditor's control, or if the interest rate changes upon expiration of a specified period of time and specified disclosures were provided before the commencement of that period. (Different rules apply to mortgages.) However, certain other interest rate and APR changes are subject to notice requirements and other rules relating to "significant changes in account terms." See "Other Changes in Terms," below.

Other Changes in Terms	
Consumer Credit Directive	**Truth in Lending Act**
The CCD addresses only changes in the borrowing rate and, in the case of overdraft facilities, changes in the charges that may be imposed.	TILA does not regulate change in terms notices for closed-end credit, other than with respect to certain mortgage loans. The TILA change in terms notice requirements for open-end credit depend on whether the change is a "significant change in account terms." Such significant changes include, for example, increases in the required minimum periodic payment, changes in how variable rates will be determined, and changes in various specified fees, such as periodic fees for the availability of an open-end credit plan, cash advance fees, and balance transfer fees. For such significant changes, the creditor must provide 45-day advance notice of the change and, when making a significant change to terms of a credit card account, the consumer has a right to reject certain changes. For certain changes in terms for open-end credit that are not a significant change in terms the creditor can either comply with the rules for significant changes or provide notice of the change before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the change. As discussed below in "Certain Additional TILA Rules," a credit card issuer is greatly limited in its ability to change the APR and certain fees during the first year that the account is opened.

Ability to Repay Analysis	
Consumer Credit Directive	**Truth in Lending Act**
The CCD requires creditors to assess the consumer's creditworthiness before conclusion (i.e., consummation) of the	TILA requires an ability to repay analysis for only certain mortgage loans and credit card accounts. TILA (through its

Ability to Repay Analysis	
Consumer Credit Directive	**Truth in Lending Act**
credit agreement "on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database." Member States that require creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant data base are allowed to retain this requirement. The CCD thus contemplates that a creditor may obtain information for the ability to repay analysis from the consumer or from other sources, without any specific rules as to (a) when the creditor can strictly rely on the consumer for that information or (b) what information to review.	Regulation Z) is much more detailed and specific than the CCD regarding what information must be considered by the creditor, though specific legislation of the Member States could include similar details. For example, TILA specifically requires the creditor to review the consumer's income or assets and current obligations, and the creditor must consider at least one of the following: the ratio of debt obligations to income, the ratio of debt obligations to assets, or the income the consumer will have after paying debt obligations. It appears, therefore, that the TILA requirements are overall more burdensome than those under the CCD. In addition to the general ability to repay analysis for all consumers, TILA imposes special credit card ability to repay standards for consumers who are less than 21 years old. Like the CCD, however, TILA does not require that that creditor obtain the relevant information from any person other than the consumer. TILA specifically provides that a card issuer may rely without further verification on income and asset information provided by credit applicants, so long as the application requests and obtains sufficient information.
A similar assessment is required before any "significant increase" in the total amount of credit.	TILA also requires a new ability to repay analysis before increasing the credit limit on a credit card account.

Right of Withdrawal	
Consumer Credit Directive	**Truth in Lending Act**
A consumer has 14 calendar days in which to withdraw (i.e., cancel the credit agreement) "without giving any reason." The period of withdrawal begins on the later of the day of the	TILA includes no comparable right (except in connection with certain loans or lines of credit secured by the consumer's principal dwelling). However, see "Pre-Contractual Disclosures," above, regarding the practical impact of required

Right of Withdrawal	
Consumer Credit Directive	**Truth in Lending Act**
conclusion (consummation) of the credit agreement or the day on which the consumer receives the written credit agreement. The consumer generally must pay the creditor the "capital" and the interest accrued thereon from the date the capital was drawn down until the capital is repaid. The creditor shall not be entitled to any other compensation except compensation for any non-returnable charges paid by the creditor to any public administrative body. In addition, if an ancillary service relating to an open-end credit agreement is provided by the creditor or a third party on the basis of an agreement between the third party and the creditor, the consumer is no longer bound by the ancillary service contract if the consumer withdraws from the credit agreement in accordance with the CCD. The Distance Marketing Directive also allows consumers to withdraw from "distance contracts" within 14 calendar days (or 30 calendar days for certain life insurance contracts or personal pension operations) without giving any reason. "Distance contract" generally means any contract for "financial services" between a supplier and a consumer under "an organized distance sales or service-provision scheme run by the supplier, who, for the purposes of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded." "Financial services" for these purposes means any service of a banking, credit, insurance, personal pension, investment or payment nature. "Means of distance communication" refers to any means that, without the simultaneous physical presence of the supplier and the consumer, may be used for the distance marketing of a service between those parties. A full summary of the Distance Marketing Directive is beyond the scope of this	account-opening disclosures before the first transaction is made under open-end credit plans and the pre-consummation disclosures for closed-end credit.

Right of Withdrawal	
Consumer Credit Directive	**Truth in Lending Act**
article, but, if the right of withdrawal under the CCD applies, then the right of withdrawal under the Distance Marketing Directive will not apply. (Note also that the model SECCI model pre-contractual disclosures also include distance marketing disclosures.) See also "Linked Credit Agreements," below.	

Termination of Open-End Credit Agreements	
Consumer Credit Directive	**Truth in Lending Act**
Consumers may terminate an open-end credit agreement free of charge at any time unless the parties have agreed on a notice period (which cannot exceed one month).	TILA does not limit or otherwise regulate the consumer's ability to terminate an open-end credit agreement once it is established.
Creditors generally must provide the consumer at least two months' notice before termination of an open-end credit agreement.	TILA does not limit the creditor's ability to terminate an open-end credit agreement other than that the creditor may not do so solely because the consumer has not incurred finance charges. However, the creditor can terminate the account if, for three or more consecutive months, no credit has been extended and the account has had no outstanding balance.
If provided in the credit agreement, the creditor can terminate further advances (the "right to draw down") for "objectively justified reasons." The creditor must notify the consumer of such, and the reasons for it, where possible before termination and at the latest immediately thereafter.	TILA has no similar creditor rights or limitations.

Periodic Statements	
Consumer Credit Directive	**Truth in Lending Act**
The CCD has only limited periodic statement requirements. Where capital amortization of a credit agreement with a fixed duration is involved, the consumer has the right to receive, on request and free of charge at any time throughout the duration of the credit agreement, a statement of account in the form of an amortization table. For credit agreements in the form of an overdraft facility, the creditor must keep the consumer "regularly informed," via a statement of account, of various information, including the amounts and dates of drawdowns, the borrowing rate applied and the charges that have been imposed. No specific timing for delivery of this statement is provided by the CCD.	For open-end credit, TILA requires delivery of a periodic statement for each billing cycle at the end of which the account has a debit or credit balance of $1 or more or for which a finance charge has been imposed. For credit card accounts, this statement must be mailed or delivered at least 21 days before the payment due date. For other open-end accounts, the statement must be delivered at least 21 days before the date on which any grace period expires (the period within which any credit extended may be repaid without incurring a periodic rate of interest) or, if there is no grace period, at least 14 days before a required minimum periodic payment is due to avoid being treated as late. TILA requires extensive information to be included on these statements.

Prepayment Penalties	
Consumer Credit Directive	**Truth in Lending Act**
The creditor is entitled to a "fair and objectively justified compensation" for possible costs directly linked to early repayment *provided that* the early repayment falls within a period for which the borrowing rate is fixed. There are limited instances when the early repayment compensation is not permitted, including in the case of overdraft facilities or if the prepayment falls within a period for which the borrowing rate is not fixed. Member States are granted some flexibility in the rules they enact. Subject to these exceptions, when early repayment	TILA does not limit prepayment penalties for other than certain mortgage loans.

Prepayment Penalties	
Consumer Credit Directive	**Truth in Lending Act**
compensation is permitted, it generally is capped at 1 to 0.5% of the credit repaid early, depending on when it is repaid.	

Penalties	
Consumer Credit Directive	**Truth in Lending Act**
The CCD requires Member States to enact rules on penalties applicable to infringements of the national measures adopted pursuant to the CCD. The CCD does not provide for specific penalties, other than that they "must be effective, proportionate and dissuasive."	Depending on the type of credit and the type of violation, a creditor violating TILA can be liable to the consumer for actual damages, twice the amount of the finance charges for the transaction (with certain minimums and maximums in some cases), and class action penalties of up to $1,000,000. In addition, many federal laws separate from TILA provide for their own consumer remedies.

Assignee Liability	
Consumer Credit Directive	**Truth in Lending Act**
If the creditor assigns to a third party its rights under a credit agreement or the agreement itself, a consumer is entitled to plead against the assignee "any defense which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned."	As a general matter, and except in connection with certain mortgage loans, voluntary assignees are liable only for TILA violations that are apparent on the face of the disclosure statement. Violations apparent on the face of the disclosure statement would include a disclosure that can be determined to be incomplete or inaccurate from the disclosure or other documents assigned, as well as disclosures that do not use the terms (terminology) required to be used by TILA.

Credit Report Adverse Action Notices	
Consumer Credit Directive	**FCRA and ECOA**
If a credit application is rejected on the basis of consultation of a database used to assess the consumer's creditworthiness, the creditor must inform the consumer "immediately and without charge of the result of such consultation and of the particulars of the database consulted."	The FCRA requires "adverse action notices" when negative credit decisions involving an individual are made in whole or in part on the basis of a credit report or other "consumer report." Unlike the CCD, the FCRA adverse action notice requirement extends to adverse actions taken with respect to existing extensions of credit. Side note: Despite the name "Fair Credit Reporting Act," the FCRA applies to "consumer reports," which include credit reports and credit scores but also many third party reports reflecting on the consumer's other characteristics. The ECOA provides for similar adverse action notices regardless of whether credit reports or other consumer reports are used to make an adverse decision regarding a credit application or existing credit.

Advertising Disclosures	
Consumer Credit Directive	**Truth in Lending Act**
The CCD generally requires additional disclosures in advertisements that indicate an interest rate or any figures relating to the cost of the credit. An exception applies where national legislation requires the indication of the annual percentage rate of charge in an advertisement that does not indicate an interest rate or any figures relating to any cost of credit.	The TILA advertising disclosure requirements depend on whether the advertised credit is open-end or closed-end. In both cases, the existence of a "triggering term" in the advertisement, including any interest rate or other finance charge in the case of open-end credit, will require additional disclosures. Regulation Z is much more detailed than the CCD, but the laws of certain Member States may include similar detail.

Linked Credit Agreements	
Consumer Credit Directive	**Federal Trade Commission Holder Rule; TILA Credit Card Rule**
The CCD includes special provisions regarding "linked credit agreements." A "linked credit agreement" is a credit agreement where the credit serves "exclusively to finance an agreement for the supply of specific goods or the provision of a specific service" and those two agreements form, "from an objective point of view, a commercial unit." A "commercial unit" exists where the supplier or service provider itself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or service are explicitly specified in the credit agreement. When the consumer exercise a right of withdrawal based on European Community law concerning a contract for the supply of goods or services, the consumer is no longer bound by the linked credit agreement. In addition, when the goods or services covered by the linked credit agreement are not supplied, are supplied only in part, or are not in conformity with the supply contract, the consumer has the right to pursue remedies against the creditor if the consumer pursued those remedies against the supplier and failed to obtain satisfaction to which he is entitled according to the law or the contract. Member States are granted the authority under the CCD to determine to what extent and under what conditions those remedies shall be exercisable.	Under the FTC's "holder rule" a consumer may bring claims against a lender that it could have brought against a seller of goods or services, with certain limitations. The general concept is that a consumer with claims against the seller should not be in the position of having to pay off a related loan when the seller has not delivered what was promised. Accordingly, the FTC's holder rule allows a consumer to avoid certain debt, and sometimes recover previous loan payments owed to a lender, when either the seller assigned the loan to that lender or the lender and the seller had a business arrangement under which the lender lent the funds for the purchase in question. Like the CCD rule, the FTC's rule applies only when credit is extended for a specific purchase of goods or services. A general purpose loan that the consumer may use for multiple purchases is not subject to the FTC's rule. In addition, when the credit is extended by a third party (rather than the seller of the goods or services), the third party is subject to the holder rule only if the seller referred the consumer to the creditor or if the seller and creditor are affiliated with each other by common control, contract, or business arrangement. For these purposes, a "business arrangement" includes any understanding, procedure, course of dealing or arrangement, formal or informal, between a creditor and a seller in connection with the sale of goods or services to consumers or the financing of such sales. This concept is similar to, but not exactly the same as, the "commercial unit" concept of the CCD. The FTC's holder rule applies only to transactions that are also subject to TILA, but does not apply to creditors who are acting with respect to the particular transaction as a credit card issuer.

Linked Credit Agreements	
Consumer Credit Directive	**Federal Trade Commission Holder Rule; TILA Credit Card Rule**
	However, TILA has a separate rule regarding disputes arising from credit card transactions. Under TILA, when a person who honors a credit card fails to satisfactorily resolve a dispute as to the property or services purchased with the card, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. This rule applies only if the amount of credit extended to obtain the property or services that resulted in the claim or defense exceeds $50, and the disputed transaction occurred either in the cardholder's home state or within 100 miles of that address. Also, as indicated above and consistent with the CCD, the consumer must attempt to resolve the dispute with the merchant.

Certain Additional TILA Rules
The rules and issues outlined above focus on the CCD and on how TILA is similar to or different from the CCD. However, TILA includes a number of rules that are not included or have no analogue in the CCD. The remainder of this Table describes certain of those TILA rules. (As noted in the introduction, this Table focuses on the CCD and not any other EU directive or Member State rules. Some of the TILA rules described here therefore could be included in other directives or Member State rules.) <u>Treatment of Prepaid Cards as Credit Cards</u> In certain cases, a prepaid card can be a "hybrid prepaid-credit card" if it can access credit from a separate credit feature or through a negative balance on the asset feature of the card (essentially, an overdraft feature). With respect to such credit features, the prepaid card is then subject to the burdensome requirements applicable to other consumer credit cards, many of which are summarized below. <u>Unauthorized Transaction Protections</u> TILA limits a cardholder's liability for unauthorized credit card transactions to the lesser of $50 or the amount of money, property, labor or services obtained by the unauthorized use before the cardholder notifies the card issuer of the unauthorized use.

Certain Additional TILA Rules

This is the primary area in which TILA applies to business purpose credit as well as consumer purpose credit. For purposes of the limits on a cardholder's liability for unauthorized use, "cardholder" includes any person, including an organization, to whom a credit card is issued for any purpose. However, if 10 or more credit cards are issued by one card issuer for use by the employees of an organization, the card issuer and the organization may agree to liability for unauthorized use of the cards without regard to TILA's unauthorized use protections, except that liability may be imposed on an employee of the organization (by either the card issuer or the organization) only in a manner that is consistent with the standard unauthorized use protections.

For all open-end credit, creditors must implement and follow specific billing error resolution procedures. If the creditor determines that a billing error occurred as asserted, the creditor must correct the error and credit the consumer's account with the disputed amount and related applicable charges.

Limits on First-Year Fees

The total amount of fees the consumer can be required to pay during the first year after opening a credit card account may not exceed 25 percent of the credit limit. Exceptions are provided for late charges, fees for exceeding the credit limit, returned-payment fees, and fees that the consumer is not required to pay with respect to the account.

Limits on Penalty Fees

The dollar amount card issuers may charge for certain fees is limited, and certain fees are prohibited. These fees generally can be thought of as "penalty fees," though TILA does not use that term, because the relevant fees are those charged for violating the terms or other requirements of the card account. The general rule is that a permitted fee may not exceed the lesser of (1) a reasonable proportion of the total costs incurred by the card issuer as a result of the type of violation made by the consumer or (2) "the dollar amount associated with the violation." TILA includes a safe-harbor dollar amount that the card issuer may impose for the first half of this test (this safe-harbor amount is adjusted annually), but that safe harbor is subject to the second rule. The second rule requires an analysis of the violation. For two examples, if a consumer fails to make a required payment of $25 by the payment due date, the late fee could not exceed $25, and if the consumer exceeds his or her credit limit by $5, the over-limit fee could not exceed $5. Prohibited fees are those for which no dollar amount is associated with the violation, such as an inactivity fee for non-use of the account.

Limits on Increases of APR and Fees

Credit card issuers can increase the APR or certain fees only in limited circumstances. The covered fees include annual or other periodic fees for account availability, fixed finance charges, minimum interest charges of more than $1, and charges for required

Certain Additional TILA Rules

insurance, debt cancellation or debt suspension products. These rules are very complex, but broadly speaking:

- During the first year after the credit card account is opened, creditors generally cannot increase the APR or a covered fee. After the first year, the creditor may increase the APR or fees only with 45-day advance written notice, and the change cannot apply to transactions that occurred prior to or within 14 days after provision of the notice.

- Notwithstanding the foregoing limitation, credit card issuers may increase *the APR* pursuant to variable rate contractual terms so long as the change is due to an increase in an index that is not under the card issuer's control and that is available to the general public.

- Card issuers also may increase the APR or the covered fees after the expiration of a promotional period of six months or longer, so long as required disclosures were provided prior to the commencement of that period.

Limits on Fees for Exceeding the Credit Limit

TILA requires a card issuer to obtain the consumer's express consent (opt-in) before the issuer may impose any fees for making an extension of credit that exceeds the credit limit for the account. This consent may be obtained only after the card issuer has provided specified disclosures. After the consumer has opted-in, the card issuer must provide the consumer written or electronic confirmation of the consumer's consent and, following the assessment of any over-the-limit fee or charge, the issuer must provide the consumer with notice of the right to revoke this consent. This second notice is ordinarily dealt with on the required periodic statement (see "Periodic Statements," above).

Payment Allocation

Credit card issuers in the US often charge different interest rates depending on the type of transaction, such as purchase transactions or cash advances. For such accounts, when the consumer's payment exceeds the required minimum periodic payment, the creditor must allocate the excess amount first to the balance with the highest interest rate (annual percentage rate), with narrow exceptions. There is an exception to this rule for deferred interest programs, under which creditors must allocate excess payments first to the deferred interest balance during the last two billing cycles of the deferred interest period, but creditors are permitted (but not required) to allocate excess payments during the deferred interest period in the manner requested by the consumer. For accounts with secured balances (in the US, these are typically secured credit card accounts), the creditor also is permitted (but not required) to allocate excess payments to the secured balance if requested by the consumer.

The CCD provides for disclosure of how payments will be allocated to different outstanding balances, as part of the pre-contractual disclosures and credit agreement disclosures, but does not mandate the order in which payments must be allocated.

Certain Additional TILA Rules
Delivery of Periodic Statements As noted above, periodic statements for credit card accounts must be mailed or delivered at least 21 days before the payment due date. This greatly limits the use of credit cards (including hybrid prepaid-credit cards) for payday loans, which generally are structured as very short term loans. Offset Prohibition Credit card issuers generally cannot offset a cardholder's debt against cardholder funds held on deposit with the card issuer. The primary exception is for a formal secured credit card arrangement in which the cardholder deposits funds with the card issuer specifically to secure the credit card debt.

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