



EBA Consumer Trends Report 2017

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List of abbreviations

4AMLD	Fourth Anti-Money Laundering Directive
APRC	annual percentage rate of charge
BSG	Banking Stakeholder Group
CA	competent authority
CTR	Consumer Trends Report
DCC	dynamic currency conversion
EBA	European Banking Authority
ECB	European Central Bank
EIOPA	European Insurance and Occupational Pensions Authority
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
EU	European Union
FID	fee information document
FinTech	financial technologies
MCD	Mortgage Credit Directive
MS	Member State(s)
PAD	Payment Accounts Directive
PSD	Payment Services Directive
RTS	regulatory technical standards
SoF	statement of fees

Executive summary

One of the mandates conferred on the European Banking Authority (EBA) is to collect, analyse and report on consumer trends and to monitor financial innovation. In order to fulfil this mandate, the EBA publishes an annual Consumer Trends Report (CTR).

The report covers the retail banking products and services that fall within the EBA's consumer protection and financial innovation mandate, such as mortgages, personal loans, deposits, payment accounts, payment services and electronic money. It reflects on the trends and issues observed in the European Union (EU) related to these products and services that may result in consumer detriment. The report also outlines the topical issues identified by competent authorities (CAs) and consumer associations that are relevant to consumers in the EU. These topical issues for this year's report are:

- i. Indebtedness* – consumers in most Member States (MS) have been gradually increasing their level of debt in the last few years. Some of the reasons for this trend are the low interest rate environment, the business practices of lenders and the innovative business models emerging on the market.
- ii. Banking fees and costs* – as a result of decreasing interest rate income, financial institutions are trying to find new revenue sources, such as fees and charges on payment accounts and loans. Issues for consumers include a lack of transparency of fees information and the introduction of or increase in fees and charges.
- iii. Selling practices* – financial institutions are trying to attract consumers by offering inappropriate incentives to sales staff and/or offering bundled products to consumers. Issues for consumers include the purchasing of unnecessary products, financial loss and unsuitable contractual agreements.
- iv. Innovations in payments* – the innovative payment methods introduced to the market may lead to consumer detriment. Issues for consumers relate to the security of payment methods, associated risks, and the new complex business models of providers.
- v. Foreign currency loans* – consumers holding foreign currency loans are exposed to risks posed by currency fluctuations. Trends observed in relation to foreign currency loans include a decrease in borrowing or their restructuring.
- vi. Alternative financial services providers* – crowdfunding continues to gain popularity among consumers. Consumers may not be aware of the authorisation status of the service provider, the safeguards that are in place or the charges and fees that apply.
- vii. Innovative uses of consumer data* – consumers are sometimes unaware that the data they provide to financial institution are used for other purposes. Issues for consumers relate to the promotion of unwanted products and the sale of consumers' data to third parties.

The CTR 2017 also includes, where relevant, the measures that the EBA and CAs have already taken to address the issues identified in the report.

Background

1. One of the mandates conferred on the EBA is to collect, analyse and report on consumer trends, as laid down in Article 9(1)(a) of the EBA Regulation¹. In order to fulfil this mandate, the EBA publishes an annual CTR, and has done so in March 2013² February 2014³ June 2015⁴ and June 2016⁵. Each annual report sets out the trends that the EBA has observed that year, identifies the topical consumer protection issues that arise from these trends and summarises the initiatives that the EBA has taken in response or is considering for inclusion in its work programme for the following year.
2. The products and services that are covered in the EBA's CTR comprise all the retail banking products that fall within the scope of action of the EBA. This includes mortgages, personal loans, deposits (including structured deposits), payment accounts, payment services (including debit/credit cards) and electronic money. The 2017 edition of the report sets out the trends and topics in these areas that the EBA has identified and analysed.
3. The CTR 2017 is therefore primarily based on the consumer protection priorities identified by national CAs in the 28 EU MS. Further input was received from a selection of national consumer associations, which were asked to name the trends and issues they had observed and the topics that they therefore considered the EBA should address in 2017/18.
4. The 2017 edition of the report is split into two sections. Chapter 1 covers the retail banking products and services that are at the core of the EBA's scope of action, which are mortgages, deposits, payment accounts, payment services and electronic money, as well as, to a lesser extent, consumer credit. These products are continuously monitored by the EBA. For this year's edition of the report, the information on retail banking products and services is complemented by complaints data provided by national CAs and input received from the EBA's Banking Stakeholder Group (BSG). Where relevant, reference is made to the initiatives that the EBA and the national CAs are carrying out in relation to these products and services.
5. Chapter 2 outlines topical issues that the sources have identified as relevant. These issues tend to vary between the annual editions of the report, which reflects the varying inputs received over time and from the different sources consulted by the EBA.
6. This year's edition covers the topics of 'Indebtedness', with the sub-topics 'Commercial lending practices' and 'Household borrowing, creditworthiness assessments and arrears handling'; 'Banking fees and costs', with the sub-topics 'Fees and charges on payment

¹ Regulation (EU) No 1093/2010 establishing an European Supervisory Authority (European Banking Authority). See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02010R1093-20160112&from=EN>

² See <http://www.eba.europa.eu/-/eba-publishes-consumer-trends-report>.

³ See <http://www.eba.europa.eu/-/eba-publishes-consumer-trends-repo-1>.

⁴ See <http://www.eba.europa.eu/-/eba-updates-on-consumer-trends-in-2015>.

⁵ See <https://www.eba.europa.eu/documents/10180/1360107/Consumer+Trends+Report+2016.pdf>.

accounts and their comparability’ and ‘Costs related to loans’; ‘Selling practices’, with the sub-topics ‘Cross-selling’ and ‘Sales incentives’; ‘Innovation in payments’; ‘Foreign currency loans’; ‘Alternative financial services providers’; and ‘Innovative uses of consumer data’.

7. The CTR 2017 also includes, where relevant, the measures that the EBA and the national CAs have already taken to address some of the issues identified in the report.

Chapter 1: Retail banking products and services

8. This section covers the retail banking products and services that are at the core of the EBA's scope of action. These products and services are continuously monitored by the EBA and feature in every annual edition of the report. The products and services covered are mortgages, deposits, payment accounts, payment services and electronic money.

Mortgages

9. Mortgages are the most common form of collateral that is used for housing loans. According to the information provided by the CAs, mortgages have a big impact on consumers because they represent between 60% and 85% of loans to households in MS. Almost all CAs reported an increase in the volume and value of mortgages in their jurisdictions, citing the decrease in interest rates and an increase in the price of real estate in the EU as the main drivers. These CAs expressed concerns about the possible impact that a future increase in interest rates might have on consumers who had purchased variable rate mortgages in terms of repayment issues for consumers and about indebtedness of households more generally.
10. Another trend observed in some EU countries following from low interest rates is the increased popularity of fixed interest rate mortgages and, in a few countries, the increased use of variable rate mortgages with floor rates.
11. Recognising the importance of mortgage credit to consumers, EU legislators have adopted the Mortgage Credit Directive (MCD), which applies from 21 March 2016⁶. The MCD aims to develop a more transparent, efficient and competitive internal EU market, through consistent, flexible and fair credit agreements relating to immovable property, while promoting sustainable lending and borrowing and financial inclusion, and hence providing a high level of consumer protection. The MCD regulates, inter alia, the obligation for lenders to assess a consumer's creditworthiness according to common EU standards and to provide clear and detailed information on loan conditions, including the right for consumers to repay their credit earlier than determined in the contract. The MCD also introduces requirements for the calculation of the annual percentage rate of charge (APRC).
12. The most common issues related to mortgages raised by CAs, applicable to the majority of the MS and also covered in the second chapter of the report, are the levels of indebtedness of households; the increasing average amount of monthly instalments; fees and charges applied to consumers; and mortgages in arrears.
13. Other issues related to mortgages that were raised by some CAs are increased loan-to-value and debt-to-income ratios, restrictions on and charges applied by credit institutions for the

⁶ Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property

redemption of mortgages before they are due, the complexity of contracts and unclear provisions in contracts. A few CAs also raised a lack of appropriate and transparent pre-contractual information on floor rate clauses, as well as credit advertising, as issues identified in their jurisdictions.

14. Some CAs also reported issues with the renegotiating of contracts between consumers and credit institutions and with restrictions on switching to other mortgage credit providers as a result of bundling of products or the imposition of fees and charges.
15. However, the level of complaints about mortgages received by CAs in 2016 was relatively low; these complaints made up an EU average of 10% (and a median of 12%) of all complaints received by CAs⁷. The most common reasons for consumers' complaints about mortgages were 'administration' and 'sales and advice'.

Consumer credit

16. In addition to loans for house purchases, households also resort to other forms of credit in order to buy products and services that they are unable or unwilling to pay for in full at the point of purchase. This is commonly referred to as consumer credit, and it includes a number of different products, such as personal loans, credit cards and overdraft facilities. The EBA has only a limited regulatory remit over this market segment, as the Consumer Credit Directive does not fall within its scope of action⁸. The EBA can act only in respect of credit (including consumer credit) that is provided by credit institutions that fall within the regulatory remit of the EBA or credit that relates to other products that fall within its regulatory remit (e.g. payment services and electronic money). The EBA's monitoring efforts in this market segment are therefore limited.
17. Most CAs reported that the demand for consumer credit has been increasing significantly in the EU, in terms of both volume and value of loans. The reason for this trend suggested by some national CAs is the decrease in interest rates in the EU.
18. The most common issues related to consumer credit raised by CAs, and also covered in the second chapter of the report, are increased charges and fees related to loans, which result in an increase in the cost of the credit, and creditworthiness assessments.
19. Other issues identified by several CAs relate to poor sales and marketing practices and the treatment of consumers in financial difficulties, as well as the increased use of new distribution channels and networks for loans, which often do not provide proper pre-contractual information or are too expensive. Some CAs also reported issues related to high levels of arrears, borrowers' financial precariousness and insufficient consumer repayment ability.

⁷ The complaints figures included in this report refer to the number of complaints that CAs received, not the number of complaints that were subsequently upheld.

⁸ Directive 2008/48/EC on credit agreements for consumers

20. The level of complaints about consumer credit submitted to CAs in 2016 was very low; these complaints made up an EU average of 4% (but a median of 14%) of all complaints received by CAs. The most common reason for consumers' complaints about consumer credit was 'charges and fees', complaints about which constituted around 56% of the total number of complaints about consumer credit. This was followed by complaints about 'administration', which constituted 26% of all complaints about consumer credit received by CAs. However, these figures need to be seen in context: some CAs do not have consumer credit in their regulatory remit.

Payment accounts

21. The first step for a consumer to be able to engage with financial services is usually opening a payment account, which is defined as 'an account held in the name of one or more payment service users, which is used for the execution of payment transactions'⁹. Payment accounts, which include current accounts, are used for the execution of payment transactions, such as to deposit salaries or incomes, pay bills, or transfer or withdraw funds, and can also be associated with credit facilities. Payment accounts are important for consumers because they allow them to access the financial system and use other banking products. Access to payment accounts is therefore crucial for the development of financial markets.
22. Recognising the importance of payment accounts to consumers for accessing the financial system and using other banking products, EU legislators have adopted the Payment Accounts Directive (PAD), which applies from 18 September 2016¹⁰. The Directive aims to promote access to payment accounts in order to reduce levels of financial exclusion in the EU. To that end, the PAD provides the framework for MS to introduce measures to allow all consumers to have access to a payment account with 'basic features'. The PAD also aims to increase transparency for consumers by allowing them to more easily compare fees charged by payment service providers for opening, maintaining and using a payment account. At the time of writing this report, MS should have transposed the PAD into their national legislation. Nevertheless, several CAs notified the EBA that their MS are still in the process of transposing the PAD.
23. Most CAs had observed an increase in the penetration of payment accounts in the population, with several of them reporting increases of up to 10 percentage points over the past two years, depending on the maturity of the national market.
24. One of the key issues regarding payment accounts is unclear and ambiguous pre-contractual information or contract terms and conditions, which in most cases relates to the transparency and comparability of fees and charges. The PAD requires MS to introduce measures to address pre-contractual information, including providing consumers with two information documents: a pre-contractual fee information document (FID) and a post-

⁹ Article 4(14) of Directive 2007/64/EC (PSD1) and Article 4(12) of Directive (EU) 2015/2366 (PSD2).

¹⁰ Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features

contractual statement of fees (SoF). On 5 May 2017, the EBA published its Final Report on draft technical standards setting out the standardised terminology for services linked to a payment account, and the standardised formats and common symbols for the FID and SoF¹¹. These technical standards are expected to address the issue of the transparency and comparability of fees and charges.

25. Other issues identified in several MS regarding payment accounts offered through digital channels are the risk of fraud and the cyber-attacks. Other identified issues are the increased amounts of charges and fees and the introduction of additional charges and fees. One CA also reported that consumers had complained that in some cases credit institutions had denied a consumer's request to open a payment account with 'basic features'.
26. Most CAs observed an increase in complaints about payment accounts, which made up an EU average of 49% (but a median of 26%) of all complaints received by CAs. The most common reason for consumers' complaints about payment accounts was the 'administration' of the accounts, which constituted around 46% of the total number of complaints about payment accounts. This was followed by complaints about 'sales and advice' and 'charges and fees', which made up 37% and 19% respectively of all complaints about payment accounts received by CAs.

Deposits

27. Taking deposits and other repayable funds is one of the two core banking activities. A deposit is 'a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable'¹². Deposits are often associated with payment accounts.
28. Deposits are products that are widely used among consumers of banking products. They are also considered to be the main funding source for banks, making up 60-70% of all funding.
29. The continuing low interest rate environment has a negative impact on savings rates. The majority of CAs have observed a decrease in the total number of deposits opened in credit institutions, because the environment leads consumers to turn to more liquid assets with similar interest rates, such as sight deposits and current accounts, as well as cash.
30. Continued depressed deposit rates and in some cases even negative interest rates may also impact on the consumer's incentive and willingness to save; consumers may instead take increased risks by investing in riskier and more profitable assets or instruments in order to secure the returns they want to achieve, without fully understanding them.

¹¹ See <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/technical-standards-on-standardised-terminology-and-disclosure-documents-under-the-pad>.

¹² Article 2(1)(4) of Directive 2014/49/EU on deposit guarantee schemes.

31. Several CAs also observed an increase in the use of alternative electronic remote channels for providing and promoting deposits, such as e-banking and online platforms, as well as telephone banking. These channels were also being used by credit institutions to distribute pre-contractual information to consumers.
32. In order to attract consumers, credit institutions in some MS have started offering promotions tied to deposits, so that the deposit provides a higher interest rate if certain conditions are met by the consumer.
33. Some of the issues related to deposits and identified in several MS are the termination by credit institutions of contracts for products with high interest rates, and a discrepancy between the interest rates on deposits and the interest rates charged on loans.
34. One CA identified an issue related to the unilateral revocation by credit institutions of long-term savings plans/contracts and building savings agreements that had been beneficial for consumers because of their high yield. Credit institutions had converted or terminated these contracts because, in the current low interest rate environment, they had found it more difficult to receive a similar level of interest payments on the capital market.
35. Another CA reported that it had encountered issues related to the provision of products that resemble traditional banking products, such as savings accounts, the funds of which are not protected by a deposit guarantee scheme. These products are often offered to the consumer by a real estate company or a supermarket chain and allow the consumer to insert money in the account maintained by the company for future payments, for example for rent or the purchase of some product or service.
36. The EBA also collected information from CAs on the subset of deposits that are called 'structured deposits'. A structured deposit is 'a deposit as defined in point (c) of Article 2(1) of the Deposit Guarantee Schemes Directive¹³, which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:
 - (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;
 - (b) a financial instrument or combination of financial instruments;
 - (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
 - (d) a foreign exchange rate or combination of foreign exchange rates'¹⁴.

¹³ Directive 2014/49/EU on deposit guarantee schemes

¹⁴ Article 4(1)(43) of Directive 2014/65/EU on markets and financial instruments.

37. Most CAs have observed that either structured deposits are not used at all or their use has been steadily decreasing. The only issue related to structured deposits that has been observed in some MS is that the specificities of the product are not well understood by consumers and the pre-contractual information provided to them does not allow them to understand the underlying risks. To address this issue, EU legislators have adopted the Regulation on key information documents for packaged retail and insurance-based investment products (KIDs for PRIIPs), in order to increase transparency and improve the provision of information in relation to these products¹⁵.
38. The level of complaints about deposits submitted to CAs in 2016 was relatively low; these complaints made up an EU average of 12% (but a median of 5%) of all complaints received by CAs. The most common reason for consumers' complaints about deposits was the 'administration' of the deposit.

Payment services, including debit and credit cards and electronic money

39. Secure, efficient, innovative and user-friendly payments are beneficial for consumers, allowing them to access a wider range of goods and services, including through e-commerce. Consumers have several options when it comes to making retail payments, including cards, typically debit and credit cards, credit transfers, cheques (which are used a lot in some countries but almost non-existent in others), direct debits and electronic money. Most CAs recognise payment services, including the underlying payment instruments, as the most widely used products in the financial sector but acknowledge that their impact on consumers is not as high as that of mortgages or personal loans.
40. The payments market in the EU has been rapidly developing in the last few years, with higher use of standard payment instruments and channels, and the rapid development of new payment solutions. Recognising this trend, EU legislators have adopted a revised Payment Services Directive (PSD2), which entered into force on 13 January 2016 and is due to apply from 13 January 2018¹⁶. PSD2 aims to foster competition, facilitate innovation, promote customer convenience and consumer protection, strengthen security and contribute to the single EU payments market. PSD2 regulates, inter alia, new and innovative services – namely account information and payment initiation services – and the new types of entities providing them. At the time of writing this report, MS are in the process of transposing PSD2 into their national legislation.
41. PSD2 has conferred 11 mandates on the EBA, including to develop 6 technical standards and 5 sets of guidelines, which will cover a wide range of topics with the aim of supporting the objectives of PSD2. At the time of writing this report, the EBA has already delivered 2 of these 11 mandates, having developed draft regulatory technical standards (RTS) on the

¹⁵ Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products

¹⁶ Directive (EU) 2015/2366 on payment services in the internal market

framework for cooperation and exchange of information between CAs for passport notifications under PSD2 and draft RTS on strong customer authentication and common and secure communication under Article 98 of PSD2.

42. Most CAs had observed an increase in the use of payment instruments, particularly in the use of payment cards (credit and debit cards). CAs reported that payment cards have been the dominant payment instrument in the EU in the last few years, with the majority of payment transactions being executed through them. The only payment instrument reported to have been used less than in the past is the cheque.
43. Many new channels and solutions have been introduced to the EU payments market, including mobile payments executed through applications installed in smartphones, fast/instant payment solutions, which allow the execution of retail payment transactions to be carried out in near real time, and contactless solutions, which facilitate the use of payment cards, smartphones and other devices in day-to-day payment transactions. The use of online banking is also reported to have increased.
44. The most common issue raised by national CAs is the security of payment transactions carried out through payment channels and solutions, as well as the safety and integrity of the consumer's data in cases where the payment service provider has introduced IT systems that are poorly protected against cyber-attacks. As stated above, the EBA has developed draft RTS on strong customer authentication and common and secure communication under Article 98 of PSD2, which are expected to address issues related to the security of electronic remote payment transactions. After the RTS enter into force, the EBA will monitor the extent to which these issues are addressed through the application of the standards.
45. Some consumer associations, including the consumer associations represented in the BSG, have reported cases of consumer detriment related to dynamic currency conversion (DCC) practices in the EU. DCC generally refers to the option offered by merchants and their payment service providers to cardholders (payers), when making a payment transaction at a terminal device abroad, of paying in the currency in which their payment card is denominated (their 'home currency'). If consumers choose to use DCC, the currency exchange rate of the merchant's payment service provider and a DCC fee will apply, whereas if they choose to pay in the local currency of the merchant, the exchange rate of the cardholder's payment service provider will apply.
46. According to these consumer organisations, DCC lacks transparency of the actual cost of the service and rarely offers advantageous exchange rates to consumers. In response to these concerns, the European Commission announced in its Action Plan on Retail Financial Services that it will carry out a more detailed study of DCC practices and rates, and, on that basis, consider whether further action needs to be taken in order to allow consumers to choose the best rate¹⁷.

¹⁷ See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0139>.

47. Other issues identified in several MS regarding payment services are the divergent and sometimes complex business models of the new payment service providers and the risks associated with their activities, which consumers might not fully understand or be aware of; the administration of payment instruments by payment service providers, e.g. incorrect or delayed action, failure to follow procedures or the law, failure to provide information, inadequate record-keeping and other problems; and finally the high cost of some instruments, which is reported to be due to hidden or unclear fees or newly introduced charges.
48. The provision of payment services is closely linked to the maintenance of payment accounts; therefore, most of the risks identified or issues applicable to payment accounts are also applicable to payment services.
49. The level of complaints about payment services submitted to CAs in 2016 was relatively high; these complaints made up an EU average of 25% (and a median of 26%) of all complaints received by CAs. The two most common reasons for consumers' complaints about payment services were the 'administration' of the services and 'charges and fees', which made up 49% and 39% respectively of all complaints about payment services received by CAs.
50. Another type of payment instrument that falls within the EBA's remit is electronic money. Electronic money is defined as an 'electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions, and which is accepted by a natural or legal person other than the electronic money issuer'¹⁸. Electronic money is a digital equivalent of cash, stored on an electronic device or remotely at a server.
51. Electronic money is considered by national CAs to be a product that is still developing. The number of complaints submitted to CAs in 2016 related to electronic money was insignificant. The CAs are still assessing all the issues arising from the use of electronic money in their jurisdictions. Among the few reported issues that were identified in some MS were issues relating to the prevention of fraud and money laundering.

¹⁸ Article 2(2) of Directive 2009/110/EC.

Chapter 2: Topical issues

52. This section presents the topical issues identified by national CAs and national consumer associations. The EBA used as a basis of the analysis the topical issues identified in the CTR for 2016 and updated them in accordance with the issues and trends that are considered to be relevant and important by CAs and consumer associations for this year's report.
53. Taking into account the input received about current issues and trends by the sources of information, the EBA arrived at the following aggregated list of topics and sub-topics relevant in the EU:
- indebtedness:
 - i. commercial lending practices;
 - ii. household borrowing, creditworthiness assessments and arrears handling;
 - banking fees and costs:
 - i. fees and charges on payment accounts and their comparability;
 - ii. costs related to loans;
 - selling practices:
 - i. product bundling and mis-selling;
 - ii. sales incentives;
 - innovation in payments;
 - foreign currency loans;
 - alternative financial services providers;
 - innovative uses of consumer data.
54. The only topical issue that the EBA identified in last year's report but that was considered this year to be less important by the majority of respondents was 'virtual currencies'. This, in part, may be a result of the two initiatives undertaken by the EBA in order to address the issue. The first was the EBA Opinion on 'virtual currencies', published in July 2014 and addressing how the risks should be mitigated in the short as well as the long term¹⁹. The second was the EBA Opinion²⁰ on the European Commission's proposal to bring virtual currencies into the scope of the Fourth Anti-Money Laundering Directive (4AMLD)²¹.
55. In its Opinion, the EBA set out a series of proposals for EU legislators to consider in the light of the revisions to 4AMLD. In particular, the EBA welcomed the proposal to bring virtual currency exchange platforms and custodian wallet providers into the scope of 4AMLD, and also recommended that measures clarifying the regulatory status of virtual exchange platforms and custodian wallet providers should be implemented in order to avoid risks of

¹⁹ See <http://www.eba.europa.eu/-/eba-proposes-potential-regulatory-regime-for-virtual-currencies-but-also-advises-that-financial-institutions-should-not-buy-hold-or-sell-them-whilest-n>.

²⁰ See <http://www.eba.europa.eu/-/eba-publishes-an-opinion-on-the-commission-s-proposal-to-bring-virtual-currency-entities-in-the-scope-of-the-anti-money-laundering-directive>.

²¹ Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

misrepresentation, including clarifying whether these entities should be allowed to carry out regulated financial activities at the same time as carrying out virtual currency transactions.

56. Furthermore, the EBA recommended that clarifications to the details and scope of the authorisation or registration regime should be introduced, including regarding the assessment of the fitness and properness of the owners and controllers of virtual exchange platforms and custodian wallet providers. The EBA also suggested that national sanction powers, as had been proposed by the European Commission, should be retained, while transactions in virtual currencies should remain outside the scope of the PSD. Finally, the EBA suggested that CAs should be enabled to exchange information more easily and efficiently.
57. In the process of the negotiation of the revisions to 4AMLD, which was still ongoing at the time of writing this report, the European Commission and co-legislators were taking on board many of the recommendations the EBA had formulated in its two opinions, as a result of which the EBA sees no further need for action in respect of virtual currencies at this juncture. However, the EBA may decide to assess other use cases of blockchain and distributed ledger technology in the future.

Indebtedness

58. Indebtedness remains the most relevant topic for consumer protection in the EU. The information on mortgages and consumer loans, set out in the first chapter of this report, shows that consumers in most MS gradually increased their level of debt between 2014 and 2016. The EBA and national authorities are therefore monitoring potential consumer protection issues arising as a result.
59. The priorities for 2017 on this topic remain the same as in the previous year and relate to lending and related commercial practices, household borrowing, creditworthiness assessments and arrears handling.

Commercial lending practices

60. CAs consider the topic of commercial lending practices to be significant. While many loan providers are seeking new business models to generate revenue in a low interest rate environment, issues arise with regard to whether they meet the needs of consumers, provide full disclosure of information in respect of the loan that is offered, and ensure that new debt is affordable and suitable for the borrower.
61. Most of the respondents reported a significant increase in consumer credit, mostly with shorter term and higher interest rates. They observed irresponsible lending practices in consumer credit, often leading to high levels of indebtedness, as well as aggressive marketing strategies, mainly in respect of credit cards, short-term credit and loan consolidation advertising. Some CAs reported issues with revolving credit (mainly revolving credit cards) and short-term credit to consumers who are in financial difficulties, or who have low credit scoring and/or insufficient financial knowledge. These types of credit usually allow

consumers to make lower instalment payments, which, however, go hand in hand with very long periods to pay off the principal and the accrual of significant interest in the process.

62. In order to address this issue, some MS have introduced compulsory amortisation of loans, requirements for the invoicing of consumer credit, revolving card simulators and/or educational initiatives to inform consumers about the risks related to postponement of the repayment of a loan.
63. Many of the respondents raised the issue of transparency and communication with consumers, especially with regard to the disclosure of relevant information related to the cost of the credit; the provision of pre-contractual information; changes in the terms and conditions of loan contracts; the provision of information on the total amounts owed by consumers; vague and abusive contract clauses; and risks related to loans with variable interest rates and to foreign exchange rate fluctuations.
64. Floor-rate clauses in mortgage loans with variable interest rates continue to be an issue in some MS. Many providers introduced such clauses in response to the low or negative interest rates, in effect limiting the extent to which borrowers, in general, can benefit from decreases in the reference rate used in the loan contract. Some CAs reported that new national regulations or laws had been introduced in their jurisdictions that either ban such floor-rate clauses or aim to resolve and handle claims related to these clauses.
65. Relatedly, the calculation of the APRC was also considered to be an issue in several jurisdictions. Some CAs had observed a trend whereby credit institutions failed to include service processing fees and other charges in credit agreements and/or the calculation of the APRC. Therefore, some authorities introduced new regulations or requirements for financial institutions to include all relevant fees and charges in the APRC, such as the insurance premium, the cost of valuation of the property in mortgage loans, and service processing fees.
66. Some CAs raised the issue of high charges imposed on consumers who want to repay their mortgages early. Some MS have therefore adopted new legislation to address this issue by introducing caps on charges to consumers for early repayment of their mortgages.
67. In some jurisdictions, the financial literacy of consumers is considered to be an issue that is particularly pertinent in respect of loan products and which prevents consumers from making well-informed decisions. Some CAs reported that consumers lack understanding of contractual terms; product features; the calculation of interest rates, charges and fees; and the risks to which consumers are exposed.
68. Some CAs and consumer associations also expressed concerns about the practice observed in their jurisdictions whereby financial institutions obtain rights of execution against debtors in arrears without consumers being able to defend their interests in a fair and impartial court proceeding.

69. In order to address some of the abovementioned issues, some MS have introduced, or are in the process of introducing, new requirements and supervisory actions, in some cases as part of their national transposition of the MCD. These initiatives relate to, inter alia, requirements for responsible lending, transparency of loan terms, increased protections for variable rate mortgage holders, the introduction of compulsory amortisation of loans and changes to the business practices of creditors.
70. In order to address the misconduct of financial institutions, including in the area of commercial lending practices, the EBA issued Guidelines on product oversight and governance arrangements for retail banking products²². The Guidelines provide a framework for robust and responsible product design, and for the bringing to market and the distribution of products and services. The first part of the Guidelines consists of requirements for manufacturers with regard to their internal control functions, the identification of the target market, product testing, disclosure, product monitoring, remedial actions and distribution channels. The second part consists of requirements for distributors related to the distributor's governance, identification and knowledge of the target market, and information requirements. The Guidelines have applied since 3 January 2017. The EBA will dedicate significant time in 2017 to contributing to a consistent supervisory application of the Guidelines across the 28 EU MS and will monitor the extent to which that application addresses the issues described above.
71. With regard to the transparency of charges related to overdraft facilities, the EBA expended significant effort throughout 2016 and 2017 on developing three technical standards under the PAD. The standards set out the standardised terminology for services linked to a payment account, and the standardised formats and common symbols for the FID and SoF, through which payment service providers will be required to disclose costs related to, among other services, overdraft facilities both at the pre-contractual and at the post-contractual stage of the interaction with the consumer.
72. On 5 May 2017, the EBA published and submitted to the European Commission the Final Report on these standards, and it will monitor the extent to which the issues raised above are addressed through the application of these standards in the MS that have included overdrafts in their national list of the most representative services linked to payment accounts.

Household borrowing, creditworthiness assessments and arrears handling

73. Household borrowing, creditworthiness assessments and arrears handling are considered to be significant issues in the majority of MS. The excessive household borrowing in the pre-crisis era – caused by, inter alia, poor creditworthiness assessments – and high levels of unemployment have resulted in high levels of arrears and outstanding debt. Younger families and families of self-employed workers are reported to be particularly affected.

²² See <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-product-oversight-and-governance-arrangements-for-retail-banking-products>.

74. Constantly increasing household borrowing, through both mortgages and consumer loans, was considered to be a major concern across CAs; this has been fuelled primarily by the decrease in interest rates across the EU, easy access to credit, more relaxed credit requirements before and during the crisis, and, more recently, plateauing or falling real estate prices in some MS.
75. Most of the respondents observed a trend towards increases in loan-to-value and debt-to-income ratios, which, in addition to the constantly increasing level of household borrowing, might impact consumers in terms of exposure to external shocks.
76. With regard to the treatment of borrowers in arrears, the most relevant issue identified by respondents is a lack of cooperation on the part of financial institutions when their consumers need to restructure their credit. Some CAs also observed a lack of information made available to consumers of non-bank creditors who are in financial distress, in particular about options for rearranging or restructuring credit agreements.
77. With regard to the assessment of consumers' creditworthiness, the main issues identified by respondents relate to the proper assessment of the consumer's financial situation, the ability of the consumer to repay the loan and the availability of safeguards.
78. Other related issues are poor creditworthiness assessments carried out by non-bank providers of consumer credit, as well as frequent renewal of credit facilities without an appropriate reassessment of the borrower's creditworthiness at the time of renewal.
79. The EBA has already taken action by issuing Guidelines on arrears and foreclosure (EBA/GL/2015/12), in support of Article 28 of the MCD²³. The Guidelines are aimed at ensuring that consumers are protected consistently across the EU when interacting with creditors. They establish requirements for verifying consumers' income, documenting and retaining information, identifying and preventing misrepresented information, assessing consumers' ability to meet their obligations under a credit agreement, and considering allowances for consumers' committed and other non-discretionary expenditures, as well as allowances for potential future negative scenarios.
80. Furthermore, the EBA has taken action in this area and issued Guidelines on creditworthiness assessments (EBA/GL/2015/11), in support of Article 18 of the MCD²⁴. The Guidelines have applied since 21 March 2016 and establish requirements in terms of policies and procedures for the early detection and handling of payment difficulties, including staff training, engagement with consumers, provision of information and assistance to consumers, resolution processes, and documentation of dealings with consumers and retention of records.

²³See <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-arrears-and-foreclosure>.

²⁴See <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-creditworthiness-assessment>.

81. Some MS have introduced new regulatory or supervisory requirements on creditworthiness assessments for personal loans, handling of consumers under arrears and the maturity of loans, as well as restrictions on loan-to-value and debt-to-income ratios and on high-cost credit.
82. Most CAs consider the national transposition of the MCD, and the national implementation of the relevant EBA guidelines, to be key measures to address issues related to household borrowing, creditworthiness assessments and arrears handling. The measures are expected to raise consumer awareness by improving pre-contractual and contractual information for the consumer, as well as by implementing additional, supplementary requirements on creditors when granting loans. The implementation of the MCD will also introduce or expand the powers of CAs to supervise credit intermediaries and other creditors that had previously not been regulated in some MS. The EBA might consider including in its supervisory convergence efforts in 2017/18 the monitoring of the effectiveness of these new requirements.

Banking fees and costs

83. The topic of banking fees and costs is another recurring issue reported by CAs and national consumer associations. As a result of low interest rates and decreasing interest rate income, credit institutions have tried to find new revenue streams. The issue tends to arise in one of two variants: fees and charges for bank accounts and their comparability between providers, and costs related to loans. Moreover, fees and costs related to banking products continue to be one of the main reasons for consumer complaints, especially in relation to consumer credit, mortgages and payment accounts.

Fees and charges on payment accounts and their comparability

84. One of the main issues raised by respondents is increasing fees and charges for payment accounts; the issue has been raised in the EBA CTR in previous years, but the increases appear to have accelerated further.
85. Several respondents stated that banking fees are one of the main reasons for consumer complaints, particularly in terms of lack of transparency and comparability of fees, which impedes consumers from making well-informed choices; the notification of consumers about any changes made to the fees and charges on their payment accounts; and the introduction of or increases to account maintenance fees. Related to this are consumer complaints regarding a lack of transparency of the fees for overdrafts and overrunning on payment accounts.
86. The CAs continued to focus their attention on the development and improvement of comparison websites, which is required under the PAD, with some of them arriving at the view that, as a result, comparison websites are no longer particularly relevant in their jurisdictions.

87. The EBA continued to be active in the area of fees on payment accounts and their comparability by fulfilling the mandates conferred on it by the PAD. In March 2015, the EBA issued Guidelines with the aim of standardising the fee terminology for payment accounts across the EU²⁵. As stated above, on 5 May 2017 the EBA published its Final Report on three technical standards setting out the standardised terminology for services linked to a payment account, and the standardised formats and common symbols for the FID and SoF. These standards are intended to enhance the comparability of fees through standardised terminology and pre-contractual and post-contractual disclosure documents across the EU.

Costs related to loans

88. Reference interest rates in the EU have remained low over the last three years. For example, the European Central Bank (ECB) has kept the main refinancing rate at zero or close to zero. Outstanding loan volumes and values have been increasing in recent years, as discussed in Chapter 1.
89. Some respondents expressed concerns about inevitable future increases in the cost of loans with variable rates and the effect it might have on consumers if interest rates in the EU increase. Related issues that were raised include increases in the use and cost of overdrafts and overrunning tied to consumers' payment accounts; loan distribution networks, which often add insignificant benefits to consumers while increasing cost; and the provision of quick loans by financial intermediaries that fail to perform a proper assessment of the creditworthiness of the borrower and do not require as much collateral as credit institutions do, which, in the end, results in a higher interest rate on the provided loan.
90. Some CAs reported that financial institutions had introduced service processing fees, which increased the charges for processing a credit instalment. These charges are sometimes not included in the credit agreement or taken into account in calculating the APRC.
91. The EBA currently does not envisage starting any initiative to address this issue, given its limited remit over consumer credit. In several MS, the CAs have capped or decreased the applicable fees and charges in the market, or have introduced new requirements for the protection of debtors against excessive costs. One CA reported that APRC caps to consumer credit, which had been in place for several years in the jurisdiction in question, had had a positive impact on limiting increases to fees, mainly those related to credit cards.
92. Concerning mortgage credit, some CAs reported that they had rules in place obliging mortgage providers to inform borrowers of the average interest rate for each fixed interest term offered. Moreover, in one MS, lenders are required to give six-month notice before raising fees on mortgages and to provide a statement on the reasons for raising the fee.

²⁵ See <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-standardised-fee-terminology-for-payment-accounts-in-the-eu>.

Selling practices

93. Another trend identified by the EBA is unsuitable selling practices, which were one of the key drivers of the mortgage mis-selling that was observed in several MS in the years prior to the financial crisis in 2008/2009. In this report, as in the CTR for 2016, the topic is presented in the two categories of (i) cross-selling and (ii) sales incentives.

Cross-selling

94. Cross-selling refers, for example, to providing a financial product that is linked to the sale of another product, which often is not a banking product but an insurance or an investment product. The cross-selling of financial products can result in consumers purchasing products that they do not necessarily want or need, additional fees and charges paid by the consumer for purchasing a certain financial product, a lack of ability of the consumer to compare different financial products, or binding consumers into unsuitable long-term contractual agreements.
95. A large number of the respondents surveyed by the EBA considered the topic of product bundling (or the related phenomenon of cross-selling) and mis-selling to remain relevant, although some CAs suggested that the importance of the topic is starting to decrease.
96. Some respondents referred to the combination of sales of loans with sales of payment protection insurance, car insurance or life insurance, and instances where the insurance was not needed by the consumer or where consumers were unaware that they were taking out the insurance in the first place. Other respondents provided examples of financial services offered in combination with medical care services, household maintenance services or traffic assistance services.
97. One respondent highlighted a prevalent business model of mis-selling that offers a 'free' payment account linked to opaque cross-subsidies with financial services, such as fees and charges for overrunning or money transfers, preventing consumers from fully understanding how much they are paying for their account. It is estimated that the cross-selling of these products has affected more than 12 million consumers in that particular MS.
98. To address the issue, the Joint Committee of the three European Supervisory Authorities (ESAs) – the EBA, the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) – published in December 2014 a Consultation Paper with draft guidelines on cross-selling, so as to address the issue in a consistent manner across the three sectors of banking, insurance and investments, respectively. However, following a year of assessing the consultation responses as well as further legal analysis, the Joint Committee concluded that the three authorities are not in a position to issue final guidelines on account of legal inconsistencies across the many Level 1 directives and regulations and the different approaches and definitions used therein.

99. The Joint Committee therefore decided, in January 2016, not to issue final guidelines, and that ESMA would issue guidelines covering only the investment sector, in fulfilment of the mandate conferred on ESMA under the revised Markets in Financial Instruments Directive (MiFID2)²⁶. In addition, the three ESAs sent a letter to the European Commission asking the legislators to address the differences in the existing legislation, so as to ensure that the three authorities can regulate cross-selling practices in a consistent way across the three sectors, for the benefit of consumers, financial institutions and supervisory authorities²⁷. Given the abovementioned legal constraints, which are beyond the control of the EBA, the EBA currently has no plans for further work in this area.
100. Some CAs reported that they had undertaken initiatives in their jurisdictions in order to address the issue of cross-selling, such as the introduction of new regulations, the introduction of appropriate oversight approaches, the conduct of on-site inspections, the imposition of changes to the business practices of banks and other financial institutions, and the issuance of recommendations to financial intermediaries that they follow certain good practices.

Sales incentives

101. The topic of sales incentives, in relation to both commission and sales staff remuneration, continues to be relevant in a large number of MS. Sales methods directly influence consumers' behaviour and choice of financial services and products. For example, the fact that an intermediary is remunerated by commission based on sales volume may create a conflict of interest between the intermediary's desire to maximise their profit and the consumer's interests, with the potential for resultant consumer detriment through unsuitable or excessively priced products.
102. Issues arising from inappropriate sales incentives are financial loss to consumers, a lack of information about the duties of financial advisers and the provision of false or misleading information, remuneration practices that are driven by profit or sales targets, a lack of transparency of offered products, financial institutions failing to manage the conflicts of interest that arise from incentive schemes, performance management of staff used as a means to reward staff achieving high sales numbers, the lack of a business culture that puts the consumer's interest before that of the intermediary, and a negative impact on trust and confidence in the banking sector.
103. In order to address some of the concerns related to sales staff remuneration, in September 2016 the EBA published Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services (EBA/GL/2016/06)²⁸. The Guidelines will apply from 13 January 2018, and are aimed at addressing undesirable

²⁶ Directive 2014/65/EU on markets and financial instruments

²⁷ See <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-for-cross-selling-practices>.

²⁸ See <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-remuneration-policies-for-sales-staff>.

remuneration policies and practices that can lead to misconduct and mis-selling of financial products by sales staff. The Guidelines apply to remuneration paid to staff employed by credit institutions, non-bank creditors, credit intermediaries, payment institutions and electronic money institutions, when selling mortgages, personal loans, deposits, payment accounts, payment services and/or electronic money. However, these Guidelines do not cover remuneration paid by institutions to credit intermediaries (often also referred to as 'commission') and are without prejudice to the remuneration rules laid down under MCD.

104. The majority of the national CAs reported that they had undertaken initiatives in order to address the issue of sales incentives, such as the implementation of the EBA Guidelines and the conduct of on-site inspections.
105. Another manifestation of consumer detriment arising from inappropriate selling practices is the potential mis-selling of financial instruments to a bank's own retail customer base in order to meet prudential and/or resolution requirements, also referred to as "self-placement". The EBA is assessing jointly with ESMA whether there is a need for further action.

Innovation in payments

106. As in previous editions of this report, the topic of innovation in payments continues to be important for CAs. The main concerns relate to the security of innovative payment services and solutions as well as to the business models of some of the new payment service providers that are entering the EU market.
107. CAs reported that they had observed a rapid increase in the use of innovative payment methods. The main trend observed is further acceleration of the development and uptake of mobile and instant payments. Many countries have seen the introduction of real time (or near real time) mobile payment solutions for person-to-person and consumer-to-business payments based on the consumer's mobile number or email address or the merchant code associated with the International Bank Account Number (IBAN) of the payment service user or linked to their payment card. The issues identified by a few of the respondents regarding these mobile payment solutions are limited customer awareness of their features, benefits and risks; safety of consumer data; contractual terms; and money laundering and terrorist financing risks.
108. Many of the respondents raised concerns about the integration of the new payment service providers with their divergent and innovative business models, and the implementation of the new requirements of PSD2 applicable to the activities of payment service providers in general. Some CAs consider that consumers might not be fully aware of these new service providers and might not understand their sometimes complex business models and associated risks. Other respondents consider that the different levels of authorisation and supervision requirements in the different MS may expose consumers in some MS to the potential risk of getting into a contractual relationship with a payment service provider

authorised in another MS that is not subject to the same level of supervisory requirements, including consumer protection requirements.

109. In order to address these issues, in December 2016 the EBA issued a Consultation Paper on guidelines concerning the information to be provided to CAs in applications for the authorisation of payment institutions. These guidelines aim to harmonise regulatory requirements for payment and electronic money institutions by standardising the information and documents required by CAs as part of the authorisation or registration procedures for these non-bank service providers. At the time of writing this report, the EBA was assessing the consultation responses received to decide which, if any, amendments to the draft guidelines should be made. The final guidelines are estimated to be published in summer 2017 and will apply from January 2018 onwards.
110. Another aspect related to innovation in payments and the new payment service providers that still gives rise to concerns is the safety and integrity of consumers' payment data. Payment service providers are exposed to an increasing risk of system failures and cyber-attacks owing to their dependence on information technology and the fact that the majority of payments are transacted electronically, and particularly over the internet.
111. A lack of consumer understanding of risks when inputting personal information into mobile apps without passwords, as well as weak authentication requirements established by merchants or payment service providers, can result in consumer detriment, including fraud. Therefore, it is important that consumers receive clear messaging around the risks and safeguards when sharing credentials or sensitive payment data or accessing their accounts indirectly through third parties.
112. The EBA considers that the risks outlined above will be addressed by the PSD2 requirements on authentication, as well as by the EBA's technical standards on strong customer authentication and common and secure communication under Article 98 of PSD2, which specify requirements on transaction monitoring mechanisms, security measures for the application of strong customer authentication, the confidentiality and integrity of the consumer's personalised security credentials, and secure open standards for communication. The EBA published and submitted the technical standards in February 2017, and they are due to apply from late 2018 at the earliest.
113. Contactless payments based on near field communication (NFC) technology also continue to develop rapidly in the EU. Respondents reported an increase in the use of contactless credit and debit cards, mobile phones and other technical devices, as well as an increase in the number of point of sale (POS) terminals accepting these payments. Many CAs continue to express concerns about many authentication processes being very weak, in that no signature, personal identification number (PIN) or identification document is required, which might result in an increase in fraud levels.

114. One other trend identified is innovation in the payment infrastructure, primarily through the use of blockchain technology, which allows the settlement of payment transactions without the use of payment systems or correspondent banking. Some respondents indicated that they are in the process of analysing the opportunities and risks arising from this new technology. In this area, the EBA continues to monitor innovations such as blockchain technology and their impact on the products and services within the EBA's scope of action, but it is currently prioritising the implementation of the six technical standards and five sets of guidelines that it has a mandate to develop under PSD2.
115. The EBA will assess the extent to which the risks arising from innovative payment solutions are addressed by PSD2 and the related standards and guidelines issued by the EBA, and will then decide what, if any, additional regulatory and/or supervisory measures are needed.

Foreign currency loans

116. The topic of foreign currency loans, in particular with regard to mortgages, remains an issue in some MS, although its relative importance has decreased. While the outstanding volumes of loans in foreign currency are declining or have a small market share in most jurisdictions, several CAs continue to monitor this market segment, because consumers holding such loans continue to be exposed to risks as a result of currency fluctuations and a lack of or misleading information made available by providers about the currency risks arising from the loans.
117. The EBA has addressed the prudential issues arising from foreign exchange loans through its Guidelines on capital measures for foreign currency lending (EBA/GL/2013/02)²⁹. Although the Guidelines contain provisions related to the governance arrangements for foreign exchange lending in financial institutions, the EBA expects the effects on consumer protection to be indirect but limited.
118. The EBA considers that the enforcement of the national laws transposing the MCD will address some of the issues related to foreign currency loans, in particular the provisions in the MCD on consumers' right to convert a credit agreement into an alternative currency and on arrangements for setting limits on the exchange rate risk to which a consumer may be exposed under a credit agreement.
119. In addition, some respondents notified the EBA that they had observed a trend whereby consumers tend to borrow less in foreign currencies. Other CAs indicated that many foreign currency loans in their jurisdictions had been restructured. Moreover, one CA notified the EBA that national legislation was in place that explicitly limited the use of foreign currency loans to certain situations.

²⁹ See <https://www.eba.europa.eu/regulation-and-policy/supervisory-review-and-evaluation-srep-and-pillar-2/guidelines-on-capital-measures-for-foreign-currency-lending>.

120. Taking into account the abovementioned initiatives and positive trends in the foreign currency markets, the EBA does not plan to become active in 2017/2018 on this particular topic from a consumer protection point of view.

Alternative financial services providers

121. The emergence of new forms of funding is another trend that continues to be observed by respondents and that the EBA has featured in previous editions of this report. Among the new forms of funding, crowdfunding has attracted significant attention from supervisory authorities.

122. Crowdfunding models are generally grouped into four types: donations, rewards, lending and investment. The last two are also described as 'financial returns' models. Of these, the lending-based model of crowdfunding is of interest to the EBA as a result of the nature of crowdfunding being akin to that of traditional loans. In the lending-based type of crowdfunding, companies or individuals seek to obtain funds from the public through platforms in the form of a loan agreement.

123. Lending-based crowdfunding comprises two main types: consumer lending and business lending. In the consumer lending type, natural or legal persons lend directly to natural persons, typically through unsecured loans, where no collateral is requested from borrowers. In the business lending type, natural or legal persons lend directly to businesses.

124. The main issues for consumers, identified by several of the CAs, arise from consumers' lack of awareness of the authorisation or registration status of alternative financial services providers and of whether they are afforded the same safeguards that traditional financial services providers are required to provide. Other issues that were considered by some CAs relate to the transparency of fees and costs, both for borrowers and lenders, and the assessment of borrowers' creditworthiness.

125. In order to address the abovementioned issues, several MS have introduced into their national legislations laws that regulate the activities of crowdfunding platforms. In most of these jurisdictions, and pursuant to these national laws and regulations, crowdfunding platforms are subject to authorisation or registration procedures and, in some cases, supervision of their activities.

126. In terms of measures taken by the EBA, the EBA issued an Opinion to the European Commission and co-legislators in February 2015, in which it concluded that the convergence of practices across the EU for the supervision of crowdfunding is desirable to avoid regulatory arbitrage, to create a level playing field, to ensure that market participants can have confidence in this market innovation and to contribute to the single European market³⁰. However, as part of the Capital Markets Union Action Plan, the European Commission

³⁰ See <http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+%28EBA+Opinion+on+lending+based+Crowdfunding%29.pdf>.

subsequently published, on 3 May 2016, its Report on crowdfunding in the EU capital markets union, which outlined the market and regulatory landscape and arrived at the view that crowdfunding remains a relatively small, largely local, phenomenon and that there is therefore no strong case for an EU-level framework at this juncture³¹.

127. Later that year, on 16 November 2016, the European Commission concluded a call for tenders aimed at providing input to the European Commission's forthcoming identification and assessment of market and regulatory obstacles to cross-border crowdfunding business. It also aims to assess how the EU legislation applies to and interacts with the existing and upcoming national regulatory frameworks in cross-border situations.
128. Throughout 2017, the EBA will continue to follow closely the European Commission's assessment of this phenomenon, and it remains available to contribute to any next steps.
129. Crowdfunding platforms aside, CAs have continued to see other alternative providers entering the markets, the majority of which use innovative financial technologies (FinTech) to offer and/or distribute financial services. The EBA is currently developing a separate publication on the topic of FinTech.

Innovative uses of consumer data

130. Several CAs and other respondents mentioned innovative uses of consumer data by financial institutions as another relevant trend. Respondents were concerned that consumers are unaware that the data they provide to financial institutions are used for purposes other than that for which they had provided the data initially. Examples of innovative uses of consumer data are the creation and promotion of personalised but otherwise unwanted products and services, and the possible sale of consumer data to third parties.
131. Another, related, example is the unauthorised use of consumer data to initiate the execution of a direct debit without the consent of the payment service user. In this scenario, a consumer receives a phone call from a company with an offer concerning a discount for a trip or an online purchase, for example, but the offer is unclear and difficult to verify. The company explains the advantages of the offer and asks the consumer if they are interested. Even if the answer is negative, the company informs the consumer that they will receive an email outlining the offer more precisely, and also providing the opportunity to unsubscribe. Then, without receiving the email, and presumably because the company has purchased or obtained the consumer's banking data before contacting them, money is debited from the consumer's payment account through direct debit.
132. The CAs surveyed for the purpose of this report noted that they have no explicit competence in the supervision of the use of consumer data and, more generally, the enforcement of rights, but that, if it raises market or business conduct issues for the financial institutions supervised by the CAs, then necessary actions can be taken.

³¹ See http://ec.europa.eu/finance/general-policy/crowdfunding/index_en.htm#maincontentSec1.

133. In order to further assess this issue, in May 2016 the EBA published a Discussion Paper on this topic, in which it characterised the phenomenon, identified the potential benefits and risks of the phenomenon, and asked external stakeholders to provide feedback to the EBA on its preliminary analysis³². At the time of writing this report, the EBA is finalising the assessment of the responses to the Discussion Paper with a view to deciding on the next steps.

³² See <https://www.eba.europa.eu/-/eba-seeks-views-on-the-use-of-consumer-data-by-financial-institutions>.



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