

Single Rulebook Q&A

Question ID	2019_5002
Status	Final Q&A
Legal act	Directive 2014/17/EU (MCD)
Topic	Passporting of mortgage credit intermediaries
Article	4
Paragraph	7
Subparagraph	c
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
Date of submission	14/11/2019
Published as Final Q&A	03/12/2021
Disclose name of institution / entity	No
Type of submitter	Law firm
Subject matter	Tied credit intermediary that represents a number of creditors or groups which does not represent the majority of the market
Question	What type of criteria should a tied credit intermediary abide to in order not to go beyond the legal limit of “the majority of the market” when establishing relationships with creditors? How should this majority be calculated and how many times do intermediaries need to update this information in order to remain compliant?
Background on the question	There is no guidance about this novel issue, so clarifications are needed in order to provide certainty as to how to make this calculation in order to comply with the law. In particular, whether this is by number of creditors available in the market, by volume of assets, by market share...etc.
Final answer	Article 4, point (7), of Directive 2014/17/EU (MCD) defines ‘tied credit intermediary’ with regard to different levels of dependency of creditors. They are tied if they act on behalf of and under the full and unconditional responsibility of: (a) only one creditor; (b) only one group; or (c) a number of creditors or groups which does not represent the majority of the market.

Under point (c), the legislator has established a threshold to consider whether the relationship of dependency exists when a credit intermediary works for more than one creditor or for a group of creditors by referring to the dimension of the market. This market can only be the market of creditors even if a tied credit intermediary may work for a number of creditors separately or as part of a group.

Therefore, to determine whether a credit intermediary, acting on behalf of and under the full and unconditional responsibility of a number of creditors or groups, should be considered as a tied credit intermediary under Article 4(7), point (c) it is necessary to ascertain whether

it acts on behalf of a number of creditors or groups representing no more than 50% of the total number of creditors in the market.

This interpretation finds support in the only other instance in MCD where the expression “majority of the market” is used. Article 22(4) MCD sets out that the use of the term of ‘independent advice’ or ‘independent advisor’ by credit intermediaries providing advisory services can only refer to credit intermediaries which are not remunerated for those advisory services by one or more creditors and the number of creditors considered is less than a majority of the market.

MCD does not specify the number of times tied credit intermediaries need to update information regarding their status to remain compliant. However, MCD sets out, in Article 33(1), point (c), that the competent authority of the home Member State may withdraw the admission granted to a credit intermediary in accordance with Article 29 where such a credit intermediary no longer fulfils the requirements under which admission was granted. Consequently, this means that the competent authority is implicitly required to have in a place a monitoring system that ensures that a credit intermediary complies with the legal requirements on a continuous basis.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and

	national courts.
Link	https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2019_5002

European Banking Authority, 25/05/2022
www.eba.europa.eu