

# Request to the European Banking Authority (EBA) for technical advice on issues related to Mortgage Credit Directive

## 1. Context and scope

The Mortgage Credit Directive<sup>1</sup> (Directive 2014/17/EU, hereinafter “MCD”) applies to loans to consumers for the purpose of buying residential property (hereinafter, “mortgage loans” or “mortgages”).

Article 44 of MCD requires the Commission to undertake a review of the MCD considering the effectiveness and appropriateness of the provisions on consumers and the internal market. The Commission started the work on the MCD review with the publication of a report on the review of the MCD<sup>2</sup> (hereinafter, “MCD report on the review”) assessing its implementation and functioning for 4 years after its transposition deadline. The report was based on a dedicated study on the evaluation of the MCD<sup>3</sup> (hereinafter, “MCD evaluation study”). It highlighted that the MCD has been effective in raising the standard of consumer protection and has helped harmonise mortgage-lending practices across the Member States. Nevertheless, the level of protection still differs across Member States, and some limitations, in particular in terms of scope and information disclosure requirements for digital delivery, seem to hinder the full effectiveness of the rules. The report also stressed that the MCD had a limited impact on the creation of a single market for mortgages and pointed to the need to ensure that the MCD remains fit for purpose as the market develops and new challenges arise notably from digitalisation and the sustainable finance agenda.

For instance, digitalisation enables new market players to offer new forms of financial intermediation such as peer-to-peer mortgage lending. The industry is progressively getting digitalised, using automated decision-making systems, non-traditional data to assess the creditworthiness, robotic advisors<sup>4</sup>, etc. Consumer habits may also be changing with increasing use of comparison websites to compare mortgage offers and non-traditional means to apply for mortgages. Digitalisation may bring many benefits to the consumers, in particular in terms of easier access to products and lower costs. It may also play an important role for the development of the Single Market. However, digitalisation may also entail new challenges for consumer protection. For instance, digitalisation may facilitate new ways of providing mortgage credit (e.g. through crowdfunding, peer-to-peer lending) but may not always be subject to all the safeguards of the MCD. Consumers may have difficulties to fully understand the offer if information disclosures are not adapted to a digital environment. Consumer may also risk to be discriminated if credit decisions are based on automated decisions, including the use of Artificial Intelligence. The recent

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<sup>1</sup> Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010

<sup>2</sup> See at: [https://eur-lex.europa.eu/resource.html?uri=cellar:ba9380c3-b23d-11eb-8aca-01aa75ed71a1.0015.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:ba9380c3-b23d-11eb-8aca-01aa75ed71a1.0015.02/DOC_1&format=PDF)

<sup>3</sup> See at : <https://op.europa.eu/en/publication-detail/-/publication/e4a1db26-2f94-11eb-b27b-01aa75ed71a1>

<sup>4</sup> Robo-advisors are online platforms that use artificial intelligence or algorithms to process information on clients' investment preferences, risk tolerance and loss-absorption capacity, to determine an investor profile and make a personalised and often product-specific investment recommendation

proposal on Artificial Intelligence (AI)<sup>5</sup> classifies AI systems used to evaluate the credit score or creditworthiness of natural persons as high-risk as they may pose significant risks to the fundamental rights of persons. Businesses developing or using high-risk AI applications would have to comply with specific requirements and obligations.

Furthermore, the Commission set an ambitious goal of carbon-neutrality by 2050 in the [European Green Deal](#). Buildings in the EU are collectively responsible for 40% of our energy consumption and 36% of greenhouse gas emissions. Improving energy efficiency and ensuring the use of sustainable materials in buildings therefore has a key role in achieving this goal.

Also, the COVID-19 crisis has disrupted the EU economy and had a major impact on the credit market and consumers, making many consumers financially more vulnerable. Member States adopted a series of relief measures, such as loan repayment moratoria, to alleviate the financial burden on consumers. The EBA has supported such initiatives, for example by clarifying which measures do not trigger forbearance classification and the assessment of distressed restructuring. The EBA has also underlined the importance of acting in the interest of the customer and avoiding unnecessary impact on their credit rating.

However, this support is being gradually tapered off and the final impact on consumers of the COVID-19 crisis still needs to be seen. It will therefore be necessary to assess whether any lessons can be drawn from the COVID-19 crisis and the support provided to the financial sector and consumers, in the context of the MCD review.

The COVID-19 crisis has not dampened the dynamics on housing markets. In fact, house prices and mortgage credit are now disconnected from the trends in the rest of the economy and continue to accelerate in the EU. Vulnerabilities related to mortgage credit and real estate markets are therefore seen as one of the main medium-term systemic risks, especially in those countries where household debt levels are high.

Finally, the Commission adopted a proposal for a Directive on consumer credits<sup>6</sup> repealing and replacing the Consumer Credit Directive (CCD)<sup>7</sup> in June 2021. The new proposal includes provisions on scope extension to crowdfunding credit services, rules to adapt information disclosure to digital channels and to tackle online practices exploiting consumer behavior, provisions to strengthen responsible lending especially in the digital context as well as provisions addressing consumer over-indebtedness. Given the important similarities between consumer credit and mortgage credit, the Commission will need to assess the proposed amendments to CCD in its review of MCD with a view to ensuring coherence of EU law and providing clarity and consistency to credit markets.

## 2. Procedure

The Commission requests the technical advice of the EBA on several issues highlighted in the MCD report on the review/evaluation study and that had been identified by the EBA in its work. The technical advice

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<sup>5</sup> See at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>

<sup>6</sup> See at: [https://eur-lex.europa.eu/resource.html?uri=cellar:2df39e27-da3e-11eb-895a-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2df39e27-da3e-11eb-895a-01aa75ed71a1.0001.02/DOC_1&format=PDF)

<sup>7</sup> Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ L 133, 22.5.2008, p. 66.

of the EBA will be an important input from supervisory community to the Commission work on the MCD review, as a result of which the Commission may propose new legislation or take other actions.

The Commission reserves the right to revise and/or supplement this formal mandate.

The technical advice received on the basis of this mandate will not prejudice the Commission's final decision in any way. In accordance with the established practice, the Commission may consult other experts or seek other inputs.

This request will be available on the website of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union once it has been transmitted to the EBA.

### 3. EBA is invited to provide technical advice on the following items

#### 3.1. MCD Evaluation, particularly focusing on:

##### Exclusions from the scope of the MCD

Some credit agreements are specifically excluded from the scope of the MCD, e.g. equity release credit agreements, also known as reverse mortgages, under Article 3(2), point (a) of the MCD. The MCD report on the review highlighted that the current level of regulation of equity release schemes may be insufficient and may pose a risk in terms of consumer protection. In addition, Article 3(3) of the MCD provides options not to apply the MCD or certain of its provisions to certain secured credit agreements. According to the information gathered by the Commission, the option under Article 3(3), point (a) has been exercised by one Member State, while the option set out in Article 3(3) point (b) was not exercised by any Member State.

##### Request to the EBA:

- Has the EBA discovered problems in the areas specifically excluded from the scope of the MCD?
- Are the current exceptions/regulatory options (Art. 3 (3) of the MCD) to derogate from the scope of the MCD justified? Do they lead to unjustified gaps in the protection of consumers, or raise broader financial stability risks and level playing issues?

##### **Tying/bundling**

According to Article 12(1) of the MCD, Member States shall allow bundling practices but shall prohibit tying practices. Nevertheless, under specific circumstances/practices creditors may request the consumers to take a tied product with their mortgage loan<sup>8</sup> (see Article 12(2) points (a), (b) and (c) and Article 12(3) of the MCD)).

The evidence collected in the EU Commission's MCD evaluation study shows that there has been a slight decrease in the proportion of consumers required to purchase additional tied services since the MCD's

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<sup>8</sup> The first ruling of the Court on the MCD ([Case C-778/18 Association française des usagers de banques](#)) clarified the extent of the exception to the prohibition of tying practices under Article 12(2), point (a) of the MCD. In particular, the ruling clarified that Article 12(2), point (a) allows national legislation making the grant of a loan conditional on the deposit of only that part of the borrower's salary or similar income, which corresponds to what is necessary for the purposes of repaying the loan.

entry in application. However, these practices still seem to occur, including as regards insurance products<sup>9</sup>. In 2016, the EBA carried out joint work with ESMA and EIOPA on “cross selling”, due to the risk of consumer detriment that the three ESAs had identified at the time<sup>10</sup>. The draft Guidelines were not finalised, due to apparent legal issues in Level-1 texts.

Request to the EBA: Is the EBA of the view that the risks identified at the time are still prevalent? Have other risks appeared? Which, if any, provision in the MCD should be changed in order to address existing risks?

### **Foreign currency loan**

“Foreign currency loan” means a credit agreement where the credit is: (a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; or (b) denominated in a currency other than that of the Member State in which the consumer is resident (Article 4(28) of the MCD).

Article 23 of the MCD introduced new rules on foreign-currency loans requiring Member States to ensure that consumers have a right to convert the credit agreement into an alternative currency under specified conditions or, if there are other arrangements in place, to limit the exchange rate risk to which the consumer is exposed. The purpose of these rules was to prevent substantial consumer detriment as observed in the past when the foreign currency in which loans were issued appreciated<sup>11</sup>.

As a result of these rules, lenders may have significantly reduced the offer of such loans or stopped offering foreign currency loans. This situation could lead to problems in specific cases where the risks of foreign currency loans are limited e.g. for some cross-border workers who receive income in a foreign currency, who may find it difficult to obtain a mortgage loan.

Request to the EBA: Has the EBA come across cases/circumstances in which consumers have difficulties to find a mortgage loan due to the limited offer of foreign currency loans, for instance in the case of cross-border workers? Does the EBA have a view of the level of risk for the consumers arising from foreign currency loans in those specific circumstances that warrant changes to the MCD rules?

## **3.2. Impact of digitalisation, particularly focusing on:**

### **Peer-to-peer lending platforms**

According to the MCD evaluation study, peer-to-peer lending and crowdfunding remain an uncommon way for consumers to fund the purchase of a residential property, but the market segment has potential to grow with digitalisation. So far, most Member States do not seem to have specifically regulated mortgage lending by crowdfunding/peer-to-peer lending platforms. Yet, some Member States have required such platforms to register as a credit intermediary and thus be subject to credit intermediary’s requirements under the MCD. In other cases, these platforms may not be fully captured by the MCD (e.g.

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<sup>9</sup> As revealed by the mystery shopping conducted in the MCD evaluation study

<sup>10</sup> See <https://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-for-cross-selling-practices>

<sup>11</sup> See report by the European Parliament “Mortgage Credit -Mis-selling of Financial Products”, June 2018

when they facilitate the mortgage credit lending between persons granting mortgage outside the course of their trade, business or profession and consumers).

In order to bring such alternative forms of financing under a regulatory scope and address the issues faced by crowdfunding platforms due to the fragmented regulatory treatment by Member States, the Commission adopted the Regulation for European crowdfunding service providers for business<sup>12</sup> (ECSPR) enabling regulatory framework (EU passport) for crowdfunding activity. However, the ECSPR does not apply to crowdfunding services for consumers (e.g. mortgage and consumer credit).

The recently proposed Directive on consumer credit would complement the ECSPR and would set clear rules for the providers of crowdfunding credit services to ensure consumer protection i.e.:

- they would be subject to creditors' requirements under the new directive, where they directly provide credit to consumers.
- they would be subject to credit intermediaries' requirements under the new directive, where they facilitate the granting of credit between creditors acting in the course of their trade, business or profession, and consumers.
- they would be subject to a limited number of requirements of the new directive (e.g. creditworthiness assessment), where they do not act as creditors or credit intermediary, where they facilitate the granting of credit between persons granting consumer credit outside of the course of their trade, business or profession and consumers.
- However, the persons granting credit outside of their trade, business or profession, to consumers through these platforms would not be subject to obligations for creditors under the new directive.

Request to the EBA: Does the EBA consider the opportunities, such as for the single market, more choice to consumers, (to be) brought by the provision of mortgage credit through crowdfunding/peer-to-peer platforms to be such that the provision should be facilitated through the MCD? What are the risks arising from such a provision through platforms and how should they be mitigated?

#### **Information disclosure rules (at pre-contractual and advertising stages)**

The MCD requires creditors to provide to consumers standard pre-contractual information through a European Standardised Information Sheet (ESIS – set out in Annex II) on paper or on durable medium and without undue delay. Pre-contractual information should help the consumer to compare the credits available on the market, assess their implications and make an informed decision. The MCD also provides standard information to be specified in the advertising (Article 11 of the MCD).

The information included in the ESIS is considered important for consumers to make an informed decision. However, the MCD evaluation study highlighted that consumers are sometimes overloaded with the information contained in the ESIS that they may not read or understand. They often appear not to compare offers due to the complexity of the ESIS, level of detail but also because the ESIS is not always supplied in a timely manner. Furthermore, reviewing a loan offer digitally (e.g. documents to be displayed on mobile phones or digital devices with small screens) could also be challenging for consumers. In addition, credit providers appear to encounter difficulties complying with advertising requirements when advertising online (e.g. radio, TV, social media).

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<sup>12</sup> See at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1503>

The proposal for a new Directive for consumer credit proposes an obligation for the creditors to provide consumers, in addition to Standard European Consumer Credit Information (SECCI), with a one-pager outlining the key features of the credit, to help them compare different offers. It also provides that the standard information in advertising should be adapted to the technical constraints of the medium used for advertising.

Request to the EBA: Has the EBA come across any issues regarding the MCD information disclosure rules at pre-contractual and advertising stages, for example as regards their effectiveness in enabling consumers to understand and compare different offers (also on digital tools) and make informed decisions? If so, how could these be mitigated?

### **Creditworthiness assessment**

In a “Big Data” context, credit providers are increasingly relying on Automated Decision Making (ADM) including Artificial Intelligence (AI) systems based on algorithms, to assess the borrower’s creditworthiness. This raises questions on the creditworthiness assessment process e.g. what types/sources of data are used by credit providers, how the algorithms analyse and interpret those data. There may be a risk of discrimination and economic exclusion for consumers.

The recently made AI proposal<sup>13</sup> suggests that AI systems<sup>14</sup> used to evaluate the credit score or creditworthiness of natural persons should be classified as high-risk as they may pose significant risks to the fundamental rights of persons. Such AI systems would be subject to requirements inter alia concerning data and data governance, documentation and record keeping, transparency, human oversight, robustness, accuracy and security. However, the AI proposal does not propose specific rights for consumers.

The GDPR<sup>15</sup> provides the right for consumers to obtain human intervention to express his or her point of view and to contest the decision. Yet, this only applies in case the decision is based solely on automated decision making, not if the decision, involving automated processing, is taken by a human, as is often the case in mortgage credit processes.

The proposal for a Directive on consumer credits provides some specific targeted complementary rights for the consumers where the creditworthiness assessment involves the use of automated processing of personal data e.g. to obtain from the creditor clear explanation of the assessment of the creditworthiness (e.g. logic and risks involved in the automated processing of personal data, as well as its significance and effects on the decision); to obtain human intervention on the part of creditor to review the credit decision; to contest the assessment of the creditworthiness and the decision.

Furthermore, the EBA Guidelines on Loan Origination and Monitoring, that apply since June 2021, aim to ensure that the creditworthiness assessment of the borrower is robust, accurate and relies on adequate information and that credit providers’ practices are compliant with consumer protection requirements.

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<sup>13</sup> See at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>

<sup>14</sup> Defined in Article 3(1) of the AI Proposal: AI system means software that is developed with one or more of the techniques and approaches listed in Annex I and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with.

<sup>15</sup> See at: <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

In this context, the EBA Guidelines set out principle-based criteria for the use of technology-enabled innovation for credit-granting purposes and the use of automated statistical models for collateral valuation. In particular, the Guidelines pay specific attention to the use of automated models for credit decision-making and credit-granting and set out supervisory expectations for the design and use of such models, varying from conventional scoring models to more advanced models based, for example, on artificial intelligence or other emerging technologies<sup>16</sup>.

Request to the EBA:

- Has the EBA come across any problems and possible risks for consumer protection arising from the use of AI systems for mortgage borrowers' creditworthiness assessments? If so, how should they be mitigated?
- Has the EBA come across any requirements for creditworthiness assessments provided by the MCD which may lead to difficulties in specific cases (e.g. thin credit files)? If so, what are the risks arising from such provisions and how could they be mitigated?

**Robo-advice**

Robo-advisors are emerging across financial services to provide automated and algorithm-driven financial advice and services with little to no human intervention/supervision. Credit providers and credit intermediaries are increasingly relying on chatbots to provide consumers with some basic information in relation with mortgages.

The MCD includes several requirements for creditors or credit intermediaries (e.g. knowledge and competence for staff in relation to the manufacturing, the offering or granting of credit agreements (Article 9), adequate explanations on the proposed credit agreements and any ancillary services (Article 16), standards for advisory services (Article 22) and general information on credit agreements at all the time (Article 13)). If creditors or credit intermediaries use robo-advisors to provide information, products or services, they must still comply with the MCD requirements. However, certain requirements e.g. knowledge and competence for staff, which are aiming at ensuring high quality of advice/information may not be applicable to robo-advisors.

Request to the EBA: Has the EBA come across any risks posed by the use of robo-advisers for mortgage credit granting processes? If so, how should those risks be mitigated?

**3.3. Ways to facilitate the cross-border provision for mortgages**

The MCD has created a more even level playing field across the Member States by setting minimum requirements for credit providers and credit intermediaries across the EU. However, a single market for mortgages has not developed to a significant extent, neither for mortgage providers nor for credit intermediaries. Important barriers hindering the cross-border provision of mortgages result from areas outside the scope of the MCD, e.g. differences in national legislation as regards tax systems, property and land registration, contract law governing the validity of credit agreements and post-contractual issues

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<sup>16</sup> See at: <https://www.eba.europa.eu/regulation-and-policy/credit-risk/guidelines-on-loan-origination-and-monitoring>

such as foreclosure rules but also language issues and consumer home bias. As set out in the MCD report on the review, there may also be other barriers, which are not outside the MCD scope. For instance, Article 21 of the MCD ensures access to databases used for assessing the creditworthiness of consumers on the basis of the principle of non-discrimination. Yet, difficulties seem to persist *inter alia* due to the principle of reciprocity<sup>17</sup> and the different content of the databases.

In addition, digitalisation of financial services may in the future help facilitate the provision of mortgage credit, including on-line. The on-line conclusion of mortgage credit agreements could facilitate the cross-border provision of mortgages in the future. The Commission proposal amending eIDAS Regulation<sup>18</sup>, will allow citizens to prove their identity and share electronic documents from their European Digital Identity wallets. The citizens will be able to access online services with their national digital identification, which will be recognised throughout Europe.

In some Member States, e.g. the Netherlands, the on-line conclusion of mortgage loans seems to have already developed. However, in other Member States, mortgage loans are generally not concluded on-line, in some it may not even be possible, for instance because of the mandatory involvement of a notary and related presence requirements.

#### Request to the EBA:

- Has the EBA come across any possible difficulties for the use of credit databases across-borders or other obstacles for the cross-border provisions of mortgage loans? If so, does the EBA have any views on how these should be mitigated?
- Does the EBA has any views on whether, and if so how, digitalisation could help facilitate cross-border provision?
- Does the EBA see any risks from the conclusion of mortgage credit agreements fully online? If so, could any measures be taken to address these risks/facilitate the on-line conclusion of mortgage credit agreements? Which measures could this be?

### **3.4. Ways to contribute to financial stability**

Financial stability is ensured through a variety of legislative acts that empower authorities to address risks to financial stability, in particular in the rules on capital requirements and buffers (Regulation (EU) No 575/2013, hereinafter “CRR”, and Directive (EU) No 2013/36, hereinafter “CRD”). The MCD, which aims at ensuring high level of consumer protection and enhancing the single market, also contributes to financial stability, in particular through responsible lending. The MCD includes several provisions that aim to ensure responsible lending and borrowing and contribute to financial stability for instance:

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<sup>17</sup> Providers consulting a foreign database are requested to provide corresponding data (e.g. positive/negative) to the consulted database. Providers in Member States that only allow “negative” data (data on payment default) to be processed for creditworthiness assessment purposes may not provide databases in other Member States with “positive” data (e.g. on ongoing financial commitments) and are thus at a disadvantage with regard to competitors that process both negative and positive data.

<sup>18</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity. See at: [https://eur-lex.europa.eu/resource.html?uri=cellar:5d88943a-c458-11eb-a925-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:5d88943a-c458-11eb-a925-01aa75ed71a1.0001.02/DOC_1&format=PDF)

- a mandatory creditworthiness assessment predominantly based on repayment (Art. 18(3)), coupled with a requirement to prevent providers lending to consumers who may be unable to repay the loan (Article 18(5)(a));
- a requirement to use reliable standards governing property valuation (Article 19);
- requirements on foreign-currency loans (Article 23) to ensure that consumers are aware of the risk they are taking on (warnings) and that consumers have the possibility to limit their exposure to exchange rate risk during the lifetime of the mortgage;
- a requirement to ensure that any indices or reference rates used to calculate variable rate mortgages are clear, accessible, objective and verifiable (Article 24) and that consumers are informed of the names of the benchmarks and of their administrators and of the potential implications on the consumer (second subparagraph of Article 13(1))<sup>19</sup>;
- a requirement to ensure that creditors exercise reasonable forbearance and make reasonable attempts to resolve the situation through other means before foreclosure proceedings are initiated (Article 28).

The EU Commission's report on the review of the MCD has indicated that the MCD has contributed to financial stability by preventing consumers from taking on credit that they will be unable to pay back and by harmonising the requirements between types of lenders.

The crisis triggered by the COVID-19 pandemic has had a major impact on many borrowers and may still prove an important test of the MCD impact on financial stability. While the aggregate level of non-performing loans continued to go down in the EU in the second quarter of 2021 to 2.3% despite the expiration of different payment moratoria in the different Member States, both the ECB and EBA expressed caution pointing to issues of asset quality of loans<sup>20</sup>.

Furthermore, in its Consumer Trends Reports, the EBA has repeatedly identified issues in relation to residential mortgages, most recently in the 2020/21 edition of the report<sup>21</sup>, including issues relating to over-indebtedness and responsible lending.

Request to the EBA: Would any of the issues that the EBA has identified with respect to residential mortgages benefit from amendments to the MCD to address them in order ensure responsible lending and borrowing and contribute to financial stability?

### **Lessons learned from COVID**

Article 28 MCD provides safeguards for consumers falling in arrears or at risk of foreclosure, which the EBA further supported by issuing Guidelines on the same topic aimed at providing more detail and achieve more consistent consumer outcomes across the EU<sup>22</sup>.

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<sup>19</sup> As amended by Article 58 of Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.

<sup>20</sup> <https://www.reuters.com/world/europe/euro-zone-banks-face-further-rise-soured-loans-ecb-2021-09-08/>

<sup>21</sup> See:

[https://www.eba.europa.eu/sites/default/documents/files/document\\_library/Publications/Reports/2021/963816/EBA%20Consumer%20trend%20report.pdf](https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2021/963816/EBA%20Consumer%20trend%20report.pdf), pp. 12-18 and 52 to 57

<sup>22</sup> See: <https://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-arrears-and-foreclosure>

The recently adopted Directive<sup>23</sup> on credit servicers, credit purchasers and the recovery of collateral (NPL Directive) aims to further strengthen Article 28 MCD by clarifying the reasonable forbearance measures (before foreclosure proceedings are initiated).

However, the MCD does not provide specific rules for exceptional situations such as COVID-19 pandemic. During the COVID-19 crisis, Member States and industry put in place a broad range of different relief measures in particular payment moratoria that seek to alleviate the financial burden of citizens and households. In response to COVID-19 pandemic, the Commission organised roundtables of representatives of the financial sector, businesses and consumers on relief measures to alleviate the impact of the crisis. As an outcome of this workstream, the financial sector, businesses and consumers came forward with best practices on relief measures<sup>24</sup>, covering amongst others credit payment moratoria. These best practices included transparency on availability of relief measures, the treatment of fees, information provided to consumers and businesses.

The EBA also took a number of actions to mitigate the impact of COVID-19 outbreak on the EU banking sector and customers, including the publication of its Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis<sup>25</sup>. Their objective is to ensure that banks would be able to grant payment holidays to customers in the context of the COVID-19 crisis avoiding the automatic classification of exposures under the definition of forbearance or as defaulted under distressed restructuring. The EBA has also underlined the importance of acting in the interest of the customer and avoiding unnecessary impact on their credit rating.

To support over-indebted consumers, the new proposal for a Directive on consumer credit introduces a provision on debt advisory services.

As a result of the low interest rate environment across the EU since the transposition date of the MCD, as well as more recently the COVID-19 relief measures that have been introduced, consumer detriment arising from the treatment of borrowers in arrears appears to have been limited. However, as the relief measures adopted in the context of the COVID-19 crisis come to an end, there is a risk that the effect of COVID-19 on revenues and employment may cause an outbreak of over-indebtedness (or debt repayment difficulties) for borrowers.

Moreover, with respect to any possible future crises, this raises a question whether some crisis-prevention mechanism could be designed and put in place that would be present at all times and activate or become particularly useful in crises situations.

#### Request to the EBA:

- In anticipation of a potential end of low interest rates and the expiry of said relief measures, does the EBA see a need for further actions to be taken in the context of the MCD review to address

<sup>23</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021L2167>

<sup>24</sup> Best practices on relief measures, adopted on 14 July 2021:

[https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/200714-best-practices-mitigate-impact-pandemic\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/200714-best-practices-mitigate-impact-pandemic_en.pdf)

<sup>25</sup> EBA/GL/2020/02, originally issued on 2 April 2020 and amended on 2 December 2020 – see:

<https://www.eba.europa.eu/regulation-and-policy/credit-risk/guidelines-legislative-and-non-legislative-moratoria-loan-repayments-applied-light-covid-19-crisis>

potential consumer detriment arising from the treatment of borrowers in arrears or at risk of foreclosure?

- With respect to any other possible future crises, could specific measures be considered to ensure a minimum last resort protection of consumers should any other crisis prevention and other measures to prevent detriment to a consumer (such as macro prudential tools more generally, or specifically as regards to MCD, property valuation, creditworthiness assessments) were to fail?

### 3.5. Sustainability: Green mortgages and properties at risk due to climate change

By choosing green mortgage loans, borrowers can significantly contribute to transforming the economy, reducing carbon emissions. Improving energy efficiency and ensuring the use of sustainable materials in buildings therefore has a key role to play in achieving the goal of carbon-neutrality by 2050, as set out in the [European Green Deal](#) as well as the goals set out in [Taxonomy Regulation](#).

Some mortgage providers already offer on a voluntary basis “green mortgages” (possibly under preferential terms and conditions) for instance to improve the energy efficiency of a building or to acquire highly energy efficient property. Some Member States support the uptake of green mortgages through a variety of schemes.

The Mortgage Credit Directive does not hinder the uptake of green mortgages but it also does not provide any specific measures to encourage their uptake.

Not many mortgage credit providers systematically collect the data on energy efficiency or “greenness” of residential real estate for which a mortgage loan was taken. The lack of such data cause a range of issues that may hinder achieving the objectives of European Green Deal. First, the lack of such data prevents conducting reliable analysis of energy-efficient mortgages<sup>26</sup>, which is important not only to assess the riskiness of such loans but also prevents evidence-based regulation of prudential risks. Overestimation of credit risk may lead to sub-optimal provision of green mortgages. Secondly, the lack of such data may pose additional risks of greenwashing.

Climate change will also put an increasing number of properties at risk of flooding, landslides or wild-fires. This may become increasingly relevant for creditors and borrowers when contracting loans secured by such vulnerable properties. It should therefore be assessed whether there should be requirements in the MCD for taking such risks into account and how these risks should be managed.

Request to the EBA: Does the EBA have any views on possible ways to encourage the uptake of green mortgages at EU level and on whether climate-change related risks to properties used to secure loans should be taken into consideration in the banks assessment when offering mortgage loans?

### 3.6. Other issues

Since the transposition date of the MCD, the EBA has issued a number of legal instruments that address issues and risks arising, not only in the mortgage market but that cut across all retail banking products in

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<sup>26</sup> Link to EEFIG report.

the EU, such as the Guidelines on complaints handling<sup>27</sup>, the Guidelines on product oversight and governance<sup>28</sup>, and the Guidelines on the remuneration of sales staff<sup>29</sup>.

Request to the EBA: Are there any measures that could be taken as part of the MCD review so as to facilitate the EBA's ability to issue such requirements in the future and address potential issues stemming from the fragmented nature of the various Level-1 texts regulating banking retail products (e.g., MCD, CCD, PAD, PSD2, EMD, DGSD)? If so, how?

### 3.7. Final considerations

The deadlines for this call for advice are the following: 30 June 2022.

It is recalled that the advice provided will not prejudice the Commission's final decision on any follow-up in terms of legislative or non-legislative actions.

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<sup>27</sup> <https://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-for-complaints-handling-for-the-securities-esma-and-banking-eba-sectors>

<sup>28</sup> <https://www.eba.europa.eu/guidelines-on-product-oversight-and-governance-arrangements-for-retail-banking-products>

<sup>29</sup> <https://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-remuneration-policies-for-sales-staff>