

EBA/GL/2015/19

11 August 2015

Final report

Guidelines on passport notifications for credit intermediaries under the Mortgage Credit Directive

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1. Executive Summary

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 (the Mortgage Credit Directive, or MCD) requires coordination, cooperation and information exchanges between competent authorities of different Member States.

Article 32 of the Mortgage Credit Directive provides that an admitted credit intermediary intending to carry out business for the first time in one or more Member States under the freedom to provide services or when establishing a branch shall inform the competent authorities of its home Member State. Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member States concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification.

Additional details are provided in Article 33(2), which requires the competent authority of the home Member State to notify the competent authority of the host Member State where the admission of a credit intermediary is withdrawn.

To ensure that the provisions of the MCD on passport notifications are applied consistently across the European Union, the EBA has formalised the passport notifications that are to be made by competent authorities from the transposition date of the MCD (21 March 2016) onwards. To this end the EBA has developed Guidelines on passport notifications and template notification forms for exercising the freedom to provide services and for exercising the freedom of establishment under the MCD.

To seek the preliminary views of stakeholders the EBA published a Discussion Paper on the draft requirements on passport notifications and draft template notification forms in December 2014. The consultation ran for a three-month period. Four responses were received. Following analysis of the responses the EBA made some amendments to the draft Guidelines to reflect some of the practical considerations raised by respondents. In June 2015, the EBA published draft Guidelines on passport notifications and draft template notification forms for a one-month consultation period. The EBA received six responses. Responses varied, with one respondent requesting that further information be included in the notification and another requesting that some information be deleted. Respondents also commented on the language and means of transmission of the notification. Following analysis and consideration of the consultation responses the EBA finalised the Guidelines and notification forms.

2. Background and rationale

2.1 Background

1. 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 (the Mortgage Credit Directive, or MCD) requires coordination, cooperation and information exchanges between competent authorities of different Member States.
2. Article 32 provides that an admitted credit intermediary intending to carry out business for the first time in one or more Member States under the freedom to provide services or when establishing a branch shall inform the competent authorities of its home Member State. Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member States concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification.
3. Additional details are provided in Article 33(2), which requires the competent authority of the home Member State to notify the competent authority of the host Member State where the admission of a credit intermediary is withdrawn. Article 34 provides that supervision of credit intermediaries is to be carried out by the home Member State in principle but allocates tasks between home and host Member States for credit intermediary branches. Article 36 requires Member States to cooperate whenever necessary for the purpose of carrying out their duties under the Directive.
4. The EBA published, in December 2014, a Discussion Paper setting out draft requirements on passport notifications and draft template notification forms (EBA/DP/2014/03). The purpose of the Discussion Paper was to give market participants early indications about future requirements in this area and to promote discussion and gather stakeholders' preliminary views at an early stage in the development of requirements. The Discussion Paper was issued for three months ending in March 2015 and four responses were received.
5. Respondents to the Discussion Paper were broadly supportive of the draft requirements and accompanying template forms. Following analysis of the responses the EBA made some amendments to the requirements to reflect some of the practical considerations raised by respondents and created draft Guidelines.
6. In June 2015, the EBA published a Consultation Paper on the draft Guidelines on passport notifications and draft template notification forms (EBA/CP/2015/11). During a one-month consultation period six responses were received to the Consultation Paper. Responses varied, with one respondent requesting that further information be included in the notification and another requesting that some information be deleted. Respondents also commented on the language and means of transmission of the notification. Having analysed and considered the comments made by the consultation respondents the EBA has made some final amendments to the Guidelines and template notification forms to ensure their clarity.

7. Whilst these Guidelines do not further define or specify the right of establishment and the freedom to provide services by credit intermediaries, the Guidelines should be read taking into account the interpretative considerations under Title B of Part One of the 'Commission Interpretative Communication: Freedom to provide services and the interest of the general good in the Second Banking Directive' (Commission Interpretative Communication)¹. The Commission Interpretative Communication relates to the Second Banking Directive and therefore does not deal specifically with credit intermediaries, but the concepts in relation to the freedom to provide services and the right of establishment contained within the Commission Interpretative Communication may provide general guidance to credit intermediaries.

2.2 Rationale

8. The EBA is interested in ensuring that the above provisions are applied consistently across the European Union, with a view to fulfilling the EBA's overall objectives, as set out in Article 1(5) of the EBA Regulation, of ensuring the consistent, efficient and effective application of the acts that fall within the EBA's scope of action and of fostering supervisory convergence across Member States. To that end, the EBA has formalised the passport notifications that are to be made by competent authorities from the transposition date of the MCD (21 March 2016) onwards.

¹ http://ec.europa.eu/internal_market/bank/docs/sec-1997-1193/sec-1997-1193_en.pdf

3. Guidelines

EBA/GL/2015/19

Guidelines

on passport notifications for credit intermediaries under the Mortgage Credit Directive

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010². In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [two months after publication of the translations into the EU official languages]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/2015/19'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p. 12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines deal with the requirement for competent authorities of the home Member States to notify the competent authorities of host Member States in relation to credit intermediaries intending to carry out business in another Member State ('passport notification') as laid down in Article 32 of Directive 2014/17/EU. These guidelines also specify requirements to update the public register for credit intermediaries related to the passport notification.

Scope of application

6. These guidelines apply to passport notifications in relation to the exercise of the freedom of establishment and to provide services by credit intermediaries as referred to in subparagraph (2) of Article 32(3) of Directive 2014/17/EU³, and do not extend to the method and means of supervision of credit intermediaries operating on a cross-border basis.

Addressees

Addressees of these Guidelines

7. The guidelines are addressed to competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 (EBA authority) which are also competent authorities as defined in point (22) of Article 4 of Directive 2014/17/EU. They apply to the extent that those authorities have been designated as competent for ensuring the application and enforcement of those provisions of Directive 2014/17/EU to which these guidelines relate.

Addressees of information requirements

8. Irrespective of whether or not an EBA authority is addressed under paragraph 7, where a Member State has designated more than one authority in accordance with Article 5 of Directive 2014/17/EU and one of them is not an EBA authority, the EBA authority designated under that article should, without prejudice to national arrangements adopted under Article 5(3) of Directive 2014/17/EU:
 - a) inform without delay the other designated authority of these guidelines and their date of application;

³ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 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 (OJ L 60, 28.02.2014, p. 34).

- b) ask that authority in writing to consider applying the guidelines;
- c) ask that authority in writing to inform either the EBA or the EBA authority within two months of the notification under subparagraph (a) whether it applies or intends to apply these guidelines; and
- d) where applicable, forward without delay to the EBA the information received under subparagraph (c).

Definitions

- 9. Unless otherwise specified, terms used and defined in Directive 2014/17/EU have the same meaning in the guidelines.

3. Implementation

Date of application

- 10. These guidelines apply from 21 March 2016, except that the information requirements referred to in paragraph 8 apply from [publication date in the official languages + 1 day].

4. Guidelines on passport notifications

1. Exercise of the freedom to provide services

1.1 In relation to the provision of services the passport notification referred to in subparagraph (2) of Article 32(3) of Directive 2014/17/EU should have the following content:

- a. the host Member State in which the credit intermediary intends to carry out its activities;
- b. the name, head office address and registration number of the credit intermediary;
- c. the web address of the online register of the home competent authority where details about the intermediary may be found;
- d. the name of the current competent authority in the home Member State;
- e. to the extent available in the register of the home competent authority, the services which the credit intermediary intends to provide in the host Member State;
- f. where applicable, the name and registration number of the creditor(s) to which the credit intermediary is tied or on whose behalf he is exclusively acting and, in such cases, confirmation that the creditor(s) take full and unconditional responsibility for the credit intermediary's activities;
- g. date of birth in case of natural person; and
- h. the date of notification by the home competent authority to the credit intermediary.

2. Exercise of the freedom of establishment

2.1 In relation to the establishment of a branch the passport notification referred to in subparagraph (2) of Article 32(3) of Directive 2014/17/EU should have the following content:

- a. the host Member State in which the credit intermediary intends to establish a branch;
- b. the name, head office address and registration number of the credit intermediary;
- c. the web address of the online register of the home competent authority where details about the intermediary may be found;
- d. the name of the current competent authority in the home Member State;

- e. the address of the proposed branch to the extent available at the time of notification;
- f. the name(s) of those responsible for the management of the proposed branch to the extent available at the time of notification;
- g. to the extent available in the register of the home competent authority, the services which the credit intermediary intends to provide in the host Member State;
- h. date of birth in case of natural person;
- i. where applicable, the name and registration number of the creditor(s) to which the credit intermediary is tied or on whose behalf he is exclusively acting and, in such cases, confirmation that the creditor(s) take full and unconditional responsibility for the credit intermediary's activities; and
- j. the date of notification by the home competent authority to the credit intermediary.

3. Transmission of the notification

3.1 The required information should be communicated by the competent authority of the home Member State to the competent authority of the host Member State(s) using the notification templates set out in Annexes 1 and 2, as appropriate. Where there are multiple notifications to communicate, competent authorities may alternatively communicate aggregated information but should do so using the headings set out in Annexes 1 and 2. If relevant competent authorities agree to do so, they may communicate multiple notifications in electronic format.

3.2 Competent authorities should provide the required information in writing in a language accepted by the competent authority in the host Member State.

3.3 Competent authorities should transmit the required information by electronic means where possible and acceptable to the relevant competent authorities. Where this is not possible or acceptable post should be used. Where post is used, the notification should be sent by the home competent authority, allowing sufficient time for the notification to reach the host competent authority within the one-month time frame specified in Article 32(3) of Directive 2014/17/EU (i.e. one month from the date of notification by the credit intermediary to the home competent authority).

3.4 Competent authorities should make the following information in relation to passport notifications publicly available:

- a. the languages accepted by competent authorities;
- b. the address to which passport notifications are to be sent if submitted by post; and

- c. any electronic means by which passport notifications may be submitted and any relevant contact details.

4. Registration

- 4.1 The competent authority of the home Member State should update its public register with the necessary information, as set out in Article 29 of Directive 2014/17/EU, in a timely manner.
- 4.2 In addition, the competent authority of the host Member State should make available on its public register within one month the information contained in the notification from the home Member State including the name, head office address and contact details of the credit intermediary.

5. Notification of changes to the information in the initial notification

- 5.1 The competent authority of the home Member State should notify the cessation or modification of passported activities or of 'static data' (e.g. change of name or address) or information which was unavailable at the time of the initial notification (Guideline 2.1 (e) and (f)) to the host competent authority as soon as possible and at the latest within one calendar month, by any appropriate means.

Annex 1 – Notification form for exercising the freedom to provide services

1	Date of transmission of this notification from the home to the host competent authority	DD/MM/YYYYY
2	Host Member State	
3	Type of notification	<input type="checkbox"/> First notification <input type="checkbox"/> Change to previous notification
4	Name of credit intermediary	
5	Date of birth in case of natural person	DD/MM/YYYYY
6	Home State registration number	
7	Head office address	
8	Email	
9	Telephone number	
10	Fax number	
11	Name of home competent authority	
12	Home Member State	
13	Web address of the online register	
14	To the extent available, services to be provided by the credit intermediary in the host Member State	<input type="checkbox"/> offers/presents credit agreements <input type="checkbox"/> assists in preparatory/pre-contractual administration work <input type="checkbox"/> concludes credit agreements <input type="checkbox"/> provides advisory services

15	Tied credit intermediary	<input type="checkbox"/> Yes <input type="checkbox"/> No
16	<p>In the case of a tied credit intermediary:</p> <p>a) Name and registration number of the creditor(s) or groups to which the intermediary is tied in the host Member State</p> <p>b) Whether the credit intermediary is exclusively tied to only one creditor</p> <p>c) Confirmation that the creditor(s) take full and unconditional responsibility for the credit intermediation activities</p>	<p>a)</p> <p>b)</p> <p>c)</p>

Annex 2 – Notification form for exercising the freedom of establishment

1	Date of transmission of this notification from the home to the host competent authority	DD/MM/YYYY
2	Host Member State	
3	Type of notification	<input type="checkbox"/> First notification <input type="checkbox"/> Change to previous notification
4	Name of credit intermediary	
5	Date of birth in case of natural person	DD/MM/YYYY
6	Home State registration number	
7	Head office address	
8	Email	
9	Telephone number	
10	Fax number	
11	Name of home competent authority	
12	Home Member State	
13	Web address of the online register	
14	Branch details (to the extent available at the time of notification) <ul style="list-style-type: none"> • Address • Telephone number • Email • Fax number 	
15	Name(s) and date(s) of birth of natural person(s) responsible for the management of the branch (to the extent available at the time of notification)	

16	To the extent available, services to be provided by the credit intermediary in the host Member State	<input type="checkbox"/> offers/presents credit agreements <input type="checkbox"/> assists in preparatory/pre-contractual administration work <input type="checkbox"/> concludes credit agreements <input type="checkbox"/> provides advisory services
17	Tied credit intermediary	<input type="checkbox"/> Yes <input type="checkbox"/> No
18	In the case of a tied credit intermediary: a) Name and registration number of the creditor(s) or groups to which the intermediary is tied in the host Member State b) Whether the credit intermediary is exclusively tied to only one creditor c) Confirmation that the creditor(s) take full and unconditional responsibility for the credit intermediation activities	a) b) c)

4. Accompanying documents

4.1 Cost-benefit analysis / impact assessment

11. Article 16(2) of the EBA Regulation provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

A. Problem identification

12. The main problem addressed by the EBA, in the context of Articles 32, 33, 34 and 36 of the MCD, is the specification of clear and consistent information to be notified by credit intermediaries to the competent authorities of the home Member State, and by the competent authorities of the home Member State to the competent authorities of the host Member State (in the case of initial notification).

13. Mortgage markets in the EU are still relatively fragmented, hampering the efficient functioning of the internal market for financial services. This incomplete market is due to a lack of consumer confidence⁴ on the demand side as well as existing barriers to the provision of services cross border and the establishment of branches in other Member States⁵. The EU passporting regime stipulated by the MCD is intended to overcome those supply-side imperfections for credit intermediaries⁶. However, lacking EU-wide guidance on the specific information to be notified by credit intermediaries wishing to passport and between home and host competent authorities, the regime falls short of being sufficiently clear and consistent. Amongst others, this impedes the efficient processing and granting of passports to credit intermediaries which intend to supply mortgage credit to consumers in several Member States across the EU.

14. The EBA recognises the need to cooperate and exchange information to ensure clarity and consistency in the content of the information to be notified regarding credit intermediaries wanting to operate cross border in the European Economic Area through the establishment of branches or through the exercise of the freedom to provide services.

⁴ European Commission: Special Eurobarometer 373 on Retail Financial Services (2012).

⁵ European Commission: Final report of the conference on emerging challenges in retail finance and consumer policy (2014).

⁶ European Commission: Impact assessment accompanying the proposal for a Directive on credit agreements relating to residential property (2011).

B. Policy objectives

15. To accomplish this, the EBA took into account that the general objective of the Guidelines is to achieve supervisory convergence, by creating a level playing field, preventing regulatory arbitrage opportunities and providing legal clarity. In particular, provisions included in the Guidelines shall clearly specify the information that needs to be notified and, by doing so, reduce the burden of compliance for the credit institutions and contribute to efficient and effective cooperation between the competent authorities in the home and host Member States.

C. Baseline scenario and options considered

16. The baseline scenario is that there would be no further regulatory intervention at European level and passport notifications would be transmitted between competent authorities across Member States as per the provisions of Articles 32 and 33 of the MCD.
17. The alternative option is for the EBA to set clear standards on passport notifications for credit intermediaries through the development of Guidelines and standardised notification templates. The Guidelines would represent common standards agreed on by Member States and be based on notification requirements developed by the EBA for other EU directives. They would also take account of the practical experience gained by national supervisory authorities in implementing those other directives.

D. Cost-benefit analysis

18. The notification requirements are generally expected to generate incremental benefits rather than incremental costs. The envisaged incremental benefits are expected to accrue to competent authorities due to greater administrative efficiencies. Credit intermediaries, in turn, will benefit as competent authorities will be able to assess passporting applications more quickly, with credit intermediaries thus being able to provide services more quickly to the benefit of their customers. The incremental costs are expected to affect the competent authorities and the credit intermediaries equally, while no incremental costs are expected to arise for any other stakeholders.
19. The greatest source of benefits to the competent authorities is that the provisions enable them to have access to a harmonised and complete set of information for the purposes of passport notifications. In particular, the notification of the activities that a credit intermediary intends to perform in the host Member State will prevent the practice, seen in other markets, of a financial institution stating all the activities for which the financial institution is authorised in the home Member State, while only a few of these activities are actually performed in the host country within a reasonable time after the approval of the notification. This practice makes it particularly burdensome for competent authorities of home and host Member States to handle notifications and maintain an up-to-date overview of services

provided abroad due to the lack of clarity on the actual activities performed by credit intermediaries.

20. Such benefits are partially offset by costs arising from competent authorities needing more time or resources to consider and analyse the information provided in relation to passport notifications. There will also be some initial costs for competent authorities to integrate the notification templates into their existing systems and processes.
21. With regard to credit intermediaries, incremental costs are expected to arise mainly due to the fact that they will need to provide more information. The only discernible benefits for them are the level playing field and common regulatory standards in the EU that the notifications will facilitate.

E. Preferred option

22. The preferred option is for the EBA to issue Guidelines and standardised notification templates which will ensure the consistent transmission of information in the notification process between competent authorities across all Member States.

4.2 Feedback on the public consultation

23. The EBA issued a Consultation Paper on the draft proposal contained in this paper, for one month ending on 4 July 2015. Six responses were received, of which four were published on the EBA website.
24. This paper presents a summary of the key points and other comments arising from the Consultation Paper, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.
25. Changes to the Guidelines have been incorporated as a result of the responses to the Consultation Paper.

Summary of key issues and the EBA's response

26. The EBA posed three questions in the Consultation Paper:
 - Do you agree with the draft Guidelines on passport notifications? If not, outline why you disagree and how the Guidelines could be improved. Please respond separately for each of the Guidelines.
 - Do you agree with the draft notification form for exercising the freedom to provide services set out in Annex 1? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.
 - Do you agree with the content of the draft notification form for exercising the freedom of establishment set out in Annex 2? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.
27. None of the six respondents disagreed with the Guidelines and template notification forms. One respondent, while agreeing with the draft Guidelines, proposed that additional information should be shared between the home and host competent authorities. While the EBA recognises the benefit of competent authorities sharing the proposed information, the suggested addition to the requirements would go beyond the requirements set out in the MCD. Therefore, the EBA has not amended its draft Guidelines to include this suggestion. However, the EBA will review these Guidelines two to three years following their application date and at that time the EBA will consider whether additional information, such as the information suggested by the respondent, should be included in the passport notification process.
28. Conversely, another respondent, while not disagreeing with the Guidelines, proposed that some of the information in the notification templates should be removed, i.e. date of birth, telephone number and fax number for both notification forms, and also branch details for the notification form for exercising freedom of establishment. The EBA does not agree with the proposed deletions and in fact considers the specified information to be of a basic nature and

relevant to the notification process; in particular, the date of birth could assist Competent Authorities in distinguishing between natural persons with the same name.

29. Another respondent made a suggestion regarding the language in which the notifications should be transmitted. The EBA does not agree with the respondent's suggestion that one specific European Union language, i.e. English, should be the default language for the transmission of notifications between home and host competent authorities. In addition a respondent suggested that notifications should be transmitted only electronically and that the EBA should add an XML structure as a third annex. The EBA rejected these suggestions because electronic transmission will not be possible or acceptable in all cases and so the Guidelines should not be restrictive in this way.
30. As already stated in the feedback statement to the Discussion Paper on draft requirements on passport notifications for credit intermediaries under the MCD (EBA/DP/2014/03) the EBA decided to clarify how the Guidelines apply where there is a competent authority as defined in Article 4(2) of Regulation (EU) No 1093/2010 (an EBA authority) which has responsibility under Article 5(3) for cooperating with other authorities designated as competent for applying the Directive.
31. To that end and as stated in the 'Addressees' section of the Guidelines, the Guidelines will apply to EBA authorities alone, and only to the extent that the EBA authority has been designated as competent for ensuring the application and enforcement of those provisions of Directive 2014/17/EU to which the Guidelines relate.
32. If, for example, an EBA authority is not designated as competent for ensuring the application and enforcement of the main provisions of Directive 2014/17/EU to which the Guidelines relate, and only has the cooperation responsibility referred to above, then only the information requirements set out in paragraph 8 of the 'Addressees' section of the Guidelines (the information requirements) are addressed to that EBA authority.
33. In that case, the EBA authority can consider itself compliant with the Guidelines if it complies with the information requirements. The information requirements have been added to the Guidelines in order to encourage all competent authorities to apply consistent supervisory practices and ensure common application of Directive 2014/17/EU, while recognising that the structure of the Directive is such that the Guidelines can only be addressed directly to EBA authorities. Other competent authorities cannot be made subject to the same 'comply or explain' obligations that apply to EBA authorities.

Summary of responses to the Consultation Paper and the EBA’s analysis

No.	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2015/11			
Do you agree with the draft Guidelines on passport notifications? If not, outline why you disagree and how the Guidelines could be improved. Please respond separately for each of the Guidelines.			
1.	Two respondents stated their agreement with the draft Guidelines and with the template notification forms in Annex 1 and Annex 2.	The EBA notes that two respondents agreed with the draft Guidelines and the template notification forms.	None
2.	<p>Another respondent agreed with the draft Guidelines and template notification forms subject to the addition of information about any past disciplinary record of the credit intermediary. The respondent commented that, where appropriate and relevant, the following information should be included in the requirements and notifications:</p> <ul style="list-style-type: none"> • complaints recorded and held on the intermediary; • former trading name(s) where appropriate; • past and current enforcement actions; • details of any pending action/matters reported to the Member State competent authority; • details of any proposed joint ventures in the Member State that relate to the credit intermediary’s activities. 	<p>The EBA notes that the respondent made the same proposal in its response to the earlier Discussion Paper on draft requirements on passport notifications for credit intermediaries under the MCD. The EBA has further considered the inclusion of the proposed additional information. However, the EBA retains its view that the Guidelines and notification forms should not be amended to include this information.</p> <p>As stated previously, while the EBA accepts that the suggested information could potentially be useful to host Member States in some circumstances, the Guidelines are limited to the collection of information for the purposes of notification (rather than, for example, information for the purposes of supervision). The notification is a requirement for commencing activities in another Member State; its content is set out in the MCD and further specified in these Guidelines.</p> <p>The EBA considers that to include this information would, therefore, go beyond the MCD’s notification</p>	None

Amendments to the proposals

No.	Summary of responses received	EBA analysis	Amendments to the proposals
3.	<p>One respondent stated that, while it welcomed the clarity and consistency in the content of passport notifications that the Guidelines provide, its view was that legal clarity should also be provided on the triggering element regarding freedom of service and freedom of establishment activities. The respondent commented that the Commission Interpretative Communication referenced in the draft Guidelines is relevant to credit institutions and therefore not helpful for credit intermediaries. The respondent called on the EBA to develop a document that would specifically address passporting from the perspective of credit intermediaries. The respondent suggested that a document for credit intermediaries similar to the EIOPA Luxembourg Protocol for insurance intermediaries would be helpful.</p>	<p>requirements. However, two to three years after their application date the EBA will review these Guidelines and will consider at that time if further information, such as the information proposed by the respondent, should be added to the Guidelines and the notification forms.</p> <p>The EBA notes that the respondent made the same request in its response to the earlier Discussion Paper on draft requirements on passport notifications for credit intermediaries under the MCD. The EBA has further considered the respondent’s request for information on the triggering element regarding freedom of services and freedom of establishment activities. The EBA retains its view that the definition or characteristics of the right of establishment and the freedom to provide services should not be dealt with in the Guidelines.</p> <p>The EBA acknowledges the respondent’s comments that the Commission Interpretative Communication referenced in the Guidelines is relevant to credit institutions and is not specific to credit intermediaries. However, the EBA is of the view that the concepts in relation to the freedom to provide services and the right of establishment, as set out in the Commission Interpretative Communication, may act as general guidance for credit intermediaries.</p> <p>The EBA acknowledges the respondent’s request for a separate EBA document to specifically address passporting from the perspective of credit</p>	<p>The second paragraph under the heading of ‘Scope of application’ has been amended and moved to ‘Background’.</p>

Amendments to the proposals

No.	Summary of responses received	EBA analysis	Amendments to the proposals
4.	<p>Regarding Guideline 3.2, one respondent commented that it may not be possible for a competent authority to write and transmit the required information in every European Union language. The respondent suggested that the words ‘or in English’ be added to the end of this Guideline.</p>	<p>intermediaries.</p> <p>The EBA does not agree with the respondent’s suggestion that one specific European Union language, i.e. English, should be the default language for the transmission of notifications between home and host competent authorities. The template notification forms in Annexes 1 and 2 will be translated into all EU languages and published on the EBA website.</p> <p>To assist with any potential language difficulties, the EBA designed the template notification forms so that only text such as names, addresses, dates and numbers must be entered into the forms. None of the fields in the templates require any narrative to be inserted. The remaining fields can be completed by ticking a box.</p>	None
5.	<p>Regarding Guidelines 3.3 and 3.4, one respondent commented that transmission by post is not a ‘state of the art’ means of transmission and incurs higher costs than electronic transmission.</p> <p>The respondent also suggested that an XML structure should be added as a third annex to the Guidelines to allow for automated registration. The following revised wording for Guideline 3.3 was suggested:</p> <p>‘Competent authorities should transmit the required information by electronic [means] in a structured format, see Annex 3.’</p>	<p>The EBA acknowledges the advantages of electronic transmission of notifications over transmission by post and for this reason Guideline 3.3 requires that information be transmitted electronically. However, the EBA equally acknowledges that it may not be possible or acceptable in all cases for notifications to be transmitted electronically and so Guideline 3.3 also allows for transmission by post.</p> <p>The EBA does not agree that the Guidelines should limit the electronic format to be used by credit intermediaries and competent authorities when transmitting the passport notifications. Rather, the format used should be a mutually acceptable format agreed by the relevant competent</p>	<p>Guideline 3.1 has been amended as follows:</p> <p>‘The required information should be communicated by the competent authority of the home Member State to the competent authority of the host Member State(s) using the notification</p>

No.	Summary of responses received	EBA analysis	Amendments to the proposals
6.	<p>One respondent suggested that it was unclear from Guideline 5.1 if the notification templates should be completed by the home competent authority when submitting, to the host competent authority, a modification or cessation of an existing notification. The respondent also suggested that, to assist host competent authorities in identifying the original notification, each notification should include an identification number.</p>	<p>authorities.</p> <p>The intention is that the template forms could be used to notify the host competent authority of a modification or cessation of the original notification. However, Guideline 5.1 is intentionally drafted to not prevent home competent authorities from notifying modifications and cessations by other means. Where other means are used competent authorities should include sufficient information to enable the host competent authority to identify the credit intermediary and the original</p>	<p>templates set out in Annexes 1 and 2 as appropriate. Where there are multiple notifications to communicate, competent authorities may alternatively communicate aggregated information but should do so using the headings set out in Annexes 1 and 2. If relevant competent authorities agree to do so, they may communicate multiple notifications in electronic format.'</p> <p>None</p>

No.	Summary of responses received	EBA analysis	Amendments to the proposals
		notification.	
Do you agree with the content of the draft notification form for exercising the freedom to provide services set out in Annex 1? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.			
7.	One respondent suggested that the information required in Row 5 (date of birth in case of natural person), Row 9 (telephone number) and Row 10 (fax number) should be removed from the notification form as this information is not collected in all Member States.	The EBA accepts that this information may not be notified for all credit intermediaries; for example, date of birth should not be notified if the credit intermediary is not a natural person and some credit intermediaries may not have a fax number. However, the EBA is of the view that information such as the natural person's date of birth, telephone number and fax number is basic information and is relevant to the notification process; in particular, the date of birth could assist Competent Authorities in distinguishing between natural persons with the same name.	None
8.	One respondent commented that in its Member State credit intermediaries must provide all of the services listed in Row 14. The respondent made the same comment about Row 16 in the notification form in Annex 2.	The EBA acknowledges that this may be the case in some Member States but is equally aware that in other Member States credit intermediaries are not required to provide all of the services listed. In designing the template notification forms the EBA sought to strike a balance between the experiences across all Member States. The EBA is satisfied that the notification forms allow for all cases. Where a credit intermediary offers all four services, all four boxes in Row 14 of the notification form in Annex 1 or Row 16 of the notification form in Annex 2 (whichever form is applicable) should be ticked.	None
9.	Regarding Row 16, one respondent commented that in its Member State tied credit intermediaries are tied to only one creditor and not to multiple creditors or to groups. The respondent made the same	In the context of passporting by credit intermediaries the MCD text refers to creditors in the plural. Article 32(3) of the MCD states that the	None

Amendments to the proposals

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	comment regarding Row 18 in the notification form in Annex 2.	<p>competent authority of the home Member State ‘shall notify the competent authorities of the host Member States concerned of the creditors to which the credit intermediary is tied and whether the creditors take full and unconditional responsibility for the credit intermediary’s activities’.</p> <p>The MCD therefore requires that the home competent authority should notify the host competent authority of the creditors to whom the credit intermediary is tied.</p> <p>While the EBA accepts that in some Member States a tied credit intermediary may be tied to only one creditor, the notification form has been designed to capture the requirements of the Level 1 text and also to reflect the spectrum of experiences across all Member States. The EBA is satisfied that the notification forms in their current design allow for all cases, whether a tied credit intermediary is tied to only one creditor, to multiple creditors or to a group.</p>	
10.	One respondent commented that it was not clear if Row 2 of the notification form referred to the host or home Member State. The respondent suggested that the word ‘host’ be added to the text in this row.	The EBA acknowledges that the text in Row 2 could be clearer and has amended the text as suggested by the respondent.	<p>Row 2 of the template notification form in Annex 1 has been amended as follows:</p> <p>‘Host Member State’.</p>
11.	One respondent commented that a row should be added to the notification form for an ‘honorary advisor’. In the respondent’s	The EBA acknowledges that there may be additional sub-categories of credit intermediary within	None

Amendments to the proposals

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Member State an honorary advisor is a service person who receives a fee from the consumer instead of compensation from the mortgage provider. The respondent also suggested that this addition should be made to the notification form in Annex 2.</p>	<p>individual Member States. However, the EBA considers that the notification forms are designed to capture all categories of credit intermediary as they specifically identify the services provided by the credit intermediary in Row 14 of the notification form in Annex 1 and in Row 16 of the notification form in Annex 2.</p>	
<p>Do you agree with the content of the draft notification form for exercising the freedom of establishment set out in Annex 2? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.</p>			
12.	<p>One respondent commented that the natural person responsible for the management of the branch may not also be the person responsible for the distribution of mortgages or mortgage services. The respondent commented that it would not be clear if the person responsible for the branch would have the necessary knowledge requirements.</p>	<p>The EBA accepts the respondent’s comments that the person responsible for management of the branch may not also be responsible for the distribution of mortgages or mortgage services.</p> <p>However, as stated in the scope of application of these Guidelines, the Guidelines do not extend to the method and means of supervision of credit intermediaries operating on a cross-border basis. Therefore, these Guidelines do not extend to the requirements set out in Article 34 of the MCD which place responsibility on the host competent authority for ‘ensuring that the services provided by the credit intermediary within its territory comply with the obligations laid down in [Article 9] and in measures adopted pursuant thereto.’ Article 9 of the MCD sets out obligations regarding knowledge and competence requirements for all staff. The Guidelines therefore do not extend to these knowledge and competence requirements.</p>	None
13.	<p>One respondent suggested that the information required in Row 5 (date of birth in case of natural person), Row 9 (telephone number),</p>	<p>The EBA accepts that this information may not be notified for all credit intermediaries; for example,</p>	None

Amendments to the proposals

No.	Summary of responses received	EBA analysis	Amendments to the proposals
<p>Row 10 (fax number) and Row 14 (branch details) should be removed from the notification form as this information is not collected in all Member States.</p>	<p>date of birth should not be notified if the credit intermediary is not a natural person and some credit intermediaries may not have a fax number. However, the EBA is of the view that information such as the natural person’s date of birth, telephone number and fax number is basic information and is relevant to the notification process and potentially for the online register of the host competent authority.</p>	<p>Row 2 of the template notification form in Annex 2 has been amended as follows: ‘Host Member State’.</p>	
14.	<p>One respondent commented that it was not clear if Row 2 of the notification form referred to the host or home Member State. The respondent suggested that the word ‘host’ be added to the text in this row.</p>	<p>The EBA acknowledges that the text in Row 2 could be clearer and has amended the text as suggested by the respondent.</p>	