



EBA/Op/2022/07

23 June 2022

Opinion of the European Banking Authority on the European Commission request for technical advice on issues related to the Mortgage Credit Directive

Introduction and legal basis

1. The Mortgage Credit Directive¹ (hereinafter 'MCD' or 'the Directive') was adopted on 4 February 2014 and was expected to be implemented by 21 March 2016. The aim of the MCD was to facilitate the emerging of a smoothly functioning internal market with a high level of consumer protection in the area of credit agreements (i) which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property, and (ii) the purpose of which is to acquire or retain property rights in land or in an existing or projected building (hereinafter 'mortgage loans' or 'mortgages').
2. The Directive also aimed at contributing to the development of a more transparent, efficient and competitive internal market, promoting sustainable lending and borrowing, and financial inclusion, hence providing a high level of consumer protection.
3. Since the entry into force of the Directive in March 2016, the EBA has supported the implementation of the MCD through the development of one Regulatory Technical Standard and three sets of Guidelines. These have contributed to ensuring that the objectives of the Directive have been fulfilled, such as the aforementioned emerging of an internal market and high level of consumer protection.
4. Article 44 of the MCD requires the European Commission ('EC') to undertake a review of the MCD considering the effectiveness and appropriateness of the provisions on consumers and the internal market. To this end, on 21 December 2021, the EC sent to the EBA a Call for Advice

¹ [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 \(OJ L 60, 28.2.2014, p. 34\).](#)

(‘CfA’) regarding the review of the MCD. The objective of the CfA is for the EC to gather evidence on the application and impact of the MCD, which includes any benefits and challenges that may have arisen, and for the EBA to identify areas where amendments to the MCD might be appropriate.

5. This Opinion, and the report attached to it, is the EBA’s response to this CfA. In developing the response, the EBA has been guided by the general objectives and tasks set out in Article 1(5) of the EBA Regulation,² which is to contribute to a sound, effective and consistent level of regulation and supervision, preventing regulatory arbitrage and promoting equal conditions of competition, ensuring risks are properly regulated and supervised, and enhancing consumer protection.
6. The EBA competence to deliver an opinion is based on Article 16a(4) of Regulation (EU) No 1093/2010, as part of the EBA’s role to provide, upon a request from, *inter alia*, the EC, technical advice in the areas set out in the legislative acts referred to in Article 1(2) of Regulation (EU) No 1093/2010. The CfA from the EC relates to the review of the MCD and activities of credit institutions and other non-bank lenders, which are legal texts that are within the scope of action of the EBA under Article 1(2) and (3) of the EBA Regulation.
7. In accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors,³ the Board of Supervisors has adopted this Opinion which is addressed to the EC.

General comments

8. The EBA welcomes the opportunity to provide input to the EC’s review on the MCD.
9. The EBA has observed that, overall, since the application of the MCD, consumer protection has become more effective throughout the EU single market and the practices related to the mortgages have been mostly harmonised across Member States.
10. Nevertheless, having monitored the implementation and the application of various provisions of the MCD and the EBA’s legal instruments in the past few years, and having assessed the areas covered in the CfA submitted by the EC, the EBA has arrived at the view that there are a limited number of issues that should be addressed in order to further achieve the objectives of the Directive of facilitating the emerging of a smoothly functioning internal market while fostering the level playing field across lenders and ensuring a high level of consumer protection. The EBA, therefore, proposes that the EC revises the MCD to address these issues and areas for improvement of the legal requirements.

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 \(OJ L 331, 15.12.2010, p. 12\).](#)

³ [Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 \(EBA/DC/2020/307\).](#)

11. To this end, the Opinion responds to the 17 questions that were set out in the EC's CfA, leveraging on the experience gained by the EBA and national CAs, as well as some other issues that the EBA considers relevant. In so doing, the EBA assessed in detail several distinct issues and, eventually, developed more than twenty proposals across the seven different items, which are described in detail in the report in the Annex to the Opinion. The Opinion itself, in turn, focuses on some of the most substantive of these proposals.
12. The Opinion does not include an impact assessment of all aspects that may be relevant in the context of each of the proposals, which is why, at times, the Opinion proposes that an additional such assessment may be warranted.
13. In addition to supporting the objectives of the MCD, the proposals put forward in this Opinion aim, *inter alia*, at contributing to further harmonisation and consistent application of the legal requirements, avoiding regulatory arbitrage, ensuring a level-playing field between the different types of lenders and increasing transparency for consumers.

Specific proposals to the Commission

14. The EBA considered that a few provisions in the MCD should be revised in order to address the identified issues. While all of these issues are covered in detail in the Report on EBA's advice on the review of MCD, which is in the Annex to this Opinion, the EBA highlighted some of the more significant proposals below.

Scope of the MCD

15. In relation to the scope of the MCD, the EBA is of the view that there is some merit in amending the scope of the MCD, in particular the definition of 'credit' agreement, so that it includes other credit agreements with similar features and risks to those set out in Article 3 of the MCD (e.g. credit agreements the purpose of which is the acquisition or construction of permanent or secondary residential property or residential leased property, as well as leasing of real estate for permanent or secondary residential property or residential leased property). The EBA has not observed any major issues arising from the currently applicable exclusions.
16. The EBA proposes to reassess Article 3(1)(b) of the MCD, as it refers to the purpose of the credit agreement, which is not always known by the borrower creditor. In this regard, the EBA proposes to amend the text of Article 3(1)(b) so to oblige the creditor borrower to expressly inform the borrower creditor of the purpose of the loan at the time of making the loan application. Should the EC amend Article 3(1)(b) of the MCD in this regard, the EC may consider aligning MCD and the CCD from this viewpoint, with particular reference to the current Article 2(2)(b).
17. On current exceptions/regulatory options under Article 3(3) of the MCD to derogate from the scope of the MCD, the EBA has not identified any major issues that would create a strong case for amending the Directive, with a weak case that can be made in relation to the exemption for bridging loans as defined in Article 4(23), because the undetermined duration of such loans

and absence of intermediate repayments can pose a risk to consumers and also to financial stability, especially when a creditor holds several bridging loans in its portfolio.

Tying/bundling

18. The EBA has not identified significant increases in cross selling risks with respect to those already identified in the joint ESAs work in 2016 nor it has observed any new risks. However, the risks remain as prevalent as they were in 2016, for example in relation to the use of digital means in cross-selling practices, the need to ensure consumers are aware of the risks and benefits of bundled products, and the lack of adequate training of sales staff on cross-selling.
19. To this end, the EBA has arrived at the view that Article 12(4) of the MCD should be changed to address the risks mentioned above and other related cross-selling risks. Said provision, could be strengthened by requiring creditors to inform their customers that they are free to choose from any insurance provider and are not obliged to take out any required insurance policy with them.
20. Should the EC decide to amend the text of the MCD in respect of tying/bundling practices, EBA strongly proposes that the resultant provisions and definitions are aligned with corresponding provisions and definitions in other sectoral legislations, and not only with legislation within the banking but also the insurance and investment sectors, because much cross-selling occurs with products from across the three financial sectors. The EC should also take into account different conclusions drawn by other authorities competent in the different sectors.

Peer-to-peer lending platforms

21. In relation to the possibility to regulated peer-to-peer lending and crowdfunding platforms, the EBA is of the view that there is merit in regulating these lending platforms under a separate framework at EU level so to ensure a level-playing field across the markets and to enhance consumer protection regardless of the type of credit concerned (either a credit agreement under the CCD or the MCD). Should the EC decide to specifically regulate peer-to-peer lending platforms, EBA proposes aligning the future EU regulation of peer-to-peer lending platforms with the framework established for crowdfunding services for businesses under the European crowdfunding service providers for business regulation.

Information disclosure rules at pre-contractual and advertising stages

22. The EBA has observed several issues regarding the MCD's information disclosure requirements at pre-contractual stage as consumers might be overwhelmed by the amount and granularity of information received, hence unable to make an informed decision. The EBA is of the opinion that a revision of the MCD rules on this matter is needed. In particular, the EBA stresses the need for simplification of the content, improvement of the presentation and enhancement of the effectiveness of the pre-contractual information, to help consumers compare different offers. In addition, EBA sees merit in amending the format of the European Standard Information Sheet (ESIS) so that essential information is provided in its first part, in line with

the principle of layering of information as recently suggested by the ESAs response to the review of PRIIPs Regulation.⁴

23. To this end, the EBA suggests to, *inter alia*, amend Article 14(6) of the MCD in order to prolong the reflection period before the conclusion of the credit agreement or the period for exercising a right of withdrawal after the conclusion of the credit agreement from 7 to 14 days across all the Member States so that the consumers may have longer time to compare different offers, assess properly the implications of the transaction and then make an informed decision, and so to ensure level-playing field. In addition to this, the ESIS should be improved, with particular reference to its format which shall be fit also for a digital channel of disclosure.

Creditworthiness assessment

24. With regards to the introduction of Artificial Intelligence systems in the creditworthiness assessment of the borrowers and use of robo-advisers, taking into consideration the detriment that consumers may suffer as a result of decisions based on automated systems, the EC may consider addressing the risks potentially harming consumers, such as the risk of financial exclusion and discrimination of certain type of consumers in the Artificial Intelligence Act.⁵

Ways to contribute to financial stability

25. The EBA is of the view that the MCD should be amended to include financial stability considerations, beyond what is mentioned in recital (3), for example through the inclusion of borrower-based measures (BBMs), as this would be in line with the European Systemic Risk Board (ESRB) response submitted to the Commission's Call for Advice on the 2022 Review of the EU Macroprudential Framework,⁶ as well as the EBA advice on the review of the macroprudential framework,⁷ and because the use of BBMs is not only beneficial from a financial stability perspective, but also for consumer protection, as it tends to be associated with lower mortgage credit growth, higher resilience of households, and higher resilience of credit providers.

Sustainability: green mortgages and properties at risk due to climate change

26. Through several initiatives, the EBA is supporting the EU policy objectives to manage financial risks stemming from environmental degradation and climate change and reorient capital flows towards sustainable investment to achieve the transition to a sustainable economy.
27. As recognised in this CfA, green mortgage loans may play an important role in achieving these objectives. However, due to challenges related to labelling standards and data availability, analysis on the use of green mortgages is still very limited. In order to encourage the uptake

⁴ [JC 2022 20 \(ESA advice on PRIIPs Regulation\).pdf \(europa.eu\)](#)

⁵ [Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence \(artificial intelligence act\) and amending certain union legislative acts. COM/2021/206 final](#)

⁶ [Review of the EU Macroprudential Framework for the Banking Sector - Response to the call for advice \(europa.eu\)](#)

⁷ [EBA advice on the review of the macroprudential framework.pdf \(europa.eu\)](#)

of green mortgages at EU level, the EBA will carry out further work under the Commission's Strategy for Financing the Transition to a Sustainable finance, which asks the EBA for an opinion on the definition and possible supporting tools for green retail loans and green mortgages.

28. In addition to the above, the EBA proposes to the EC, as already foreseen in the EBA Guidelines on loan origination and monitoring, that institutions should take ESG factors into account when conducting a credit assessment, and in particular take into consideration ESG factors affecting the value of collateral, for example the energy efficiency of buildings.

Other issues

29. The EBA has arrived at the view that a potential revised MCD should clarify whether credit intermediaries are capable to hold funds from borrowers in order to transfer them to the creditors and, if so, whether this activity would be excluded or not from PSD2. In this respect, Article 6(2)(c) of Directive (EU) 2021/2167 expressly clarifies that payments made by the borrower to the servicer in order to, partially or totally, reimburse the amounts due should be treated as having been paid to the creditor (the credit purchaser). The EBA sees merit in clarifying in the MCD whether credit intermediaries may hold borrowers' funds.

30. This Opinion will be published on the EBA's website.

Done at Paris, 23 June 2022

[signed]

[José Manuel Campa]

Chairperson
For the Board of Supervisors



EBA REPORT

IN RESPONSE TO THE EUROPEAN
COMMISSION REQUEST FOR TECHNICAL
ADVICE ON ISSUES RELATED TO THE
MORTGAGE CREDIT DIRECTIVE

EBA/REP/2022/15



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Abbreviations

ADM	Automated Decision Making
AI	Artificial Intelligence
AIA	Artificial Intelligence Act, Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts, COM/2021/206 final
APRC	Annual percentage rate of change
BBMs	Borrowers-based measures
BSG	Banking Stakeholders Group
CA	Competent Authority
CCD	Consumer Credit Directive 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
CfA	Call for Advice
CPI	Consumer price index
CRA	Credit Rating Agency
CRD	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
CRR	Capital Requirements Regulation Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
CTR	European Banking Authority Consumer Trends Report (2021)
CWA	Creditworthiness assessment
EBA	European Banking Authority
ESAs	European Supervisory Authorities, namely European Banking Authority, European Securities and Markets Authority and European Insurance and Occupational Authority
EU	European Union
GDPR	General Data Protection Regulation Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance)
GL	Guidelines
EC	European Commission
ECSPR	Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937
EMD	Electronic Money Directive Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions

ESG	Environmental, social and governance
ESIS	European Standardised Information Sheet
ESRB	European Systemic Risk Board
EU	European Union
DGSD	Deposit Guarantee Scheme Directive Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes
MCD	Mortgage Credit Directive 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
PPI	Producer price index
PRIIPs	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (Text with EEA relevance)
PSD2	Payment Services Directive Directive (EU) 2015/2366 on payment services in the internal market

Background

1. The EBA has been invited to respond to the EC's December 2021 CfA on issues related to MCD.¹ Article 44 of the MCD requires the EC to undertake a review of the MCD considering the effectiveness and appropriateness of the provisions on consumers and the internal market. The EC started the work on the MCD review with the publication of a report ('MCD report') on the review of the MCD² which was based on a study on the evaluation of the MCD.³ Finally, in parallel to the request for technical advice to the EBA, the EC has also issued a public consultation on the review of the MCD.⁴
2. The CfA covers 17 questions across 7 topical areas, which are the evaluation of the MCD, digitalisation, ways to facilitate the cross-border provision for mortgages, ways to contribute to financial stability, lessons learnt from COVID-19, sustainability and other issues.

¹ [Call for advice on the review of the MCD.pdf \(europa.eu\)](#)

² [EUR-Lex - 52021DC0229 - EN - EUR-Lex \(europa.eu\)](#)

³ [Evaluation of the Mortgage Credit Directive \(Directive 2014/17/EU\) - Publications Office of the EU \(europa.eu\)](#)

⁴ [European Commission Consultation Document – Review of the Mortgage Credit Directive](#)

Methodology

3. To develop the response to the EC CfA on issues related to the MCD, the EBA relied on its own experience of the implementation of the MCD as well as that of its national member authorities. To that end, the EBA gathered information from CAs through surveys and a series of discussions in the first half of 2022, with a view to cover all the issues that have arisen in their respective jurisdictions. In addition to information gathered through CAs, the EBA also received comments from individual members of its Banking Stakeholder Group ('BSG').

4. The EBA also leveraged information from the EBA's past and currently ongoing work, such as
 - a. the EBA Guidelines on loan origination and monitoring,⁵
 - b. the EBA's biennial report on consumer trends 2021,⁶
 - c. the EBA advice on the review of the macroprudential framework,⁷
 - d. the EBA Guidelines on arrears and foreclosure in support of the existing MCD (EBA/GL/2015/12),⁸
 - e. the EBA Guidelines on management of non-performing and forborne exposures (EBA/GL/2018/06),⁹
 - f. the EBA Guidelines product oversight and governance arrangements for retail banking products (EBA/GL/2015/18)¹⁰ and the related supervisory convergence reports (EBA/REP/2020/28),¹¹
 - g. the EBA Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services (EBA/GL/2016/06)¹² and the related supervisory convergence report (EBA/REP/2021/37),¹³

⁵ [EBA GL 2020 06 Final Report on GL on loan origination and monitoring.pdf \(europa.eu\)](#)

⁶ [EBA Consumer Trend Report \(europa.eu\)](#)

⁷ [EBA advice on the review of the macroprudential framework.pdf \(europa.eu\)](#)

⁸ [EBA-GL-2015-12 EN_GL on arrears and foreclosure.pdf \(europa.eu\)](#)

⁹ [Final Guidelines on management of non-performing and forborne exposures.pdf \(europa.eu\)](#)

¹⁰ [EBA-GL-2015-18 Guidelines on product oversight and governance.pdf \(europa.eu\)](#)

¹¹ [EBA report on the application of the guidelines on POG arrangements \(1\).pdf \(europa.eu\)](#)

[Second EBA report on the application of the POG guidelines arrangements.pdf \(europa.eu\)](#)

¹² [Final Report on Guidelines on remuneration of sales staff \(EBA-GL-2016-06\).pdf \(europa.eu\)](#)

¹³ [EBA Report on the Application of the Guidelines on the Remuneration of Sales Staff.pdf \(europa.eu\)](#)

- h. the EBA's Final Report on response to the non-bank lending request from the CfA on digital finance.¹⁴
- 5. The EBA decided to develop the response based on all of the above sources, many of which were themselves subject to public consultations. To avoid duplication of work carried out in parallel by the EC with its public consultation and call for evidence, and in order to be able to meet the demanding deadline set in the CfA, the EBA did not seek any separate input from external stakeholders prior to submitting this advice.

¹⁴ [Report on response to the non-bank lending request from the CfA on digital finance.pdf \(europa.eu\)](#)

Item 1 - MCD evaluation

Scope of the MCD

6. 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. In addition, Article 3(3) of the MCD provides options not to apply the MCD or certain of its provisions to some secured credit agreements. The possibility of adopting different standards across the EU markets may hinder consumer protection and level-playing field.
7. Based on the above, the EC requested the EBA to provide its advice on whether:
 - *the EBA had discovered problems in the areas specifically excluded from the scope of the MCD; and*
 - *the current exceptions/regulatory options (Article 3(3) of the MCD) to derogate from the scope of the MCD are justified or instead lead to unjustified gaps in the protection of consumers, or raise broader financial stability risks and level playing issues.*
8. In response to the first of these two questions, the EBA is of the view that there is some limited merit in amending the scope of the MCD, in particular the definition of 'credit agreement', so to include other credit agreements with similar features and risks to those set out in Article 3 of the MCD, such as credit agreements the purpose of which is the acquisition or construction of permanent or secondary residential property or residential leased property, as well as leasing of real estate for permanent or secondary residential property or residential leased property.
9. However, the EBA has not observed any major issues arising from the currently applicable exclusions.
10. In addition to the above, the EBA proposes to reassess Article 3(1)(b) of the MCD, as it refers to the purpose of the credit agreement, which is not always known by the borrower creditor. In this regard, the EBA proposes to amend the text of Article 3(1)(b) so to oblige the creditor borrower to expressly inform the creditor borrower of the purpose of the loan at the time of making the loan application. Should the EC amend Article 3(1)(b) of the MCD in this regard, it is then important to ensure consistency also with the EC proposal for review of the CCD, in particular the current Article 2(2)(b).
11. In response to the second question, on current exceptions/regulatory options as per Article 3(3) of the MCD to derogate from the scope of the MCD, the EBA has not identified any major issues that would create a strong case for amending the Directive. A weak case can be made in favour of removing exemptions because, as a matter of principle, exemptions are more likely to contribute to inadequate levels of consumer protection. One potential example can be the exemption for bridging loans as defined in Article 4(23), because the undetermined duration of

such loans and absence of intermediate repayments can pose a risk to consumers and also to financial stability, especially when a creditor holds several bridging loans in its portfolio.

12. By contrast, with regards to 'reverse mortgages', the EBA is of the view that this matter should be addressed at national level, when needed. As stated by recital 16 of the current MCD, equity release products or other equivalent specialized products have specific characteristics (such as the fact that the payments are made from the creditor to the consumer) which are beyond the scope of the MCD and are better regulated at member state level.

13. Somewhat related to exemptions, there is a case for the revised MCD to bring about greater consistency between the MCD with the CCD when it comes to credit agreements where the purpose of credit is the renovation of a residential immovable property.

Tying/bundling

14. 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 (see Article 12(2) points (a), (b) and (c) and Article 12(3) of the MCD). Although the evidence collected in the EU Commission's MCD evaluation study showed that there has been a slight decrease in the proportion of consumers required to purchase additional tied services since the MCD's entry in application, these practices still seem to occur, including as regards insurance products.

15. Based on the above, the EC has requested the EBA to provide its technical advice on whether:

- *The risks identified in 2016 with the ESAs joint work on 'cross selling' are still prevalent;*
- *New risks other than the ones identified in 2016 have appeared;*
- *A provision (if any) in the MCD should be changed in order to address the existing risks.*

16. The EBA has not identified significant increases in cross selling risks, neither of those already identified in the joint ESAs work in 2016, nor any new risks. However, the risks remain as prevalent as they were in 2016, for example in relation to:

- a. the use of digital means in cross-selling practices,
- b. the offer and/or obligation to purchase additional products or services that are not ancillary to the credit and do not necessarily have an economic advantage for the borrowers,
- c. the need to ensure consumers are aware of the risks and benefits of bundled products,
- d. consumers' right to search for the best prices in the market for services that are linked,

- e. the lack of clear information on prices and conditions of linked products at the pre-contractual stage, and
- f. the lack of adequate training of sales staff on cross selling.

17. Potential provisions in the MCD that should be changed to address the above and other related cross-selling risks are:

- Article 12(4), which could be strengthened so as to state that creditors shall inform their customers that they are free to choose from any provider and are not obliged to take out any required insurance policy with them.
- MCD rules on bundling practices to require that, in any circumstances, (i) additional products and services offered be strictly ancillary to the credit offered and (ii) their subscription be subject to independent withdrawal right. Relatedly, EBA sees merit in introducing a definition of 'strictly ancillary service' under Article 4 of the MCD, suggesting that this type of service would be such that its absence would be detrimental for the consumer.

18. Finally, should the EC decide to amend MCD in respect of tying/bundling practices, EBA strongly proposes that the resultant provisions and definitions are aligned with corresponding provisions and definitions in other sectoral legislation, and not only with legislation within the banking but also the insurance and investment sectors, because much cross selling occurs with products from across the three sectors.

Foreign currency loan

19. "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 as per Article 4(28) of the MCD. Article 23 of the MCD introduced 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 depreciated.

20. The EC has requested the EBA to provide its technical advice on whether:

- *The EBA has 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; and*

- *The EBA has 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.*

21. In response to these two questions, the EBA is not aware of any specific cases or circumstances in which consumers have difficulties finding a mortgage loan due to the limited offer of foreign currency loans, which may be due to the niche share of the market that these products occupy and the limited data that therefore is available. However, the EBA sees merit in amending the rules such that further information is provided to consumers in relation to the exchange risk and the change in the borrowing rate, and also taking into consideration also scenarios such as the consumers' income and the macro-economic situation.

Item 2 - Impact of digitalization

Peer-to-peer lending platforms

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

23. The EC adopted the Regulation for 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). Although 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, 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.

24. Based on the above, the EC has requested the EBA to provide its technical advice on whether:

- *The EBA considers the opportunities, such as for the single market, and 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; and*
- *The EBA has identified any risks arising from such a provision through platforms and how they should be mitigated.*

25. With regards to peer-to-peer lending platforms providing mortgage credits, the EBA acknowledges that these platforms have not been developed yet in most of the EU Member States' market.
26. In response to the first of the two questions posed by the EC in relation to peer-to-peer lending and crowdfunding platforms to be potentially regulated within revised text of the MCD, the EBA is of the view that there is merit in regulating these lending platforms for consumers under a separate framework at EU level to ensure level-playing field across the markets and to enhance consumer protection regardless of the type of credit concerned (either a credit agreement under the CCD or the MCD).
27. Should the EC decide to specifically regulate peer-to-peer lending platforms for consumers, EBA proposes aligning the future EU regulation of peer-to-peer lending platforms with the framework established for crowdfunding services for businesses under the ECSPR.
28. In relation to the second question posed by the EC with regards to any risks arising from the provision of mortgage credit through platforms and how they should be mitigated, in addition to the proposal made to the EC in the reply to the first question under peer-to-peer lending, the EBA has identified a number of risks emerging from the current regulatory framework. Such risks are in terms of consumer protection, and also on the side of the lenders, such as financial exclusion, lack of disclosure requirements and comprehensibility, lack of credit risk assessment, operational risks in general, and the presence of different national legislations to regulate peer-to-peer lending. Due to this gap in the legislation, consumers may suffer consequences from the lack of a (thorough) creditworthiness assessment and end up in a situation of over-indebtedness or financial exclusion when the consumers are not digitally literate.
29. In addition to the above considerations, the EBA report on non-bank lending has identified supervisory concerns related to peer-to-peer business model. This is the case when this type of lending platform often does not fall under any domestic regimes for non-bank lenders, so they are not subject to any specific requirements.
30. Moreover, through the EBA report on non-bank lending, the EBA noted that when the peer-to-peer platform operates on a cross-border basis, the CAs may have very little visibility on its operations, especially if the platform is not regulated. Finally, in terms of creditworthiness assessment, if peer-to-peer lending platforms do not bear any risk, they might have little incentives to ensure a robust assessment of borrowers, thus increasing the change of granting credit to high-risk customers and this can ultimately lead to over-indebtedness of borrowers and increase the risk of losses for lenders/investors.
31. As mentioned in paragraph 26 above, to mitigate the risks identified, the EBA proposes to the EC to set up a separate framework at EU level for peer-to-peer lending platforms for consumers.

Information disclosure rules at pre-contractual and advertising stages

32. The MCD requires creditors to provide to consumers standard pre-contractual information through an 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 as per Article 11 of the MCD.

33. 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.

34. Based on the above, the EC has requested the EBA to provide its technical advice on whether:

- *The EBA has 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; and*
- *If so, how these would be mitigated.*

35. The EBA has observed several issues regarding the MCD's information disclosure requirements at pre-contractual stage and is of the opinion that a revision of the MCD rules on this matter is needed. Consumers might be overwhelmed by the amount and granularity of information received, hence unable to make an informed decision. The EBA stresses the need for simplification of the content, improvement of the presentation and enhancement of the effectiveness of the pre-contractual information.

36. In addition to the above, the revised MCD should cover explicitly the use of digital channels to ensure that disclosures at pre-contractual and advertising stages are fit for the digital age, to allow informed decision-making and avoid mis-selling, in line with recommendation 2 from the response to the CfA on digital finance.¹⁵

37. Moreover, with regards to issues at advertising stages, the EBA has not identified any major issues that would create a strong case for amending the MCD. A weak case can be made against the 'representative example' in Article 11(3) of the MCD the implementation of which seems to be failing in its aim of representativeness and comparability among different offers.

38. To this end, potential measures to be adopted in order to address the issues related to the MCD's information disclosure requirements at pre-contractual and advertising stages are:

¹⁵ [ESA 2022 01 ESA Final Report on digital finance \(europa.eu\)](#)

- The use of behavioral tests and methods to gain a better understanding of the type, amount, and form of information that enables consumers to make an informed decision;
- Amendment to Article 14(6) of the MCD in order to prolong the reflection period before the conclusion of the credit agreement or the period for exercising a right of withdrawal after the conclusion of the credit agreement from 7 to 14 days so that the consumers may have longer time to compare different offers, assess properly the implications of the transaction and then make an informed decision;
- Improvements of the ESIS, in particular in relation to its format, the time when it is provided and ways through which such document displays information. EBA is of the view that making the ESIS provision mandatory before the provision of an offer binding the creditor would enable consumers to make an informed decision. It is important that the ESIS will be provided in advance and in a timely manner to ensure consumers have sufficient time to make an informed decision.

39. Other potential measures to address the issues stemming from the current provisions of the MCD with regards to pre-contractual and advertising information disclosure can be found while bringing greater consistency between the MCD and the CCD in the following aspects:

- The definition of 'durable medium' provided in Article 4(18) of the MCD which should also take into account the digital format of the medium;
- The inclusion of an obligation for creditors to include on the first page of the ESIS all the key features of the credit to help consumers compare different offers. This information should not be repeated in the other parts of the ESIS fact sheet. This proposal is in line with the principle of layering of information as recently suggested by the ESAs response to the review of PRIIPs Regulation.¹⁶

40. Finally, EBA proposes the EC to revise the information referring to the APRC as per Article 17 in accordance with Annex I to the MCD, in order to include in its calculation, when applicable, every cost and any subsidies of tied and bundled products.

Creditworthiness assessment

41. Credit providers are increasingly leveraging on ADM, including AI systems-based decision-making and algorithmic decision-making, to assess the borrower's creditworthiness.

42. The proposed Regulation by the European Commission laying down harmonised rules on AI ('AI Act') suggests that AI systems 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

¹⁶ [JC 2022 20 \(ESA advice on PRIIPs Regulation\).pdf \(europa.eu\)](#)

and data governance, documentation and record keeping, transparency, human oversight, robustness, accuracy and security. However, the proposed AI Act does not introduce specific rights for consumers.

43. Article 22 of the GDPR provides data subjects, including consumers, “the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her”. However, that provision does not cover the cases in which the decision involves automated processing but is taken by a human, as is often the case in mortgage credit processes.
44. The EC proposal for a new Directive on consumer credits, which would replace the CCD (Directive 2008/48/CE), provides some specific targeted complementary rights for the consumers where the creditworthiness assessment involves the use of automated processing of personal data. Under Article 18(6), the Member States will have to ensure that the consumer has the right to (a) request and obtain from the creditor a clear explanation of the assessment of creditworthiness, including on the logic and risks involved in the automated processing of personal data, as well as its significance and effects on the decision; (b) to request and obtain human intervention on the part of the creditor to review the credit decision; and (c) to express their point of view and contest the assessment of the creditworthiness and the decision. Moreover, under Article 18(7), where the credit application is rejected, the creditor would be required to inform the consumer without delay of the rejection and, where applicable, of the fact that the assessment of creditworthiness is based on automated processing of data.
45. 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. In order to achieve that, paragraph 38(g) of the Guidelines states that credit risk policies and procedures should specify the conditions for the application of automated decision-making in the credit-granting process, including identifying products, segments and limits for which automated decision-making is allowed. Paragraph 41 of the Guidelines, in turn, prescribes that institutions, in their credit risk policies and procedures dealing with credit decision-making, should “specify the use of any automated models in the creditworthiness assessment and credit decision-making processes in a way that is appropriate to the size, nature and complexity of the credit facility and the types of borrowers”.
46. The EBA Guidelines also set out requirements for the credit institutions to have appropriate governance and model governance arrangements for models used for the purposes of creditworthiness assessment and automated credit decision-making. In particular, paragraph 54 of the Guidelines requires that when using automated models for creditworthiness assessment and credit decision-making, institutions should understand the models used, and their methodology, input data, assumptions, limitations and outputs. Moreover, paragraph 55(b) of the Guidelines requires that institutions have adequate model documentation that covers the use of model outputs in the decision-making process and the monitoring of these automated decisions on the overall quality of the portfolio or products in which these models are used.

Finally, paragraph 65 of the Guidelines requires that the credit decision-making framework should clearly articulate the decision-making powers and limitations of each decision-maker and of any automated models for credit decision-making purposes.

47. Based on the above, the EC has requested the EBA to provide its technical advice on whether:

- *the EBA has 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;*
- *the EBA has 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.*

48. While acknowledging the benefits of using automated decision-making to support creditworthiness assessment, the EBA is aware that due consideration should be given to the problems and risks that may arise for consumer protection, especially from the use of AI systems. In particular, the EBA sees potential risks arising from the (un)reliability of the input data, the lack of explainability of the output, the use of social media as a factor, technical errors, anomalies, and ultimately the risk of financial exclusion when the AI system or algorithm behind the automated decision-making is based on factors not directly related to creditworthiness.

49. In response to the first question, in order to mitigate the risks mentioned above and to ensure an effective consumer protection, EBA is of the view that rules related to the disclosure of the use of automated decision-making, including AI systems, should be established. In line with paragraph 44 above, and the proposed revised CCD, the EBA proposes that a revised MCD includes specific targeted complementary rights for the consumers where the creditworthiness assessment involves the use of automated processing of personal data. The EBA also sees merit in clarifying the relationship between the respective requirements and obligations in the MCD and those in the GDPR.

50. Regarding the model governance arrangements and whether the scope should cover non-bank lenders under the MCD, the EBA is of the view that such changes could be considered in the light of a potential revision of the MCD so that this can be further covered in the EBA Guidelines on loan origination and monitoring, following the principle of proportionality.

51. In reply to the second question, the EBA has not identified any major issues arising from the MCD's requirements on creditworthiness assessment. However, the EBA considers that some amendments can be introduced in this area, such as better specifying tracking and record-keeping requirements.

Robo-advice

52. 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.

53. 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 as per Article 9, adequate explanations on the proposed credit agreements and any ancillary services under Article 16, standards for advisory services under Article 22 and general information on credit agreements at all the time as per 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.

54. Based on the above, the EC is requesting the technical advice of the EBA on the following matter:

- *Has the EBA come across any risks posed by the use of robo-advisers for mortgage credit granting processes, and, if so, how should those risks be mitigated.*

55. In response to this question, the EBA is of the view that risks may arise by the fact that robo-advisers use simplistic methods and can handle only simple cases. To mitigate the risks emanating from this limitation, the EBA proposes to adopt a continuous revision of the robo-advisers performance, keep individual and human advice and possibly to apply to the robo-advisers certain requirements emanating from the MCD, such as knowledge and competence for staff.

56. In addition to the above, the EBA is of the opinion that consumers should have the right to receive information on the transparency, accountability and explicability of the applied systems/algorithms.

57. Similarly, to the issues that may arise by the use of AI systems in the mortgage credit process, the EBA sees merit in adopting an appropriate data governance framework, including quality of data, data and model security. The governance framework should include also disclosure requirements, training and development of staff were as key factors for the effective adoption of robo-advisers. As per the use of AI systems, the implementation of robo-advisers may also bring several challenges in terms of consumer protection that would need to be overcome, such as the risk of exclusion from the use of financial services and discrimination against certain groups of consumers, in particular if human intervention is not sufficiently preserved.

58. The EBA is of the view that the upcoming Artificial Intelligence Act should be addressing all the risks mentioned in the paragraphs above, as well as the shortcomings identified with reference to the use of robo-advisers in the creditworthiness assessment. In this regard, it is essential to provide consistency between the MCD review and the upcoming AIA in order to avoid overlapping or contradictions in the Artificial Intelligence framework related to creditworthiness assessment and the use of robo-advice.

Item 3 - Ways to facilitate the cross-border provision for mortgages

59. Since its entry into force, the MCD has contributed to create a 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 as there are still barriers to the cross-border provision of mortgages resulting from areas outside the scope of the MCD.

60. In addition, digitalisation of financial services may in the future help facilitate the provision of mortgage credit, including on-line. The online conclusion of mortgage credit agreements could facilitate the cross-border provision of mortgages in the future.

61. Based on the above, the EC has requested the technical advice of the EBA on the following matters:

- *whether the EBA has come across any possible difficulties for the use of credit databases across-borders or other obstacles for the cross-border provisions of mortgage loans, and, if so, whether the EBA has any views on how these should be mitigated;*
- *whether the EBA has any views on whether, and if so how, digitalisation could help facilitate cross-border provision;*
- *whether the EBA sees any risks from the conclusion of mortgage credit agreements fully online, and if so, whether any measures could be taken to address these risks/facilitate the online conclusion of mortgage credit agreements and which measures.*

62. With regards to the difficulties identified for the use of credit databases across-border or other obstacles for the cross-border provisions of mortgage loans, the EBA acknowledges that mainly the issues identified derived from areas that are outside the scope of the MCD, such as the different national procedures, such as registration of hypothecs, involvement of the notaries and others. In addition, the EBA is of the view that the functioning of the passporting procedures should be improved, in particular with reference to the information sharing among CAs and published in the national registers, as CAs have reported difficulties with the current regime.

63. In relation to the views on the way forward in order to mitigate the obstacles, the EBA proposes, *inter alia*, to explore solutions for an increased harmonization at EU level of the information related to the creditworthiness assessment and to set up a single EBA register for credit intermediaries. Developing such a register would facilitate identification of relevant CAs, avoid a double registration of credit intermediaries by CAs of the home and host Member States and resolve issues of lack of harmonized information, in particular for cross-border provision of mortgages.

64. In addition to the above, EBA is aware of the lack of EU-harmonized database of EU consumer and mortgage credit market indicators. Although similar initiatives may exist at national level, the consolidated information on the credit market at EU-level is still missing. EBA is therefore proposing to the EC to create a harmonized consumer credit database to cover different types of credits provided to consumers, such as mortgages and consumer credits, under the EBA's remit anchoring onto Article 9 of the EBA Founding Regulation.¹⁷ Market indicators to be collected could cover: (i) default rate by type of credit, (ii) default rate by type of lender, and (iii) default rate by sales channels. The harmonized consumer credit database will provide regulators, consumers and other relevant stakeholders with one set of aligned information ensuring consistency, transparency, and level playing field. This will also enable relevant authorities to identify any detrimental practices and to remediate possible financial exclusion., The EBA is required to take a leading role in promoting transparency, simplicity, and fairness in the market for consumer financial products or services across the internal market. In creating the EU consumer credit database to cover different types of credits provided to consumers, such as mortgages and consumer credits, EBA should collaborate with CAs across EU to collect and analyse data.
65. In response to the second question under Item 3, the EBA considers digitalization as a tool to facilitate the cross-border provision of the mortgage credit. Indeed, the provision of standardized and adequate pre-contractual information in a digital format would enable consumers to compare easily a variety of mortgage offers from different markets. However, the EBA acknowledges that areas outside the scope of the MCD (such as specific national regimes for tax systems, property and land registers, notary, contract law governing the validity of credit agreements and post-contractual issues such as foreclosure rules), might discourage in future the cross-border provision of mortgage credit also via digitalization.
66. In response to the third question under Item 3, the EBA is of the view that the risks arising from the online conclusion of mortgage credit agreements are mainly related in areas outside the scope of the MCD, such as possible increase of litigations due to matters related to proof of signature's authenticity, the different national frameworks for the (complex) procedure itself, with a particular reference to the role of the notary here as well.
67. In order to mitigate the complexity of the online conclusion of the mortgage credit, the EBA proposes to keep the human intervention/communication in the online conclusion of mortgage credits and supports a technology neutral approach. In addition to this, as previously stated for Item 2, the EBA considers that the pre-contractual requirements should be adapted to fit the digital context and ensure that consumers are provided with adequate explanations.

¹⁷ [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](#)

Item 4 - Ways to contribute to financial stability

68. 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”).

69. The MCD, while aiming at ensuring high level of consumer protection and enhancing the single market, also contributes to financial stability, in particular by having introduced requirements on responsible lending, including the mandatory creditworthiness assessment predominantly based on repayment under Article 18(3), coupled with a requirement to prevent providers lending to consumers who may be unable to repay the loan as per Article 18(5)(a).

70. Notably, the EBA has identified in its Consumer Trends Reports recurring issues in relation to residential mortgages, including issues relating to over-indebtedness and responsible lending.

71. Based on the above, the EC has requested the technical advice of the EBA on the following matters:

- *whether 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.*

72. In its report on non-bank lending and its advice on the review of the macroprudential framework¹⁸, the EBA acknowledges that a number of risks may arise in the lending market due to the presence of non-bank lenders, such as regulatory arbitrage and over-indebtedness. Regulatory arbitrage may arise if borrower-based measures (BBMs) are only applied to credit institutions and not extended to non-bank lenders. On the other side, over-indebtedness may arise as a consequence of a poor creditworthiness assessment carried out by non-bank lenders which are not subject to stringent capital requirements contrary to banks under the CRR/CRD regimes. This may cause detriment to consumers, especially vulnerable borrowers.

73. Relatedly, in its response to the Commission’s CfA on the 2022 Review of the EU Macroprudential Framework,¹⁹ the ESRB too, is supportive of BBMs and explains that ‘[...] BBMs act directly on the borrower, generally restricting the quantity of credit provided with characteristic that are deemed risky. [...]’ and that ‘[...] BBMs can help to ensure sound lending standards and higher resilience of borrowers. [...]’.²⁰

¹⁸ [EBA advice on the review of the macroprudential framework.pdf \(europa.eu\)](#)

¹⁹ [Review of the EU Macroprudential Framework for the Banking Sector - Response to the call for advice \(europa.eu\)](#)

²⁰ *Ibid*, pages 12 and 13.

74. In summary, the use of BBMs is not only beneficial from a financial stability perspective, but also for consumer protection, as it tends to be associated with lower mortgage credit growth, higher resilience of households, and higher resilience of credit providers. However, should the BBMs be included in the MCD, the EBA is of the view that its design and, activation should be calibrated to take into account national mortgage and real estate markets, including those for low income and first-time buyers and therefore could remain in the exclusive responsibility of national authorities.
75. The above considerations are also in line with the EBA advice on the macroprudential framework, which states the BBMs may help ensuring sound lending standards and thereby mitigating financial stability risks. In line with the EBA advice on the macroprudential framework, EBA suggests to consider covering all credit providers (i.e. not only credit institutions but also non-bank lenders) by a macroprudential framework, allowing the possibility to introduce activity-based macroprudential measures, which should consider also the application of any requirement at entity level. In turn, this may also reduce the scope of regulatory arbitrage and enhance consumer protection regardless of the type of lender.
76. With regards to responsible lending, the EBA is of the view that creditors' obligations in relation to creditworthiness assessment should be enhanced. In particular, creditors shall monitor the risks of payment arrears and take appropriate measures for consumers in a timely manner. The EBA stresses the importance that such rules should benefit consumers and not to impose a burden on them. In this regard, consumers shall be informed about the circumstances that lead to a re-assessment of their creditworthiness and what the consequences will be if the re-assessment shows that the consumer is no longer creditworthy as per the original criteria. In addition to this, the EBA considers appropriate to include requirements on up-to-date information and complete overview of the consumer's risk profile (in line with the EBA Guidelines on loan origination and monitoring) to enhance the creditworthiness assessment during the life of the contract, in compliance with GDPR applicable rules. Related to the aim of ensuring responsible lending, the EBA is of the view that credit institutions shall be granted access to the relevant databases which shall provide updated information and establish sound processes to assess the consumer's creditworthiness.
77. The EBA also proposed that the Directive should also strengthen the knowledge and competences requirements of creditors' staff involved in the commercialization of mortgage credit and taking into account consumers' financial education when advertising the product. The EBA is of the view that the revised MCD should also include an adequate provision of debt advisory services in alignment with the corresponding provision of the CCD.
78. Finally, the EBA is of the view that the MCD provisions on creditworthiness assessment could be revised so that the EBA Guidelines on loan origination and monitoring, in particular its paragraphs 103 to 109, could be taken into consideration.

Item 5 - Lessons learned from COVID

79. The EBA has issued specific guidelines to support Article 28 of the MCD for providing safeguards for consumers falling in arrears or at risk of foreclosure in order to achieve more consistent consumer outcomes across the EU.

80. In addition to the above, the EBA took a number of actions to mitigate the impact of the 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.

81. As a result of the low interest rate environment across the EU since the transposition date of the MCD, as well as the more recently introduced COVID-19 relief measures, 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.

82. 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 crisis situations.

83. Based on the above, the EC has requested the EBA to provide its advice on the following questions:

- *Whether, in anticipation of a potential end of low interest rates and the expiry of said relief measures, the EBA sees a need for further actions to be taken in the context of the MCD review to address potential consumer detriment arising from the treatment of borrowers in arrears or at risk of foreclosure; and*
- *Whether, with respect to any other possible future crises, specific measures could 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.*

84. With regards to the first question, the EBA is of the view that the current legal framework stemming from the MCD and the measures introduced by Directive 2021/2167 on credit servicers and credit purchasers amending the CCD and the MCD, with particular reference to the revised Article 28 of the latter, already introduced robust requirements for creditors to have adequate policies and procedures in place to grant, where appropriate, reasonable forbearance before foreclosure proceedings are initiated.

85. However, it should also be taken into account the need to introduce additional measures for lenders to monitor possible payment arrears of consumers that should be specified in the MCD, so that consumers with payment arrears can be helped at an early stage.

86. The EBA suggests that the MCD may take further inspiration from the EBA Guidelines on arrears and foreclosure and EBA Guidelines on management of non-performing and forborne exposures for a number of measures in the treatment of borrowers in arrears or at risk of foreclosure. In particular, in order to further decrease the risk of over-indebtedness, further attention should be given to identify early signs of payment difficulties and financial fragility based on objective criteria (e.g. loss of income, payment incidents, debts to tax or social authorities);

- establish contact with the borrower with early signs of payment difficulties to assess his/her financial situation, warn and assist him/her;
- provide training to employees regarding the prevention of arrears and over indebtedness; and
- provide pedagogical information to consumers as regards budget management, factors leading to over indebtedness and existing procedures for handling excessive debt or financial default (in line with the proposal to have debt advisory services outlined in the review of the CCD).

87. With regards to specific issues identified in relation to the anticipation of a potential end of the low interest rate environment and the expiry of said relief measures, the EBA sees merit in taking further actions by revising the Directive to address potential consumer detriment arising from the treatment of borrowers in arrears or consumers at risk of foreclosure. In particular, EBA proposes to the EC to strengthen the requirements set out in the current Article 28 of the MCD. The EC may consider taking inspiration of the approach implemented in Section 4 of the EBA Guidelines on arrears and foreclosure and paragraphs 8.2 and 8.3 of the EBA Guidelines on loan origination and monitoring. In addition, the EBA sees merit in amending the MCD so to ensure that prior granting credit, credit institutions make prudent allowances for potential negative scenarios in the future, including an increase in benchmark interest rates in the case of variable rate mortgages as part of the creditworthiness assessment.

88. In addition to the above and as already mentioned under Item 4, the EBA sees merit in introducing in the revised MCD a provision similar to Article 36 of the EC proposal on the review of the CCD which requires members states to ensure debt advisory services are made available to consumers in order '[...] to help them facing financial problems and guide them to repay, as far as possible, their outstanding debts, while maintaining a decent level of life and preserving their dignity [...]' – as per recital (72) of the proposal for a revised CCD.

89. Finally, in relation to the second question under Item 5, the EBA does not consider it necessary addressing potential issues deriving from potential future crisis within the scope of the MCD. As witnessed during the COVID-19, some Member States have responded in an effective manner to the challenges posed by the pandemic and provided safety nets for consumers and financial institutions too. The EBA is of the view, in line with the EU principle of subsidiarity, that this type of measures should be left at Member State level with coordinated and aligned responses.

Item 6 - Sustainability: Green mortgages and properties at risk due to climate change

90. Through several initiatives, the EBA is supporting the EU policy objectives to manage financial risks stemming from environmental degradation and climate change and reorient capital flows towards sustainable investment to achieve the transition to a sustainable economy. As recognised in the Commission CfA to the EBA, green mortgage loans may play an important role in achieving these objectives.

91. By choosing green mortgage loans, borrowers can significantly contribute to transforming the economy, reducing carbon emissions and transition to a sustainable economy. However, due to challenges related to labelling standards and data availability, analysis on the use of green mortgages is still very limited.

92. The MCD neither hinders the uptake of green mortgages nor encourages it. Similarly, the Directive does not provide specific requirements for taking risks related to loans secured by properties vulnerable to the transition or physical risks related to climate change.

93. Based on the above, the EC requested the EBA advice on the following matter:

- *Whether the EBA has 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.*

94. With regards to the possible ways to encourage the uptake of green mortgages at EU level, the EBA sees the need to have a harmonised EU definition of 'green mortgage'. Such common definition would also ensure a level playing field for the lenders and adequate consumer protection for the borrowers involved. Furthermore, the EBA is of the view that a number of elements should be developed and become available to support a successful implementation of such framework, such as:

- Adequate public disclosure requirements, e.g., to increase transparency and mitigate the risk of green washing;
- Specialisation of responsibilities and powers for designated authorities that would be responsible for validating/certifying the green features of the mortgages, before and during the lifetime of the contract;

- The adequate competencies and capabilities of the relevant supervisors in the oversight of institutions offering green mortgage loans.

95. The EBA considers that by making consumers aware of the possibility to choose a green mortgage offered at preferential terms and conditions may encourage the uptake of these loans. However, deciding on a specific regulatory intervention at this stage would be premature. More work should be carried out, including evidence collection, to provide an informed advice on potential further actions on green mortgage loans.

96. With regards to the first part of question under Item 6, the EBA will carry out further work under the Commission's Strategy for Financing the Transition to a Sustainable Finance²¹ which asks the EBA for an opinion on the definition and possible supporting tools for green retail loans and green mortgages.

97. In response to the second part of the question under Item 6, the EBA proposes to the EC, as already foreseen in the EBA Guidelines on loan origination and monitoring, that institutions should take ESG factors into account when conducting a credit assessment, and in particular take into consideration ESG factors affecting the value of collateral, for example the energy efficiency of buildings.

98. The EBA Guidelines on loan origination and monitoring also specify that the risk of climate change for the financial performance of borrowers can materialise as physical risks, such as risks to the borrower that arise from the physical effects of climate change, as well as transition risks. With regards to the possibility to take into consideration climate-change related risks to properties used to secure loans in the banks assessment when offering mortgage loans, the EBA suggest the EC to consider the leveraging on the provisions of the EBA Guidelines on loan origination and monitoring, in particular Section 4.3.5. In this part, EBA is proposing that ESG factors and associated risks are included in the institutions' credit risk appetite and risk management policies, credit risk policies and procedures.

Item 7 - Other issues

99. The EBA has issued a number of legal instruments addressing issues and risks arising across all retail banking products in the EU, not only related to mortgage credit, since the transposition date of the MCD. Based on this, the EC requested the EBA advice on the following matter:

- *Whether there are 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*

²¹ [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Strategy for Financing the Transition to a Sustainable Economy COM/2021/390 final](#)

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), and, if so, how.

100. In response to this question, the EBA strongly proposes to ensure that, should a revision of the MCD be carried out, further consistency and harmonisation among the EU legislation dealing with consumer credits needs to be achieved. In particular, a number of areas of the MCD may possibly be amended as better outlined in the following paragraphs.
101. In relation to amendment of definitions, the EBA is of the view that consistency between MCD and the provisions of Directive (EU) 2021/2167 on credit servicers and credit purchasers,²² in the definition of 'creditor' and 'credit purchaser' is needed. The definition of 'creditor' under MCD should be consistent with the definitions of 'creditor' and 'credit purchaser' contained in the Directive (EU) 2021/2167, so that the new MCD should expressly exclude from its scope credit purchasers of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union (under the scope of Directive (EU) 2021/2167), and not require them to apply for an authorization. EBA is therefore suggesting to add a specific provision in the revised Article 3(2) of the MCD to clarify that credit purchasers as defined in Directive (EU) 2021/2167 do not fall within the scope of the MCD.
102. In relation to Article 25 of the MCD on early repayment, the EBA is of the view that the wording should be amended in order to emphasize that the provision should facilitate, or at least not impair, credit agreements with long term fixed borrowing rates by aiming for a fair balancing of interests between consumers and financial institutions. By contrast, the EBA acknowledges that the wording of this provision should remain flexible to cover national specific financial products. In addition and related to early repayment, the EBA proposes to the EC to clarify the application of a proportionate reduction in the total cost of the credit to the consumer, especially when products are sold as bundle or ancillary service to the mortgage credit. EBA suggests however to carefully consider any amendment to Article 25 of the MCD and ensure consistency with any proposed changes in this respect under the CCD. The EBA suggests to the EC to take into consideration the possibility for developing guidance for structuring fees based on adequate and measurable elements for all products under EBA remit so to ensure consistency across the EU.
103. Finally, the EBA has arrived at the view that the revised MCD should clarify whether credit intermediaries are capable to hold funds from borrowers in order to transfer them to the creditors and, if so, whether this activity would be excluded or not from PSD2. In this respect, Article 6.2(c) of Directive (EU) 2021/2167 expressly clarifies that payments made by the borrower to the servicer in order to, partially or totally, reimburse the amounts due should be

²² [Directive \(EU\) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU \(OJ L 438, 8.12.2021, p. 1–37\).](#)

treated as having been paid to the creditor (the credit purchaser). The EBA sees merit in clarifying in the MCD whether credit intermediaries may hold borrowers' funds.



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