EC Public Consultation on the Review of Mortgage Credit Directive

European Mortgage Federation-European Covered Bond Council (EMF-ECBC) Response

24 February 2022

The MCD is a largely well-functioning, well-balanced Directive which has established a common EU legal framework for mortgages, further increasing consumer protection and contributing to financial stability. However, some limited legislative changes to provisions which are overly complex in an increasingly digital world (i.e. those on advertising and pre-contractual information) or have resulted in market detriment (i.e. foreign currency loans) could be appropriate.

1. New market actors

Based on the principle of "same business, same rules," all professionals providing credit to consumers should be included within the scope of the Directive.

Concerning new products, reverse mortgages are designed to suit a specific audience without a creditworthiness assessment or borrower insurance. In order for lending institutions to continue to offer this type of financing, they should not be included in the scope of the MCD.

2. Credit Worthiness Assessment & automated processing

The proposal – in case of automated processing - appears to be stricter than the GDPR provisions that already regulates automated individual decision making, including profiling. There is no need to duplicate this right in the MCD, creating the risk of different interpretations and double supervision. The GDPR should be the reference point.

3. Overly detailed & complex information on mortgages

There is a concern that the amount of information provided in the ESIS and its prescriptive format have resulted in complex information and information overload. However, mindful of the challenges in striking the right balance in information provision and of the heavy industry investments, any intervention should deliver the most added value and be determined by a cost-benefit analysis. The potential for a 'one-pager' is inspired by the recent introduction of a similar document in Denmark. However, the latter is the result of several years of national discussion and time is needed to assess its effectiveness. We believe that the emphasis should be on simplifying the information requirements and improving the way it is provided in an increasingly digital world.

4. Green Mortgages

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On green mortgages, the following considerations should be borne in mind:

- The EU-funded Energy Efficient Mortgages Initiative (EEMI) provides a market-led definition of an EEM and has launched the EEM Label to identify and disclose information on EEM in banks' portfolios, delivering a quality and transparency benchmark for consumers, lenders, investors and regulatory authorities. We strongly believe that the EEMI and EEM Label already deliver the benefits the EC is seeking to achieve in this area through the MCD.
- The MCD is a principle-based directive: including specific product details or requiring particular information to be collected for CWA purposes for example would add a level of prescription to the MCD currently not present, potentially creating distortion.

As such, appropriate references in the MCD's recitals could be a proportionate way of respecting its principle-based nature, while promoting the supply and uptake of EEM.

5. Cross-border lending & foreign currency loans

The MCD has not created a single, cross-border market for mortgages due to legal or infrastructural differences between Member States, such as differences in product ranges across Member States and consumer preference to shop and contract locally. Ironically, the provisions on foreign currency loans have limited cross-border lending. Some lenders have stopped offering such loans due to the definition of such loans in the MCD and the associated requirements. Limiting the scope of the definition would allow more consumers to conclude a mortgage loan in cases where there is no or limited exchange rate risk.

6. Potential protective measures

Extraordinary events such as the COVID-19 Pandemic can be better dealt with at national level. Member States can more easily and quickly respond to specific national challenges as they arise.

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