

EC Public Consultation on the Review of Mortgage Credit Directive

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

24 February 2022

1. General questions

Question 1. To which extent do you agree that the MCD has been effective in achieving its 3 objectives i.e.:

	1 (fully disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know - No opinion - Not applicable
Increase consumer protection	☐	☐	☐	☐	☒	☐
Contribute to an efficient and competitive single market for mortgages	☐	☐	☒	☐	☐	☐
Promote financial stability	☐	☐	☐	☒	☐	☐

Please explain your answer to question 1 and provide suggestions on what can be improved to increase its effectiveness:

The MCD is, to the largest extent, a well-functioning, well-balanced piece of legislation which has established a comprehensive, common legal framework for mortgage lending in each Member State, effectively increasing consumer protection and contributing to the stability of the financial system. In fact, this assessment coincides with the findings in the impact study “Evaluation of the Mortgage Credit Directive (Directive 2014/17/EU)– Final Report” of the European Commission, published on February 2021.

We believe that the provision of pre-contractual information and the European Standardised Information Sheet (ESIS) has contributed to increase the level of consumer protection by fostering more awareness of costs and of the real obligations that consumers face when taking out a loan and make an informed decision. The ESIS has furthermore improved consumers’ ability to compare loans available on the market.

However, it is worth pointing out here that the amount of information provided in the ESIS and the prescriptive way in which to present and explain this has resulted in information overload and a document that does not necessarily work as well as it could. However, given that the balance to be struck in information provision is an extremely difficult one and mindful of the heavy - and in some cases very recent - investment of the Industry in information provision, any intervention with regard to the ESIS should be focussed on bringing the most added value, which should be determined by conducting a careful cost-benefit analysis. The potential for a one-pager in addition to the ESIS is a proposal apparently inspired by the recent introduction of a similar document in Denmark. It should be noted that the Danish one pager is the result of several years of national consultation and discussion and much more time is needed to assess its effectiveness and added value. It is also worth highlighting here that one challenge experienced by Danish stakeholders was in selecting the right attributes for the document, as Danish mortgage loans are distinct from “normal” bank loans due to the match funding with covered bonds. Developing a document, that is relevant for consumers throughout the European Union, could prove to be an even bigger and more difficult task. With these considerations in mind, we believe that the emphasis should primarily be placed on improving the way in which information is provided to take account of the digital era we are now living in.

We also believe that the provisions on creditworthiness assessment have helped to avoid the potential phenomenon of over-indebtedness of consumers, improving, at the same time, financial and market stability.

While mortgage markets are largely efficient, competitive and serve consumers well, it appears widely accepted that the MCD has not created a single, cross-border market for mortgages. However, the reasons for this are typically related to legal or infrastructural differences between Member States external to the mortgage industry itself, differences in product ranges across Member States often driven by structural characteristics of mortgage markets and the preference of many consumers to shop around and contract locally, in their own language, regardless of the opportunities available in other Member States.

Finally, we would like to underline that the MCD is still a ‘young’ Directive with EU-wide implementation having been completed only as recently as 2019. We would therefore argue that it is too early to embark upon an wide-spread, in-depth revision of a piece of legislation which was the subject of careful discussion and subsequent calibration, and for which there is, to the largest extent, no empirical evidence of shortcomings. Instead, the Review should focus on areas where recent, significant market developments mean targeted revisions to the Directive could bring genuine added value to consumers and industry alike, for example, in relation to the digital agenda and sustainability, or where market detriment has been identified, for example, in relation to loans in a foreign currency.

Question 2. To which extent do you agree that:

a) The EU-intervention (MCD) was more effective in achieving those objectives than leaving it to Member States acting at national or regional level



- ☐ 1 - Fully disagree
- ☐ 2 - Rather disagree
- ☒ 3 - Neutral
- ☐ 4 - Rather agree
- ☐ 5 - Fully agree
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 2 a):

5000 character(s) maximum

To a large extent, the MCD reinforced already existing national legislation on mortgages, particularly in relation to consumer protection.

As indicated above, it appears widely accepted that the MCD has not fulfilled its objective of creating a single, cross-border market for mortgages. However, the reasons for this are typically related to legal or infrastructural differences between Member States external to the mortgage industry itself, differences in product ranges across Member States often driven by structural characteristics of mortgage markets and the preference of many consumers to shop around and contract locally, in their own language, regardless of the opportunities available in other Member States.

b) The overall benefits (such as increased consumer protection, level playing field) of introducing the EU MCD have outweighed the overall costs linked to its implementation

- ☐ 1 - Fully disagree
- ☒ 2 - Rather disagree
- ☐ 3 - Neutral
- ☐ 4 - Rather agree
- ☐ 5 - Fully agree
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 2 b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is fair to note that even in cases where the MCD provisions have proven to work well or go in the right direction, the measures adopted by lenders have been costly, both on a one-off and recurring basis, compared to the previous measures.

Most significant costs relate to:

- The provision of information via the ESIS: as a result of the rigid, standardised format of the ESIS, lenders have been obliged to adopt internal processes to cover legal and operational risks, significantly increasing costs.

- Right of withdrawal/period of reflection: The establishment of specific IT systems to manage these rights gave rise to costs. In fact, the right of withdrawal, in spite of its low use recorded in the market, has significant costs for lenders due to the IT systems required to manage the process.

- Early repayment: The right to early repayment has a significant cost for lenders as a result of the fact that: (i) the limit on compensation does not entirely compensate the actual cost for lenders; (ii) there is a potential increase in the cost of funding on the market.

- Training costs to ensure staff have an adequate level of knowledge and competence in light of the detailed framework of the MCD

c) The MCD continues to be relevant, i.e. addresses current needs and problems in society and in the mortgage credit market

- ☐ 1 - Fully disagree
- ☐ 2 - Rather disagree
- ☐ 3 - Neutral
- ☒ 4 - Rather agree
- ☐ 5 - Fully agree
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 2 c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that, as a result of its high level, principles-based approach, the MCD remains largely fit for purpose, and responds to societal needs and challenges.

As indicated above, any revisions should focus on areas where recent, significant market developments mean targeted revisions to the Directive could bring genuine added value to consumers and industry alike, for example, in relation to the digital agenda and sustainability, or where market detriment has been identified, for example, in relation to loans in a foreign currency.

d) The MCD is coherent with other EU policies and interventions

- ☐ 1 - Fully disagree
- ☐ 2 - Rather disagree
- ☐ 3 - Neutral
- ☐ 4 - Rather agree
- ☐ 5 - Fully agree
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 2 d):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Some relevant pieces of legislation, for example the Consumer Credit Directive and the Directive on Distance Marketing of Financial Services, are still under review and therefore it would be inappropriate to comment on coherence of the MCD with them at this stage.

Concerning the relationship between the CCD and the MCD, it is worth highlighting that even though these two pieces of legislation do share similarities, consumer credit and mortgage credit are different kind of loans (e.g. in terms of amount, duration, purpose etc.) which deserves two different rules.

Question 3. Do you consider that the MCD could be simplified to reduce compliance costs without undermining its effectiveness?

- ☒ **Yes**
- ☐ No
- ☐ Don't know / no opinion / not applicable

Question 3.1 If you do consider that the MCD could be simplified, please specify in which areas and explain your answer:

5000 character(s) maximum

In general terms, as a result of its high-level and principles-based nature, we believe the Directive still strikes an appropriate balance between respecting national legislation and best practices, establishing a minimum European benchmark and potentially leaving room for innovation.

However, we believe that there is potential room for improvement by simplifying the provision and conclusion of mortgage loans through digital means.

In particular, we refer to the information to be included in advertising which could be revised in order to take account of new channels and ways of communication. The current rules on "Standard information to be included in advertising" no longer seem to be in line with the significant digital advances of the last few years and do not take into account the increasing use of "digital devices". An initial possible remedy could be to implement different rules on the information to be included in advertisements, depending on the "medium" used (e.g. TV, radio, paper, website pop-ups/banners, social networks).

Information requirements also need to be better aligned to the digital environment, with less rigidity regarding presentation and the proof of their delivery in order to meet consumer expectations in respect of timing, convenience and expedience. This applies to both standardised and to personalised information, and therefore to the ESIS.

Consumer protection in the mortgage lending process is furthermore about striking the right balance between providing the necessary relevant information and avoiding information overload and duplication.

Indeed, there is also an overlap in information requirements between the ESIS, information to be included in advertising, general information and information requirements concerning credit intermediaries and appointed representatives which contributes to the overload.

Article 13 provides that information can be given “on paper or on another durable medium or in electronic form”. In article 15, the information must be given “on paper or on another durable medium” even though some of the requirements are the same in the two articles. e.g. “the identity and geographical address”.

While it is reasonable that some information must be given on a durable medium, we find that certain types of information can be given through a link to the credit provider’s website, while more personalised information in the form of the ESIS could be permitted via other digital transmission mechanisms. This would allow for a more effective organisation of the lending process in terms of information to the consumer.

We therefore suggest that the information requirements are reviewed in order to avoid overlapping information and furthermore that the increased use of websites (“electronic form”) and other digital means of transmission are permitted for standardised and personalised information.

Please explain your answer to question 3:

5000 character(s) maximum

See answer to question 3.1

Question 4. Are you aware of possible discrimination (e.g. on gender, nationality, medical history) for consumers taking mortgage loan?

- ☐ Yes
- ☒ No
- ☐ Don’t know / no opinion / not applicable

Please explain your answer to question 4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Discrimination is prohibited by EU Law and Member States comply with this fundamental principle.

It should furthermore be recalled that banks grant loans according to the result of creditworthiness assessment which is based only on financial data (e.g level of income, historical arrears, LTV etc.).

However, we would like to underline that a positive creditworthiness assessment should not automatically give rise to a ‘right to credit’. In order to continue to favour responsible lending practices, the lender must remain in control of the granting decision. The granting policy must remain the responsibility of the lender.

Question 5. Are you aware of practices by credit providers exploiting consumer’s situation and patterns of behaviour (e.g. pre-ticket boxes, cross-selling of an additional product, sale of tied insurance policies)?

- ☐ Yes
- ☒ No
- ☐

Don't know / no opinion / not applicable

Please explain your answer to question 5:

5000 character(s) maximum

Cross-selling should not necessarily be seen as "practices exploiting consumer's situation". The offering of additional products via bundling can provide added value for consumers (all products in the same place, one single contract, interest rate reductions, ...)

Question 6. To what extent do you agree that enforcement of the MCD provisions by national competent authorities (NCAs) is satisfactory?

- ☐ 1 - Fully disagree
- ☐ 2 - Rather disagree
- ☐ 3 - Neutral
- ☐ 4 - Rather agree
- ☒ 5 - Fully agree
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6:

5000 character(s) maximum

It is our view that the MCD is satisfactorily enforced in all 27 Member States.

Member States should not introduce their own interpretations of the MCD provisions or "gold-plate", as this can negatively impact the level playing field.

Question 7. Are you aware of shortcomings in the enforcement action of MCD provisions by NCAs?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Question 7.1 If you are aware of shortcomings in the enforcement action of MCD provisions by NCAs, do you consider that the shortcomings identified are due to the MCD legal framework or to its application?

5000 character(s) maximum

Please explain your answer to question 7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8. Do you consider that Article 38 of the MCD regarding sanctions and the empowerment of NCAs to apply them is satisfactory?

- ☒ **Yes**
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 8 (including whether MCD provisions should be improved):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 9. To what extent do you agree that the out-of-court complaint and redress procedures set up on the basis of Article 39 MCD are effective?

- ☐ 1 - Fully disagree
- ☐ 2 - Rather disagree
- ☐ 3 - Neutral
- ☐ 4 - Rather agree
- ☒ **5 - Fully agree**
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 9 (including whether participation for creditors/intermediaries in such procedures is mandatory and the decisions of the relevant bodies are binding):

We generally agree that they have been effective, as demonstrated by the following examples:

CZECHIA: out-of-court dispute resolution entities (Financial Arbitrator) have rather pro-consumer approach, and, from the consumer point of view, the objectives of the MCD are met. From the perspective of the banks, certain decisions are considered to be bureaucratic and formalistic

ITALY: The Italian legal framework has already set up i) from a substantial point of view, a system of contractual clauses aimed at protecting consumers and ii) from a procedural point of view, an ad-hoc mechanism e.g. the Arbitro Bancario Finanziario (ABF) for the extra-judicial resolution of disputes between non-professional investors/non-qualified counterparties and financial intermediaries, which became operational in 2009. Pursuant to the rules governing the Financial and Banking Ombudsman, all Italian and foreign intermediaries who are entered in the registers and lists kept by the Bank of Italy or subject to the regulations of this sector must adhere to the system and may receive complaints. The ABF carries out its tasks and decides disputes as an independent and impartial body, assisted in its work by the Bank of Italy. Its decisions are based only upon the documents provided by the parties (complainant and intermediary); the parties do not need to be assisted by lawyers. The Ombudsman's decisions are not legal judgments and are not legally binding; however, if the intermediary does not comply with a decision, its non-compliance is made public on this website for five years, and highlighted on the home page of the intermediary's website for six months. Before submitting a dispute to the Ombudsman, the customer must lodge a dispute with the financial intermediary. If the client, the intermediary, or both are not satisfied with the ABF's decision they may submit the dispute to the civil courts.

FRANCE: Mediation has enabled situations to be resolved quickly without going to court. This is a procedure that has its place in the "recovery" system

BELGIUM: The "Ombudsman" is an out of court mechanisms that allows consumers to introduce a complaint against a creditor. The advice given by the Ombudsman is not binding but is mostly followed in practice.

Question 10. Do you consider that Article 6 of the MCD on financial education has contributed to increasing the financial education of consumers?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 10:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Art. 6 of MCD has contributed to improving the financial education of consumers, representing an essential tool for a correct and aware debt management.

2. Specific questions

Please click on the "Next" button to answer the specific questions.

2.1 Market structure / scope

Question 11. To which extent do you agree with the following statements:

	1 (fully disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know - No opinion - Not applicable
Consumers have enough mortgage credit providers to choose from in all Member States	☐	☐	☐	☐	☒	☐
There is sufficient competition among mortgage credit providers so that consumers are able to get competitive offers	☐	☐	☐	☐	☒	☐

Please justify your answers to question 11:

5000 character(s) maximum

EU mortgage markets are very competitive, as evidenced by the fact that banks' margins are driven down to very low levels across all markets transforming mortgage lending to a low margin business where banks can only make profits through highly standardised 'mass business' and correlated economies of scale in order to reduce overheads and credit risk cost per single loan. See below for more details:

CZECHIA: The Czech mortgage credit market is very competitive and apart from established banking providers, there are many smaller bank mortgage providers.

FRANCE: The competitiveness of the French mortgage credit market is witnessed by the persistence of very low rates: in the 4th quarter of 2021, up to 0.70% to 1.25% depending on the Institutions, for a free 20-year loan (source ANIL - Rate indicator), then even as 10-year OATs have turned positive again since the end of summer 2021. Consequently, recourse to offers from other member countries does not really arise.

ITALY: The Italian mortgage market is quite competitive with more than 100 Banking Groups working in issuing mortgage loans. In Italy the volume of outstanding has risen from € 365,8 billion on 30 September 2016 (year when the MCD was transposed into national law) to € 405,3 billion on 30 September 2021, a 10,8% increase over 5 years. Nonetheless, the MCD was not able to encourage the cross border offer, the growth of which represent is a significant element for banks.

DENMARK: In Denmark, mortgage loans are funded by covered bonds and match funding ensure market driven and low prices for the consumers. The Danish mortgage rates are among the lowest in the EU, cf. European Quarter Reviews Tables 5a and 5b <https://hypo.org/emf/publications/quarterly-reviews/>. Furthermore, the match funding ensures attractive prepayment terms for borrowers, which a record number of borrowers have taken advantage of in previous years by converting to loans with lower interest rates.

GERMANY: The MCD has had a positive impact on the functioning of the single market by levelling the playing field (e.g., setting common requirements) and by enhancing competition on national markets for mortgages. The mortgage credit market in Germany has remained extremely competitive between domestic players.

Please attach below any relevant study(ies)/evidence supporting your answers to question 11. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Question 12. Are you aware of barriers to the offer of and/or demand for cross-border mortgage loans that could be addressed in the MCD review?

- ☒ **Yes**
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 12:

5000 character(s) maximum

When it comes to cross-border activities, the mortgage sector is a particular case. This is due to the essential

character of the mortgage product, which is intrinsically linked to the location of the property and will therefore, to a certain extent, always be subject to the national framework.

For a credit supplier, a successful business case in one country for a particularly designed product cannot necessarily be transformed to another market within a different legal, cultural and commercial context. Furthermore and as outlined earlier, there are legal or infrastructural differences between Member States external to the mortgage industry itself which means suppliers will incur costs linked to these differences which will influence pricing and the ability to offer a product in an efficient way for the entity and for consumers. Furthermore, economies of scale are difficult to achieve for cross-border activities, which imply operating in a market without establishing a presence there.

In more detail, standardised mortgages cannot be marketed cross-border in a competitive way because of the need for adaptation to local legal requirements regarding both the mortgage product and the real estate collateral. Instead of standardised business with related economies of scale, a tailor-made processing is required, particularly as regards mandatory consumer protection rules applicable to the mortgage contract, the valuation of the property, the creation and registration of the mortgage security and possible subsequent enforcement measures if relevant and tax systems.

From lenders' perspective, another consideration is the requirement under the Rome I Regulation (Article 6), according to which companies that target another Member State as a market for their operations (e.g. by advertising or using intermediaries in the country) have to comply with the consumer protection requirements of this country.

Lenders are supposed to operate in foreign markets where awareness of market, legal and credit risks might be less developed, triggering the need for additional operating expenses and for a general need of using third party servicers at additional cost. Overall, gross margins for lenders and interest rates for borrowers must be considerably higher for cross-border mortgages than for domestic products to cover the cost of product complexities, processing and risks. As a consequence, foreign mortgage lenders lose their competitiveness compared to domestic competitors acting in their local markets and providing standardised mortgages at low margins. In such a constrained economic context, there is no business case for cross-border lending in the sense targeted by the European Commission.

Further obstacles to cross-border lending and borrowing are the different debt-to-income ratios imposed by national competent authorities across the EU reflecting different market dynamics, as well as the differences in product ranges across Member States often driven by different structural characteristics of mortgage markets.

Additionally, while today's consumers are arguably more savvy and open than the consumers of 15 years ago when the discussions on the integration of Europe's mortgage markets (precursor to MCD) first began, consideration should nevertheless be given to the fact that a mortgage is likely to be one of the largest, if not the largest, financial commitments that a consumer will contract in their lives. As such, many consumers will prefer to shop around and contract locally, in their own language, regardless of the opportunities available in other Member States.

Finally, it is worth recalling here that the definition of a foreign currency loan in the MCD has itself unintentionally discouraged cross-border lending: in fact, some lenders have stopped offering loans in a foreign currency as a result of the requirements of the MCD, namely to bear the exchange rate risk; in addition, viable consumers have been prevented from accessing credit, for example, consumers residing in non-euro Member States, receiving their income in EUR and taking a loan in EUR. This is one area where the Review could indeed seek to address an unintended detriment to the benefit of market participants.

Question 13. Depending on their business models, crowdfunding and peer-to-peer lending platforms may only be partly covered by the MCD rules.

Are you aware of any existing or likely challenges for consumer protection or financial stability arising from mortgage loans granted through crowdfunding and peer-to-peer lending platforms (including mortgages obtained by individuals from other individuals)?

	Yes	No	Don't know - No opinion - Not applicable
For consumer protection	☐	☐	X
For financial stability	☐	☐	X

Please explain your answers to question 13:

5000 character(s) maximum

With regard to peer-to-peer lending and crowdfunding, these practices remain limited at the current time but could increase in the future, and as such should be regulated under the MCD (and CCD). In particular, in order to promote both maximum protection for the consumer and the right balance of competitiveness among credit providers, as well as fostering the integration of mortgage markets in the EU, it would seem appropriate to ensure that all professional consumer credit providers, even peer-to-peer lending, crowdfunding or other digital platforms, including e-commerce platforms, are included within the scope of the MCD on the basis of the principle of "same business, same rules" principle.

A number of new types of credit providers, with new innovative funding models, have entered the market in recent years, and may not be as strictly regulated as existing players. Local and EU authorities should consider whether some of these need to be scrutinized thoroughly from a consumer protection and financial stability perspective.

Question 14. Peer-to-peer and crowdfunding platforms are already active in EU markets to provide consumer credit to natural persons, and business loans. The [Regulation for European crowdfunding service providers for business \(ECSPR\)](#) allows platforms to apply for an EU passport based on a single set of rules. However, the Regulation does not apply if the project owner is a consumer.

To which extent do you agree that encouraging peer-to-peer service providers (e.g. clearer rules and applicability of the MCD to providers / aligned rules across the EU on mortgage issuance / cross-border provision

of services) to intermediate between consumers in their capacity as borrowers and non-professional investors/consumers/businesses for issuing mortgage loans has a potential to:

	1 (fully disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know - No opinion - Not applicable
Increase the choice of consumers	☐	☐	X	☐	☐	☐
Increase competition between mortgage credit providers	☐	☐	X	☐	☐	☐
Contribute to the integration of mortgage markets in the EU	☐	☐	X	☐	☐	☐

Please justify your answers to question 14:

5000 character(s) maximum

See answer to question 13.

Question 15. Some credit agreements are specifically excluded from the scope of the MCD (e.g. equity release credit agreements). The [MCD report on the review](#) highlighted that the current level of regulation of equity release schemes may be insufficient and may pose a risk in terms of consumer protection.

Are you aware of problems for consumer protection stemming from equity release schemes or other types of credit agreement that are specifically

excluded from the scope of the MCD?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 15:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Reverse mortgages are excluded from the scope of the MCD because their objective is to finance individuals who have real estate assets but not sufficient repayment capacity or current resources to meet mortgage payments. These are loans designed to suit a specific audience without a creditworthiness assessment and without borrower insurance. It is through the principle of the reverse mortgage that work to improve the energy performance of housing or adaptation work for home support for dependent people can be financed.

For these reasons and to allow this type of financing to continue, the MCD is unsuitable for reverse mortgages: they should not be included in the scope.

Question 16. In other cases, Member States have an option not to apply the MCD or certain of its provisions (e.g. to certain secured credit agreements; to “buy-to-let” credit agreements for immovable properties bought as an investment and not as a place to live).

Are you aware of specific problems stemming from areas where the MCD (or certain of its provisions) may not apply?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 16:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In some markets, buy-to-let loans to individuals are in the scope of the Mortgage Law. It would seem advisable that this type of loan be fully within the scope of the MCD.

2.2 Information to consumers / digitalisation

The MCD requires creditors to provide to consumers standard pre-contractual information through an European Standardised Information Sheet (ESIS) on paper or on durable medium. The MCD evaluation report concluded that

consumers are sometimes overloaded with pre-contractual information contained in the ESIS that they may not read or understand.

Question 17. Do you consider that MCD rules on pre-contractual information ensure that the consumer receives appropriate and timely information to compare the credits available on the market, assess their implications and make an informed decision?

- ☒ **Yes**
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 17:

5000 character(s) maximum

We believe that the provision of pre-contractual information and the European Standardised Information Sheet (ESIS) has contributed to increase the level of consumer protection by fostering more awareness of costs and of the real obligations that consumers face when taking out a loan and make an informed decision. The ESIS has furthermore improved consumers' ability to compare loans available on the market.

However, it is worth pointing out here that the amount of information provided in the ESIS and its prescriptive format has resulted in information overload and a document that does not necessarily work as well as it could. Furthermore is also an overlap in information requirements between the ESIS, information to be included in advertising, general information and information requirements concerning credit intermediaries and appointed representatives which contributes to the overload.

Finally, there are certain inconsistencies with regard to the way in which information may be provided. For example, Article 13 provides that information can be given "on paper or on another durable medium or in electronic form". In article 15, the information must be given "on paper or on another durable medium" even though some of the requirements are the same in the two articles. e.g. "the identity and geographical address". While it is reasonable that some information must be given via a durable medium, we find that certain types of information could be given through a link to the credit provider's website, while more personalised information in the form of the ESIS could also be permitted via other digital transmission mechanisms where this is favoured by consumers. The MCD should allow for the "proof of delivery" of the ESIS to be fulfilled by way of a tick box. Overall, this would allow for a more effective organisation of the lending process in terms of information to the consumer.

We therefore suggest that the information requirements are reviewed and substantially simplified in order to avoid overlapping information and furthermore that the increased use of websites ("electronic form") and other digital means of transmission are permitted for standardised and personalised information.

We would however like to recall that the balance to be struck in information provision is an extremely difficult one and mindful of the heavy - and in some cases very recent - investment of the Industry in information provision, any intervention with regard to the ESIS should be focussed on bringing the most added value, which should be determined by conducting a careful cost-benefit analysis.

Question 18. In your view, what would facilitate consumers' understanding and

comparison of the pre-contractual information, including the information received through digital means?

5000 character(s) maximum

As explained above, we believe that generally information requirements need to be better aligned to the digital environment, with less rigidity regarding presentation and the proof of their delivery in order to meet consumer expectations in respect of timing, convenience and expedience. This consideration applies to both standardised and to personalised information, and therefore to the ESIS. We believe it would also be appropriate, taking account of developments in digitalisation and environmental considerations at European level, to allow for the paper version of the ESIS to be replaced with a digital format where this is favoured by consumers.

Substantial reduction and simplification of pre-contractual information to focus on main cost parameters, handling of late payments and post-contractual services would be very important in order to alleviate the information burden on consumers and to allow the document to be easily adapted both for digital evolution and for the environment.

Question 19. To which extent do you agree that, in addition to ESIS, the provision of a summary of simplified information on the key features of the mortgage credit offer could address information overload and help understanding and comparing offers (even on digital devices with small screens)?

- ☒ 1 - Fully disagree
- ☐ 2 - Rather disagree
- ☐ 3 - Neutral
- ☐ 4 - Rather agree
- ☐ 5 - Fully agree
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 19:

5000 character(s) maximum

It is our understanding that the potential for a one-page-summary in addition to the ESIS is a proposal apparently inspired by the recent introduction of a similar document in Denmark.

A key challenge experienced by Danish stakeholders was in selecting the right attributes for the document to be relevant for consumers and tailored to the specific Danish mortgage product. Developing a document with relevant figures throughout the EU could prove an even more difficult task. There is a risk that a standardised MCD summary would not be specific to the mortgage products in different Member States. This would make a summary less relevant for the consumers.

Furthermore, adding an extra layer of information on top of ESIS does not address the problem of information overload, but amplifies it. We believe consumers will increasingly prefer digital tools to compare loans offers. Before



a revised directive enters into force this development will only intensify.

With these considerations in mind and as indicated above, we believe that the emphasis should primarily be placed on improving the way in which information is provided to take account of the digital era we are now living in and to avoid overloading the consumers with even more information.

Question 19.1 Please select which pre-contractual information should be included in the key summary:

Please select as many answers as you like

- ☐ the total amount of credit
- ☐ the duration of the credit agreement
 - ☐ borrowing rate
 - ☐ APRC (Annual percentage rate of charge)
 - ☐ bundled services required to be purchased separately
 - ☐ monthly installment
 - ☐ costs to be incurred by consumers due late payment
 - ☐ total amount to be paid back by consumer for the credit
 - ☐ other

Please specify to what other pre-contractual information you refer in your answer to question 19.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See response to question 19.

Question 20. If credit providers were required to provide a consumer with a summary of simplified information on the key features of the mortgage credit (in addition to the ESIS):

a) How would you rate the expected benefits to consumers?

- ☒ 1 - Negligible
- ☐ 2 - Low
- ☐ 3 - Medium
- ☐ 4 - Large
- ☐ Don't know / no opinion / not applicable

Please explain your answers to question 20 a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.



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If an “additional” document were to be required it could lead to yet more information overload and duplication to the detriment of consumers, as stated above.

b) What would be the total estimated one-off and recurring costs for credit providers (in monetary terms)?

	Costs
One-off costs	
Recurring costs	

Please explain your answers to question 20 b):

5000 character(s) maximum

It is not possible to calculate IT development and training costs until the scope of the upcoming changes is known, and, even where this is known, these costs are difficult to isolate and estimate.

Question 21. The [MCD evaluation study](#) has shown that consumers often do not have sufficient time to select the best offer of mortgage credit available in the market (e.g. because the consumer may only have a period of 7 days for reflection/withdrawal).

In your view, which of the following measures would be adequate to help improve the situation?

Please select as many answers as you like

- ☐ to increase the minimum reflection/withdrawal period from 7 days to 14 days
- ☐ to make a reflection period mandatory (thus excluding the possibility of a withdrawal period)
- ☐ to require that a certain minimum amount of time elapses between the provision of the ESIS/binding offer and the conclusion of the contract
- ☐ other

Please specify to what other measure(s) you refer in your answer to question 21:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 21:

5000 character(s) maximum

We do not believe that a mandatory extension of the reflection period is necessary. In fact, there is no evidence to suggest that this measure would bring actual benefits to consumers, given that often they are subject to strict deadlines to sign real estate contracts in order to buy an immovable property.

As regards the withdrawal right (applicable in most Member States), it only applies after the conclusion of the loan contract and there is no pressure from lenders to sign (it is more from the consumer himself). Hence, there is no need to extend timescales.

Question 22. Are you aware of problems for consumers or creditors linked to mortgage advertising via specific channels (radio, TV, printed media, social media etc.)?



	Yes	No	Don't know - No opinion - Not applicable
Radio	☒	☐	☐
TV	☒	☐	☐
Printed media	☒	☐	☐
Social media	☒	☐	☐
Other	☐	☐	☐

Please specify to what other channel(s) you refer in your answer to question 22:

5000 character(s) maximum

Digital channels (pop-ups, smartphones, internet...)

Please explain your answer(s) to question 22:

5000 character(s) maximum

The current rules on "Standard information to be included in advertising" no longer seem to be in line with the significant digital advances of the last few years and do not take into account the increasing use of "digital devices".

Against this background, current rules, which were devised mainly for traditional media (newspapers, billboards, flyers, etc.), result outdated not only in light of the digital evolution of the last decade, but even for the above-mentioned traditional ads.

In fact, current requirements are designed in a way that banks must include such amount of information – especially those related to the cost of the credit- that can hardly be applied to modern digital formats (pop-up, mobile, etc.).

Moreover, it is necessary to consider that each instrument that can be used for advertising (radio, TV, printed media, social media, etc) has its own specific characteristics (message length, transmission times, etc.) which require diversified approaches.

An initial possible remedy could be to update the Directive with different rules on the information to be included in advertisements, depending on the "medium" used (e.g. TV, radio, paper, website pop-ups/banners, social networks). This approach would allow to make the advertisement requirements more consistent with the media used to display the information on the mortgage product, including new digital instruments available.

It would also be necessary to identify a minimum, contained amount of information on financing to be included in ads, apart from the presence of information on the cost of the credit in the ad, i.e. in the case of advertising via social media, pop-ups/banners, drop down links leading to a web page (landing page) that contains more detailed

examples enabling further investigations on the product.

Question 23. Do you consider that the MCD advertising requirements should be adapted to the specific medium on which the advertising is displayed (e.g. radio, TV, social media etc.)?

	Yes	No	Don't know - No opinion - Not applicable
Radio	☒	☐	☐
TV	☒	☐	☐
Printed media	☒	☐	☐
Social media	☒	☐	☐
Other	☒	☐	☐

Please specify to what other medium(a) you refer in your answer to question 23:

Digital channels (pop-ups, smartphones, internet...)

Please explain your answer(s) to question 23:

5000 character(s) maximum

See answer to question 22

Question 24. The [MCD evaluation study](#) indicates that creditors are increasingly relying on robo-advisors (e.g. automated chats) to provide for instance some basic information to consumers.

Do you consider that the use of robo-advisors poses problems in terms of consumer protection?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 24, indicating possible solutions:

5000 character(s) maximum

We believe that, as a result of its high level, principles-based approach, the MCD remains largely fit for purpose, also in relation to the development of new technologies, such as robo-advice, which can offer benefits to consumers and industry alike. It is furthermore worth highlighting that lenders or credit intermediaries using robo-advice are required to comply with Articles 9, 13, 16 and 22. Caution should be exercised in any efforts to provide further specifications in the MCD in this respect because this technology is evolving quickly and any prescriptive indications in the Directive could be quickly out-dated.

Question 25. To date, very few mortgage credit agreements are concluded fully digitally.

Can you describe the main difficulties/problems you experience in this area?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The level of digitalisation varies greatly from one Member State to another. In some Member States, the whole process from the submission of loan offers, to signature and notary registration is fully digital. In others this is not the case, although it is likely that all mortgage loans have involved at least one digital step in their journey, for example, in relation to on-line simulations, the submission of supporting documents in secure internet spaces, the electronic signature of credit applications or loan offers. Preferences from consumers also vary, as some prefer paper and a high degree of face-to-face dialogue with their mortgage providers, while others prefer the entire process to be conducted digitally. Even young and highly digitalised individuals often want to complement the digital experience with human interaction in the key event that is buying a home. As long as this demand exists from customers, credit institutions will naturally continue to complement digital tools with human interaction. In our view, it is central that the MCD, for its part, continues to allow further digital development and does not hinder it. While it is not possible for legislators to predict and therefore take into account future technical developments, legislators can decide to apply a less prescriptive and detailed approach, when drafting legislation. For example, and as already noted earlier, one may question why a requirement for “paper” should be included in the provisions of the MCD instead of a broader definition. The review process is an opportunity to ensure that the directive will also remain relevant alongside a rapid digital development in the mortgage sector in the coming years.

One further example of how the review process could be an opportunity to ensure that the directive will also remain relevant in the context of rapid digital development in the mortgage sector in the coming years, is with regard to the new digital distribution channels. Currently, the MCD leaves discretion to Member States in this area as to allow them to impose requirements which are contrary to the objectives of the Directive in particular concerning digitalisation. For example, the legislator in Germany requires the personal signature of both the consumer and the creditor for the conclusion of the consumer loan agreement and the printing of all contractual documents. This undermines consumer flexibility in an increasingly digitalised world and gives rise to competitive distortion between Member States and is furthermore inconsistent with the EU's sustainability and environmental goals.

Question 25.1 If available, please also provide practical examples/solutions to such problems that enable the digital conclusion of mortgage credit agreements:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A first step could be to allow banks to deliver precontractual information according to the different devices that can be used to perform the contract as outlined in more detail earlier.

2.3 Tying and bundling

Under the MCD, the bundling practices are allowed but tying practices are prohibited (with few exceptions under Article 12(2)). Also, tying practices may be allowed when the creditor can demonstrate to its competent authority that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the consumers taking due account of the availability and the prices of the relevant products offered on the market (Article 12(3)).

Question 26. Are you aware of existing problems related to tying or bundling practices?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 26:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are not aware of any problems related to tying and bundling. On the contrary, we would like to take this opportunity to recall that the offering of additional products via bundling can provide added value for consumers (all products in the same place, one single contract, interest rate reductions, ...)

Question 27. To what extent do you agree that the exceptions to the prohibition of tying practices are still relevant?

	1 (fully disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know - No opinion - Not applicable
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open or maintain a payment or a savings account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for					X	
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the creditor
in the event
of default;



purchase or keep an investment product or a private pension product, where such product which primarily offers the investor an income in retirement serves also to provide additional security for the creditor in the event of default or to accumulate capital to repay the credit, to service the credit or to pool resources to						X
--	--	--	--	--	--	---



obtain the credit						
conclude a separate credit agreement in conjunction with a shared-equity credit agreement to obtain the credit						X 

Please explain your answers to question 27:

5000 character(s) maximum

Current rules contained in the MCD on this matter are generally well-written.

The possibility to request the opening of a current account is important for the lender to be able to monitor the cash flow of borrowers and therefore assess the credit position, also for supervisory purposes.

2.4 Creditworthiness assessment

Credit providers are increasingly relying on automated decision-making systems where the consumer is subject to a credit decision based solely or partially on automated processing of his/her data. The [recently made artificial intelligence \(AI\)](#) proposal 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. The credit institutions would be subject to requirements inter alia concerning data and data governance, documentation and record keeping, transparency, human oversight, robustness, accuracy and security.

However, the AI proposal does not propose specific rights for consumers. The [General Data Protection Regulation \(GDPR\)](#) provides the right for consumers to obtain human intervention to express his or her point of view and to contest the decision. Yet this only applies in case the decision is based **solely** on automated decision making, not if the decision, involving automated processing, is taken by a human, as is often the case in mortgage credit processes.

Question 28. Do you consider that the consumer should have specific targeted complementary rights and information in the creditworthiness assessment process where it involves the use of automated processing of personal data?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 28:

5000 character(s) maximum

This issue is already governed by the General Data Protection Regulation (GDPR). Therefore, we do not believe there is any need for this matter to be dealt with by the MCD, also taking account of the fact that the provisions on creditworthiness assessment are the result of lengthy discussion and continue to be balanced and well-functioning.

Introducing similar provisions in the MCD would likely cause unnecessary overlaps between the two pieces of EU legislation, creating potential confusion and detrimental both for the banking industry and consumers.

Question 29. Do you consider that the consumer ought to have the following specific rights in the case where the creditworthiness assessment involves the use of automated processing of personal data?

	Yes	No	Don't know - No opinion - Not applicable
To obtain from the creditor clear explanation of the assessment of the creditworthiness (e. g. logic and risks involved in the automated processing of personal data, as well as its significance and effects on the decision)	☐	☒	☐
To obtain human intervention on the part of creditor to review the credit decision	☐	☒	☐
To contest the assessment of the creditworthiness and the decision	☐	☒	☐
No specific protection is needed	☒	☐	☐
Other	☐	☐	☐

Please specify to what other right(s) you refer in your answer to question 29:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer(s) to question 29:

5000 character(s) maximum

The proposal appears to be stricter than the GDPR provisions. As indicated above, the GDPR already regulates automated individual decision making, including profiling as well as the information to be provided where personal data have not been obtained from the data subject, and in particular with regards to automated decisions making including profiling. There is therefore no need to provide for specific protection in the context of the MCD which would duplicate aspects that are already covered by the GDPR framework. Creating additional regulation on the same issue risks creating different interpretations as well as double supervision over the same issues. We would suggest clarifying that, as far as it concerns personal data, the GDPR is the reference point.

Furthermore, these "rights":

a) would undermine creditor discretion in making such assessments, in contradiction with the objective of avoiding situations of over-indebtedness. Linked to this, it is not clear what is practically meant by the consumer's right to



“obtain human intervention...to review the decision...”. Furthermore, if the intention of the European Commission is that credit providers maintain a non-digital (human) flow in order to comply with this right (next to their online flow), it is important to highlight all potential risks (regulatory, fraud, operational, reputational) involved. Furthermore, it is essential to underline that a right for the consumer to obtain a clear explanation of the assessment of the creditworthiness assessment, including of the logic behind it, may be in contradiction with the credit provider’s interest to keep confidential and potentially competitor sensitive information secret. Indeed, mortgage scoring methods are strictly confidential for reasons of business secrecy and in the interests of financial stability. Lenders define their own risk policies and grant loans based on these elements and do not have to justify these in the event of loan refusal. Besides, there is no right to credit. Finally, whether the decision is taken totally or partially by a human being, it is the result of the application of the lender’s risk policy. This risk policy is enshrined in texts specific to the financial sector which aim to ensure financial stability within the EU.

b) would increase potential disputes between bank and customer. Automatic assessment systems, particularly used in consumer credit, have favoured the correct assessment by banks, with a consequent general reduction in levels of insolvency and, at the same time, the growth of the personal loans market.

Additionally, it must always be stressed that it is in the creditor's interest to assess with the utmost care the consumer's ability to fulfil contractual obligations by regularly repaying the credit. In fact, NPL management represents a significant cost item in banks' balance sheets.

Question 30. The MCD requires a creditworthiness assessment to be based only on information on the consumer’s income and expenses and other financial and economic circumstances which is necessary, sufficient and p r o p o r t i o n a t e .

Do you consider that this requirement may not be sufficiently granular to assess the creditworthiness of consumers in all cases, in particular of consumers with “thin credit files” (i.e. consumers for whom not a lot of economic and financial data is available)?

- ☐ Yes
- ☒ No
- ☐ Don’t know / no opinion / not applicable

Please explain your answer to question 30:

5000 character(s) maximum

Alongside the pre-contractual information requirements in the MCD, the rules on creditworthiness assessment are amongst the most important of the Directive. We strongly believe that the provisions strike the right balance in setting a clear and robust benchmark for lenders, whilst at the same time ensuring the assessment is not reduced to a tick-box exercise by over-prescription. In this way, banks have sufficient flexibility to collect additional, relevant information so that certain categories of consumers are not automatically excluded from access to credit e.g. the self-employed, single parent families, first-time buyers. In the case of thin credit files specifically, in our view the MCD allows for the use of other elements to be able to perform a more accurate and therefore increase the possibility for relevant consumers to obtain a mortgage: this new information can be used as variables in the structures of the algorithm, and these variables should be previously and clearly defined. Moreover, the provisions on CWA have helped to avoid the potential phenomenon of over-indebtedness of consumers, improving, at the same time, financial

and market stability.

Furthermore, the EBA Guidelines on loan origination and monitoring specify the lenders internal governance arrangements for granting and monitoring of credit facilities throughout their lifecycle. They introduce requirements for borrowers' creditworthiness assessment and bring together the EBA's prudential and consumer protection objectives. The guidelines ensure that institutions have robust and prudent standards for credit risk taking, management and monitoring, and that newly originated loans are of high credit quality. The Guidelines also aim to ensure that the institutions' practices are aligned with consumer protection rules and AML requirements.

Against this background, we consider the drafting used in the MCD to be sufficiently granular to assess consumer creditworthiness in different cases and we would therefore argue that it is too early to embark upon an in-depth revision of such a key provision which is overall well-functioning and for which there is no empirical evidence of shortcomings.

Question 31. Do you consider that, in clearly defined cases (e.g. thin credit files), it should be possible to take other specific information/factors into account for the creditworthiness assessment?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 31, including the possible cases and possible other specific information/factors that should be allowed to be taken into account for the creditworthiness assessment:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer to question 30.

Question 32. Do you consider it appropriate to set out some key indicators to be used for creditworthiness assessments (e.g. loan-to-value, debt-to-income ratios, loan maturity, length of time during which the interest is fixed)?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 32:

5000 character(s) maximum

Mortgages markets in the EU are at this point in time still too different to work with strict, EU-wide indicators. Fiscal systems, differences in housing markets (availability of rental/private houses), the legal system and the valuation of property make it necessary to match indicators with the local situation. There could be serious



impacts on the citizens and housing markets if key indicators were to be determined at European level and yet the conditions under which they apply (fiscal/legal etc.) differ so significantly.

A further consideration is that each bank has its own model for assessing creditworthiness. Current data show that these models have managed to avoid over-indebtedness without compromising access to and the growth of the mortgage market. Using specific mandatory key indicators might also compromise the good results achieved so far.

Question 33. The MCD requires Member States to provide non-discriminatory access for all creditors from all Member States to credit databases for assessing the creditworthiness of consumers.

Are you aware of any discrimination in accessing public and private databases/registers to assess the creditworthiness including for the cross-border provision of mortgages?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 33:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Access to credit databases is possible in all EU countries with no evidence of discrimination. However, the existence of positive and/or negative registers for example in Member States means that there are differences in the registration methods of credits and possible arrears across Member States. This often makes it impossible to interpret registrations correctly.

Question 34. The MCD evaluation study showed that creditors could access databases in other countries as long as they respect the principle of reciprocity.

In your view, does this affect the provision of cross border services?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 34:

5000 character(s) maximum

We believe that this is one element among many others which affects the provision of cross border services, as indicated earlier.

Question 35. Is there scope for improving public and private credit

registers/databases, in terms of their capacity to provide relevant information for creditworthiness assessments while protecting personal data?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 35:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The choice between positive and/or negative databases is inherently a very national one and one that is deeply enshrined in national legal systems.

In France, for example, the Banque de France database is "negative". It only identifies payment defaults. The French Constitutional Council ruled that the establishment of a positive database unconstitutional on the grounds that, at the time, there was a disproportionate relationship between the number of over-indebtedness files and the number of credit holders. Today with a 50% decrease in the number of over-indebtedness cases, it is not anticipated that the Constitutional Council will reverse its position.

In Italy, there are public and private databases/registers which work efficiently. They collect both positive and negative information and all lenders can access to them in a reciprocity framework. There are specific provisions regulating data protection aspects in a comprehensive way.

2.5 Early repayment

The MCD has granted consumers the right to early repayment. This right makes it easier for consumers to switch to another provider, which is important to foster competition. The MCD evaluation report has, however, indicated that only a minority of consumers has exercised the right of early repayment since the MCD entered into force. This seems to be in particular due to a lack of consumer awareness, their inability to assess how much they could save, the possible conditions attached to early repayment and the possible amount of compensation to be paid.

Question 36. Which are in your view the main obstacles for the consumers to exercise the right of early repayment?

	1 (not important)	2 (slightly important)	3 (neutral)	4 (rather important)	5 (very important)	Don't know - No opinion - Not applicable
lack of consumer awareness	X 					
inability to assess how much they could save	X 					
unclear conditions attached to early repayment	X 					
too high amount of compensation to be paid	X 					
other						

Please specify to what other obstacle(s) you refer in your answer to question 36:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answers to question 36:

5000 character(s) maximum

The EMF-ECBC endorses the importance of healthy competition in the mortgage market for consumers. We believe the provisions on early repayment in the MCD have been beneficial for consumers in helping them to achieve savings over the duration of their loans and in improving affordability. The reasonable cost of early repayment resulting from Article 25 of the MCD has furthermore promoted competition.

In our view, there are no obstacles to early repayment for customers. Information requirements on the consequences of early repayment already exist under Art. 13 and Art. 16 of the MCD. In addition, the consumer is informed of his or her options in the ESIS before the contract is concluded. The customer also has the right to request information from the bank at any time, free of charge, about the amount of the current compensation, in order to assess whether early repayment would result in savings. Finally, the customer will also be informed about this right in the contract.

An important consideration however is that in some Member States, it is not possible for lenders to claim compensation even in case of early repayment during the fixed interest rate period. This can result in a mutualisation of the cost of early repayment across all consumers, meaning that the cost is not borne only by those who choose to exercise the right. In order to be able to offer fixed interest rate periods (especially long ones), it is crucial for lenders to be able to charge consumers compensation for loss of interest in the case of early repayment/refinancing.

Question 37. Do you consider that further measures should be taken to further facilitate the early repayment of mortgage credit?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Question 37.1 If you do consider that further measures should be taken to further facilitate the early repayment of mortgage credit, please specify which ones and explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 37:

5000 character(s) maximum

The early repayment provisions in the MCD are the result of careful discussion and subsequent calibration and there is currently no empirical evidence of shortcomings from a consumer perspective. On the contrary, we believe they have delivered benefits for consumers in terms of savings, affordability and competition.

Question 38. The credit providers may be entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment but shall not impose a sanction on the consumer. The compensation shall not exceed the financial loss of the creditor.

Do you consider that the MCD leaves too much discretion for the calculation of compensation to the possible detriment of consumers?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Question 38.1 If you do consider that the MCD leaves too much discretion for the calculation of compensation to the possible detriment of consumers, please specify which measures should be taken:

Please select as many answers as you like

- ☐ a cap on the compensation
- ☐ guidance on the calculation of "fair and objective compensation"
- ☐ other

Please specify to what other measure(s) you refer in your answer to question 38.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 38:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Where there is a compensation fee, we do not consider that the discretion in the MCD regarding calculation of the compensation presents any detriment to consumers. In our experience, in many cases the limit on compensation does not entirely compensate the actual cost for lenders, indicating that there is no detriment for those consumers who have exercised the right to repay early.

However, and as highlighted above, in some markets lenders are not actually permitted to seek compensation in the event of early repayment. In Czechia and Italy, for example, lenders face higher funding costs – in comparison with other European markets – in order to cover the additional specific risk of an early repayment. This translates into a concrete risk of higher “pricing” policies with regard to fixed interest rates marketed to all borrowers who bear a cost, to their detriment, which could actually be limited only to those who exercise the right of early repayment.

While we firmly believe that all other aspects of the early repayment provisions remain fit for purpose, we consider that the MS discretion to determine whether or not lenders may claim compensation in the event of early repayment is the single element of the provisions where a revision would be warranted. Concretely, we believe that in the event of early repayment, there should be a right for lenders to claim compensation. In other words, the Member State discretion in this area should be removed. As indicated above, in order to be able to offer fixed interest rate periods (especially long ones), it is crucial to be able to charge the client compensation for loss of interest in the case of early repayment/refinancing. To recall, fixed interest rates offer long-term stability and predictability for borrowers, which translates into reduced rates of default.

It is our view that the level and calculation of the compensation fee should be determined at national level, in accordance with the principle of subsidiarity, adapting legislation to the specific economic realities and mortgage systems without the imposition of legally enforced caps.

Question 39. The MCD report on the review suggested that there is scope to increase the level of mortgage switching by consumers, which could potentially unlock substantial benefits for consumers while increasing competition and innovation in the market.

Do you have any further suggestions to foster competition in the market and further facilitate the switching of providers?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 39:

5000 character(s) maximum

Firstly, measuring the extent of product switching in a market, benchmarking this against what would be deemed to be an optimal level and even examining the potential barriers to switching will not adequately explain the reasons why consumers do not switch mortgage products. In other words, it is not possible to determine objectively whether consumers do not switch because they cannot (because they are prevented from doing so because of barriers) or simply do not want to (because they choose to remain with the same lender).

Indeed, discussions around product switching are frequently driven by the assumption that at any given time consumers can potentially benefit from better loan pricing with another lender. It is important to underline here that price is not the only factor affecting consumers decisions. When a consumer makes what is almost arguably one of the most important financial decisions in their life i.e. choice of mortgage provider and type of mortgage, they are also led by other factors such as brand loyalty, good relationship with their current bank, the availability of other complementary products, to name but a few. Furthermore, every jurisdiction has its own characteristics and specificities, on both the supply and demand sides. As such, even cultural factors, for example, might determine the presence or absence of switching in a given market and not commercial or legal barriers.

The points above can be demonstrated by way of the following example: in some countries, such as the UK, there are relatively high levels of switching; in others switching is not a common practice although there are no significant legal or commercial barriers to switching. For example, according to a study carried by Finance Denmark, more than half of borrowers never change mortgage provider in Denmark, and most of these took this decision to remain with their lender on the basis that they were satisfied with the product/service provided.

Another consideration is that a differentiation should be made between the “cheapest mortgage” and the “right mortgage”. Some mortgages might not be suitable for an individual borrower regardless of whether they are cheaper or not.

It is also worthwhile highlighting that switching always comes at a cost. There might be an attractive interest rate offered by a new lender, however there are switching fees triggered by a new fully fledged creditworthiness assessment and registration fees to be paid. In case of switching, the existing mortgage must be transferred to the new lender or must be deleted and a new mortgage must be registered. In most countries, mortgages are accessory securities which expire in case of redemption (through the loan provided by a new lender). In many cases, notary fees and registration costs reduce interest rate benefits.

In conclusion on this point and for the reasons outlined above, it should not automatically be presumed that when a consumer does not switch mortgages, this is because of barriers that do not allow him to do so.

Regarding legal and commercial barriers to switching, our internal investigations reveal neither legal nor commercial barriers to switching. Given the typically low level of early repayment compensation fees, these are not considered to be barriers to switching. Ironically, one of the only common legal barriers to switching identified arises from the nature of the transposition of the MCD in many countries, namely that consumers are now subject to a new creditworthiness assessment every time they want to change product or provider, even if they are up to date with their payments and they remain with the same lender. This requirement implies that consumers have to gather a large amount of information which is costly and time-consuming, and therefore a disincentive to switching product and/or provider.

With the considerations above as well as the differences between markets and consumers in mind, we believe that it would be extremely challenging to provide useful and proportionate regulatory ‘solutions’ at European level which do not disrupt or result in unintended consequences for otherwise well-functioning markets.

In this context, we would also like to point out that caution should be exercised in relation to potential solutions to facilitate and promote external switching, since excessive levels of external switching could negatively affect banks' capital requirements and consequently disrupt financial stability. In addition, it has been proven that the long-term relationship between financial entities and customers have benefits for the economy as a whole, which would be undermined in the event of excessive levels of switching.

2.6 Foreign currency loans

Question 40. Do you agree that the MCD has been effective in protecting consumers from exchange rate risks posed by foreign currency loans?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 40:

5000 character(s) maximum

We fully understand the need to offer consumer protection when it comes to exchange rate risk in foreign currency lending and believe that the MCD has been effective in protecting certain categories of consumers from exchange rate risks posed by this type of loan product by facilitating understanding and awareness in relation to such risks, and by establishing important rights for consumers to convert the foreign currency of the credit agreement into an alternative currency, to receive warnings regarding the increased total amount payable etc. However, while the intention to introduce these provisions in MCD is well-placed, the provisions have given rise to unintended consequences as access to mortgages for some categories of consumers has been made more difficult.

Question 41. As a result of the MCD rules foreign currency loans, lenders may have significantly reduced the offer of such loans or stopped offering foreign currency loans. This situation could lead to problems in specific cases where the risks of foreign currency loans are limited e.g. for some cross-border workers.

Are you aware of specific cases where the MCD provisions on foreign currency loans may have had unintended or undesirable consequences?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 41:

5000 character(s) maximum

As indicated above, the definition of a foreign currency loan in the MCD has triggered the following, unintended consequences:

- Some lenders have completely stopped offering loans in a foreign currency as a result of the requirements of the MCD, as lenders are required to bear the exchange rate risk;
- Viable consumers have been prevented from accessing credit, for example, consumers residing in non-euro Member States, receiving their income in EUR and taking a loan in EUR.

In order to address this market detriment, it is EBIC's view that the scope of the foreign currency loan definition should be limited to secure access to credit to consumers where there is no exchange rate risk or limited exchange rate risk. In this respect, EBIC proposes to modify the current definition of a foreign currency loan as follows:

'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; **AND**
- b) denominated in a currency other than that of the Member State in which the consumer is resident.

- A foreign currency credit is thus a credit granted in a currency other than that in which the consumer receives his income or holds the assets from which the credit is to be repaid AND which grants assets in a currency other than that of the consumer's habitual residence.
- This definition allows creditors to grant credit to consumers where the exchange rate risk is virtually non-existent because of the connection that those consumers have with the currency in which the credit is granted.
- This is a definition that is fully aligned with the objective of consumer protection developed in the MCD, since Article 23 provides among the modalities for limiting currency risk the right for the consumer to convert the credit agreement into an alternative currency, which shall be either:
 - The currency of the member state in which the consumer primarily receives income or holds assets from which the credit is to be repaid,
 - Or the currency of the member state in which the consumer is resident.
- It therefore seems legitimate to argue that these two currencies (income and place of residence) are considered by the MCD as sufficiently protective of the consumer to propose them as limiting the foreign exchange risk of a loan in a currency. The notion of foreign currency therefore seems legitimate only to apply to a currency that is different from both the currency of the income and the currency of the place of residence, which correspond to the EBIC proposal of a "cumulative" definition.
- The consumer should nevertheless be warned of any potential risk before the conclusion of the contract, especially in case the consumer's income situation were to change, however the ongoing monitoring obligations and the right to convert should not apply.
- In order to obtain an optimal and clear delineation of the terms used in the definition, it would be useful to describe in concrete terms what is meant by "assets". We understand this to include rental income, savings, income from life insurance, investments in securities, etc.

In addition to this, we believe that the current option included in the Directive for Members States to ensure either a right to convert the credit agreement into an alternative currency or "other arrangements in place to limit the exchange rate risk" should be maintained. This flexibility will allow more mortgage lenders to provide foreign currency loans, while having adequate consumer protection measures in place.

The EMF-ECBC believes in a pragmatic approach. By limiting the scope of a foreign currency loan, more consumers will be able to conclude a mortgage loan in cases where there is no exchange rate risk or a limited exchange rate risk.

2.7 Mortgage lending by non-credit institutions

The MCD also applies to credit granted by non-credit institutions (which means creditors that are not a credit institution in the sense the [Capital Requirements Regulation 575/2013](#)). The Commission MCD report on the review highlights that the share of mortgages granted by non-credit institutions generally remains limited in the EU. However, in a few Member States, their market share seems non-negligible.

On the basis of Article 35 of the MCD, non-credit institutions need to be subject to an adequate admission process, including entering the non-credit institution in a register and arrangements for supervision by a competent authority. In its [2017 report, the ECB](#) suggested that the growing role of non-credit institutions in the mortgage market poses some challenges in terms of financial stability. The ECB report explained that the growing market share of non-bank providers may limit the effectiveness of some macro-prudential measures that apply only to banks.

Question 42. Do you consider that further regulation of non-credit institutions providing mortgage loans would be necessary?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 42:

5000 character(s) maximum

As explained in our answer to question 13, we believe that it would be appropriate to regulate under the MCD professional consumer credit providers, thus also non-credit institutions providing mortgages - for example peer-to-peer lending platforms, crowdfunding platforms - in compliance with the "same business, same rules" principle.

Including non-credit institutions in the scope of the MCD would further promote maximum protection for consumers and ensure the right balance of competitiveness among credit providers, as well as fostering the integration of mortgage markets in the EU.

Indeed, a number of new types of credit providers, with new innovative funding models, have entered the market in recent years, and may not be as strictly regulated as existing players. Local and EU authorities should consider whether some of these need to be scrutinized thoroughly from a consumer protection and financial stability perspective

Question 43. The MCD does not provide a passport for non-credit institutions. Do you believe that a passport for non-credit institutions providing mortgage loans should be introduced in order to further the single market for mortgages?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 43:

5000 character(s) maximum

Passports are available to lending institutions intermediaries duly authorised to carry out these activities. A passport

for non-banks without them being subject to the same rules as banks or authorised intermediaries, would accentuate an "uneven playing field" and would not contribute to the creation of a single market for mortgages. It could also reduce consumer protection, which has improved at European level with the MCD.

Question 44. Do you see any potential risks stemming from the introduction of a passport for the non-credit institutions?

- ☒ **Yes**
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 44:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See response to question 43.

2.8 Credit intermediaries

Question 45. One of the main changes brought about by the MCD was to create an EU passport for credit intermediaries. This enables credit intermediaries to offer their services in other Member States, while consumers benefit from easier access to mortgages from other Member States. However, the MCD report on the review indicated that only few credit intermediaries offer their services cross-border.

Are you aware of problems for credit intermediaries to exercise their activity in another Member State?

- ☐ Yes
- ☐ No
- ☒ **Don't know / no opinion / not applicable**

Please explain your answer to question 45, specifying what the issues are related to (e.g. to the application of the MCD provisions) and how those issues could be overcome to foster cross-border provision of intermediation services:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.9 Arrears and foreclosure

Question 46. Article 28 of the MCD (arrears and foreclosure) requires Member States to adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated but leaves flexibility for Member States as to the measures to protect consumers experiencing financial difficulties.

Do you believe that the MCD's provisions on arrears and foreclosure have been effective in terms of reducing the risk of foreclosure?

- ☒ **Yes**
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 46:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In credit risk assessment, banks adopt European rules on default provision as well as the rules for the adoption of forbearance measures aimed at managing situations of financial difficulty presumed or already manifested.

As such, creditors have been further encouraged to make reasonable attempts to resolve the situation through other means before foreclosure proceedings being initiated and/or exercised reasonable forbearance.

Question 47. The [Directive on credit servicers, credit purchasers and the recovery of collateral](#) will strengthen Article 28 of the MCD clarifying the forbearance obligations and introducing reinforced information duties on credit purchasers and servicers. Do you consider that further measures would be required to protect consumers falling in arrears?

- ☐ Yes
- ☒ **No**
- ☐ Don't know / no opinion / not applicable

Question 47.1 If you do consider that further measures would be required to protect consumers falling in arrears, what would these measures be?

Please select as many answers as you like

- ☐ obligations to individually support consumers who experience or might experience difficulties in meeting their financial commitments (e.g. personalised assistance like debt advisory services)
- ☐ strengthen consumer education
- ☐ strengthen awareness on debt management in financial difficulties
- ☐ other

Please specify to what other measure(s) you refer in your answer to question 47.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 47 and 47.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 47:

5000 character(s) maximum

We would strongly advise against introducing any mandatory forbearance measures in the MCD and stress the importance of maintaining the relevant flexibility for lenders and ensuring the provision of appropriate support in any given situation. The application of forbearance measures should remain in the remit of the decision of lenders and overlaps with the EBA Guidelines on the treatment of forbearance exposures should be taken into account to avoid overlaps and inconsistencies.

Indeed, to provide adequate support on a case-by-case basis, solutions must be sought at the local level allowing for tailor-made solutions that take into account the individual situation as well as the comprehensive, and often highly divergent, legal frameworks applicable. Many mortgage providers and Member States have worked extensively on the issue, and to implement further measures would not be appropriate, as this could force lenders to restrict lending to consumers.

Furthermore, in our understanding, the European Parliament insisted, in the context of the legislative negotiations on the Directive on Credit servicers and Credit Purchasers (NPL Directive) that only the assessment of forbearance was mandatory and not the actual application of forbearance measures.

Question 48. The MCD does not include specific additional rules to protect consumers who backed their mortgage loans by their first residency.

Do you consider that a specific protection for such cases would be warranted?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 48:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Any protection of this nature should be in the hands of Member States given the potential for conflict with other legal provisions. For example, in France, "family housing" is already protected by the Civil Code and it has an impact on its financing. Related recovery procedures are specific at the national level as well as the specific protections (over-indebtedness procedure, no commissary pact on the main residence...).

Question 49. During the COVID-19 pandemic, Member States and industry put in place a broad range of differing relief measures in particular payment moratoria. The MCD does not provide specific rules for such exceptional situations.

Do you consider that any lessons need to be drawn from the COVID experience and specific measures should be provided for in the MCD?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 49:

5000 character(s) maximum

The COVID-19 pandemic was an extraordinary event and extraordinary events are by definition very difficult, if not impossible, to predict.

Overall, mortgage markets managed well through these extraordinary times, in some cases helped by local, targeted actions such as amortisation relief.

Therefore it is most appropriate and efficient for any measures to be left to the discretion of Member States, also in order for them to respond to specific national challenges where relevant.

2.10 Green mortgages

Some mortgage providers already offer “green mortgages” (under possible preferential terms and conditions) for instance to improve the energy efficiency of a building or to acquire highly energy efficient property. Green mortgages are an important possible avenue of development for an inclusive sustainable finance framework, as acknowledged in the [strategy for financing the transition to a sustainable economy](#).

Question 50. Is there a need to create an EU-wide definition of green mortgages?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 50:

5000 character(s) maximum

Since 2015, the EMF-ECBC has been leading efforts to mobilise the mortgage industry to support the transition to a more sustainable economy. In this context, the EU-funded Energy Efficiency Mortgages Initiative (EEMI) has already laid down a definition of an energy efficient mortgage and in 2021 launched the Energy Efficient Mortgage Label, based on this definition, to identify energy efficient mortgages in banks' loan portfolios and disclose information on their 'green' credentials (currently labelling 53 products from 38 lending institutions in 14 Member States), delivering a quality and transparency benchmark for consumers, lenders, investors and regulatory authorities, modelled on the highly successful Covered Bond Label (currently labelling EUR 41.74bn ESG covered bonds from 29 issues in 11 jurisdictions).

Question 51. What would be the benefits/advantages for consumers and/or lenders of an EU-wide definition of green mortgages?

Please select as many answers as you like

- ☐ to ensure common requirements and possible incentives
- ☐ to ensure high level of confidence into the greenness of the mortgages
- ☐ to facilitate securitisation and refinancing of mortgages through green bond issuances
- ☐ to facilitate disclosure obligations under [Taxonomy Regulation](#)
- ☐ other

Question 51.1 Please specify to what other benefit(s)/advantage(s) you refer in your answer to question 51:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 51:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly believe that the EEM Label, based on the existing, market-led definition of an energy efficient mortgage, alongside the multiple outputs of the Energy Efficient Mortgages Initiative focused on delivering an integrated EEM 'ecosystem', already deliver all of these benefits.

The EEML has three main objectives: (i) to help private and professional customers navigate to lending institutions and their residential and commercial energy efficient mortgage products for the purchase/construction of energy efficient properties or renovation of existing properties, (ii) to facilitate the disclosure by lending institutions of information to investors and regulatory authorities on their portfolios of energy efficiency loans to meet regulatory and supervisory requirements and for the purpose of issuing green covered bonds and green securitisation and (iii) to support investors in their due diligence by allowing for enhanced evaluation and tracking of the financial performance of energy efficiency mortgages relative to alternatives.

The EEML is intended to scale-up private market support for the NextGenerationEU vision, the EU Renovation Wave Strategy and the EU Green Deal, by acting as a catalyst for consumer demand and a driver of the qualitative upgrade of the energy profile of lending institutions' portfolios and of enhanced asset quality, in alignment with the main legal and policy developments.

It furthermore acts as a global benchmark for EEM from the perspective of lending institutions and institutional investors.

Question 52. Do you consider that a possible common definition of green mortgage should be based on the EU taxonomy criteria (construction of a new building or acquisition or renovation of an existing one)?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 52:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our opinion, the EU Taxonomy does not adequately promote climate transition in response to the objectives of the 'Renovation Wave', as it focuses on delivering A-rated properties instead of transforming the existing building stock to the highest attainable energy performance level, which is where the most significant energy savings can be achieved in support of the EU's climate targets. It is our assessment that the Technical Screening Criteria of the EU Taxonomy do not fully acknowledge the full potential of the building stock because the energy performance of the existing building stock cannot be improved by 30% in all cases (due to affordability and technical reasons) and not all buildings are able to (technically) obtain EPC Class A. In other words, under the EU Taxonomy it is possible that the energy performance of a building has been enhanced significantly and the maximum technically feasible EPC has been achieved but that the building is not considered Taxonomy eligible because the Technical Screening Criteria have not been met. Furthermore, the conditions for applying the Taxonomy criteria are poorly suited to retail customers: for example, asking for a renovation plan to be drawn up at the time of purchase does not seem appropriate for consumers.

More generally, it is important to secure consistency between different legislative initiatives such as the EU Taxonomy, EU Green Bond Standard (EU-GBS) and the Energy Performance of Buildings Directive. Regulatory initiatives such as the e.g EU-GBS should be voluntary since this provides an opportunity to choose and develop other

standards. This can help to ensure that the European market remains the market leader within the green transition.

Question 53. In your view, which measures could be considered to encourage the uptake of green mortgages?

Please select as many answers as you like

- ☐ obligation for credit providers to inform the consumer if such product can be provided
- ☐ ensure that mortgage credit providers and/or consumers taking a mortgage obtain an Energy Performance Certificate (EPC) for the residential property that the consumer will acquire using the mortgage loan
- ☐ create a label for green mortgages offered at preferential terms and conditions
- ☐ other

Question 53.1 Please specify to what other measure(s) you refer in your answer to question 53:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 53:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The EEM Label is playing a flagship role in orienting Industry best practices towards green retail (labelling 53 products from 38 lending institutions in 14 MS) and funding (Covered Bond Label labels EUR 41.74bn of ESG covered bonds from 29 issuers in 11 jurisdictions) strategies and stimulating the uptake of EEM. The Label provides a quality and transparency benchmark for consumers, lenders, investors and moreover facilitates regulatory compliance and ESG data gathering and disclosure, preventing greenwashing.

We appreciate that the current MCD legal infrastructure already offers margin to maneuver for lenders to take action immediately and this framework supports the supply and uptake of these EEM products across markets. Of course, any enhancement of this would be welcome, however, we consider that any efforts in this respect should be considered very carefully in the context of the principles-based nature of the Directive in order to ensure consistency and coherence and to safeguard its well-performing nature to date. The inclusion of references relevant to energy efficient mortgages in certain provisions, for example, a reference to a specific feature of the underlying collateral i.e. its energy performance, or requirement for particular information to be collected for credit assessment purposes i.e. energy bills, would add a level of prescription which is otherwise not present in the Directive, potentially creating a distortion.

We are aware of suggestions that lending institutions should provide borrowers with an EPC apparently as part of the pre-contractual information. We would like to recall that the pre-contractual information provided by lending institutions to the candidate borrower is essentially focused on those elements which are determined by and under the control of lending institutions, namely those related solely to the mortgage loan. The EPC provides data on the energy performance of a building and, as per EU legislation, the responsibility for obtaining and providing this information to a prospective buyer is that of the owner of the property as the seller.

Finally, we would like to underline that lenders are not the owners or builders of the underlying buildings that are used as collateral for mortgage loans in their portfolios and cannot themselves improve their energy performance. Rather it is the prerogative of borrowers, as owners, to take the decision and any necessary steps in this respect. The role of lending institutions is to support borrowers via specific instruments, such as EEM. As indicated above, we believe that the EEMI and the EEM Label will stimulate both supply and uptake of energy efficient mortgages, by removing obstacles to market development and delivering an 'ecosystem' enabling lending institutions to support the Renovation Wave. Specific public guarantee schemes, fiscal incentives and preferential supervisory rules can further support the development of the EEM market.

We believe that attempts to emulate other industry 'portfolios standards', particularly without appropriate, efficient and inexpensive access to EPC data, represent an oversimplification for the reasons explained above and against a background of legal complexities (GDPR compliance) rooted in regional/national discretions. The application of these Industry standards to the mortgage business is inappropriate and could hinder the Industry's ability to support the Renovation Wave.

In any reflections on possible enhancements to the MCD in this area, we would like to focus on the construction of the energy efficient mortgage 'ecosystem' mentioned above, in which lenders, energy data authorities, utilities, builders and SMEs work together to deliver an integrated green product and service offering for consumers. We would like to recall that the European Commission is part of the EEMI Advisory Council and the EEMI is financed through the EU's Horizon 2020 Programme, via the EeMAP, EeDaPP, EeMMIP (delivering the EEM Label), TransparEENs and NEEM Projects. Therefore, any efforts from the European Commission should furthermore take account of these initiatives, as well as individual bank actions, to promote and develop sustainable financing solutions.

A proportionate way of respecting the principles-based nature of the Directive, while nevertheless promoting the origination of energy efficient mortgages by lending institutions could be through appropriate references in the Directive's recitals.

In any case, it is essential that legislation does not prevent the uptake of green mortgage lending. In this respect, it should be pointed out that the IFRS9 may in its current shape be an obstacle, as it is uncertain whether sustainability-linked adjustments to interest rates are consistent with the SPPI criterion. We encourage the EU Commission and authorities to look into this matter in collaboration with IASB, to clarify the link between sustainability factors and change in credit risk and value of collateral.

Question 54. Do you consider that the knowledge and competence requirements for the staff of creditors and credit intermediaries should specifically cover knowledge on green mortgages?

- ☐ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 54:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that staff of creditors and credit intermediaries should be competent on all aspects of mortgage credit to the extent that it is necessary for them to conduct their functions.

2.11 Other

Question 55. Are there any other issues that have not been raised in this questionnaire that you think would be relevant for the MCD revision?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 55:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.