

POSITION PAPER



ESBG Position Paper on the European Commission evaluation of the Mortgage Credit Directive

ESBG (European Savings and Retail Banking Group)

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I. General comments:

The European Commission is working on a review of the Mortgage Credit Directive. EU mortgages have continued to develop, and the text does not take into account all the new options.

ESBG has gathered some key points which we would like to highlight to the Commission whilst it finalises the first draft of a new text. We believe these points merit being considered to reflect the current needs of the mortgage market. Some of these points are based on the Commission report of the MCD assessment, published in May 2021.

II. Advertising

In recent times, innovative new channels for communication with customers have been developed, which make it significantly more challenging to comply with Article 11 MCD. It is all but possible to present the prescribed advertising content in digital channels in a way that provides potential customers with all necessary information at a single glance.

Hence, the requirements for advertisement pursuant to Art. 11 MCD need to be simplified and streamlined in order to be in line with the digital experience that consumers expect. Moreover, it is sensible to limit the disclosure requirements to certain key figures, such as the annual percentage rate of charge. A large volume of mandatory advertising content is also unsatisfactory for consumers, because it makes it difficult to draw comparisons.

III. Pre-contractual information

Consumers receive the same information multiple times at different stages of the process, creating an information overload. Furthermore, the current format of the pre-contractual information comprises a level of detail that is too much for consumers to process. This seriously undermines the intended consumer protection objectives.

Consumers should receive relevant information in a brief and concise manner (i.e. the total amount of credit, duration, borrowing rate, annual percentage rate of charge, the customer's withdrawal right or reflection period, and the right to early repayment). Especially against the backdrop of recent digital trends, it seems almost impossible to fulfil the current extensive information requirements in a user-friendly way.

Therefore, ESBG believes that pre-contractual information should be simplified, and digitalised (where this is not yet the case) to reflect the new developments in banking technology. This one-pager could be an alternative option to the current pre-contractual information. If that couldn't be the case, the existing pre-contractual information should stay the same, however, as the cost to change the system would likely outweigh the benefit of change.

IV. Contractual information and design of mortgage credit agreements

From the consumer's perspective, the relevant contractual information is the total amount of credit, the repayment plan, the default interest rate, and information about the typical consequences for the borrower during the tenor of the contract in case of breaches of obligations. Any information beyond this might overburden consumers.



With regard to the new digital distribution channels of mortgage credits, it is important that the MCD enables customers to conclude mortgage credits in a legally secure and digital manner. Therefore, the MCD should not entail provisions that make digital conclusion of contracts difficult.

V. Creditworthiness assessment

The report mentions adjusting the procedure to adapt the CWA so that it is up to date with artificial intelligence developments. However, these adjustments should not lead to a standardisation of the criteria because these criteria must be adapted to different national situations (income, taxes, level of public aid...).

VI. Foreign currency loans

The evaluation has shown that the introduction of Article 23 of the Directive has led to either a significant reduction, or full-on stop, in offering loans in a foreign currency. We believe that this is not the Commission's intention. Therefore, we would like to propose a change in the definition of a foreign currency loan which is included in the Directive.

'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.

With this definition, the scope of a foreign currency loan is limited but it will allow financial entities to once again offer this type of product.

This definition would allow 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. A definition that is fully aligned with the wish 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.

Another point to raise is that the Directive does not specify whether it refers to tax residence or administrative residence. We consider that the Commission should opt for the tax residence due to the fact that the administrative residence is more arbitrary. Currently, most of the OECD countries establish that in order to be considered tax resident, the citizen must reside in the country for a period equal to six months or more in a tax year.



VII. Right of withdrawal

Article 14, para. 6 MCD allows Member States to specify if there is a withdrawal period or a reflection period. In the case where a Member State has chosen to apply a withdrawal period, and in order to provide legal certainty with regard to the right of withdrawal and prevent its misuse, the MCD could benefit from including an expiry provision as well as a standard form containing information about the right of withdrawal and an explanation how to exercise this right.

VIII. Early repayment

This right is well integrated according to the report of Commission and helps to ensure consumer protection. For an easier use of this right by the borrower, information in the contract on the compensation to be paid in return for early repayment seems to be appropriate as well as full harmonisation of the conditions of this allowance. Having some more clarity and legal certainty might be beneficial in this regard to explain to the consumer how to exercise their right.

On the other hand, a right to renegotiate or a special legal regime for ‘switching’ would not be appropriate.

IX. Credit registers

Access to accurate and up-to-date information on the personal and financial circumstances of the consumer is of utmost importance in the credit approval process. The creditworthiness assessment is based on data obtained from the customer, the credit institution’s own records and national registers or credit databases. There are certain differences within the European Union regarding the accessibility of data sources. Some EU member states have public credit databases, while other countries have private ones, and yet other countries may have both. Some databases exclusively record positive data, while others record negative data only.

Further measures regarding the cooperation of credit registers should only be implemented at the level of the national credit registers themselves and on a reciprocal basis in consideration of the principle of non-discriminatory access. Credit institutions should not be obliged to provide a greater volume of data than the amount they are already sharing or be forced to access and use a specific database.

X. Simplification of contractual adjustments

Over the term of the credit agreement, changes in the personal circumstances of the consumer may prevent him or her from continuing to perform contractual obligations under the credit agreement in their existing form. It should be possible for customers to arrange adjustments to the repayment terms of their credit agreement (e.g. by temporarily reducing the re-payment instalments, suspending the repayment, or lowering the interest rate) with the lender in a simple way without the need to enter into a completely new agreement.

XI. Arrears and foreclosure

ESBG calls to harmonise the provisions on arrears and foreclosure with those in the Commission Directive on credit servicers, credit purchasers and the recovery of collateral, in which we find Article 38, which amends Art. 28 MCD.



XII. Overlap with the NPLD

During the dialogues on the Directive on Credit Servicers & Purchasers (NPLD) we strongly advocated for a clear-cut approach making sure that any regulatory change impacting ‘performing loans’ would be enshrined in the MCD or CCD texts, and not in NPLD. Best example for our success is Article 38 NPLD.

Now that we’re confronted with the revision of the MCD, we should raise our awareness on Article 8a NPLD (which is targeting Credit Servicers & Purchasers) in the sense that credit providers (e.g. banks) would not be subjected to (1) in general, harsher protection rules for borrowers; and (2) in the specific case of assignment, redundant information duties which should be completed exclusively by the assignee (and not by the assignor).



About ESBG (European Savings and Retail Banking Group)

ESBG represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 900 banks, which together employ more than 650,000 people driven to innovate at roughly 50,000 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion in corporate loans (including to SMEs), and serve 150 million Europeans seeking retail banking services. ESBG members are committed to further unleash the promise of sustainable, responsible 21st century banking. Our transparency ID is 8765978796-80.



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