



# POSITION PAPER



## **European Commission public consultation on the Review of the Mortgage Credit Directive**

ESBG (European Savings and Retail Banking Group)

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**Background information:**

The Commission is launching the present public consultation to complement the information gathered in the MCD evaluation study and to collect further evidence to assess, in line with Better Regulation principles, the effectiveness, efficiency, coherence, relevance and EU value-added of the MCD. The stakeholders are also consulted on the possible problems and measures to improve the MCD.

The results of the consultation will inform a formal MCD evaluation and impact assessment accompanying a possible proposal for the revision of the MCD. The aim is to make sure that the MCD continues to meet its objectives in terms of consumer protection, competitive internal market and financial stability and that it is adapted to new challenges.

The respondents will be invited at the end of the questionnaire to include studies or other analytical material on mortgage credit, which may concern any issues discussed in this consultation paper and might help the Commission services in shaping future EU policies on mortgage credit.

The questionnaire targets all stakeholder groups, but not all questions are relevant for all stakeholders and respondents do not need to reply to every question. It is thus possible for respondents to leave some questions unanswered.

**General questions**

**Q1: To which extent do you agree that the MCD has been effective in achieving its 3 objectives i.e.:**

	<b>1 (fully disagree)</b>	<b>2 (rather disagree)</b>	<b>3 (neutral)</b>	<b>4 (rather agree)</b>	<b>5 (fully agree)</b>	<b>Don't know/no opinion/N.A.</b>
<b>Increase consumer protection</b>					X	
<b>Contribute to an efficient and competitive single market for mortgages</b>				X		
<b>Promote financial stability</b>					X	

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

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*



The MCD has established a comprehensive and common legal framework which has made it possible to unify the practice of mortgage lending in each Member State, increase consumer protection and contribute to the stability of the financial system. In their essence, the provisions of the MCD remain suitable for ensuring a high level of consumer protection in the mortgage credit sector. The mortgage credit market is highly competitive and offers consumers a wide variety of products and providers. Where changes in the market – especially in connection with digitalization – or practical experience necessitate adjustments to the directive, such adjustments should be made in a careful and targeted manner. This process should primarily be guided by pragmatic consumer protection considerations.

Finally, regarding financial stability, Articles 29-39 certainly contribute to this.

**Q2: To which extent do you agree that:**

	<b>1 (fully disagree)</b>	<b>2 (rather disagree)</b>	<b>3 (neutral)</b>	<b>4 (rather agree)</b>	<b>5 (fully agree)</b>	<b>Don't know/no opinion/N.A.</b>
<b>a) The EU-intervention (MCD) was more effective in achieving those objectives than leaving it to Member States acting at national or regional level</b>		X				
<b>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</b>		X				
<b>c) The MCD continues to be relevant, i.e. addresses current needs and problems in society and in the mortgage credit market</b>					X	
<b>d) The MCD is coherent with other EU policies and interventions</b>		X				



**Please explain your answer to question 2 a):**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

In some Member States, national law was already very protective before the MCD in terms of mortgage loans. The mortgage market is very dynamic. The MCD added new, standard, precontractual details and information which were more complex than the national rules and it is not certain that the MCD has provided better information to consumers.

In addition, as the mortgage market is mainly a local market, EU intervention was not really necessary. Consumers rely heavily on the local expertise of their relationship managers in this area, and most prefer local providers, particularly because of the long loan terms. With regards to consumer protection in particular, national interventions can (and do) also safeguard a high level of protection. It depends on how the texts have been transposed into national law (and conflicting with the European Accessibility Act). We believe it is necessary to change legal acts elsewhere.

The low development of cross-border credits seems to us to be linked to a set of reasons which are sometimes foreign to the Directive itself:

- The rich product offering in each EU country which leaves little appetite to look elsewhere, (case of France)
- The proximity of each European consumer to their usual banking contacts
- Language barriers
- A different and unrecognised applicable law....

In addition, the mortgage credit sector has to overcome further obstacles such as substantial differences in land law (e.g. strict requirements of form for purchasing agreements and a reliable system of land registers in some cases), insolvency law and tax systems.

Foreign currency provisions even exclude entire customer groups from mortgage lending (e.g. expats, foreign currency income in border areas).

Especially for credit institutions, cross-border activities only exist in theory. The legal situation of the country in which the borrower is resident must be taken into account when drafting the contract. In the event of legal action and execution against a foreign consumer, the creditor's know-how is often insufficient and must be purchased at high cost. Due to the small number of foreign borrowers, cross-border lending does not pay off economically.

**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.*

The IT adaptation costs for pre-contractual information and creditworthiness assessment were very high. Some inaccuracies (e.g. Article 13 paragraph 1 on general information point h) still create sources of litigation in some Member States today.

In addition, as the number of citizens with a cross-border mortgage is insignificant, the benefits for all consumers do not outweigh the implementation costs (e.g. for Austrian



Savings Banks EUR 1,4 million was spent on IT investments for the implementation plus ongoing training costs for certifications). Beyond that there are also not quantifiable costs, like the reduced flexibility because advice can only be provided by certified employees.

**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.*

The scope of the MCD is still relevant. The directive continues to perform well and therefore does not need to be revised in depth. In some Member States, the mortgage market is doing well and is very dynamic. In some Member States, it is almost exclusively fixed rate.

Granting loans is based on a solid creditworthiness assessment based on an analysis of the borrower's ability to repay (financial situation and solvency) and not only on the value of the property acquired. This solidity is validated by a very low doubtful outstanding rate (for example in France, according to the ACPR in 2020 the rate was 1.06%).

It is now governed at national level and at European level by the GL of the EBA

Some Member States believe that the ESIS is relevant for the small amount of customers who are interested in taking up a mortgage on a cross-border basis.

The article on financial education is also very important, and a best practice example for other legal texts.

**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.*

There is a lack of coherence with the following texts:

• **GDPR:**

Art 21 MCD presupposes the existence of databases for assessing the creditworthiness of consumers. In practice, however, the legality of said databases is still challenged and subject to legal proceedings. A revised version of the MCD should declare such databases to be in the "public interest" pursuant to Art 6 (1) (e) GDPR, because they serve the public purpose of effective and functioning credit markets

• **EU Accessibility Directive (EU Accessibility Act):**

As the MCD is included in the scope of the Accessibility Directive, the MCD review should be used to specify how accessibility requirements are to be met in the context of lending.

• **Rome I Regulation:** Fragmentation is a barrier to deepening the single market. The Rome I Regulation stipulates that the different standards of a consumer's home market must be taken into account by lenders operating across border. The consumer protection varies across Europe.

E.g.: An Austrian lender (application of Austrian consumer protection law) provides an Estonian consumer with a loan. The Austrian lender always needs to take into account Estonian consumer protection law. The lender needs to apply the more favourable regulation for the consumer. This creates legal uncertainty and narrows the range of offerings with a negative impact for both consumers and lenders.



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**Q3: Do you consider that the MCD could be simplified to reduce compliance costs without undermining its effectiveness?**

<b>Yes</b>	<b>X</b>
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**Q3.1: If you do consider that the MCD could be simplified, please specify in which areas and explain your answer:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

<p>We could reduce:</p> <ul style="list-style-type: none"> <li>- Pre-contractual information, in particular to adapt it to digital media and to borrowers' ability to concentrate to make it more relevant and efficient.</li> <li>- Mentions regarding advertising for the same purpose,</li> <li>- Obligations in terms of foreign currency loans and change their definition.</li> </ul> <p>Modifications concerning the right to convert into an alternative currency: These provisions are hindering the potential client in getting a loan. Art. 23(2)(1), especially, as the provision is not limited to EU-currencies. An Austrian development aid worker works in India and earns rupees. Her EUR-loan has to be treated as a foreign currency loan. She has the right to convert into rupee. Maybe two years later she will be sent to Thailand. She would have the right to convert into Bhat etc. etc.</p> <p>Review and reduction of information requirements to the essentials (otherwise compliance with the forthcoming accessibility requirements will become technically hardly possible).</p> <p>Credit assessment: take into account the principle of minimum harmonisation to ensure room for local expertise, room for technological development (e.g. algorithm-based creditworthiness assessments) and room for lending in the sense of social banking.</p> <p>Financial education (Art. 6) and responsible lending and borrowing (Art. 45): Member States and market participants should be encouraged to do more for financial education, also in the spirit of the UN sustainability goals. This would contribute to responsible borrowing.</p> <p>Advertising: The large amount of disclosure requirements for advertising has resulted in a situation where lenders advertise their products without specifying interest rates or borrowing costs at all, in order to circumvent these requirements. Therefore, it would be sensible to limit the 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.</p>	
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General Information: We take the view that the European Standardised Information Sheet (ESIS) and the explanatory notes provide consumers with all the information they need and that further general information should therefore not be required.

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. The information in the ESIS should therefore be rationalized and adapted for digital communication channels.

Form requirements: With regard to the new digital distribution channels, it is important to fully harmonize the text form requirement as a mandatory standard for the conclusion of contracts in every Member State. Hence, enabling the possibility of concluding contracts digitally.

Right of withdrawal: 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.

Simplification of contractual adjustments: It should be possible for customers to arrange adjustments to the repayment terms of their credit agreement (e.g. by temporarily reducing the repayment instalments, suspending the repayment, or lowering the interest rate) in a simple way without the need to enter into a completely new agreement.

**Please explain your answer to question 3:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

**Q4: Are you aware of possible discrimination (e.g. on gender, nationality, medical history) for consumers taking mortgage loan?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**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 based on gender and nationality is prohibited in many Member States. To avoid the exclusion of sick people, alternative solutions have been developed to allow them to benefit from specific insurance and therefore benefit from funding (AERAS agreement or on pricing of a basic group contract). However, this should in no way mean that there is a right to credit.



In order to continue to favour responsible credit practices, the lender must remain in control of the granting decision and the granting policy must remain the responsibility of the lender. This includes giving the lender the right to decide to develop (or not) an activity in a region or country in which it chooses not to.

**Q5: 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)?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don’t know/No opinion/N.A.</b>	

**Please explain your answer to question 5:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

Tied selling is prohibited in most Member States.  
 In the case of a loan insurance subscription, the borrower can change company at any time in the first year of his loan and then on each anniversary date of the loan.  
 With the opening of the loan insurance market, we have seen an overall improvement in insurance coverage at a lower cost. Banks and alternative insurers have improved their contracts to the benefit of borrowers. There is therefore no reason to prohibit the sale of loan insurance for the mortgage lender. In the end, the customer will choose the best guarantee offer as mortgage lenders are required to inform customers about other products in connection with the mortgage loan. Ideally, these consulting points (especially life/accident/business interruption insurance) are recorded in the national consulting protocol in some Member States.

**Q6: To what extent do you agree that enforcement of the MCD provisions by national competent authorities (NCAs) is satisfactory?**

<b>1 - Fully disagree</b>	
<b>2 - Rather disagree</b>	
<b>3 - Neutral</b>	
<b>4 - Rather agree</b>	
<b>5 - Fully agree</b>	
<b>Don’t know / no opinion / not applicable</b>	<b>X</b>

**Please explain your answer to question 6:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

Enforcement of the MCD provisions by NCAs differs within the European Union and depends upon the national application and implementation of the directive.

From a German perspective, we believe the national supervisory authorities are fulfilling their supervisory duties.

However, the ACPR, the French competent authority, has appropriated the subject and have published recent recommendations and mandatory decision of the HCSF in terms



of granting a mortgage credit. It demonstrates the involvement of the supervisory authorities in the aim to maintain the production of real estate loans in a secure environment.

**Q7: Are you aware of shortcomings in the enforcement action of MCD provisions by NCAs?**

Yes	
No	X
Don't know/No opinion/N.A.	

**Q7.1: 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 including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

**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.*

**Q8: Do you consider that Article 38 of the MCD regarding sanctions and the empowerment of NCAs to apply them is satisfactory?**

Yes	X
No	
Don't know/No opinion/N.A.	

**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.*

If there are regulations they should also be sanctioned, as otherwise this would result in distortions of competition.



**Q9: 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?**

<b>1 - Fully disagree</b>	
<b>2 - Rather disagree</b>	
<b>3 - Neutral</b>	
<b>4 - Rather agree</b>	
<b>5 - Fully agree</b>	<b>X</b>
<b>Don't know / no opinion / not applicable</b>	

**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):**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

Participation is not mandatory, and the decisions are not binding. Mediation has enabled situations to be resolved quickly and cheaply without going to court. This is a procedure that has its place in the "recovery" system.

**Q10: Do you consider that Article 6 of the MCD on financial education has contributed to increasing the financial education of consumers?**

<b>Yes</b>	<b>X</b>
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**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.*

Due to the lack of EU competence in the area of education we welcome every possibility the EU institutions use to promote financial education. Art. 6, inter alia, has encouraged Member States to be more active in this area.

**Section 2: Specific questions**

**2.1 Market structure / scope**

**Q11: To which extent do you agree with the following statements:**

	<b>1 (fully disagree)</b>	<b>2 (rather disagree)</b>	<b>3 (neutral)</b>	<b>4 (rather agree)</b>	<b>5 (fully agree)</b>	<b>Don't know/no opinion/N.A.</b>
<b>Consumers have enough mortgage credit providers</b>					<b>X</b>	



<b>to choose from in all Member States</b>						
<b>There is sufficient competition among mortgage credit providers so that consumers are able to get competitive offers</b>					X	

**Please justify your answers to question 11:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The mortgage credit market is very competitive in some Member States and consumers have different providers to choose from.

**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.**

*If you can, please provide a link to any study you wish to add. Otherwise, we will attach annexes to the consultation response whilst drafting, and these will be uploaded upon submission.*  
*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.*

**Q12: 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?**

<b>Yes</b>	X
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**Please explain your answer to question 12:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The relevance and volume of cross-border transactions have remained very low in this segment despite the efforts of European institutions over the past decades. Various studies have identified a multitude of reasons, mainly out of the scope of the MCD. From the consumers' perspective, these include cultural idiosyncrasies of the individual EU Member States, language barriers, and the fact that entering into a mortgage credit agreement constitutes the biggest financial decision many borrowers make in their life and that, for pragmatic reasons, EU citizens thus tend to enter into such commitments with a provider near their place of residence. From the lenders' perspective, there is also the fact that under the Rome I Regulation (Article 6), 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. In addition, the mortgage credit sector has to overcome further obstacles such as substantial differences in land law (e.g. strict requirements of form for purchasing agreements and a reliable system of land registers), insolvency law and tax systems.

Foreign currency loans:

The definition of foreign currency credit is excessive. We have found that the current definition means that there are foreign currency loans that fall within the scope, although the inclusion is disproportionate to the actual risk to the consumer.

Foreign currency loans have mostly disappeared from the financing offer for individuals due to the inability to implement the recommendations of the MCD. It is not so much the currency of the loan that poses a problem as the currency risk introduced by the mismatch between the currency of the repayment charges and that of the income that is used for that repayment. In addition, consumers do not seem to be willing to get a cross-border mortgage. They would prefer to get a mortgage in a language, they know and under a legal system where they have some knowledge.

We believe that the Commission should not emphasise the idea of promoting cross border mortgage loans because consumers are not interested in this product.

Article 23, para. 2, point 1: modification and full harmonisation of the right to convert the credit agreement into an alternative currency required

For specific groups of persons, e.g. expats, such as Austrians working/living in UK, US, China, etc., borrowing in EUR to finance their pension residence at home remains difficult due to the broad provisions regarding the right of conversion into an alternative currency. In such scenarios it is just unpredictable for the lender to assume the potential currency into which the customer might want to convert and to prepare (hedge) for such an occurrence.

The scope of point 1 needs to be defined more precisely (e.g. EU currencies) or better aligned with real scenarios, e.g. by using the wording of the UK transposition: “where applicable”:

“(a) **where applicable**, the currency **of a Member State** in which the consumer primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the credit agreement was made; or”

Valuations of properties:

Valuations: There is a need for action when it comes to the mutual recognition of valuations in cross-border distribution. In the interests of the internal market, standards should be set to facilitate cross-border lending.

Rome I Regulation:

Fragmentation is a barrier to deepening the single market. The Rome I Regulation stipulates that the different standards of a consumer’s home market must be taken into account by lenders operating across border. The consumer protection varies across Europe.



**Q13: 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)?**

	For consumer protection	For financial stability
<b>Yes</b>	X	X
<b>No</b>		
<b>Don't know/No opinion/N.A.</b>		

**Please explain your answer to question 13:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

*Crowdfunding for financing a property is not known in all Member States, however there could be a reference made to the "European Crowdfunding Service Providers Regulation" (provided, of course, the ECSP will have been adopted). In some Member States, the disappearance of a few crowdfunding platforms that had a strong impact on "lender-investors" was noted.*

*The ECSP Regulation will provide an adequate legal framework for consumer protection and financial stability as lending-based crowdfunding will be in the scope of the ECSP Regulation. Hence, beyond an appropriate reference to the ECSP we do not see a necessity to include specific (probably diverging) provisions on lending-based crowdfunding within a renewed MCD.*

*Mortgage lenders should all comply with the same rules both in terms of carrying out the activity and the supervision, regardless of the type of lender. We should therefore extend the scope of the MCD towards new types of market actors. This would ensure a level playing field, high levels of consumer protection and financial stability.*

*Overall, the MCD should be structured as a proper product-related directive for consumer protection and not be person-related with regard to the type or organisation of the creditor.*

**Q14: 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/N.A.



<b>Increase the choice of consumers</b>					X	
<b>Increase competition between mortgage credit providers</b>					X	
<b>Contribute to the integration of mortgage markets in the EU</b>					X	

**Please justify your answers to question 14:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

All mortgage lenders to individuals must comply with the same rules both in terms of the exercise of the activity and of supervision regardless of the statuses: level playing field. It is in the interests of the consumer who can then compare like with like and it is also an equality of economic competition.

According to the ECB, competition from non-banks is growing. In order not to destabilize the market, it is essential to regulate them like the banks to allow healthy competition. And therefore to rise to the level of traditional (and regulated) players, the requirements to be applied to its new entrants, particularly in terms of pre-contractual information and advertising.

We also refer to our response in question 13.

**Q15: 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?**

<b>Yes</b>	
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	X

**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.*

For the time being, ESBG members believe that reverse mortgages are not yet well enough established across the EU to have an informed discussion if they should or should not be included in the scope of the MCD. This type of loan is not available in all Member States, and the practice varies greatly among those where they are already offered. Our overall position is that we would like this topic to be raised in the next MCD review, when we would have more information from more Member States.

That being said, if the Commission includes this topic in the upcoming MCD review, we ask that a strong focus is put on consumer protection. This type of product will be predominantly used by the older generation and potential customers must be well informed of the product, the risks, and what happens at the end of the loan. What's more, the



Commission must be careful to examine what kind of creditworthiness assessment should be carried out, the conditions for which a loan may be granted (for example, does the lender need to know and approve what the loan will finance).

During its work, the Commission should also decide if reverse mortgages fit in the scope of the MCD or if there is (or will be) another text where it would be suitable.

**Q16: 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?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**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.*

The consumer loans mentioned in the question are therefore subject to the Consumer Credit Directive, which also contains a very high level of consumer protection. Therefore, we are not aware of any such problems.

## **2.2 Information to consumers / digitalisation**

**Q17: 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?**

<b>Yes</b>	<b>X</b>
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**Please explain your answer to question 17:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The pre-contractual information and in particular the ESIS are delivered at the right time But they are too numerous, often too technical with a vocabulary unsuitable for consumers. Consumers receive the same information multiple times at different stages of the process, creating an information overload.  
 So the ESIS does not meet its objective of “transversal” information and does not allow consumers to easily compare offers by a borrower not used to this type of language. The vocabulary used which claims to be “trans-European” is a long way from the financial knowledge of consumers. Finally, one can find different terminologies in ESIS and the loan offer for the same concept.



We doubt, however, that in this product segment the issue of mobility plays an essential role for the consumer.

**Q18: 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 including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

A few key information points on the loan would be enough (amount, duration, monthly instalments, borrowing rate and APR, total cost, etc.) to provide the main information making it possible to compare loans. The rest of the information is in the contract and can be viewed later. Reducing to the essentials is needed to avoid issues with complying with the forthcoming accessibility requirements. Therefore, the information in the ESIS should be rationalized and adapted for digital communication channels. Digitalisation has led to the possibility to get a mortgage online, with the entire process able to be carried out remotely in some Member States, apart from signing the final deed for a property. Sharing information online might help to speed up the process.

**Q19: 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)?**

<b>1 - Fully disagree</b>	<b>X</b>
<b>2 - Rather disagree</b>	
<b>3 - Neutral</b>	
<b>4 - Rather agree</b>	
<b>5 - Fully agree</b>	
<b>Don't know / no opinion / not applicable</b>	

**Please explain your answer to question 19:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

It is best to send a single document to borrowers containing the information most relevant to them.

Rather than making a summary of the ESIS (to be attached before the ESIS), it would be preferable to reduce the information appearing in the ESIS which could lead to reducing the costs incurred when implementing the ESIS. A certain amount of information is included in the contract and with the cooling-off period or the withdrawal period, the borrower has time to read it.

The idea of the summary stems from an observation of the inadequacy of ESIS to the needs of the consumer, you might as well tell him what is important to him. It also goes against the Commission's aim to reduce information overload. The same can be said for the similar idea proposed in the CCD Review.

**Q19.1: Please select which pre-contractual information should be included in the key summary:**

*Please select as many answers as you like.*



<b>the total amount of credit</b>	<b>X</b>
<b>the duration of the credit agreement</b>	<b>X</b>
<b>borrowing rate</b>	<b>X</b>
<b>APRC (Annual percentage rate of charge)</b>	<b>X</b>
<b>bundled services required to be purchased separately</b>	
<b>monthly instalment</b>	<b>X</b>
<b>costs to be incurred by consumers due late payment</b>	
<b>total amount to be paid back by consumer for the credit</b>	<b>X</b>
<b>other</b>	

**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.*

The borrower is looking for a mortgage, to finance the purchase of his life, his home. This is not an impulse purchase unlike purchases financed by consumer credit. Therefore it is very relevant to send him the financial information he is looking to have. He will have all the other elements in his offer. In addition, consumers have a reflection period or a withdrawal period, which makes it possible to receive offers from other lenders and to compare serenely.

**Q20: 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	<b>X</b>
2 - Low	
3 - Medium	
4 - Large	
Don't know / no opinion / not applicable	

**Please explain your answer to question 20 a):**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The cumbersome nature of the documents provided and the repetition of the same information, sometimes in different terms, in the summary and the ESIS are likely to discourage the consumer and / or create confusion.

Ideally, it would be desirable to limit the pre-contractual information to a few key information of the ESIS that the borrower is looking for.

Regarding the document "general information", it would be desirable to delete point h) of article 13. It introduces with the terminology "possible costs" an imprecision which is not conducive to a good understanding of the borrower and the supervisory authorities.



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

	Costs
<b>One-off costs</b>	
<b>Recurring costs</b>	

**Please explain your answer to question 20 b):**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

It is not possible to calculate IT development and training costs until you know the scope of the upcoming changes.

**Q21: 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.*

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

**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.*

ESBG would like there to still be flexibility at EU level on this point, as it has been implemented successfully in different ways, in different Member States. The different rules have grown out of the tradition of the respective legal systems of the different Member States and have proven their worth, i.e. they offer sufficient consumer protection, and so should not be changed.

In some Member States, the principle adopted is a reflection period of 10 clear days (10 full 24 hour periods). This period seems well suited, knowing that the credit offers are valid for 30 days. It is also well known by consumers, who nevertheless find it sometimes a bit long when their real estate project would need to go faster and therefore likely to delay its completion.

However, in some Member States, the right of withdrawal should not be introduced because of the implications for the seller as well as the reimbursement of capital.



**Please explain your answer to question 21:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

In some Member States, there is no need for a mandatory reflection period as consumers have a right of withdrawal. Moreover, in some Member States such a reflection period could also hamper the possibility of using digital channels for concluding the contract (however, this is not an issue for all Member States).

Beyond that, for most of the people their mortgage credit is the most important financial decision they take in their lifetime. Consequently, our experience is that consumers take enough time for comparing different offers and finally for deciding which offer they accept.

**Q22: 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
<b>Radio</b>	X		
<b>TV</b>	X		
<b>Printed media</b>	X		
<b>Social media</b>	X		
<b>Other</b>			

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

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

It is very difficult to advertise in any media (radio, TV, print media, etc.). The current requirements demand the introduction of a large amount of information that does not fit into the space of the commercials. There are too many legal notices that are inaudible on radio or unreadable on TV. On the other hand, even in a pop-up there are too many mentions to put in an advertisement for them to be effective. The presentation of information in layers should be promoted.

**Please explain your answer to question 22:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

It is impossible to comply with the requirements in Art. 11 MCD in a legally secure manner and even display them on digital channels. The prescribed disclosures are too extensive.

**Q23: 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
<b>Radio</b>	X		
<b>TV</b>	X		
<b>Printed media</b>	X		
<b>Social media</b>	X		
<b>Other</b>	X		

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Advertising must be adapted to the medium and Member States must be prohibited from adding other mentions. This would allow better comparability of cross-border offers.

**Please explain your answer(s) to question 23:**

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Q24: 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?:**

<b>Yes</b>	
<b>No</b>	X
<b>Don't know/No opinion/N.A.</b>	

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is important that the consumer receives all necessary information in an understandable way. This is also guaranteed by means of Robo advisors. In many areas, information must be transmitted on paper or permanent data media anyway due to the MCD. The robo-advisors would only be a problem if it were used as a single decision-making system, without human intervention, and not as one of many "human" decision support tools.

In our practice, the robot-advisor (a human decision-making aid tool) makes it possible to provide proven and calculated answers based on the filters set.

This does not replace the bank commercial advisor who will take the time to listen to the future borrower, better understand his project and his needs and make him a proposal adapted to his situation. Nothing replaces knowing your customer by an advisor.



In the end, the decision to grant or not a mortgage will always be made by a "human being". This is a long-term commitment for the bank, for a very important project for the consumer (family housing).

This mix of human and automated analyses also corresponds to a strong expectation of customers: a 2021 KPMG study, relating to financial advice, shows that only 8% of French people would be comfortable with a digital tool without any recourse to a human interaction and that 65% of customers favour mixed solutions.

In summary, automation should only be used in the service of human decision-making. With regards to mortgage credit agreements, robo-advisors play - if at all - a subordinate role.

**Q25: 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.*

Today, there is no 100% digital mortgage loan route ... but nearly 100% of mortgage loans have had at least one digital step in their journey. In fact, there is a set of digitized functions that allow consumers to be informed and / or allow them to put together their file digitally - although not all points are available in all Member States:

- To do a simulation on website
- To submit supporting documents in their secure internet space
- To sign electronically the credit application
- To sign electronically loan offers

In some Member States, it is not possible to formalise a mortgage digitally as the last stage, the formalisation before the notary, cannot be done digitally.

Overall, consumer lending is mostly based on one borrower while mortgage loans have often two borrowers which makes the data collection and signing process more difficult. The personal contact between customer and advisor is more efficient and the advice is appreciated by the customers.

With regard to the new digital distribution channels, it is important to fully harmonize the text form requirement as a mandatory standard for the conclusion of contracts in every Member State.

The MCD allows Member States to undermine the objectives of the Directive in particular concerning digitalisation. For example, the legislator in some Member States could demand the personal signature of both the consumer and the creditor for the effectiveness of the consumer loan agreement. This contradicts the objectives of the Directive, however. The flexibility of consumers in an increasingly digitalised world cannot be ensured in this manner. With a view to a uniform single market, it would lead to competitive distortion compared with other Member States, where individual Member States impose formal requirements not amenable to growing digitalisation. This applies all the more as such formal requirements make it necessary for the contractual documents to be printed out and hence use quantities of paper produced contrary to the principle of sustainability and environmental aspects.



**Q25.1: 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 household carries out one or two real estate transactions in its life. The loan represents more than 5 years of wages and a term of approximately 20 years. Future borrowers very often ask for a loan from their own banker because they need to be reassured given the amount of the loan and the upcoming commitment.

In addition, the identification of tax and other fraud (money laundering) is more easily detectable face to face, because the advisor can directly ask the origin of the invested capital and gauge a reaction, which might not be detected if a question is asked via a computer or smartphone.

**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)).

**Q26: Are you aware of existing problems related to tying or bundling practices?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**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 existing problems related to tying or bundling practices. The MCD is very clear on permitted and prohibited practices.*

*However, we do want to highlight a judgment of the European Court of Justice, which has on 15/10/2020 condemned the practice of making the opening of an account conditional on obtaining a preferential rate, assimilating it to a tied sale, despite the interest that the consumer could derive from the benefit from a more advantageous rate. The retroactivity to the stock of this decision could be problematic in the future.*

**Q27: To what extent do you agree that the exceptions to the prohibition of tying practices are still relevant?**

	<b>1 (fully disagree)</b>	<b>2 (rather disagree)</b>	<b>3 (neutral)</b>	<b>4 (rather agree)</b>	<b>5 (fully agree)</b>	<b>Don't know/no opinion/N.A.</b>
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<p><b>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 the creditor in the event of default</b></p>					<p>X</p>	
<p><b>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 obtain the credit</b></p>					<p>X</p>	
<p><b>conclude a separate credit agreement in conjunction with a shared equity credit agreement to obtain the credit</b></p>					<p>X</p>	

**Please explain your answers to question 27:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The exceptions to the prohibition of tying practices are still very relevant in the area of mortgage credit. Consequently, the provisions should remain.

However, the exceptions of point 2 of article 2 should be clarified: indeed, it seems normal for a lender to request an account opening to collect loan charges. Therefore,



the lender ensures that its debit will end up in an existing account, the borrower is responsible for depositing sufficient funds there to avoid unpaid charges.

**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

**Q28: 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	X
Don't know/No opinion/N.A.	

**Please explain your answer to question 28:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

GDPR is enough; In particular the part on the explanation of automated processing of personal data.

**Q29: 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		X	



<b>(e. g. logic and risks involved in the automated processing of personal data, as well as its significance and effects on the decision)</b>			
<b>To obtain human intervention on the part of creditor to review the credit decision</b>		X	
<b>To contest the assessment of the creditworthiness and the decision</b>		X	
<b>No specific protection is needed</b>			
<b>Other</b>			

**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.*

The lender defines its own risk policy and grants loans based on these elements. He does not have to justify them in the event of loan refusal, especially as he already does so with his supervisory authorities.  
 There is no right to credit.  
 In addition, the supervisory authorities sometimes set limits to be observed, in particular in terms of the level of indebtedness, but each institution has the right to choose its maximum admissible debt ratio within these limits.  
 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 (GPDR application - no need for additional sectoral rules). This policy is enshrined in texts specific to the financial sector which aim to ensure financial stability within the Union.  
 Furthermore, vague terms such as "clear explanation" often only result in legal disputes as to what requirements should be placed on clear explanations.

**Please explain your answer(s) to question 29:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

**Q30: The MCD requires a creditworthiness assessment to be based only on information on the consumer's income and expenses and other financial and economic circum-**



**stances which is necessary, sufficient and proportionate. 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	X
Don't know/No opinion/N.A.	

**Please explain your answer to question 30:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The existing obligations to check the creditworthiness of the consumer are essential for responsible lending. However, it is important to leave sufficient national discretion to give due recognition to the local expertise of lenders. Local expertise is an essential prerequisite for responsible lending. Therefore, **no more granularity is needed.**

Particularly against the background of socio-political and socio-economic developments, such as the increase in precarious employment relationships, divorce rates, single households, rising property prices, etc., it must be possible to include in the credit assessment **not only quantitative but also qualitative factors** that are relevant to examining the prospects of the consumer fulfilling his obligations under the credit agreement.

Against the background of the sustainability agenda, **social banking must be given greater recognition:**

- The credit assessment for social organisations should take into account the aspect of non-profit organisation and assess the ability to repay by the ability to reduce costs, create savings or generate additional income.
- The credit rating for borrowers in the social banking segment should assess the ability and prospects of meeting the obligations under the loan agreement. Regular savings (i.e. one year) and future income projections (i.e. in connection with education, training and qualification programmes) can be considered as income surrogates for financially excluded and vulnerable clients.

In addition, the very low level of over-indebted or defaulted files proves that the current provisions of the MCD are balanced. There is no need to go back on it. As a reminder (see answer to question 2c): Very low doubtful outstanding rate in France: 1.06% (source ACPR 2020).

If there are consumers with “thin credit files” wishing to obtain a mortgage credit, banks are flexible in their creditworthiness assessments as to which additional information can or should be considered.

**Q31: 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	X



<b>Don't know/No opinion/N.A.</b>	
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**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.*

Proportionality is not practiced in mortgage loans, but rather the principle of minimum harmonisation to ensure room for local expertise, room for technological development (e.g. algorithm-based creditworthiness assessments) and room for lending in the sense of social banking. The granting of loans is closely supervised by the supervisory authorities. For example, the EBA recently issued guidelines for granting credit. The text of the MCD must therefore provide for the main principles of a creditworthiness assessment and specify the contours to be applied, to leave texts more quickly modifiable, in the hands of each member state, according to economic conditions and market specificities.

See also our answer to Q30.

**Q32: 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)?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**Please explain your answer to question 32:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

It is not a good idea to define indicators to be used for credit ratings. Fixed values for the above mentioned key indicators should not be specified in any case. The values for the key indicators may vary from bank to bank. They may be determined by the business model of the banks (e.g. the risk appetite). The directive refers to the appreciation of repaying the loan. This made it possible to reduce payment incidents by avoiding some mistakes. The 2008 crisis highlighted the risk of lending, taking into account only the value of an asset, to borrowers unable to pay loan repayments. Today the principle that loan repayments must be compatible with income must be the rule, to guarantee financial stability for Europeans. Within this framework and if necessary, according to the national context, the Member States, alerted by the FSB, can take corrective measures.

**Q33: 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	X
Don't know/No opinion/N.A.	

**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.*

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. Lenders are obliged to add data to the databases of the regions in which they operate, no matter if the database is positive or negative.

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

**Q34: 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	X
Don't know/No opinion/N.A.	

**Please explain your answer to question 34:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

It seems normal that access to the databases involves supplying them with credits granted to residents in another Member State. It is, at least, not a bad thing to have reciprocity.

**Q35: 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	X
Don't know/No opinion/N.A.	

**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.

Once again, we would ask for flexibility here to allow Member States to implement what works for them. Changes to this would be costly for those Member States who could be required to change their system. Art 21 MCD presupposes the existence of databases for assessing the creditworthiness of consumers. In practice, however, the legality of said databases is still challenged and subject to legal proceedings.

According to recital 59 of the MCD, consultation of a credit database is a useful element in credit scoring. Some Member States even legally oblige creditors to assess creditworthiness on the basis of consultation of an appropriate database. In order to ensure the necessary harmonisation, which would have a particularly positive impact on cross-border lending, it must be ensured throughout the Union that the processing of personal data by a credit database is in the public interest and thus lawful under Article 6(1)(1)(e) of the GDPR.

For example, in France, the Banque de France database is “negative”. It only identifies payment incidents. The French Constitutional Council ruled that the establishment of a positive database unconstitutional, at the time, it was highlighted the 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 does not appear that the Constitutional Council is reversing its position. Note that in the countries that have set up a positive file (example Belgium), this had no effect on the risk of default and the number of over-indebtedness files.

**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.

**Q36: 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/N.A.
lack of consumer awareness	X					
inability to assess how much they could save	X					
unclear conditions attached to early repayment	X					



<b>too high amount of compensation to be paid</b>	<b>X</b>					
<b>other</b>						

**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.*

In some Member States the right to early repayment might not be as smooth. However, in most Member States the right to early repayment works well. Please see some national examples below:

In France, customers generally prefer renegotiating loan terms with their lender rather than switching to another institution (there are fewer fixed costs). In addition, borrowers are usually hopefully "loyal" or hesitate to search for another lender because they do not want to face the challenge of a new loan file.

Finally with the current interest rate level practiced in France (from 0.70% to 1.25% depending on the institution for a 20-year loan) there are few possibilities to find better elsewhere.

In Spain, the transposition has introduced a very clear framework.

The Law establishes the right of the borrower to repay the loan in full or in part, a period of prior notice (which may not exceed one month) and the lender's obligation to inform the borrower, who has indicated his willingness to repay in advance, of certain details that are important to bear in mind when making this decision.

The lender's compensation for early repayment is also modified. This differs according to the type of loan and may not exceed the following percentages:

- In the case of variable rate loans or variable interest tranches, the parties may establish a commission for one of the following mutually exclusive cases:
  - o During the first five years of the loan, it may not exceed 0.15% of the capital repaid in advance.
  - o During the first three years of the loan, it may not exceed 0.25% of the capital repaid in advance.
- In cases of novation of the loan or subrogation of the creditor, provided that this involves the conversion from a variable rate loan to a fixed-rate loan:
  - o During the first three years of the loan, it may not exceed 0.15% of the capital repaid in advance.
  - o After the first three years of validity of the loan, no compensation may be claimed.
- In fixed-rate loan agreements or in fixed-interest tranches in which the reimbursement occurs:
  - o During the first ten years of the loan, it may not exceed 2% of the capital repaid in advance.
  - o After the first ten years of validity, it may not exceed 1.5% of the capital repaid in advance.

In Germany there are no obstacles for the consumers to exercise the right of early repayment, too.



Customers can decide whether to choose a fixed- or a variable-rate mortgage credit. In the latter case they are free to terminate their loan agreement at any time with three months' notice and without the payment of compensation for early repayment. If they choose a fixed-interest rate loan, it can be redeemed in full without an early repayment compensation at the end of every period for which a fixed rate of interest has been agreed or at least after a period of at ten years.

It is essential for customers to retain the opportunity to choose between these different propositions with come with different conditions. Consumer protection considerations are a major argument in favour of retaining the legal framework for fixed-rate credits in its present form. Long-term interest-rate and planning security for borrowers, coupled with mortgage interest rates which are among the lowest in Europe, represents a key element of consumer protection in the field of mortgage loans. The feasibility of offering of long-term fixed interest rate loans with the highlighted benefits for customers depends on lenders' ability in refinancing loans at matching maturities. An unconditioned right for early repayment would jeopardize this balanced system an put its existence at risk. It would be incomprehensible from a consumer protection and market perspective to reduce product diversity and to indirectly ban certain national funding techniques from the market by changing the legal framework as is. This is even more important given that the vast majority of Germans intentionally opt for fixed-rate loan when financing their home.

**Please explain your answers to question 36:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The possibility and procedure of early repayment is included in the loan agreement. Consumers can also contact the bank if they have additional questions. The current provisions are therefore sufficient.

**Q37: Do you consider that further measures should be taken to further facilitate the early repayment of mortgage credit?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**Q37.1: 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 including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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**Q38: 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	X
No	
Don't know/No opinion/N.A.	

**Q38.1: 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:**

a cap on the compensation	
guidance on the calculation of "fair and objective compensation"	X
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.

In some Member States, the national law is very favourable to consumers in terms of repayment compensation - to the detriment of the economic aspect carried by lenders.
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**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.

In Europe, a common understanding of "fair and objective compensation" does not exist.  For example, in German law, prescribing a strictly financial mathematical calculation and lump sums, which may be to the consumer's disadvantage, are not allowed. This is largely due to the proven refinancing system in Germany that has existed for over 250 years. In Germany, the lender can only demand an early repayment compensation in the case of fixed-rate loans. In this context, the early repayment compensation is an essential cornerstone of the previous and present German financing culture, which was characterised by long-term fixed-rate loans. If the compensation is abolished or further limited, higher lending rates are to be expected and possibly even an increasing share of
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variable-rate financing like in other member states of Europe which limited the compensation. The latter could prove to be a veritable time bomb for consumers and credit institutions alike as soon as the current low-interest phase is abandoned.

In numerous other Member States, the compensation is limited by law and not by the lender's loss. There the early repayment compensation turns into a fee that no longer serves its original economic purpose. This means that when a loan is repaid early, the repayment usually in monthly annuities is replaced by a one-off payment. A properly measured early repayment compensation ensures that the two correspond to each other.

Further regulation of compensation, even if only guidelines, must therefore take more than one system into account, especially their advantages. It is demonstrable that limits on compensation lead to more variable loans and more expensive loans, while banks in countries without limits on compensation offer relatively very cheap loans.

Hence, the current legal framework should be maintained.

**Q39: 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?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**Please explain your answer to question 39:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

Competition is already very tight in the market and consumer have access to a wide range of offers.

Besides, Eurobarometer studies have shown that customers to not switch because they are satisfied with their current supplier. Beyond that, the different languages, cultures, traditions etc. result in an insignificant demand for cross-border switching to another supplier.

**2.6 Foreign currency loans**

**Q40: Do you agree that the MCD has been effective in protecting consumers from exchange rate risks posed by foreign currency loans?**

<b>Yes</b>	<b>X</b>
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**Please explain your answer to question 40:**



*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The requirements introduced in the MCD has been very strict and the consequence is that most of the financial entities do not offer this product.

We would like to propose a change in the current definition of a foreign currency loan:

'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. 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 this 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, among other things, rental income, savings, income from life insurance, investments in securities, etc.

ESBG 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.

**Q41: 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?**

<b>Yes</b>	<b>X</b>
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**Please explain your answer to question 41:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The offer of “foreign currency loans” has disappeared because the requirements for lenders are too difficult to meet. A loan in euros, the banker’s currency, could be considered as a foreign currency loan if it is taken out by a person who lives in Poland even if his/her income is received in euros.

- Paragraph 28) Foreign currency loans: a new definition is required:**  
 ‘Foreign currency loan’ means a credit agreement where the credit is:  
 (a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; **or and**  
 (b) denominated in a currency other than that of the Member State in which the consumer is resident.

Justification:

The definition of foreign currency credit is excessive. We have found that the current definition means that there are foreign currency loans that fall within the scope, although the inclusion is disproportionate to the actual risk to the consumer.

A representative example is the case of a Czech nurse who works in Austria but continues to reside in the Czech Republic. The carer is paid in euros. She decides to buy an apartment in Austria, financed by a housing loan in euros taken out with an Austrian savings bank. Although the nurse receives her salary in euros, the currency of the loan is in euros and even the property is located in a euro zone, the savings bank must treat the loan as a foreign currency loan under provision b), as the nurse’s place of residence is not in Austria (or the euro zone).

This would ensure that Czechs living in the Czech Republic, who travel to Austria for work every day and earn EUR, would no longer be subject to the conditions for foreign currency loans in the sense of the MCD (HlKRG) in the case of EUR loans. Conversely, it would also clearly regulate that people living in Vorarlberg, working in Switzerland and earning CHF are not subject to the foreign currency loan regime within the meaning of the HlKRG when taking out a EUR loan.

Thus, the definition of FX-loan has to be changed in order to support lending to “cross-border persons” (e.g. Austria/Czech Republic; Austria/Switzerland; Sweden/Denmark).

- Article 23, para. 2, point 1: modification and full harmonisation of the right to convert the credit agreement into an alternative currency required**

For specific groups of persons, e.g. expats, such as Austrians working/living in UK, US, China, etc., borrowing in EUR to finance their pension residence at home remains difficult due to the broad provisions regarding the right of conversion into an alternative currency.



The MCD provides for the right to convert “into the currency in which the consumer primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the credit agreement was made;”

As in some jurisdictions (e.g. AT, BE) it is required under financial accounting regulations to conclude a new credit agreement, thus with a new creditworthiness assessment, if a conversion into a new currency is requested.

Consequently, concerns arise when such a conversion is requested. For example, the consumer could request a conversion from EUR into Yuan (scenario: Austrian expat in China, salary paid in Yuan, loan in EUR = FX-loan for Austrian bank). Legally, this right cannot be excluded. However, the bank cannot provide a refinancing in yuan at reasonable costs, the financing must be rejected. In addition, whenever a change in maturity or a deferment would be requested, another creditworthiness assessment will be needed. The currency of a credit for some groups of consumers over a period of 20-30 years is not predictable for the creditor. It also should be highlighted that spreads on currencies are different. EUR financing can be commercially implemented with lower charges than in other currencies if refinancing is feasible at all. However, in reality the consumer might not be choosing between two different alternatives, since he will go for the cheapest option which will always be EUR financing.

Thus, in such scenarios it is just unpredictable for the lender to assume the potential currency into which the customer might want to convert and to prepare (hedge) for such an occurrence.

**The scope of point 1 needs to be defined more precisely (e.g. EU currencies) or better aligned with real scenarios,** e.g. by using the wording of the UK transposition: “where applicable”:

“(a) **where applicable**, the currency **of a Member State** in which the consumer primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the credit agreement was made; or”

## **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.

**Q42: Do you consider that further regulation of non-credit institutions providing mortgage loans would be necessary?**

Yes	X
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<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**Please explain your answer to question 42:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

Generally, non-credit institutions should be subject to the same requirements as credit institutions in order to guarantee consumer protection and ensure financial stability. This “same job, same risk, same rules” approach should be in place for the MCD, CCD texts to ensure a level playing field as well.

Here is an example, in detail, why further regulation is needed:

While mortgages provided by banks are subject to both the rules in the MCD and to the capital requirements in CRR/CRD, mortgages offered by non-credit institutions (NCI), as defined in the MCD are often obliged to follow only the rules in the MCD. According to the Commission, the granting of mortgages by NCIs remains a limited activity in most Member States. However, in some MS new actors have indeed entered the market, for example Sweden and the Netherlands (see below). It cannot be ruled out that this trend will expand to other MS. It must be ensured in the MCD that the entrance of new actors on the mortgage market is not made on the expense of either consumer protection or financial stability.

In Sweden, and the Netherlands, NCIs usually set up their funding structure involving one or more Alternative Investment Funds (AIF), which can be subject to some minimum capital requirements, but not for the purpose of covering exposures to mortgage clients. These capital requirements are negligible in a mortgage exposure risk context. The AIFs connected to the NCI that are offering mortgages normally issue debt instruments, which are in turn offered to insurance companies and other institutional investors, in some cases in a way so that the insurance company or investor becomes the direct owner of the asset (mortgage), creating an exposure for the insurance company.

These exposures of the insurance companies are subject to the requirements in the Solvency Directive. However, in several cases, the debt instruments are structured in a way so that the exposure of the investing insurance company benefits from a so called “look through approach”, which in practice leads to that the capital requirement according to the EU Solvency Directive become insignificant for this exposure. The NCI are not subject to risk retention rules, and the capital requirement for credit risk for insurance companies when investing in mortgages is, in cases where the above mentioned setup is used, is zero.

If a credit institution (traditional bank offering mortgages) subject to the capital requirements in CRR/CRD would create a similar setup using e.g. an AIF, the activity of the AIF and of other licensed entities related to the creation of an alternative structure for offering mortgages, would be defined as ancillary services, and would be subject to the rules on consolidation in CRR/CRD. This means that those activities would need to be covered with capital in the same manner as if the mortgage lending was offered directly from the credit institution. This set up can also lead to financial stability concerns from the point of view of the supervisory authorities overseeing these NCIs.

If the MCD is revised, it should be with the purpose to make sure that NCIs are properly regulated, and that a level playing field both between Member States and between market actors can be ensured. Also, if requirements like capital, liquidity, and resolution are



not the same, this might lead to refinancing risks for consumers in case of a crisis situation, resulting in consumers being forced to pay a higher interest rate if the NCI would get in refinancing problems. Furthermore, since the MCD does not include any requirements regarding compliance function or any other operation risk control, there could also be operational vulnerabilities threatening the resilience in the financial system.

**Q43: 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	X
Don't know/No opinion/N.A.	

**Please explain your answer to question 43:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

There is a passport if it is a lending institution, or an intermediary duly authorized for these activities.  
 A passport for non-banks, without them being subject to the same rules as banks or authorized intermediaries, would accentuate an "unlevel playing field" and would not contribute to the creation of a single market for mortgage loans. It could also reduce consumer protection, which has improved at European level with the MCD.

**Q44: Do you see any potential risks stemming from the introduction of a passport for the non-credit institutions?**

Yes	X
No	
Don't know/No opinion/N.A.	

**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.*

Today the market is balanced: there is a sharp increase in mortgage loans without an increase in over-indebtedness or defaults  
 The entry of unregulated non-banks could only destabilize this market which is also very competitive in terms of rates.

**2.8 Credit intermediaries**

**Q45: 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?**



<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**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.*

There are no particular problems in the context of the credit intermediary passport that prevent cross-border activity. Rather, this is related to the general problems in cross-border business transactions.

For credit institutions and for credit intermediaries cross-border activities only exist in theory. The legal situation of the country in which the borrower is resident must always be taken into account when drafting the contract. In the event of legal action and execution against a foreign consumer, the creditor's know-how is often insufficient and must be purchased at high cost. Due to the small number of foreign borrowers, cross-border lending does not pay off economically.

## **2.9 Arrears and foreclosure**

**Q46: 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?**

<b>Yes</b>	<b>X</b>
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**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.*

The application of forbearance measures must be the sole decision of the creditor and after conducting the corresponding risk assessment. The application of forbearance measures should remain in the remit of the decision of creditors and overlaps with the EBA Guidelines on the treatment of forbearance exposures should be taken into account to avoid overlaps and inconsistencies. In our understanding, the European Parliament insisted in the legal discussions regarding the directive on credit servicers and credit purchasers (NPL Directive), that only the assessment of forbearance was mandatory and not the application of forbearance measures itself.

We don't consider that MCD should include further regulation in this regard. Exceptional circumstances such as COVID should be addressed in the current situation. Already in the past, other measures were taken first. Enforcement was only used when there were no other options or no other agreements with the customer possible. Therefore, Art. 28



has neither a direct impact on our default definition nor on the methodology of forbearance.

**Q47: 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	X
Don't know/No opinion/N.A.	

**Q47.1: 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:**

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



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**Q48: 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?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**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.*

Specific protection, if chosen, must be in the hands of the Member State. Indeed, specific provisions could conflict with other legal provisions. For example, in France, “family housing” is already protected by the *code civil* and it has an impact on the way to finance it (authorisation of the non-borrowing spouse to give a mortgage on this property). The recovery procedures are specific at the national level as well as the specific protections (over-indebtedness procedure, no commissary pact on the main residence...). Banks are obliged to inform the customer about the risks in the counselling protocol.

**Q49: 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?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**Please explain your answer to question 49:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

The measures must remain at the level of the Member State: they will be more appropriate and faster to activate. Exceptional situations are by definition complicated to predict and therefore each one requires an individual answer. The lessons learnt are that Member States and credit institutions reacted fast and appropriate to prevent a financial turmoil. Thus, adhering to the principal of subsidiarity is very important and consequently, no EU-wide harmonised measures are needed to tackle any exceptional situation.

Experience has shown that some Member States are able to introduce measures that protect the interests of borrowers and lenders in the event of exceptional and systemic economic disruption, such as that caused by the Covid-19 outbreak. Many EU countries



have already implemented some kind of national insolvency legislation regarding credit moratoria or can take from other legislative texts (e.g. commerce law) that may be used in case of non-performance like force majeure for example. Therefore, it is not necessary to introduce such measures in the MCD and the necessity of such kind of propositions should be carefully envisaged, especially considering the existence of other forms of borrowers' protection according to the legislation. It seems very ambitious to anticipate legal rules for exceptional situations, such as the corona crisis. It would be preferable to find appropriate rules on a case-by-case basis when these unforeseen situations arise.

### **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](#).

**Q50: Is there a need to create an EU-wide definition of green mortgages?**

<b>Yes</b>	<b>X</b>
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**Please explain your answer to question 50:**

*5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.*

We believe that, at some point, it will be necessary to introduce a definition of green mortgage. However, it could be too early to do so at this stage.

Firstly, we do not think that the MCD is the right text for a definition of green mortgage. The European Commission, or maybe the EBA, should examine if the MCD is the right place or if there is a better suited text. The EU Taxonomy would be one alternative, or Energy Efficient Buildings Directive. Even the CRR currently under review in the Banking Package 2021 could include something on green mortgages (new article 501 CRR).

Secondly, any such definition must be in line with the EU Taxonomy regulation (perhaps this regulation could cover all green products, and harmonise the definitions in one place), although the definition should remain simple and leave credit providers with enough room for their own product design. There are also a lot of other texts in the drafting process which are including ‘green’ topics, with different views of energy performance, greenhouse gas emissions, digital footprints, or even the weight on biodiversity. As this Directive is sectorial and only covers mortgages on housing, we could end up with a definition which is immediately out of date or not harmonized with other texts. We are also concerned that the definition of transactions on real estate in EU Taxonomy is very narrow and the risk is to have only very few green loans with bad consequences for the green balance sheets of the banks.

Thirdly, we see a need for a common market standard defining green mortgages based on the collateral or the transaction purpose; not on the loan agreement as such. The definition should therefore be on what defines a green property and what defines an



energy efficient measure for a specific property. It is important that the definition is simple to ensure that green mortgages can continue to exist in the market. The definition should also provide credit providers with enough room for their own product design.

Before a common market standard is defined and required, it is of utmost importance that the data needed is available. This should be provided by relevant national authority to ensure consistency and harmonization. It cannot be required to use any EU definition of green mortgages until such data is available.

**Q51: What would be the benefits/advantages for consumers and/or lenders of an EU-wide definition of green mortgages?**

<b>to ensure common requirements and possible incentives</b>	X
<b>to ensure high level of confidence into the greenness of the mortgages</b>	X
<b>to facilitate securitisation and refinancing of mortgages through green bond issuances</b>	X
<b>to facilitate disclosure obligations under <a href="#">Taxonomy Regulation</a></b>	X
<b>other</b>	X

**Q51.1: 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.*

A benefit with setting an EU-wide definition of green mortgages is to ensure more harmonization in the market. For the consumer it will also become clearer what is expected for a property/energy efficiency measure to be deemed to be green and thereby easier to change a green mortgage from one bank to another.

To define the green criteria for the collateral or the energy efficiency measure, rather than the loan contract, should not be in conflict with the regulations on competition.

**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.*

Any definition of “green” or “energy efficient” mortgages should not be too narrow. For example, the Nearly Zero Energy Building Standard as defined in directive 2010/31/EU on the energy performance of buildings has proven to be in good balance between economic affordability and energy efficiency in the Austrian context.

However, although we see the growing demand for a harmonising initiative, we also have doubts whether the MCD is the right place for integrating sustainability strategies. We strongly recommend integrating sustainability requirements into building regulations and building procedures. This would stipulate that only sustainable



properties can be built at all. Consequently, only new properties meeting sustainable benchmarks would be financed by banks. Of course, this does not take into account the buildings which already exist.

It is a matter of fact that sustainable buildings are more expensive compared to less sustainable ones. Thus, a higher credit amount would be needed. Most of the consumers would tend to build cheaper, thus less sustainable. Thus, sustainable buildings must be affordable. Incentives are required, for example via national/local building laws or via premiums or interest subsidies (e.g. solar energy subsidies, heat pump subsidies, use of sustainable building materials, etc.).

After assessing the specific NPLs, we might also recommend prudential measures, such as the introduction of a Green Supporting Factor. Yet, we do not recommend the development of a brown factor as this would have negative effects on lending capacities and would increase the social gap.

**Q52: 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	X
No	
Don't know/No opinion/N.A.	

**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.*

The criteria of the taxonomy are very demanding with regard to the quality of the housing stock, adopting the taxonomy could lead to discarding too many borrowers and only considering very few loans as green. What would happen if someone cannot afford to buy a 'green' house? What would then be the consequences in terms of exclusion? The EU-Taxonomy should be the only legal definition of Green Mortgages. This is the direction in which the development will go, so there is no need for an additional definition of "Green Mortgages" in the transition phase.

To not create too many different definitions of what is green, a link to the EU Taxonomy seems appropriate. However, the definition should be limited to the "substantial contribution" criteria in the Taxonomy and should not include the DNSH-criteria. The definition of green mortgages should not give advantages to one of the environmental objectives, but instead it should be possible to grant a green mortgage independent on which environmental objective the technical screening criteria relates to (e.g. climate change mitigation, biodiversity).

**Q53: In your view, which measures could be considered to encourage the uptake of green mortgages?**

*Please select as many answers as you like*



<b>obligation for credit providers to inform the consumer if such product can be provided</b>	
<b>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</b>	
<b>create a label for green mortgages offered at preferential terms and conditions</b>	
<b>other</b>	<b>X</b>

**Q53.1: 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.

It is not the loan that is green and should be encouraged, but the real estate transaction. The financing is just a means. For a green object, the terms of the loan may be different or better or both, depending on the pricing policy of each lender.

The Commission should also look into the introduction of a Green Supporting Factor: As said previously, it is a matter of fact that sustainable buildings are more expensive compared to less sustainable ones. Thus, a higher credit amount would be needed. Most of the consumers would tend to build cheaper, thus less sustainable. Therefore, sustainable buildings must be affordable. Incentives are required, for example via national/local building laws or via premiums or interest subsidies (e.g. solar energy subsidies, heat pump subsidies, use of sustainable building materials, etc.).

After assessing the specific NPLs, we might also recommend prudential measures, such as the introduction of a Green Support Factor. Yet, we do not recommend the development of a brown factor as this would have negative effects on lending capacities and would increase the social gap.

One solution could be to introduce the requirement that every building can get a free energy performance certificate offered by an EU fund (perhaps the Next Generation EU?) to gather all the data and information on a building. By using a fund, the EU would ensure a harmonised certification which would be easy to understand. The borrower should be required to get all the necessary certificates whilst in the process of purchasing a property, and the lender should check that the criteria are adhered to.

**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.

To finance the construction or acquisition of ecological buildings or the renovation of buildings to become more energy efficient is sensible in itself. Green buildings produce less operational costs, higher and more stable property values and less emissions of CO<sub>2</sub>. There is no need to encourage green mortgages beyond these effects. In addition, there are already a large number of government funding programmes, for example for the promotion of energy-efficient buildings.



**Q54: Do you consider that the knowledge and competence requirements for the staff of creditors and credit intermediaries should specifically cover knowledge on green mortgages?**

<b>Yes</b>	
<b>No</b>	<b>X</b>
<b>Don't know/No opinion/N.A.</b>	

**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.*

The loans offer meets the consumer's expectations and constraints.  
The training obligations for bank advisers already cover aspects related to energy performance and the fight against greenhouse gas emissions. The MCD does not have to specify this point concerning the knowledge that bank advisers must have, the content of the training must be left in the hands of the Member State.

### **2.11 Other**

**Q55: Are there any other issues that have not been raised in this questionnaire that you think would be relevant for the MCD revision?**

<b>Yes</b>	<b>X</b>
<b>No</b>	
<b>Don't know/No opinion/N.A.</b>	

**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.*

The MCD has been in operation since 2016 and concerns long-term financing. It is a bit early to fully review it because today its application seems balanced and certain points related to the treatment of arrears have not yet been sufficiently tested.



### **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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