

Europäische Kommission

Generaldirektion Finanzstabilität,
Finanzdienstleistungen und Kapitalmarktunion

SPA 2 – Pavillon Rue de Spa 2 / Spastraat 2
Belgien

Via E-Mail an:
fisma-mortgage-credit-review@ec.europa.eu

BEREICH Integrierte Aufsicht
GZ FMA-LE0001.230/0002-INT/2022
(bitte immer anführen!)

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WIEN, AM 28.02.2022

EK-Konsultation: Review of the Mortgage Credit Directive

Sehr geehrte Damen und Herren,

bezugnehmend auf die öffentliche Konsultation der Europäischen Kommission zu einem

„Review of the Mortgage Credit Directive“

erlauben wir uns Ihnen anbei die offizielle Stellungnahme der Österreichischen Finanzmarktaufsichtsbehörde (FMA) zukommen zu lassen.

Die Stellungnahme wurde zur leichteren Auswertung auch in das ECAS-EU-Survey-Tool unter Verwendung des Links auf der Seite <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13090-Mortgage-credit-review-of-EU-rules/public-consultation_en> eingegeben.

Wir ersuchen höflich um Berücksichtigung unserer Anregungen und stehen für Rückfragen sehr gerne zur Verfügung.

Finanzmarktaufsichtsbehörde
Bereich Integrierte Aufsicht

Für den Vorstand

MMag.a Dr.in Julia LEMONIA RAPTIS, LL.M LL.M

Dr. Christoph Seggermann

elektronisch gefertigt

Signaturwert	M7/7oIoInSQky4LiLyfYPYB27N4sKDGtvl1vO10QOZQYOczJMV97Ueqm2bGkxnBvkXzhCf3FhkMoKoRFFH42gCWkPZjj4tFsvpmQG/GLTBhuMSFMjWAZ3faW3OJE9lw3w7AOhfZX9WEHNmmL1Sigj4ED0XpLScJ4JFa6o gppzitGQXORHvozklETk6tnNzXFCg5ooKJbIOBKN5RxaS4cqEJYqR2XQjlpAKzn02IJ23+dAJLGULQsxo3jE OtSCTpeAbQQmPYKgJ0nU4oQuWOEUUYTsc6OFLeBcZ1PMwbkGr5X/+dFSVGikMFpK1dOI8jvZhvy43E13vmoM0usSdw==	
	Unterzeichner	Österreichische Finanzmarktaufsichtsbehörde
	Datum/Zeit-UTC	2022-02-28T09:18:58Z
	Aussteller-Zertifikat	CN=a-sign-corporate-light-02,OU=a-sign-corporate-light-02,O=A-Trust Ges. f. Sicherheitssysteme im elektr. Datenverkehr GmbH,C=AT
	Serien-Nr.	532114608
	Methode	urn:pdfsigfilter:bka.gv.at:binaer:v1.1.0
Prüfinformation	Informationen zur Prüfung des elektronischen Siegels bzw. der elektronischen Signatur finden Sie unter: http://www.signaturpruefung.gv.at	
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EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

Horizontal policies
Retail financial services

CONSULTATION DOCUMENT

REVIEW OF THE MORTGAGE CREDIT DIRECTIVE

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 28 February 2022** at the latest to the **online questionnaire** available on the following webpage:

https://ec.europa.eu/info/publications/finance-consultations-2021-mortgage-credit-review-2021_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage:

https://ec.europa.eu/info/publications/finance-consultations-2021-mortgage-credit-review-2021_en

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at fisma-mortgage-credit-review-2021@ec.europa.eu.

INTRODUCTION

Background for this consultation

The [Mortgage Credit Directive](#)¹ (Directive 2014/17/EU, hereinafter “MCD”) applies to loans to consumers for the purpose of buying residential property (hereinafter, “mortgage loans” or “mortgages”).

Article 44 of the MCD requires the Commission to undertake a review of the MCD considering the effectiveness and appropriateness of the provisions on consumers and the internal market. The Commission started the work on the MCD review with the publication of a [report on the review of the MCD](#)² (hereinafter, “MCD report on the review”) assessing its implementation and functioning for 4 years after its transposition deadline. The report was based on a [dedicated study on the evaluation of the MCD](#)³ (hereinafter, “MCD evaluation study”). It highlighted that the MCD has been effective in raising the standard of consumer protection and has helped harmonise mortgage-lending practices across the Member States. Nevertheless, the level of protection still differs across Member States, and some limitations, in particular in terms of scope and information disclosure requirements for digital delivery, seem to hinder the full effectiveness of the rules. The report also stressed that the MCD had a limited impact on the creation of a single market for mortgages and pointed to the need to ensure that the MCD remains fit for purpose as the market develops and new challenges arise notably from digitalisation and the sustainable finance agenda.

For instance, digitalisation enables new market players to offer new forms of financial intermediation such as peer-to-peer mortgage lending. The industry is progressively getting digitalised, using automated decision-making systems, non-traditional data to assess the creditworthiness, robotic advisors, etc. Consumer habits may also be changing with increasing use of comparison websites to compare mortgage offers and non-traditional means to apply for mortgages. Digitalisation may bring many benefits to the consumers, in particular in terms of easier access to products and lower costs. It may also play an important role for the development of the Single Market. But, digitalisation may also entail new challenges for consumer protection. For instance, digitalisation may facilitate new ways of providing mortgage credit (e.g. through crowdfunding, peer-to-peer lending) without necessarily in all cases being subjected to the safeguards of the MCD. Information disclosures, which are not adapted to a digital environment, may make it more difficult for consumers to fully understand the offer. There may be also a risk of discrimination linked to credit decisions based on algorithms (use of Artificial Intelligence). The recently made [artificial intelligence \(AI\) proposal](#)⁴ 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.

Furthermore, buildings in the EU are collectively responsible for 40% of our energy consumption and 36% of greenhouse gas emissions. Improving energy efficiency and ensuring the use of sustainable materials in buildings therefore has a key role to play in achieving the ambitious goal of carbon-neutrality by 2050, as set out in the [European green deal](#).

Also, the COVID-19 crisis has disrupted the EU economy and had a major impact on the credit market and consumers, making many consumers more financially vulnerable. Member States adopted a series of relief measures, such as loan repayment moratoria, to alleviate the financial burden on consumers. It will be necessary to assess whether lessons need to be drawn from the COVID

¹ Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0017>

² See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0229>

³ See : <https://op.europa.eu/en/publication-detail/-/publication/e4a1db26-2f94-11eb-b27b-01aa75ed71a1>

⁴ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206>

experience.

Finally, the Commission adopted a [proposal revising the Consumer Credit Directive \(CCD\)](#) in June 2021. Given the important similarities between the two Directives, and the need to ensure overall consistency in credit markets, the Commission will need to take the amendments suggested in the CCD proposal and the on-going negotiation of them EU legislator into account.

Responding to this consultation and follow up

In this context, 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.

CONSULTATION QUESTIONS

1. GENERAL QUESTIONS

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

	Fully disagree	Rather disagree	Neutral	Rather agree	Fully agree	Don't know/ No opinion
Increase consumer protection				X		
Contribute to an efficient and competitive single market for mortgages				X		
Promote financial stability				X		

Please explain and provide suggestions on what can be improved to increase its effectiveness:

We would favour further harmonisation of enforcement measures and competences to ensure a level playing field and enhance effective enforcement of conduct regulation.

Question 2. To which extent do you agree that:

	Fully disagree	Rather disagree	Neutral	Rather agree	Fully agree	Don't know/ No opinion
The EU-intervention (MCD) was more effective in achieving those objectives than leaving it to Member States acting at national or regional level					X	
Please explain						

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						X
Please explain						
The MCD continues to be relevant , i.e. addresses current needs and problems in society and in the mortgage credit market					X	
Please explain						
The MCD is coherent with other EU policies and interventions					X	
Please explain						

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

Yes	No	Don't know
		X

Please explain

If so, in which areas could the MCD be simplified?

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

Yes	No	Don't know
		X

Please explain

There were some concerns on discrimination of elderly persons to obtain mortgage credits, however a closer look revealed that such issues did not occur on a wider scale and were limited to singular cases.

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

Yes	No	Don't know
X		

Please explain

Studies carried out by consumer protection organisations⁵ showed that credit institutions often require the purchase of a life insurance and a property damage insurance along with the mortgage credit. Consumers are not sufficiently made aware that they do not have to buy the insurance proposed by the credit institutions, but can compare insurance offers and choose the best offer for themselves.

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

⁵ Cf.

https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Kreditsicherheiten.html#heading_Versicherungsschutz_gegen_Ableben

https://www.arbeiterkammer.at/beratung/konsument/Versicherungen/AK_Studie_Kreditrestschuldversicherung_2021.pdf

https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Checkliste_fuer_Wohnkredite.html#heading_Tipps_fuer_das_Kreditgespraech

Fully disagree	Rather disagree	Neutral	Rather agree	Fully agree	Don't know/ No opinion
	X				

Please explain

We rather disagree due to the fact that enforcement of the MCD in Austria is decentralised:

- FMA has been designated by law to supervise some parts of MCD (knowledge and competences of staff, staff remuneration, remuneration policy, use of reliable standards for the valuation of residential immovable property as well as strategies regarding forbearance).
- Responsible for the execution of the main federal act (HIKrG) transposing the MCD is the Ministry of Justice.
- Regarding credit intermediaries, the Federal Ministry for Digital and Economic Affairs is responsible and enforce the MCD through the delegation of federal authority to relevant administrative bodies at district level.
- Regarding administrative penalties, the administrative authorities at district level are competent as well.

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

Yes	No	Don't know
X		

Please explain

We would favour a greater harmonisation of the scope of enforcement/enforceability: With regard to the provisions in the national law transposing the MCD, the FMA does not have any investigative, enforcement, or administrative penalty powers. The national law transposing the MCD is not subject to supervision by the FMA but by the Ministry of Justice and the Ministry for Digital and Economic Affairs (via district administrative authorities). In order to achieve a level playing field like in the other supervisory areas (insurance supervision, securities supervision) and to strengthen conduct supervision, the supervisory authorities should be granted investigative, enforcement, and administrative penalty powers. The provisions should allow supervisors to audit banks' systems in order to ensure that they are compliant with standards of conduct.

If "YES", do you consider that the shortcomings identified are due to the MCD legal framework or to its application?

There are shortcomings due to both, the legal framework and its application.

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

Yes	No	Don't know
		X

Please explain

We are not aware of sanctions based on Article 38 of the MCD.

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

Fully disagree	Rather disagree	Neutral	Rather agree	Fully agree	Don't know/ No opinion
					X

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

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

Yes	No	Don't know
		X

Please explain

The extent of awareness and information campaigns and thus financial education increased during the last decade. However, the verification is difficult, whether this finding is due to the mentioned provision.

2. SPECIFIC QUESTIONS

2.1. Market structure / scope

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

	Fully disagree	Rather disagree	Neutral	Rather agree	Fully agree	Don' t know/ No opinion
Consumers have enough mortgage credit providers to choose from in all Member States				X		
Please justify your answer and attach any relevant study(ies) / evidence at the end of the questionnaire	Only 70 out of 510 Austrian banks and bank branches from other Member states do not offer mortgage credits (per 31/12/2021).					
There is sufficient competition among mortgage credit providers so that consumers are able to get competitive offers				X		
Please justify your answer and attach any relevant study(ies) / evidence at the end of the questionnaire	See answer above.					

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

Yes	No	Don't know
		X

Please explain

We have no perceptions of barriers.

Question 13. Depending on their business models, crowdfunding and peer-to-peer lending platforms may only be partly covered by the MCD rules. Are you aware of any existing or likely challenges for consumer protection or financial stability arising from mortgage loans granted through crowdfunding and peer-to-peer lending platforms (including mortgages obtained by individuals from other individuals)?

	Yes	No	Don't know
For consumer protection			X
Please explain	<p>Regarding peer-to-peer-lending platforms, we have no perceptions. Likewise, we have no perceptions regarding crowdfunding platforms with consumers as borrowers but only regarding platforms according to the ECSPR, which do not include consumers as borrowers. Therefore, we consider that platforms with consumers as borrowers are not covered by the framework of financial market regulation, in particular the ECSPR.</p> <p>However, regarding peer-to-peer-lending and loan based crowdfunding there is the challenge, that users may touch regulated activities, if they provide loans: Credit business is in Austria a banking activity. Especially users that act on platforms more often or continuously are likely to be seen as acting in a commercial manner and therefore providing credit business. Hardly any user is aware of this issue. This can be seen as consumer protection issue in a broader sense, if platforms provide a space for possible unauthorised business of their users, which of course could have unfavourable consequences like administrative fines.</p>		
For financial stability			X
Please explain			

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

To which extent do you agree that encouraging peer-to-peer service providers (e.g. clearer rules and applicability of the MCD to providers/ aligned rules across the EU on mortgage issuance/ cross-border provision of services) to intermediate between consumers in their capacity as borrowers and non-professional investors/consumers/businesses for issuing mortgage loans has a potential to:

	Fully disagree	Rather disagree	Neutral	Rather agree	Fully agree	Don't know/ No opinion
Increase the choice of consumers				X		
Increase competition between mortgage credit providers		X				
Contribute to the integration of mortgage markets in the EU						X

Please explain

Peer-to-peer and crowdfunding platforms will likely increase the choice of consumers, because new competitors with different terms and conditions will enter the market. However, the new competitors will likely not provide loans to currently undersupplied customer groups and the different terms and conditions will be insufficient, inadequate or insufficiently comparable.

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

Yes	No	Don't know
		X

Please explain

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

Yes	No	Don't know
		X

Please explain

2.2. Information to consumers / digitalisation

The MCD requires creditors to provide to consumers standard pre-contractual information through an European Standardised Information Sheet (ESIS) on paper or on durable medium. The MCD evaluation report concluded that consumers are sometimes overloaded with pre-contractual information contained in the ESIS that they may not read or understand.

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

Yes	No	Don't know
	X	

Please explain

Studies carried out by consumer protection organisations regarding consumer credits (from August 2021) showed that there are reports by consumers that the ESIS was not handed out at all or not handed out in time:

https://www.arbeiterkammer.at/service/presse/Praxistest_Beratung_von_Konsumkredit_in_W

ien_01.pdf

We have no data on mortgage credits.

Question 18. In your view, what would facilitate consumers' understanding and comparison of the pre-contractual information, including the information received through digital means?

Generally, simplification and comprehensibility of information facilitates consumers' understanding of the information; also, the incorporation of findings of behavioural economics and consumer testing before regulating is important.

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

Fully disagree	Rather disagree	Neutral	Rather agree	Fully agree	Don't know/ No opinion
		X			

Please explain

The risk is that another information leaflet could contribute even more to the information overload. The ESIS itself should be simplified and should play a key role when information is given to the consumer. Harmonisation with the CCD II is important.

Please select which pre-contractual information should be included in the key summary [multiple choice]:

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

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

i. How would you rate the expected benefits to consumers?

	0 (negligible)	1	2	3	4 (large)
Expected benefits to consumers			X		

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

- One-off costs

The question does not concern competent authorities.

- Recurring costs

The question does not concern competent authorities.

Please explain

Question 21. The [MCD evaluation study](#) has shown that consumers often do not have sufficient time to select the best offer of mortgage credit available in the market (e.g. because the consumer may only have a period of 7 days for reflection/withdrawal). In your view, which of the following measures would be adequate to help improve the situation?

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

no opinion

Please explain

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

Mortgage advertising on:	Yes	No	Don't know
Radio			X
Please explain	The Austrian FMA has not gained any practical experience in this area.		
TV			X
Please explain	The Austrian FMA has not gained any practical experience in this area.		
Printed media			X

Please explain	The Austrian FMA has not gained any practical experience in this area.		
Social media			X
Please explain	The Austrian FMA has not gained any practical experience in this area.		
Other:			
Please explain			

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

Mortgage advertising on:	Yes	No	Don't know
Radio			X
Please explain			
TV			X
Please explain			
Printed media			X
Please explain			
Social media			X
Please explain			
Other:			
Please explain			

Question 24. The [MCD evaluation study](#) indicates that creditors are increasingly relying on robo-advisors (e.g. automated chats) to provide for instance some basic information to consumers. Do you consider that the use of robo-advisors poses problems in terms of consumer protection?

Yes	No	Don't know
	X	

Please explain indicating possible solutions

The advantage with robo advisors is that they provide information automatically, so that an individual bank advisor cannot forget e.g. the ESIS. A potential disadvantage lies in the lack of communication with an advisor, e.g. for customers with individual questions. In case of mortgage loans, consumers prefer to inform themselves personally at the premises of bank or its branch, as concluding a mortgage loan agreement represents quite predominantly one of the most important decisions in life. Robo advice for basic information is acceptable but the possibility to have individual advice should remain available.

Question 25. To date, very few mortgage credit agreements are concluded fully digitally. Can you describe the main difficulties/problems you experience in this area?

In case of mortgage loans, consumers prefer to inform themselves personally at the credit institution or intermediary, as concluding a mortgage loan agreement represents quite predominantly one of the most important decisions in life. In addition, the decision of the credit institution to grant the loan requires experience and double checks. However, automatised

calculations and other parameters can be helpful to support advice and decisions.

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

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2.3. Tying and bundling

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

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

Yes	No	Don't know
X		

Please explain

Studies carried out by consumer protection organisations⁶ showed that credit institutions often require the purchase of a life insurance and a property damage insurance along with the mortgage credit. Consumers are not sufficiently made aware that they do not have to buy the insurance proposed by the credit institutions, but can compare insurance offers and choose the best offer for themselves.

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

	Fully disagree	Rather disagree	Neutral	Rather agree	Fully agree	Don't know/ No opinion

⁶ Cf.

https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Kreditsicherheiten.html#heading_Versicherungsschutz_gegen_Ableben

https://www.arbeiterkammer.at/beratung/konsument/Versicherungen/AK_Studie_Kreditrestschuldversicherung_2021.pdf

https://www.arbeiterkammer.at/beratung/konsument/Geld/Kredite/Checkliste_fuer_Wohnkredite.html#heading_Tipps_fuer_das_Kreditgesprach

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

Please explain

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](#)⁷ 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 \(GDPR\)](#)⁸ 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.

⁷ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206>

⁸ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R0679-20160504>

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

Yes	No	Don't know
X		

Please explain

In particular, the consumer should be informed about database inquiries in order to be able to correct the information contained therein.

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

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

Please explain

Extensive information, on how the assessment is conducted, could lead to an information overload for consumers; credit institutions should not be required to disclose this kind of business secret.

Question 30. The MCD requires a creditworthiness assessment to be based only on information on the consumer's income and expenses and other financial and economic circumstances which is necessary, sufficient and 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	Don't know
	X	

Please explain

The EBA Guidelines on loan origination and monitoring (EBA/GL/2020/06) specify that information sufficiently.

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

Yes	No	Don't know

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

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

Yes	No	Don't know
X		

Please explain

In Austria the overwhelming share of loans under the MCD are granted by institutions that are already subject to EBA's GL on loan origination (EBA/GL/2020/06). We deem the requirements set by the GL, above all the indicators listed in the Annexes, sufficient to ensure a coherent standard for loan origination to consumers/mortgages. Therefore, from an Austrian point of view no further rules are needed. However, for countries where a relevant share of loans under the MCD is originated by entities that are not subject to the EBA GL, equivalent rules should apply. In any case, any key indicators to be used for creditworthiness assessments must be aligned with the indicators listed in EBA's GL on loan origination (EBA/GL/2020/06).

Question 33. The MCD requires Member States to provide non-discriminatory access for all creditors from all Member States to credit databases for assessing the creditworthiness of consumers. Are you aware of any discrimination in accessing public and private databases/registers to assess the creditworthiness including for the cross-border provision of mortgages?

Yes	No	Don't know
		X

Please explain

We have no perception of discriminatory access, in particular in regard with cross-border issues.

Question 34. The MCD evaluation study showed that creditors could access databases in other countries as long as they respect the principle of reciprocity. In your view, does this affect the provision of cross border services?

Yes	No	Don't know
		X

Please explain

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Question 35. Is there scope for improving public and private credit registers/databases, in terms of their capacity to provide relevant information for creditworthiness assessments while protecting personal data?

Yes	No	Don't know
		X

Please explain

2.5. Early repayment

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

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

	Not important	Slightly important	Neutral	Rather important	Very important	Don't know/ No opinion
lack of consumer awareness						X
inability to assess how much they could save						X
unclear conditions attached to early repayment						X
too high amount of compensation to be paid						X
other						

Please explain

Question 37. Do you consider that further measures should be taken to further facilitate the early repayment of mortgage credit and if so, which ones?

Yes	No	Don't know
		X

Please explain

Question 38. The credit providers may be entitled to fair and objective compensation, where justified,

for possible costs directly linked to the early repayment but shall not impose a sanction on the consumer. The compensation shall not exceed the financial loss of the creditor.

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

Yes	No	Don't know
		X

If so, which measures should be taken:

- A cap on the compensation;
- Guidance on the calculation of “fair and objective compensation”;
- Other:

Please explain

Question 39. The MCD report on the review suggested that there is scope to increase the level of mortgage switching by consumers, which could potentially unlock substantial benefits for consumers while increasing competition and innovation in the market. Do you have any further suggestions to foster competition in the market and further facilitate the switching of providers?

Yes	No	Don't know
		X

Please explain

2.6. Foreign currency loans

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

Yes	No	Don't know
		X

Please explain

In Austria, the FMA Minimum Standards 01/2017 for the Risk Management and Granting of Foreign Currency Loans and Loans with Repayment Vehicles⁹ stipulate that foreign currency loans are not allowed to be offered as a standardised product for private households. Moreover, it is also explicitly stated that foreign currency loans are not suitable instruments for private households for financing the purchasing of residential property. There are some exceptions: E.g. Persons with sufficient income in the same currency may be offered a foreign currency loan. The currency, in which principal and interest are paid, should be the same as the currency of the income, from which the loan is being serviced.

Question 41. As a result of the MCD rules foreign currency loans, lenders may have significantly

⁹ Cf. <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2885>

reduced the offer of such loans or stopped offering foreign currency loans. This situation could lead to problems in specific cases where the risks of foreign currency loans are limited e.g. for some cross-border workers. Are you aware of specific cases where the MCD provisions on foreign currency loans may have had unintended or undesirable consequences?

Yes	No	Don't know
		X

Please explain

The FMA did not receive any complaints or inquiries in this regard. However, it cannot be ruled out that the offer of such loans was reduced and that cross-border workers may have problems taking out loans.

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 of the [Capital Requirements Regulation 575/2013](#)⁷). 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](#)¹⁰, the ECB suggested that the growing role of non-credit institutions in the mortgage market poses some challenges in terms of financial stability. The ECB report explained that the growing market share of non-bank providers may limit the effectiveness of some macro-prudential measures that apply only to banks.

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

Yes	No	Don't know
		X

Please explain

Regarding the Austrian circumstances, two aspects are worth to be considered: Some of likely eligible non-credit institutions are not within the remit of the Austrian FMA. Most mortgage providers, which could be a non-credit institution under the MCD, are required to receive an authorisation as credit institution in Austria. Thus, from an Austrian point of view, the assessment of the question depends on whether the regulatory framework will provide a passport for non-credit institutions in the future or not. If so, the new passporting regime would provide access to the Austrian mortgage market for non-credit institutions, which is reserved for credit institutions due to prudential risk reasons, so far.

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

Yes	No	Don't know

¹⁰ See: <https://www.ecb.europa.eu/Dub/Ddf/fsr/financialstabilityreview201705.en.Ddf>

		X
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Please explain

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

Yes	No	Don't know
		X

Please explain

In general, potential risks addressed with the term 'Shadow banking system' should be considered.

2.8. Credit intermediaries

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

Yes	No	Don't know
		X

Please explain and specify to 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:

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2.9. Arrears and foreclosure

Question 46. Article 28 of the MCD (arrears and foreclosure) requires Member States to adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated but leaves flexibility for Member States as to the measures to protect consumers experiencing financial difficulties. Do you believe that the MCD's provisions on arrears and foreclosure have been effective in terms of reducing the risk of foreclosure?

Yes	No	Don't know
		X

Please explain

We consider it essential to clarify, in which cases these provisions are applicable. Regarding forbearance measures, rolling back the default interest rate for consumers willing to pay would be an important measure according to consumer protection organisations. Borrowers often have an information gap regarding the default interest rate at maturity, namely that from the loss of the term there is no longer a right to the contractual interest rate, even if it should soon be
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possible to make instalment payments again after payment difficulties. Information about the outstanding balance is also a major concern, especially if the debt collection has been outsourced.

Question 47. The [Directive on credit servicers, credit purchasers and the recovery of collateral](#)⁹ will strengthen Article 28 of the MCD clarifying the forbearance obligations and introducing reinforced information duties on credit purchasers and servicers. Do you consider that further measures would be required to protect consumers falling in arrears?

Yes	No	Don't know
X		

Please explain

Please see the answer to the question 46 above.

If yes, which additional measures would be required to protect consumers falling in arrears:

- Obligations to individually support consumers who experience or might experience difficulties in meeting their financial commitments (e.g. personalised assistance like debt advisory services),
- Guidance on the calculation of “fair and objective compensation”,
- Strengthen awareness on debt management in financial difficulties,
- Other:

Please explain

Question 48. The MCD does not include specific additional rules to protect consumers who backed their mortgage loans by their first residency. Do you consider that a specific protection for such cases would be warranted?

Yes	No	Don't know
		X

Please explain

Question 49. During the COVID-19 pandemic, Member States and industry put in place a broad range of differing relief measures in particular payment moratoria. The MCD does not provide specific rules for such exceptional situations. Do you consider that any lessons need to be drawn from the COVID experience and specific measures should be provided for in the MCD?

Yes	No	Don't know
		X

Please explain

The issue of payment moratoria depends largely on specific situations.

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](#)¹¹.

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

Yes	No	Don't know
X		

Please explain

An EU-wide definition of green mortgages is key in order to create a level playing field and a common understanding of what a green mortgage is and to avoid/prevent green washing.

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

- X to ensure common requirements and possible incentives
- X to ensure high level of confidence into the greenness of the mortgages to facilitate securitisation and refinancing of mortgages through green bond issuances to facilitate disclosure obligations under [Taxonomy Regulation](#)¹² other

Please explain

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

Yes	No	Don't know
X		

Please explain

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

- X obligation for credit providers to inform the consumer if such product can be provided.
- ensure that mortgage credit providers and/or consumers taking a mortgage obtain an

¹¹ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0390>

¹² See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0852>

Energy Performance Certificate (EPC) for the residential property that the consumer will acquire using the mortgage loan.

create a label for green mortgages offered at preferential terms and conditions.

Other:

Please explain

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

Yes	No	Don't know
X		

Please explain

2.11. Other

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

Yes	No	Don't know

Please explain