

Public consultation on the review of the Mortgage Credit Directive

Fields marked with * are mandatory.

Introduction

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Background for this consultation

The [Mortgage Credit Directive](#) (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](#) (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](#) (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](#) 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 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.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-mortgage-credit-review-2021@ec.europa.eu.

More information on

- [this consultation](#)
- [the consultation document](#)
- [mortgage credit](#)
- [the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- ☐ Bulgarian
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- ☐ Czech
- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Irish
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
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- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☐ Company/business organisation
- ☐ Consumer organisation

- ☐ EU citizen
- ☐ Environmental organisation
- ☐ Non-EU citizen
- ☒ Non-governmental organisation (NGO)
- ☐ Public authority
- ☐ Trade union
- ☐ Other

* Who's interests are you representing?

- ☐ Credit institutions
- ☐ P2p / crowdfunding services providers
- ☐ Credit intermediaries
- ☐ Insurance undertakings
- ☐ Pension providers
- ☒ Other

* Please specify who's interests you are representing:

Consumers, public interest

* First name

Peter

* Surname

Norwood

* Email (this won't be published)

peter.norwood@finance-watch.org

* Organisation name

255 character(s) maximum

Finance Watch

* Organisation size

- ☐ Micro (1 to 9 employees)

- ☒ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☐ Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

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- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- French Southern and Antarctic Lands
- Gabon
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- Germany
- Ghana
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- Nauru
- Nepal
- Netherlands
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- Nigeria
- Niue
- Norfolk Island
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- North Korea
- North Macedonia
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Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its**

transparency register number, are always published. Your e-mail address will never be published.

Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

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Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☒ I agree with the [personal data protection provisions](#)

1. General questions

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

	1 (fully disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know - No opinion - Not applicable
Increase consumer protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Contribute to an efficient and competitive single market for mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Promote financial stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

To make the MCD more effective, it needs to be adapted to the digital age. The mortgage credit market, and the financial services market in general, is becoming increasingly digitalised. Therefore, there is need for a number of amendments in the current legislative text to make sure that new consumer protection risks arising from the digitalization of the market are properly regulated. For example, new products and players such as peer-to-peer mortgages are emerging on the market but are currently not in scope of the directive. In addition, the pre-contractual information requirements need to be adapted to the fact that mortgages are increasingly sold via new digital channels such as mobile phones.

In addition, the directive needs more prescriptive rules on what kind of data can be used for creditworthiness assessments (CWAs). The wording in the current directive on this is quite general, leading to irrelevant data being used for the assessment which leads to mis-selling of mortgage loans. Refer to our response to question 4 for additional details. The consequences for consumers with regards to the mis-selling of mortgages can be huge. It can lead to over-indebtedness and the consumer losing their property. Likewise, the MCD needs to introduce rules on regulating automated decision-making tools for CWAs to ensure that these tools use the right kind of data needed for an adequate CWA, do not use biased data, are accountable and ensure that consumers can demand human intervention and contest the decision.

Moreover, the MCD would be more effective if it addressed malpractices we are witnessing by providers in the online market. For example, there are increasing instances of misleading mortgage advertising online due to important information such as the costs of the product being hidden. This should be addressed by introducing more stringent rules not only on the content of mortgage advertising but also on the presentational aspects of the advertisements. Also, other malpractices in the online market such as the use of pre-ticked boxes to sell ancillary insurance products without consumers being consciously aware of it, need to be addressed.

Question 2. To which extent do you agree that:

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

☒ 1 - Fully disagree

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

Please explain your answer to question 2 a):

5000 character(s) maximum

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

We agree with the EC's evaluation study of the MCD that the introduction of the MCD has increased the level of protection for consumers in many member states. Therefore, EU intervention was more effective than leaving the national measures that were in place before the introduction of the MCD.

In addition, we believe that EU intervention was more effective in achieving financial stability than leaving it to member states acting at national level. We agree with the EC's evaluation study of the MCD that the Directive has helped to reduce the mis-selling of mortgages and therefore contributed to a reduction of the level of indebtedness for consumers.

Moreover, the harmonization of rules has helped create an equal level of protection for consumers and a level playing field for mortgage providers across the EU. This, in our view, will contribute to an efficient and competitive single market for mortgages going forward.

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

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

Please explain your answer to question 2 b):

5000 character(s) maximum

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

As studies such as the EC's evaluation study of the MCD have shown, the costs linked to the introduction of the MCD were low.

However, consumer protection and financial stability on the mortgage credit market in the EU, as elaborated in our response to the previous question, has increased to a considerable degree (in particular due to better pre-contractual information and creditworthiness assessments thanks to the MCD).

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

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

Please explain your answer to question 2 c):

5000 character(s) maximum

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

The MCD is still relevant but would need to be better adapted to the digitalization trend and be made future proof. For example, there is a need to widen the scope to peer-to-peer mortgages, adapt the pre-contractual information to digital channels and regulate comparison websites.

As highlighted in the EC's evaluation study of the MCD, comparison websites are increasingly being used by consumers. There is therefore a need to regulate them going forward. For example, a study by the German consumer organisation VZBV (<https://www.vzbv.de/pressemitteilungen/studie-zu-finanzvergleichsportalen-unter-falscher-flagge>) shows that most existing comparison websites do not allow for a comprehensive or objective comparison of products available on the market as they do not compare the entire market, and give more favourable rankings to advertised offers or to companies offering higher commissions to the website.

Only comparison tools that meet criteria such as being operationally independent or those that can demonstrate that they include a broad range of financial services product offers covering a significant part of the market should be able to identify themselves as comparison websites. Comparison tools that do not meet these requirements should need to identify themselves clearly as financial product brokers or sellers as they are not independent. We propose that the criteria listed in the Payment Accounts Directive (Directive 2014/92/EU) to assess whether a comparison website is truly independent is used for the purposes of this Directive. Moreover, to ensure that those websites identifying themselves as comparison websites are really meeting the criteria, any website wanting to identify as a comparison website should have to first apply for and receive accreditation by the relevant national competent authority in each member state.

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

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

Please explain your answer to question 2 d):

5000 character(s) maximum

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

The MCD is currently coherent with other EU policies and interventions. However, we would like to highlight the need to ensure that the MCD is coherent with the Consumer Credit Directive (CCD) which is currently undergoing a review. The consumer and mortgage credit markets are very similar with similar challenges and problems.

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

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

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.

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

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

Please explain your answer to question 4:

5000 character(s) maximum

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

There is possible discrimination of consumers taking out a mortgage loan based on irrelevant data being used for creditworthiness assessments (e.g. medical history, gender, nationality, etc.) and relevant data not being collected and used, including assessments being carried out by automated decision-making tools.

As highlighted by a recent study by Finance Watch (<https://www.finance-watch.org/wp-content/uploads/2021/04/Consumer-credit-market-study-V13.pdf>), there are currently many instances of poor creditworthiness assessments when selling a consumer credit. For example, our study shows that most loan providers ask for less than 4 pieces of information about the customer's budget when performing a creditworthiness assessment. Moreover, in 31% of the cases, information about budget balance (level of income/level of expenditures) is not even asked. Instead, the study shows that lenders often use irrelevant data for the assessment which can lead to discrimination.

Although this study focuses on the non-mortgage lending market, it can be assumed that these kinds of practices are prevalent on the mortgage market as well because the MCD, as in the case of the CCD currently, does not contain prescriptive rules on what kind of data to use for the CWA.

Other studies show that health data is used for creditworthiness assessments for mortgages leading to the financial exclusion of people with certain medical histories, such as cancer survivors (<https://www.sciencedirect.com/science/article/abs/pii/S2213538320300382?via%3Dihub>). The mortality risks of these diseases have been significantly reduced thanks to developments in modern medicine. Survival rates for cancer victims are improving at an average annual rate of 3 percent and the life expectancy for survivors can be expected to be comparable to non-cancer patients. Despite this, only five EU Member States have implemented a 'right to be forgotten' for cancer survivors and the number of years survivors must wait to enjoy this right varies.

Therefore, it is important that the MCD includes more prescriptive rules on what kind of data can be used for a creditworthiness assessment. Having the right kind of data helps in two ways. First, mis-selling of consumer credit can be prevented and second, financial inclusion can be ensured. If the wrong kind of data is used, however, this can lead to consumers being sold a loan they are unable to afford as well as to financial exclusion, i.e. consumers being denied a loan not because they are unable to afford it, but because the data used for the assessment is biased and/or based on data irrelevant for the assessment. As more and more data on consumers is easily becoming accessible online, this risk is certain to increase over time.

As highlighted in our report on creditworthiness assessments, 'Responsible Lending and privacy protection' (https://www.finance-watch.org/wp-content/uploads/2020/10/FW-paper_Responsible-lending-and-privacy-protection_Oct2020.pdf), a good creditworthiness assessment analyses the current financial capacity of the borrowers' budget. Therefore, it is crucial that the assessment is based on a thorough and adequate assessment of the consumer's income and expenditures as well as data on the consumer's ability to manage their budget, which should include credit and debt instalments. We think that the EBA Guidelines on loan origination and monitoring (<https://www.eba.europa.eu/regulation-and-policy/credit-risk/guidelines-on-loan-origination-and-monitoring>) are a good basis for specifying what data should be used for an adequate CWA in the level 1 text of the MCD. There is a need to have more prescriptive rules in the level 1 so that the rules are obligatory and to ensure they are applied and enforced.

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

☒ Yes

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

Please explain your answer to question 5:

5000 character(s) maximum

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

Creditors are increasingly exploiting consumers by using opt-out selling practices. This kind of selling practice defaults consumers into buying a product which they then have to opt-out of, for example by using pre-ticked boxes to sell consumers add-on insurance when purchasing a mortgage online.

The FCA in the UK, for example, has introduced rules banning pre-ticked boxes (<https://www.fca.org.uk/news/press-releases/fca-proposes-end-opt-out-selling-insurance-add-ons>) after finding evidence of wide-spread consumer harm. There is also evidence that this practice is a problem in the EU27 as a DGCCRF mystery shopping exercise in 2018 revealed that the insurance option was often pre-ticked by most credit sellers in France. With the increasing digitalization of the mortgage market, the risk of such practices is likely to increase and should therefore be addressed now.

In addition, problems linked to tying practices also need to be addressed in the MCD going forward. The current rules (Article 12) have proven ineffective as there are too many derogations which still allow for the tying of mortgages with the subscription of a Payment Protection Insurance (PPI) or the opening of a savings account. A recent factsheet from BEUC (https://www.beuc.eu/publications/beuc-x-2019-035_factsheet-payment_protection_insurance.pdf) highlights harmful practices regarding PPIs on the mortgage credit market.

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

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

Please explain your answer to question 6:

5000 character(s) maximum

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

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

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

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

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

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

5000 character(s) maximum

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

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

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

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

5000 character(s) maximum

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

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

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

Please explain your answer to question 10:

5000 character(s) maximum

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

Mortgages are complex and risky products that are difficult to understand. Moreover, consumers typically take out a mortgage only 1-2 times in their lifetime. Therefore, it is more efficient and effective to provide independent financial advice rather than financial education on mortgages.

2. Specific questions

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

2.1 Market structure / scope

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

	1 (fully disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know - No opinion - Not applicable
--	------------------------------	-------------------------------	-----------------------	----------------------------	---------------------------	--

Consumers have enough mortgage credit providers to choose from in all Member States	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There is sufficient competition among mortgage credit providers so that consumers are able to get competitive offers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

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

The maximum file size is 1 MB.

You can upload several files.

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

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

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

Please explain your answer to question 12:

5000 character(s) maximum

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

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

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

	Yes	No	Don't know - No opinion - Not applicable
For consumer protection	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
For financial stability	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answers to question 13:

5000 character(s) maximum

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

With the digitalisation trend, peer-to-peer mortgages have emerged on the EU mortgage market. The market for peer-to-peer mortgages is currently limited. However, with the increasing digitalization, this market has clear potential to grow as has been pointed out in the EC's evaluation study of the MCD. Therefore, to make sure that consumers of these types of products are protected (with regards to advertising; adequate creditworthiness assessments, etc.), the MCD's scope should be widened to include these products. The European Commission proposed widening of the scope of the Consumer Credit Directive (CCD) to peer-to-peer lending and the MCD should follow these proposals.

If these products are not properly regulated, consumers, in particular vulnerable consumers, will be exposed to mis-selling which can lead to over-indebtedness or the consumer losing their property. For example, vulnerable consumers who are not able to obtain a more traditional mortgage, for which MCD rules apply, because they are not able to pass a creditworthiness assessment (CWA), may gravitate to these new products if they offer less stringent CWAs due to them not being regulated.

In addition, a failure to expand the scope of the MCD to include peer-to-peer mortgage providers could pose a risk for financial stability as consumers are offered mortgages that are beyond their financial capacity to repay by an underregulated subsection of the market.

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

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

	1 (fully disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know - No opinion - Not applicable
Increase the choice of consumers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Increase competition between mortgage credit providers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contribute to the integration of mortgage markets in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

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

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

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

Please explain your answer to question 15:

5000 character(s) maximum

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

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

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

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

Please explain your answer to question 16:

5000 character(s) maximum

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

2.2 Information to consumers / digitalisation

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

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

- ☐ Yes
- ☒ No

● Don't know / no opinion / not applicable

Please explain your answer to question 17:

5000 character(s) maximum

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

The pre-contractual information provided currently is too long and complex, resulting in a situation where consumers often do not read the pre-contractual information before making a purchasing decision and/or not understanding key information.

Moreover, the pre-contractual information is often provided to the consumer not before the conclusion of the mortgage contract but at the time the agreement is concluded. This does not allow the consumer to fully read the pre-contractual information, digest it and compare different offers on the market before concluding a contract.

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

5000 character(s) maximum

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

There is a need to simplify the pre-contractual information to ensure that consumers read the information and are able to understand it. As confirmed by the MCD evaluation study, consumers won't read pre-contractual information if it is too long and the current pre-contractual information provided is too complex for most consumers to understand.

Therefore, the MCD should introduce a shortened version of the ESIS which contains all of the key information a consumer needs to take an informed decision. This will ensure that consumers see all the essential information at a glance, even on a mobile telephone screen. What is essential is not the quantity of the information provided but that the key information about the mortgage (e.g. all information about the costs /fees and the consequences for defaulting on the mortgage or late payments) is prominently and clearly communicated in simple and easy to understand language.

In our view, the European Banking Authority (EBA) should be tasked with evaluating which information is key and also stipulate rules on the format and presentational issues of the pre-contractual information based on consumer testing.

In addition, the MCD rules on the timing of the provision of the pre-contractual information stipulates that the information must be provided to the consumer 'in good time before' the consumer is bound by the mortgage contract. The rules, however, do not define what is explicitly meant with 'in good time'. In our view, a consumer needs at least 24 hours to read, think about and compare offers. Therefore, we propose specifying that 'in good time' means at least 24 hours before a credit agreement is proposed. This is also in line with the European Commission proposal on amending the Consumer Credit Directive (CCD).

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

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

Please explain your answer to question 19:

5000 character(s) maximum

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

As mentioned in our reply to Question 18, we think this could address this issue. However, it is essential that this summary really contains all of the key information, including information on any consequences in case of missed/late payments or default by the consumer as well as information about early repayment fees.

In addition, the EBA should be mandated to draft regulatory technical standards (RTS) on the content, format, and presentation of the summary information sheet.

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

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

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

Please explain your answers to question 20 a):

5000 character(s) maximum

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

Currently, many consumers do not read the pre-contractual information or fail to understand it because it is too long and complicated. This results often in the consumers purchasing a mortgage without really understanding what they are purchasing. This leads to mis-selling with potential dire financial consequences for consumers.

A summary of simplified information on the key features of the mortgage credit would help remedy this and allow more consumers to make more informed decisions when purchasing a mortgage. It would also allow more consumers to compare different offers taking account of their needs and financial situation.

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

	Costs
One-off costs	
Recurring costs	

Please explain your answers to question 20 b):

5000 character(s) maximum

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

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

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

Please select as many answers as you like

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

Please 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.

As explained in our answer to Question 18, one of the ways this can be improved is by requiring the pre-contractual information to be provided at least 1 day before the conclusion of the contract.

The MCD rules on the timing of the provision of the pre-contractual information stipulate that the information must be provided to the consumer 'in good time before' the consumer is bound by the mortgage contract. The rules, however, do not define what is explicitly meant with 'in good time'.

In our view, a consumer needs at least 24 hours to read, think about and compare offers. Therefore, we propose specifying that 'in good time' means at least 24 hours before a credit agreement is proposed. As highlighted in the EC's evaluation study of the MCD, currently, many mortgage providers provide the pre-contractual information at the time the contract is concluded and not ahead of time and thus prevent the consumer from comparing different offers on the market. Introducing this policy proposal is also in line with the European Commission proposal on amending the Consumer Credit Directive (CCD).

In addition, the situation could be improved by increasing the minimum reflection/withdrawal period from 7 to 14 days. This would also put the MCD in coherence with other EU consumer protection legislation which provides consumers with a minimum 14 day withdrawal period (for example, the DMFSD and the CCD).

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

	Yes	No	Don't know - No opinion - Not applicable
Radio	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
TV	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Printed media	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Social media	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

Digital channels in general.

Please explain your answer(s) to question 22:

5000 character(s) maximum

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

As confirmed, amongst others, by the EC's Behavioural study on the digitalisation of the marketing and distance selling of retail financial services (https://ec.europa.eu/info/sites/default/files/live_work_travel_in_the_eu/consumers/digitalisation_of_financial_services_-_main_report.pdf), online advertisements of mortgages are often misleading. Often the benefits of the product are emphasized while the costs are hidden or given lower prominence in advertising.

Advertising is a powerful tool in the pre-contractual phase as it nudges consumers to purchase a product and often uses tools influencing behavioral biases to do so. Therefore, it is crucial that it is not misleading, in particular for risky products such as mortgages which can lead not only to over-indebtedness but also to a consumer losing their property if they are unable to repay the mortgage.

For that reason, there is a need for the MCD to provide more prescriptive rules on the format, content and presentation of advertising of mortgage loans to make sure that the advertisement is not misleading and includes all of the essential information the consumer needs to know about the credit. To ensure the new rules' effectiveness with consumers in terms of achieving adequate level of consumer protection, the new rules should be developed and consumer-tested by the EBA.

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

	Yes	No	Don't know - No opinion - Not applicable
Radio	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
TV	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Printed media	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Social media	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

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

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

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

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

5000 character(s) maximum

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

While automated decision-making tools such as robo-advice can make the commercial process easier and more efficient, there are serious consumer protection risks associated with these tools. Decisions, such as advice based on Artificial Intelligence (AI) can lack transparency, suffer from bias of the data used, and lack commercial surveillance and accountability. All of this can result in inaccurate consideration of consumer risk, inaccurate advice and even discrimination.

Since, as confirmed by the EC's evaluation study of the MCD, creditors are increasingly using robo-advice, we think this tool should be properly regulated in the MCD to protect consumers and ensure the MCD is future proof. Robo-advice, for one, is not always impartial advice. Robo-advisers can simply be programmed to influence decisions and can also be influenced by inducements. Robo-advisers are in fact almost certainly more effective and efficient at pushing investors to certain products that generate higher income for providers than inducements provided to human advisors. The research report on robo-advice by Better Finance, despite being focused on the retail investment market, (<https://betterfinance.eu/wp-content/uploads/Robo-Advice-Report-2020-25012021.pdf>) offers support for this, as the research has found "extreme divergences in asset allocation and expected returns" for the portfolios suggested by different robo-advisers for exactly the same investor profile.

It is important to look closely at what data is being collected and what is allowed to be collected for profiling in the robo-advisor context. The GDPR purpose limitation principle should be ensured above all and no data should be profiled outside the explicit purpose of providing advice. Limits should also be put on collecting data from third parties and sources. The data silo principle of the EU Digital Market Act should apply and robo-advice should be considered as an intermediation process. Data must be then kept in a corresponding silo.

The machine-learning aspect of algorithms is important to mention here as well. It is an inductive process that self-reinforces different inherent or acquired biases. There are ways to work around this by monitoring, benchmarking and resetting algorithms. Moreover, the MCD should provide consumers with the right to request human intervention to review any robo-advice, and receive information about the categories of data used in the robo-advice process.

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

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

5000 character(s) maximum

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

Mortgage products are quite complex (e.g. regarding their costs) and therefore not easy for most consumers to understand. Moreover, they are risky as the mis-selling of mortgages can have severe consequences for the consumer such as over-indebtedness and/or the loss of their property.

One of the important tools to address this is to ensure that consumers receive high quality independent advice and information to choose the right offer. In a digital environment, however, this is often lacking as there is no/less room for human interaction. Therefore, a fully digital process for taking out a mortgage without personal advice is not desirable.

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

5000 character(s) maximum

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

2.3 Tying and bundling

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

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

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

Please explain your answer to question 26:

5000 character(s) maximum

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

The current rules (Art. 12) contain too many derogations allowing for the tying of mortgages with the subscription of a Payment Protection Insurance (PPI) or the opening of a savings account. PPI are often portrayed as “compulsory” and/or not adapted to the consumer’s profile, with huge profits being made. A BEUC factsheet on this issue provides more information on this (https://www.beuc.eu/publications/beuc-x-2019-035_factsheet-payment_protection_insurance.pdf).

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

	1 (fully disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know - No opinion - Not applicable
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;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
conclude a separate credit agreement in conjunction with a shared-equity credit agreement to obtain the credit	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.

2.4 Creditworthiness assessment

Credit providers are increasingly relying on automated decision-making systems where the consumer is subject to a credit decision based solely or partially on automated processing of his/her data. The [recently made artificial intelligence \(AI\)](#) proposal suggests that AI systems used to evaluate the credit score or creditworthiness of natural persons should be classified as high-risk as they may pose significant risks to the fundamental rights of persons. The credit institutions would be subject to requirements inter alia concerning data and data governance, documentation and record keeping, transparency, human oversight, robustness, accuracy and security.

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

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

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

Please explain your answer to question 28:

5000 character(s) maximum

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

There are serious consumer protection risks associated with creditworthiness assessments involving automated processing of personal data. These risks stem from a lack of transparency of automated decision-making tools, bias of the data used by these tools, and a lack of commercial surveillance and accountability of these tools.

Therefore, in cases where the creditworthiness assessment process involves the use of automated processing of personal data, consumers should have the right to:

- Request human intervention to review the decision,
- Request and obtain from the creditor a clear explanation of the assessment of creditworthiness, including on (i) the logic and risks involved in the automated processing of personal data as well as its significance and effects on the decision and (ii) the categories of data processed as part of the assessment;
- Express his or her point of view and contest the assessment of the creditworthiness and the decision;
- Receive information on how to contest the decision.

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

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

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.

In addition to the rights listed above, consumers should also have the right to receive information about how they can contest the decision.

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.

To ensure that the consumer can easily make use of the right to contest the automated decision, he or she should be provided with information about the procedure they need to follow to contest the decision. This procedure should be made as easy and straightforward as possible.

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

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

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

Please explain your answer to question 30:

5000 character(s) maximum

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

As highlighted in our response to Question 4, the creditworthiness assessment (CWA) rules in the MCD are currently not prescriptive/granular enough to ensure adequate creditworthiness assessments. A good creditworthiness assessment analyses the current financial capacity of the borrowers' budget.

Therefore, it is crucial that the assessment is based on a thorough and adequate assessment of the consumer's income and expenditures as well as data on the consumer's ability to manage their budget, which should include any (if applicable) credit and debt instalments. What is too commonly observed in countries where credit registers are widely used for creditworthiness assessments is the fact that, as long as credit history is positive (no default or arrears registered), no negative signal will be sent when the household budget limit is reached. Moreover, a Finance Watch study on the EU consumer credit market (<https://www.finance-watch.org/wp-content/uploads/2021/04/Consumer-credit-market-study-V13.pdf>) shows that often irrelevant personal data that is easily accessible online such as political views expressed on social media are used for the assessment.

Therefore, to ensure that the assessment is based on the right kind of data and on sufficient data to determine a consumer's ability to afford the loan, it is crucial that the MCD contains more prescriptive rules on what data are to be used for the CWA.

We think that the EBA Guidelines on loan origination and monitoring (<https://www.eba.europa.eu/regulation-and-policy/credit-risk/guidelines-on-loan-origination-and-monitoring>) is a good basis for specifying what data should be used for an adequate CWA. However, there is a need to integrate it in the level 1 text of the MCD to make it mandatory and ensure that it is applied and enforced.

Our proposed approach would also resolve the problem where consumers are denied a loan not because they can't afford the loan but simply because they lack credit history.

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

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

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

5000 character(s) maximum

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

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

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

Please explain your answer to question 32:

5000 character(s) maximum

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

The indicators provided in the EBA Guidelines on loan origination and monitoring (<https://www.eba.europa.eu/regulation-and-policy/credit-risk/guidelines-on-loan-origination-and-monitoring>) offer a good set of data to be used for creditworthiness assessments.

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

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

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

Please explain your answer to question 33:

5000 character(s) maximum

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

Question 34. The MCD evaluation study showed that creditors could access databases in other countries as long as they respect the principle of r e c i p r o c i t y .

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

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

Please explain your answer to question 34:

5000 character(s) maximum

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

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

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

Please explain your answer to question 35:

5000 character(s) maximum

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

2.5 Early repayment

The MCD has granted consumers the right to early repayment. This right makes it easier for consumers to switch to another provider, which is important to foster competition. The MCD evaluation report has, however, indicated that only

a minority of consumers has exercised the right of early repayment since the MCD entered into force. This seems to be in particular due to a lack of consumer awareness, their inability to assess how much they could save, the possible conditions attached to early repayment and the possible amount of compensation to be paid.

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

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

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.

Consumers often are not aware of the right to early repayment and of the possibility to switch mortgages based on this right. Consumers also often lack information on the conditions of early repayment. Moreover, often, unreasonably high amounts of compensation make early repayment unattractive for consumers.

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

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

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

5000 character(s) maximum

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

The calculation of the compensation consumers need to provide to creditors in the case of early repayment needs to be transparent and comprehensible at the pre-contractual stage. In addition, the MCD needs to be much clearer on the right of early repayment and limit the penalties consumers incur when exercising this right. Caps should be introduced to these penalties at EU level similar to the provisions included in the European Commission legislative proposal on the Consumer Credit Directive (CCD) (Art. 29, §2).

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

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

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

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

Please select as many answers as you like

- ☒ a cap on the compensation
- ☒ guidance on the calculation of “fair and objective compensation”
- ☐ other

Please 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.

There is a need for the MCD to be much clearer on the right of early repayment and limit the penalties. In PT, FR and BE, penalties are capped, caps should also be set at the EU level. Compensation should in any case not exceed the amount of interest that the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.

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

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

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

Please explain your answer to question 39:

5000 character(s) maximum

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

2.6 Foreign currency loans

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

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

Please explain your answer to question 40:

5000 character(s) maximum

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

Foreign currency loans are very risky for consumers. Most consumers have problems understanding the risks associated with fluctuating exchange rates and thus these kinds of loans cannot be considered as suitable for most consumers. As acknowledged in the EC's evaluation study of the MCD, as a result of its riskiness, these loans have caused a lot of harm to consumers, including, in the worst case, consumers losing their property or falling into over-indebtedness.

Problems with these loans were particularly significant before the MCD came into force in Croatia, Hungary, Poland, Romania, and Spain. As noted by a European Parliament study on the mis-selling of mortgages ([https://www.europarl.europa.eu/RegData/etudes/STUD/2018/618995/IPOL_STU\(2018\)618995_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/618995/IPOL_STU(2018)618995_EN.pdf)), these loans 'have cognitive biases which financial institutions may have exploited in their marketing campaigns for these kinds of products.' The damages inflicted on consumers of foreign currency loans in these Member States were reinforced by qualitative information shared with Finance Watch by its members, with long term negative impacts on financial well-being.

The measures introduced by the MCD to protect consumers from these types of loans have been effective as, in recent years, there have been no more reports of any significant harm to consumers caused by these loans.

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

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

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

Please explain your answer to question 41:

5000 character(s) maximum

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

2.7 Mortgage lending by non-credit institutions

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

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

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

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

Please explain your answer to question 42:

5000 character(s) maximum

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

The definition of 'non-credit institutions' in the MCD should clarify that credit intermediaries and providers of peer-to-peer mortgage services are also covered under Article 35 and therefore need to be subject to an adequate admission process, including entering these entities in a register and arrangements for supervision by a competent authority.

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

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

Please explain your answer to question 43:

5000 character(s) maximum

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

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

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

Please explain your answer to question 44:

5000 character(s) maximum

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

2.8 Credit intermediaries

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

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

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

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

5000 character(s) maximum

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

2.9 Arrears and foreclosure

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

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

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

Please explain your answer to question 46:

5000 character(s) maximum

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

Question 47. The [Directive on credit servicers, credit purchasers and the recovery of collateral](#) will strengthen Article 28 of the MCD clarifying the

forbearance obligations and introducing reinforced information duties on credit purchasers and servicers. Do you consider that further measures would be required to protect consumers falling in arrears?

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

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

Please select as many answers as you like

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

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

5000 character(s) maximum

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

The forbearance measures in the Directive on credit servicers, credit purchasers and the recovery of collateral are very weak as they do not oblige creditors to exercise forbearance measures in cases where consumers are facing financial difficulties. Nor do they prescribe any binding forbearance measures that must be considered. In our view, this must be changed to ensure that creditors have to consider reasonable forbearance measures in circumstances where consumers are in financial hardship.

Moreover, Article 28 of the MCD allows for any charges that are imposed on consumers from a default on a loan to be greater than is necessary to compensate the creditor for costs it has incurred as a result of the default. This is not reasonable and could unjustifiably lead to financial distress for the consumer who is already in financial difficulty. Therefore, any charges should be limited to the costs the creditor incurs as a result of the default.

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.

Over-indebtedness is a very serious problem in the European Union and is likely to get even worse in light of the economic consequences of the COVID-19 crisis. Eurostat data (https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Living_conditions_in_Europe_-_poverty_and_social_exclusion) shows that for the first time since 2012 the percentage of those at risk of poverty or social exclusion has risen and now stands at 22% of the population across the EU. A recent EU social survey found that 32% of the population does not believe they could cope with unforeseen expenses equivalent to one month's income. In light of these statistics, tackling over-indebtedness in the EU level is very important.

Several tools exist to support consumers who are facing over-indebtedness or are at risk of over-indebtedness. Several studies such as "The Economic Impact of Debt Advice, A Report for the Money Advice Service" (<https://moneyandpensionsservice.org.uk/wp-content/uploads/2021/03/economic-impact-of-debt-advice-main-report.pdf>), show that debt advice is one of the most effective tools to address over-indebtedness as it delivers significant direct and indirect economic benefits for the society at large. However, currently, most EU citizens are not able to take advantage of this effective tool. Debt advice services exist in many Member States, but to very different degrees of availability and use. For example, only nine Member States in the EU have well-established services, while 14 provide them sporadically, some of which offer almost no support.

Therefore, in our view, there is a strong need to make it mandatory in the MCD that each member state ensures that consumers have access to independent and free debt advice services. In addition to making the availability and access to debt advice mandatory in general terms, it is also key that the debt advice provided is of a good quality in order to ensure that it is actually effective. Therefore, we are of the strong view that the MCD should include a minimum harmonization of debt advice practices. For this purpose, minimum harmonization debt advice practices should be developed as part of a delegated act under the MCD. The practices developed should be based on best practices and not on the lowest common denominator.

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

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

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

Please explain your answer to question 48:

5000 character(s) maximum

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

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

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

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

Please explain your answer to question 49:

5000 character(s) maximum

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

The COVID experience has shown that there is a need to have good and robust debt relief measures in place in the MCD. The MCD currently does not contain any meaningful and robust relief measures for consumers struggling to repay their mortgage due to economic hardship situations.

This should be corrected by introducing the measures we are proposing in our answer to Question 47. There should be a provision in the MCD making it mandatory for member states to ensure that consumers have access to free and independent, high-quality debt advice.

Moreover, as pointed out in our answer to Question 47 as well, the MCD should oblige creditors to exercise forbearance measures in cases where consumers are facing financial difficulties. In addition, it should prescribe binding forbearance measures that must be considered by creditors. These binding forbearance measures should include, as a minimum, the following:

- (a) a total or partial refinancing of a credit agreement;
- (b) a modification of the existing terms and conditions of a credit agreement, which may include among others:
 - (i) extending the term of the credit agreement;
 - (ii) changing the type of the credit agreement;
 - (iii) deferring payment of all or part of the instalment repayment for a period;
 - (iv) reducing the interest rate;
 - (v) offering a payment holiday;
 - (vi) partial repayments;
 - (vii) currency conversions;
 - (viii) partial forgiveness and debt consolidation.

2.10 Green mortgages

Some mortgage providers already offer “green mortgages” (under possible preferential terms and conditions) for instance to improve the energy efficiency of a building or to acquire highly energy efficient property. Green mortgages

are an important possible avenue of development for an inclusive sustainable finance framework, as acknowledged in the [strategy for financing the transition to a sustainable economy](#).

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

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

Please explain your answer to question 50:

5000 character(s) maximum

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

The definition of green mortgages should be linked to the Taxonomy, though we acknowledge that more ambitious sustainability initiatives exist. In order to streamline standardisation and attain the aspirations of the EU strategy for financing the transition to a sustainable economy, we believe the Taxonomy should be the basis for the definition of green mortgages. However, the Taxonomy should be adapted to align with the new Energy Performance of Buildings Directive.

To increase uptake and expand inclusion of access to green mortgages by a broad range of consumers, the definition of a green mortgage should also include sustainability-based renovations for current mortgage holders. Green mortgages, therefore, would include a loan backed by the guarantee of a home that is taken with the intention to upgrade the home's energy performance and proven by an improvement or attainment of an Energy Performance Certificate.

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

Please select as many answers as you like

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

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

5000 character(s) maximum

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

Additional benefits of creating a common definition of green mortgages would be to prevent greenwashing and to meaningfully mobilise finance for the transition of the EU economy towards sustainability. As the EU has been a frontrunner advancing the sustainable finance regulatory agenda, among others aiming to mobilise finance for the transition to a sustainable economy, a knock-on effect could be to provide a definition that is replicated or held up as a standard worldwide.

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.

Promoting environmentally sustainable investments into the building and renovation of houses and apartments is of high importance for a transition towards a sustainable economy. Moreover, mortgage financing is an important financial instrument for mobilising finance for the transition as it brings fresh capital and has the capacity to effectively finance a sustainable economic activity. This is in contrast to financial instruments which only derive their value from other financial instruments (e.g. synthetic ETFs) or financial transactions which involve a mere change of ownership but where no new money is channeled to an economic activity, project or a company (e.g. equities and funds on secondary markets).

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

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

Please explain your answer to question 52:

5000 character(s) maximum

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

As mentioned in the response to question 50, the Taxonomy should be the basis for the definition of green mortgages. However, it should be first adapted to align with the new Energy Performance of Buildings Directive which brings forward more recent and more ambitious criteria regarding this particular economic activity.

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

Please select as many answers as you like

- ☒ obligation for credit providers to inform the consumer if such product can be provided

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

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

5000 character(s) maximum

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

Mortgage providers should have a duty of advice and information to mortgage customers to inform them of the long term benefits and help to connect them with registered renovation professionals in their area.

Instead of an optional label, a green mortgage standard would be a more effective mechanism for increasing uptake.

Explicit reference to the preferential terms and conditions for borrowers and providers should be provided.
See below.

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 encourage the uptake of green mortgages and facilitate the transition to a sustainable economy, credit providers should have a duty of advice and information to mortgage customers. As stated in the EU/OECD International Framework on Financial Education, awareness is a key component to changing behaviour.

Advancements by all Member States in the adoption of best standards regarding Energy Performance Certificates (EPC) will improve the capability of owners, finance providers and renovators to access, assess and update information on EPC databases. Presentation of information by means of visualisation tools, such as those employed in the Netherlands database, and the confidential access capabilities to building energy data provided to certified renovation professionals in Italy and other Member States provide examples of best practice standards that should be repeated across all 27 Member States.

In regard to the creation of a label for green mortgages, Finance Watch believes that creation of a green mortgage standard will be more effective to prevent greenwashing. We question the impact that a voluntary label would have on increasing uptake of green mortgages.

Finally, while we do agree that preferential terms and conditions should be developed both for consumers and credit providers to incentivise green mortgage uptake, it is imperative to define the nature of any such preferential terms and conditions. The total cost of the green mortgage for the client should be lower, or at least not higher, than in case of a regular mortgage. On the one hand, immovable property investments that green mortgages would finance, are most likely to result in higher initial costs due to materials and techniques / methods used that need to meet the environmental standards. On the other hand, the long-term costs associated with such investments will be lower due to higher energy efficiency. A more attractive interest rate should be complemented by knowledgeable support from mortgage providers. This knowledge should include an explanation of benefits, a long term projection of the energy cost savings and support for contacting certified renovation professionals. In addition, we believe that public assistance in the form of public grants and loans as well as tax incentives should be made available to consumers to renovate buildings. This would be another effective incentive for consumers to purchase green mortgages.

Preferential terms and conditions, however, should not include granting of a loan in cases and on conditions, where risks to the consumer and mortgage provider would otherwise be unacceptable based on the consumer's creditworthiness assessment, as this could be detrimental to the consumer and broader financial stability.

For mortgage credit providers, we strongly oppose the notion that green mortgages should be per se subject to lower capital requirements for finance providers. Given that climate-related financial risks are not currently incorporated into the prudential capital requirements, private green mortgages do not automatically imply a lower risk of borrower's default and it is therefore critical that the need to raise capital to support sustainability goals is balanced with considerations of financial risks, in particular financial stability risks. To support the market for green mortgages and compensate lenders for the preferential terms offered to consumers, we believe that establishment of green targeted long-term refinancing options (TLTROs), sometimes referred to as climate-risk adjusted refinancing options, by central banks is the most feasible, prudent approach to striking this balance.

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

☒ Yes

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

Please explain your answer to question 54:

5000 character(s) maximum

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

In an increasingly complex market, it is unrealistic and unfair to place to the onus of financial product expertise onto the average consumer. Knowledge of financial products is best delivered at the point of access and in the case of mortgages, this point of access is the representative of a credit provider or credit intermediary.

To ensure that knowledge of green mortgages is equally and adequately acquired by staff across the EU, knowledge and competence requirements, such as advice or guidelines for the development of a certification in part of their training, should be developed at EU level.

2.11 Other

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

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

Please explain your answer to question 55:

5000 character(s) maximum

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

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can

upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

You can upload several files.

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

Useful links

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2021-mortgage-credit-review_en\)](https://ec.europa.eu/info/publications/finance-consultations-2021-mortgage-credit-review_en)

[Consultation document \(https://ec.europa.eu/info/files/2021-mortgage-credit-review-consultation-document_en\)](https://ec.europa.eu/info/files/2021-mortgage-credit-review-consultation-document_en)

[More on mortgage credit \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/credit/mortgage-credit_en\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/credit/mortgage-credit_en)

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Contact

fisma-mortgage-credit-review@ec.europa.eu