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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the review of the Directive 2014/17/EU of the European Parliament and of the Council on credit agreements for consumers relating to residential immovable property

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ABBREVIATIONS

APRC	Annual percentage rate of charge
ECB	European Central Bank
EBA	European Banking Authority
ESIS	European Standardised Information Sheet
EU	European Union
NCA	National competent authority
CCD	Consumer Credit Directive (Directive 2008/48/EC)
CRA	Credit Reference Agencies
DG FISMA	Directorate-General for Financial Stability, Financial Services and Capital Markets Union
FIN-NET	Financial Dispute Resolution Network
FinTech	Financial technology
GDPR	General Data Protection Regulation (Regulation (EU) 2016/679)
GEGRFS	Government Expert Group on Retail Financial Services
MS	Member States
NPL	Non-performing loan

1. INTRODUCTION

The Mortgage Credit Directive[1] (MCD) was adopted on 4 February 2014 as part of the EU's efforts to create a single market for mortgages, and against the background of the global financial crisis.

Member States were required to transpose the provisions of the MCD into their national law by 21 March 2016. However, only eight Member States had transposed the Directive on time. The last Member State transposed the Directive into national law in June 2019.

This report has been prepared under Article 44 MCD, which requires the Commission to review the effectiveness and appropriateness of the provisions on consumers and the internal market, with an emphasis on the experience acquired in applying the Directive. A study launched by the Commission on the evaluation of the Directive[2] (the 'RPA study') formed the basis for this report. In addition,and in line with Article 45 MCD, the report reviews the need for supervision of credit registers. The Commission will meet the requirement under Article 45 MCD to submit a comprehensive report assessing the wider challenges of private over-indebtedness directly linked to credit activity at a later stage, taking in particular account of the impact of the COVID-19 pandemic on consumers.

When preparing this report, the Commission faced a number of challenges regarding data collection. They mainly concern the limited time since the Directive has been applied, the difficulties in accessing national credit intermediaries registers and the COVID-19 crisis, which coincided with the data collection stage of the RPA study.

The present report will feed into next phases, whereby the Commission will carry out an evaluation based on additional evidence gathered through a dedicated public consultation and an impact assessment with a view to deciding on the next initiatives (legislative or not) concerning the Directive.

2. ASSESSING THE APPLICATION OF THE MORTGAGE CREDIT DIRECTIVE

The MCD aimed to create "*an efficient and competitive single market for consumers, creditors and credit intermediaries with a high level of consumer protection by fostering consumer confidence, customer mobility, cross-border activity of creditors and credit intermediaries, and a level playing field*."[3] It also sought "*to ensure a level playing field between creditors and promote financial stability"*[4].

The following section therefore evaluates how the MCD has contributed to providing a high level of protection of consumers, to developing a single market for mortgages and to promote financial stability.

[1] Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance, OJ L 60, 28.2.2014, p. 34–85 (MCD).

[2] Study on the "Evaluation of the Mortgage Credit Directive", by Risk & Policy Analysts (RPA), 2020, see at https://op.europa.eu/en/publication-detail/-/publication/e4a1db26-2f94-11eb-b27b-01aa75ed71a1

[3] Point 1 of the Explanatory memorandum of the Commission proposal for a directive on mortgage credit agreements.

[4] See recital 75 of the MCD.

2.1 Impact on consumer protection

In assessing the impact of the Directive on the level of consumer protection[5], it is necessary to look at how it has contributed to increasing consumer trust and satisfaction with mortgages and at the effectiveness of the rules on advertising and pre-contractual information. In particular, the assessment looked at the annual percentage rate of charge (APRC), tying and bundling practices, creditworthiness assessment, knowledge and competence of staff, foreign-currency loans, the right to reflection/withdrawal, early repayment, arrears and foreclosure.

Consumer trust and satisfaction with mortgages

Results from the 2018 edition of the EU Consumer Market Scoreboard[6] (the 'EU CMS') show that, since the MCD entered into force, consumer satisfaction with mortgages has improved from a score of 6.6/10 in 2014 to 7.3/10 in 2018. Similarly, trust in the mortgage credit market has increased (from a score of 6/10 in 2014 to 6.8/10 in 2018).

The 2018 EU CMS notes that implementing the MCD is likely to have contributed to an improved assessment of the mortgage credit market because it gave consumers detailed information on the terms of the mortgage granted and access to early repayment. Nonetheless, given that the Directive was transposed late in many Member States, the results of the 2018 EU CMS may not fully capture its effects. Furthermore, the EU CMS results do not allowdistinguishment to be made between consumers who concluded a mortgage credit agreement in 2017-18 and those who concluded mortgage credit agreements before then.

Effectiveness of the rules on advertising and pre-contractual information

Consumers are often in a weaker position than service providers in terms of access to relevant information on products and services. This is often exacerbated by behavioural issues such as cognitive bias relating to systematic errors in processing and interpreting information which affect consumers' decisions. . The MCD sought to address this by ensuring that consumers receive appropriate information enabling them to make informed decisions. The provisions on advertising and pre-contractual information are instrumental to that aim.

On advertising, the Directive has contributed to preventing unfair and misleading advertising practices, in particular under Articles 10 and 11. According to the RPA study, most consumers believe that advertisements for mortgages are fair, clear and not misleading. However, there are indications that the advertising requirements may not be well suited to the digital world, with creditors citing difficulties in complying with information requirements when advertising online.

The Directive (Article 14) requires the provision of free, pre-contractual and personalised information to consumers, in particular through the European Standardised Information Sheet (ESIS) including the annual percentage rate of charge (APRC). The evaluation shows that consumers benefited from this, in particular from receiving better pre-contractual information in a standardised format[7] with the ESIS and calculation of the APRC. Information on the APRC was found to be important in enabling consumers to compare offers, although evidence

[5] The Directive applies only to mortgage credit agreements concluded as from 21 March 2016 (see Article 43(1).
[6] See at https://ec.europa.eu/info/publications/consumer-markets-scoreboard_en.
[7] The 2018 edition of the EU CMS shows that after the MCD entered into force, 'comparability' in the mortgage market improved.

shows that few consumers fully understand the meaning of the APRC[8]. In addition, although the information provided in the ESIS is considered important for consumers to make an informed decision, consumers often appear to be overloaded with information that they do not read or understand, making it harder to compare products. The ESIS also seems not to be always supplied in a timely manner, so consumers are not able to shop around (e.g. they only receive the information when receiving the final offer), is not well suited to electronic devices (e.g. smart phones) or the provision of information in digital form. The RPA study also indicates that pre-contractual information may not always be provided free of charge to consumers.

Period of reflection and/or withdrawal

Following transposition of the Directive, Member State legislation now gives consumers a period of reflection, withdrawal or both, which they did not always have before. Most Member States opted to grant a period of reflection rather than a period of withdrawal. Despite this, the proportion of consumers who felt that they are given enough time to reflect has fallen (compared to before the Directive was implemented).

By contrast, a higher share of the consumers who were given a right of withdrawal believe they were given enough time to withdraw their application than the number surveyed before the Directive was implemented. The Directive appears to have been effective in this regard, although in practice most consumers do not withdraw from mortgages. Some consumers who tried to withdraw from their mortgage agreement faced several difficulties.

Bundling and tying practices

Although the evidence collected shows that there has been a slight decrease in the proportion of consumers required to purchase additional tied services, these practices still occur, particularly among credit intermediaries for insurance products[9]. The extent to which tying practices comply with the exceptions of Article 12 is uncertain[10]. In this context, EU Competition Law may also apply.

Creditworthiness assessment

The obligation for creditors to conduct a creditworthiness assessment (Articles 18 and 20 MCD) and the requirement that the provider may only make the credit available to the consumer if the result of the assessment is positive[11], seems to be one of the most effective provisions in terms of consumer protection as it prevents providers from granting credit to consumers unable to repay it[12]. The fact that, in recent years, arrears on mortgages appear to have decreased may provide an initial indication that these provisions are starting to have a positive effect. Nonetheless, bearing in mind the time lag between issuing credit and consumers falling into financial difficulty, it may only be possible to fully assess the true

[8] Consumers often do not realise that when comparing the APRC, they must compare mortgages of the same duration and type, see RPA study.
[9] As revealed by the mystery shopping conducted in the RPA study.
[10] The first ruling of the Court on the MCD (Case C-778/18 *Association francaise des usagers de banques*) concerned national legislation and the issue of tying practices.
[11] See Article 18(5)(a) of the MCD.
[12] See RPA study. In 2009, only ten Member States had legislation prohibiting the granting of credit to consumers unable to repay it. See London Economics, "Study on the costs and benefits of different policy options for mortgage credit".

effectiveness of these provisions at a later stage. However, there is a degree of uncertainty on the possibility to apply the provisions to consumers who are jointly and severally liable for the loan as the MCD only refers to the assessment of the credithworthiness of an individual consumer. There has also been a recent shift in the credit market to use 'big data' and machine learning to create bespoke services, based notably on expedited creditworthiness assessments (mostly in the context of consumer credit)[13]. These technologies could make it easier and cheaper for consumers to obtain a mortgage, and could improve the capacity of lenders to assess risks for example through algorithm-based analytics of creditworthiness. At the same time they also pose new risks regarding the data used (e.g. social media data), the way information is provided and the offer designed (to accelerate consumers' purchase decision), and consumer targeting and personalisation (in particular the transparency of algorithm-based creditworthiness assessment decisions).[14] These matters are also covered by the recent Commission Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on Artificial Intelligence (Artificial Intelligence Act).

As a response to climate change and to promote sustainable practices, the concept of 'energy-efficient mortgages' has gained traction over the past few years. Recent research identified a potential correlation between mortgage holders' loan performances and the energy efficiency of their properties, indicating a possible lower risk of default of these type of mortgages. Further research on this topic is ongoing at various levels[15].

Knowledge and competence of staff

The results of the RPA study indicate that the MCD requirements on knowledge and competence of staff (Article 9 and Annex III) may have led to an increase in the level of competence of creditors' staff, in turn contributing to a higher level of professionalism. Most surveyed consumers believed that the staff employed by creditors and credit intermediaries have a suitable level of knowledge and competence. Industry stakeholders indicated that there had been an increase in training costs as a result of the Directive. In this context, it was noted that creditors are increasingly relying on robo advisers.

Foreign-currency loans

Article 23 of the Directive on foreign-currency loans requires Member States to ensure that consumers have a right to convert the credit agreement into an alternative currency under specified conditions or, if there are other arrangements in place, to limit the exchange rate risk to which the consumer is exposed. These rules seek to prevent substantial consumer detriment as observed in the past when the foreign currency in which loans were issued appreciated.[16]

The evidence collected shows that, although the MCD rules were effective in preventing consumer exposure to exchange rate risk and default, in many countries lenders have stopped offering loans in a foreign currency as a result of the rules. In other countries, there has been a significant reduction of foreign-currency loans.

[13] See study CML (2017): Digital change and Mortgage Borrowers. The Council of Mortgage Lenders, pages 9-10. Findings for the UK can be transferable to the EU.
[14] European Commission (2019): Behavioural study on the digitalisation of the marketing and distance selling of retail financial services, not yet published.
[15] At Commission level, this work is being carried out in the Energy Efficient Financial Institutions working group on risk assessment and at industry level by the EMF-ECBC Initiative on Energy Efficient Mortgages.
[16] See report by the European Parliament "Mortgage Credit - Mis-selling of Financial Products", June 2018.

Right to early repayment

Article 25 of the MCD grants consumers a right to early repayment of the mortgage, subject to the possibility for the Member States to set conditions for early repayment, notably fair and objective compensation.

The evidence collected by the Commission shows that this provision is effective in ensuring a high level of consumer protection.[17] Although consumers have the right to repay all or part of the outstanding balance of their mortgage early, only a minority of consumers seem to have exercised this right since the Directive entered into force. The full benefit of this right seems to be limited by a lack of consumer awareness, their inability to assess how much they could save, and by the charges to be paid (see Section 2.2 on customer mobility).

A study[18] commissioned by the Commission in 2019 (the 'ICF study') has shown that the conditions that may be attached to early repayment (notice period or minimum contract elapse) and the possible amount of compensation to be paid to the lender, especially in fixed interest rate mortgage loans, may discourage consumers. Most but not all Member States issued a precise definition of the compensation to be paid (such as a percentage of interest due or of the outstanding balance), which allows the borrower to calculate the costs in advance. This seems to considerably reduce the differences between credit institutions' calculation of the amounts due, improving legal certainty and overall transparency.

Arrears and foreclosure

The aim of Article 28 of the MCD on arrears and foreclosure is to encourage creditors to deal with emerging credit risk at an early stage and to make reasonable attempts to resolve the situation before initiating foreclosure proceedings. Stakeholders consulted for the RPA study indicated that the MCD has contributed to a reduction in over-indebtedness. The results of the consumer survey suggests that consumers are also satisfied with the lenders' behaviour in this regard. Thirteen Member States have used the option provided in the Directive to allow creditors to impose additional charges on consumers in the event of default (with some setting caps) whereas 12 have not[19]. Based on the limited information provided, and given the short period of application of the MCD and its late transposition, it is not possible to assess with a high degree of certainty whether these provisions have been effective in reducing the risk of foreclosure.

The economic impact of COVID-19 creates a risk that an increasing number of consumers will be unable to meet their financial commitments and might become over-indebted. A more detailed analysis will be carried out in the context of the upcoming report on the wider challenges of private over-indebtedness.

Assignment of the credits to a third party

[17] Most stakeholders in the interviews and public consultation conducted by RPA are of this view.
[18] ICF "Study on switching of financial services and products", 2019, not yet published.
[19] See RPA study, legal assessment.

The GDPR requires the new creditor/controller to inform the consumer/data subject of its identity and contact details, among other details.[20] However, unlike the CCD, the MCD does not explicitly provide any guarantees to consumers in the event that the credit agreement is assigned to a third party. To ensure that the level of consumer protection is not affected in the event of an assigned credit, the Commission included in its proposal for a Directive on credit servicers, credit purchasers and the recovery of collateral (the 'proposal for a Directive on NPL')[21] an amendment to the MCD to ensure that in such cases the consumer is entitled to plead against the credit purchaser any defence available against the original provider[22]. The proposal also requires purchasers of consumer credit that are not established in the EU to appoint a credit institution or a credit servicer authorised in the EU for servicing the credit agreement[23]. The legislative procedure on this proposal is still ongoing.

New post-contractual rights

Amendments to the credit agreement can be detrimental to consumers given the situation of dependency they find themselves in, thus reducing their bargaining power vis-à-vis the provider. Therefore, the Commission included a new provision in the proposal for a Directive on NPL[24] providing that, if the terms of the contract are amended, consumers are entitled to receive a clear and comprehensive description of the proposed changes, the timescale for implementation and the grounds of complaint available.

Conclusion on consumer protection aspects

In conclusion, there are indications that the MCD has contributed to raising the overall level of consumer protection in the EU, in particular by establishing a minimal level of protection in all Member States. The MCD also appears to have contributed to a rise in the level of consumer trust in the mortgage market. However, some limitations related to consumers' capacity to process complex and extensive information and the inadequacy of certain information disclosure requirements for digital delivery, seem to hinder the full effectiveness of the rules. The provider's obligation to assess consumer credithworthiness before finalising the agreement may have led to the reduction in the number of consumers experiencing difficulties in paying back their credit. The right to early repayment has had positive effects but the conditions that may be attached to it and the amount of compensation to be paid appear to discourage consumers from exercising the right and switching contracts to make savings. Early indications on the provisions governing arrears and foreclosure indicate they are effective in reducing the risk of foreclosure. However, these provisions are likely to be more extensively tested in the context of the COVID-19 pandemic. The amendment to the MCD and new consumer safeguards proposed by the Commission are expected to raise the level of consumer protection in cases when the credit is assigned to a third party.

2.2 Impact on the single market

The MCD aims to promote cross-border trade in mortgage credits, and hence a single market, by bringing in a degree of harmonisation in the requirements for providing mortgages

[20] See Article 14 of the GDPR.
[21] Proposal for a Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral {SWD(2018) 75 final}.
[22] See Article 38 of the proposal for a directive on NPL.
[23] See Article 15(1) of the proposal for a directive on NPL.
[24] See Article 34 of the Commission's proposal for a Directive on NPL

(notably covering the conduct of businesses, the supervision of credit intermediaries and the activity of non-credit institutions). Starting from a very low level of around 1% of mortgages granted in 2016[25], the cross-border provision of mortgages has remained very limited (at a value of EUR 52 billion (<1%)).[26]

The lack of cross-border mortgage activity is due to the fact that significant barriers remain, including differences in national legislation in areas outside the scope of the Directive such as tax systems, property and land registration, contract law governing the validity of credit agreements and post-contractual issues such as foreclosure rules. As shown by the RPA study, creditors fear that having to implement foreign law in a legally secure manner would expose them to legal risks and challenges that could undermine the profitability of cross-border transactions.

The lack of cross-border activity is caused by other reasons too, such as consumer home bias and language. According to the RPA study, the most frequently reported reasons by consumers for not taking a mortgage with a lender from another EU country were that there was no need, or because it never occurred to them to do so. A lack of familiarity and trust with providers, language barriers and a lack of awareness of available products were also frequently reported issues.

These barriers have been increased by Member States 'gold-plating' the Directive's requirements and implementing regulatory options (e.g. advertising, tying practices, period of reflection/withdrawal) that impose additional obligations and associated costs that cannot be attributed to the Directive.

Despite these obstacles, the MCD has had an impact on the functioning of the single market by levelling the playing field (e.g. setting common requirements and provisions for creditors and extending the scope of the obligations to credit intermediaries and non-credit institutions). As a result, it has contributed to some extent to giving consumers a wider choice and better quality. Digitalisation, and the increase in digitally and financially literate consumers, could reduce the need for face-to-face contacts and help boost the provision of mortgage loans across borders in the future.

The development of a single market for mortgages depends on the effectiveness of the MCD rules to promote cross-border activity, increase customer mobility, unhindered access to databases (for creditworthiness assessment purposes), the guarantee of responsible lending by credit providers, intermediaries and non-credit institutions and effective enforcement. As the single market constantly evolves, there is a need to ensure that the rules keep pace with new developments such as online peer-to-peer platforms.

Scope of the Directive

[25] Data from the special Eurobarometer 2016 shows that in the EU-28, only 1% of consumers living in Belgium, Cyprus and the Netherlands had bought a mortgage in another Member State (this figure was slightly higher for Luxembourg (3%) and for Ireland (2%)) .

[26] See ECB 2019 data on outstanding positions of cross-border loans to households provided by monetary financial institutions. The data include mortgages and other types of consumer credit, such as household loans, overdrafts and credit cards. The data show that of the EUR 5 882 billion in outstanding amounts, EUR 52 billion (<1%) are for cross-border intra euro area mortgages. The data cover only direct cross-border lending, excluding the activities of branches of foreign banks providing mortgages.

The data collected indicates that, overall, the scope of the MCD remains appropriate to meet the objectives of the Directive, though there is a case to make some adjustments.

Equity release schemes, also known as reverse mortgages, are currently excluded from the scope of the MCD under Article 3(2)(a). The RPA study found that the current level of regulation of these schemes may be insufficient and may pose a risk in terms of consumer protection[27].

Article 46 MCD extended the scope of the CCD to include credits for the renovation of a residential property above EUR 75 000. The CCD is currently under review and its scope of application is being assessed.

The emergence of online peer-to-peer platforms that match consumers as both lenders and borrowers could have implications for the mortgage market in the future.[28] Although the market for peer-to-peer lending and crowdfunding for residential property remains small and is likely to remain so at least in the near future, developments warrant monitoring. Member States have taken different approaches, with most choosing not to regulate for the time being. In some cases, national legislators require such platforms to register as a credit intermediary. There is also legal uncertainty whether comparison websites qualify as a credit intermediary.

Only Finland reported having used the option provided in Article 3(3)(a) to exclude from the scope of application certain secured credit agreements.

Only the UK has used the option to exclude 'buy-to-let' credit agreements from the Directive (Article 3(3)(b)).

Access to credit databases

Article 21 MCD requires Member States to provide non-discriminatory access to credit databases by creditors located in other countries for the purpose of assessing the creditworthiness of consumers. Difficulties related to accessing the credit databases may be an impediment to the cross-border provision of mortgages.

The RPA study found that the conditions for non-discriminatory access to credit databases are generally made clear, and there is no evidence of discrimination. However, the study also shows that to actually access the database, providers are requested to provide corresponding data to the database (principle of reciprocity[29]). But providers in Member States that only allow 'negative' data (data on payment default) to be processed for creditworthiness assessment purposes may not provide databases in other Member States with 'positive' data (e.g. on ongoing financial commitments) and are thus at a disadvantage with regard to competitors that process both negative and positive data. Further complications arise from the differences in the content of credit databases and the lack of a common terminology, such as a definition of 'default'.[30]

[27] See results of consultation conducted by RPA with stakeholders.

[28] See for instance Ziegler et al. (2019)[28] *Expanding Horizons: The 3rd European Alternative Finance Industry*.

[29] See also ICF, 2020, Evaluation of the CCD; European Commission, 2009, Report of the Expert Group on Credit Histories.

[30] ICF, 2020, Evaluation of the CCD; European Commission, 2009, Report of the Expert Group on Credit Histories.

Customer mobility/Switching of providers

The MCD provisions on pre-contractual information, prohibition of tying practices, period of reflection/withdrawal and in particular the right to early repayment of the credit make it easier for consumers to switch providers. Customer mobility is very important to foster competition and to ensure that consumers can benefit from the best deals available on the market.

Consumers do not often switch providers. According to a study carried out for the Commission[31], the aggregate savings for consumers from switching across the entire sample of 14 Member States could reach up to EUR 1.7 billion per month, or over EUR 20 billion per year. According to the survey of mortgage consumers carried out for this study, the percentage of all consumers currently holding a mortgage loan who would benefit from switching their mortgage varies significantly between Member States (e.g. 22% in Sweden compared to 78% in Portugal)[32].

A behavioural study carried out for the Commission[33] showed that there is no single reason why consumers do not switch mortgages, but a combination of reasons such as satisfaction with the current provider, market situation (e.g. low interest rates), unawareness of the opportunity to switch or of the potential benefits. Other significant factors are other priorities, too much information to process and the way it is presented, a sense of dread of making the wrong choice, and the time, cost and hassle of searching for a better offer. As mentioned in Section 2.1, a concern over conditions that may affect the right to early repayment may also discourage consumers from switching mortgages[34].

Both the above studies on switching also indicate a potential market failure related to a number of practices by providers that discourage switching. In particular, the ICF study showed that the lack of a specific legal framework for switching mortgages[35] might constitute an obstacle to switching, because credit institutions can take advantage of legislative gaps to adopt various commercial practices that make it difficult to, or altogether prevent, consumers from switching financial products. Such commercial practices may be subject to EU Competition Law scrutiny.

EU passport for credit intermediaries

One of the main changes brought in by the Directive was to create a EU passport for credit intermediaries and to regulate their activity on a par with creditors. This enables credit intermediaries to offer their services in other Member States while consumers benefit from having an easier process to obtain a mortgage, in particular when shopping for a mortgage in other Member States.

[31] See "Study on switching of financial services and products elaborated by ICF (2019)" not yet published.
[32] These estimates refer to switching within an existing lender ('internal switching') and to a new lender ('external switching') and are based on a sample of 14 Member States.
[33] "Applying behavioural insight to encourage consumer switching of financial products" by G. Marandola, A. Proestakis, J. Sousa Lourenço, R. van Bavel, 2020, not yet published.
[34] Such conditions should be in compliance with EU Ccompetition Law principles.
[35] A legal framework for switching exists only in Italy and Spain. Ireland, Portugal and Denmark have only a few provisions to facilitate mortgage switching, see ICF study.

Under the MCD, Member States must draw up a register of licensed credit intermediaries. However, the registers are not always easily accessible[36] and the available information differs between them. For this reason, the total number of credit intermediaries currently operating across the EU is unknown.

Overall, credit intermediaries play a minor part in mortgage lending (see Annex). However, a significant number of Member States have a moderate (and in Ireland[37], even a high) level of activity.[38] According to the results of the consumer survey carried out by RPA, before the Directive entered into force, less than a quarter of consumers (24%) used a credit intermediary. For mortgages taken out between 2016 and 2019, this increased to 36%. However, this change cannot be exclusively attributed to the Directive since the use of credit intermediaries seems to be associated with other factors too, such as national practices and culture, which varies substantially between the Member States. Some differences seem to persist in the way the definition of credit intermediary is interpreted by the Member States. For example, comparison websites and online platforms that help consumers choose a mortgage are considered as intermediaries in some Member States but not in others.

Few credit intermediaries offer their services cross-border and the limited evidence available suggests that the Directive has had little impact on this aspect. One possible reason, as noted by some stakeholders including industry representatives and public authorities consulted by RPA, is the very limited demand for credit intermediaries offering cross-border services.

By contrast, one of the key benefits of the MCD is that it brought in new EU-wide minimum regulatory requirements for credit intermediaries. This has helped level the playing field between creditors and credit intermediaries and raised the bar in terms of consumer protection by setting quality standards for the distribution and provision of mortgages.

Mortgage lending by non-credit institutions

Under the Directive, Member States must ensure that non-credit institutions are subject to a proper admission process, including entering the non-credit institution in a register, and arrangements for supervision by a competent authority. The Directive only defines non-credit institutions *as those creditors that are not a credit institution*. This could include insurance companies and other financial institutions such as real estate investment funds, financial auxiliaries such as security brokers and financial leasing.

The data available (see Annex) suggest that the share of mortgages granted by non-credit institutions remains limited. Results from the RPA consumer survey indicate that the proportion of consumers across the EU who obtained their mortgage from a non-banking institution has not changed since the Directive came into force. However, in the Netherlands in 2017, around 35% of new mortgages were provided by pension funds, insurers or mortgage funds, an increase since 2016. Austria and Belgium also have non-negligible levels of activity, and it appears to be rising in Belgium (it is presently above 10%).

The majority view of stakeholders surveyed in the RPA study was that the Directive is fit for the purpose of supervision of non-credit institutions. Stakeholders mainly indicated that the

[36] The EBA provides a link to the available national registers.
[37] 452 registered credit intermediaries.
[38] Austria, Belgium, Czechia, Germany, France, Hungary, Italy, Lithuania, Netherlands, Poland and Portugal.

same rules should apply to all providers on the mortgage market, and that the Mortgage Credit Directive has helped level the playing field in this area.

In its 2017 report[39], the ECB suggested that the growing role of non-credit institutions in the mortgage market posed 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 macroprudential measures that apply only to banks. For example, an increase in the risk weighting applied to mortgage loan exposures for the calculation of bank capital ratios, the aim of which was to address a build-up of vulnerabilities in the mortgage market, could lead to an increase in mortgage lending by insurance companies and pension funds[40].

The predominant view of stakeholders consulted by the RPA (industry associations and competent authorities) is that the rules of the MDC helped level the playing field in this area.

Enforcement

Member States are required to lay down rules on sanctions applicable to infringements of the national implementing provisions (Article 38) and to provide for out-of-court settlement of consumer disputes with creditors and credit intermediaries (Article 39).

Most industry stakeholders and FIN-NET[41] members surveyed in the RPA study considered the level of compliance with the MCD to be high. In line with this finding, the complaints received by the Commission mainly concerned mortgages granted before the Directive came into force. Compliance has resulted in an increase in consumer protection while the industry has benefited mostly from an improvement in the level playing field, improved legal clarity and lower litigation costs. Public authorities mainly indicated that the publication arrangements for sanctions (Article 38(2)) in their country provide sufficient transparency. In addition, the new directive on representative actions for the protection of the collective interests of consumers will further boost consumer protection.

By contrast, some consumer organisations suggested that the enforcement authorities should be more proactive. They considered the lack of thorough enforcement of the Directive as barrier to "the development of cross-border offers" and to a single market for mortgages.

Conclusion on single market aspects

In conclusion, the Directive has created a more even playing field across the Member States by setting minimum requirements for credit providers and credit intermediaries across the EU.

However, a single market for mortgages has not developed on a larger scale, neither for mortgage providers nor for credit intermediaries. Major barriers remain to the cross-border provision of mortgages, mostly related to differences in national legislation in areas outside the scope of the Directive. Gold-plating of the MCD provisions by the Member States also created obstacles to cross-border trade. Although there is scarce data on lending by non-credit institutions, their share of the mortgage market seems to have remained limited though it increased slightly in some Member States (e.g. Netherlands and Belgium). Access to credit

[39] See at https://www.ecb.europa.eu/pub/financial-stability/fsr/focus/2017/pdf/ecb~8341bea69d.fsrbox201705_07.pdf.
[40] Idem
[41] The Financial Dispute Resolution Network is a network of national organisations responsible for settling out of court consumers' complaints concerning financial services.

databases by lenders is not discriminatory but it is hindered by the principle of reciprocity and by differences in the content of credit databases.

An increased consumer take-up of the right to switch mortgages could generate substantial savings for consumers and by the same token increase competition for mortgages.

With regard to the scope of the Directive, some aspects may have become redundant. In the future, challenges may be posed by increasing digitalisation. Peer-to-peer lending (though currently uncommon for mortgages) has the potential to grow and will require further assessment of the rules applicable to it. There appears to be room to improve the enforcement of the MCD by national competent authorities, in particular on cross-border aspects.

2.3 Impact on financial stability

Poor lending/borrowing decisions and, as a result, consumer default and over-indebtedness can have severe consequences for these individuals and for the stability of the entire financial system. An ESRB report published in 2019 highlights the importance of residential real estate markets and mortgage credit for financial stability.[42] Busts in residential real estate markets are a common cause of banking crises and occur relatively frequently.

The EU legislators brought in multiple provisions in the MCD that aim to ensure responsible lending and borrowing and contribute to financial stability. These provisions include:

- a mandatory creditworthiness assessment predominantly based on repayment capability instead of on the value of the mortgage compared to the value of the residential property or on assumed rising property prices (Art. 18(3)), coupled with a requirement to prevent providers lending to consumers who may be unable to repay the loan (Article 18(5)(a)) (see Section 2.1);
- a requirement to use reliable standards governing property valuation (Article 19);
- requirements on foreign-currency loans (Article 23) to ensure that consumers are aware of the risk they are taking on (warnings) and that consumers have the possibility to limit their exposure to exchange rate risk during the lifetime of the mortgage;
- a requirement to ensure that any indices or reference rates used to calculate variable rate mortgages are clear, accessible, objective and verifiable (Article 24) and that consumers are informed of the names of the benchmarks and of their administrators and of the potential implications on the consumer (second subparagraph of Article 13(1))[43];
- new provisions to ensure that creditors exercise reasonable forbearance and make reasonable attempts to resolve the situation through other means before foreclosure proceedings are initiated (Article 28) (see Section 2.1).

Stakeholders consulted for the RPA study provided mixed views when asked about the extent to which the MCD has contributed to financial stability. The predominant view was that the primary focus of the Directive is on consumer protection rather than financial stability and that other pieces of legislation are more suitable to regulating the stability of the market (particularly the Capital Requirements Regulation and Capital Requirements Directive). It

[42] ESRB (2019): Vulnerabilities in the residential real estate sectors of the EEA countries, https://www.esrb.europa.eu/news/pr/date/2019/html/esrb.pr190923~75f4b1856d.en.html.

[43] As amended by Article 58 of Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.

was also argued that the MCD has served only to reinforce existing legislation in the Member States.

Notwithstanding, stakeholders noted that the Directive has helped ensure financial stability by preventing consumers from taking on credit that they will be unable to pay back and by harmonising the requirements between types of lenders. Stakeholders also noted that the Directive has increased the protection of consumers' financial interests by regulating the activity of credit intermediaries.

It was also noted that the option for consumers to repay their mortgage early has motivated consumers to reduce their indebtedness and that this has a knock-on impact on market stability.

According to information collected from the Member States[44] and other stakeholders, in most countries , lenders have ceased to offer loans in a foreign currency as a result of the MCD. Such loans, had led to considerable consumer detriment prior to the adoption of the MCD(see Section 2.1). However, the crisis triggered by the COVID-19 pandemic may prove an important test of the Directive's impact on financial stability, in particular the extent to which it helps avoid large-scale foreclosures with disruptive effects on housing markets and the financial sector.

Conclusion on financial stability aspects

In conclusion, the available evidence suggests that stakeholders do not consider financial stability to be one of the main objectives of the Directive. However, it has helped prevent consumers from taking on credit they will be unable to pay back, it has provided consumers with the opportunity to reduce their level of indebtedness, and it has limited consumers' exchange rate risk on access to foreign-currency loans – all factors that should help promote financial stability. However, the crisis triggered by the COVID-19 pandemic may further test the Directive's impact on financial stability.

3. SUPERVISION OF CREDIT REGISTERS

All Member States have credit databases/registers, which are generally consulted by mortgage providers to assess the consumer's creditworthiness.

These credit databases can be public or private, depending on the Member State. In some Member States, privately owned and operated credit registers gather financial information from the banking sector but also information from other organisations in the economy that provide credit (e.g. utilities, telecoms companies). In others, public credit registers, housed by the central bank or bank supervisory agency, gather very detailed information about the loans that consumers take out, mainly for statistical analysis and economic supervision. Some public credit registers allow banks to consult their credit database.

The activity of those databases or credit reference agencies must comply with (multiple) national legal requirements. Given that the processing of personal data is part of their core activity and the core risk involved, all credit databases are subject to supervision by the national data protection authorities (DPAs) for all matters related to compliance with GDPR

[44] Consultation of the Commission's Government Expert Group on Retail Financial Services (GEGRFS).

and the national legislation further specifying it.[45] This means that those entities are under the strict surveillance of DPAs for issues related to the enforcement of the rights of data subjects and the principle of accountability, including the obligations to carry out data protection impact assessments, notify data breaches, comply with the principle of data protection by design and by default, and designate data protection officers.

Thus, credit reference agencies are already supervised in all Member States and at EU level by DPAs and the European Data Protection Board regarding the conduct of their activity in processing personal data under the MCD. Currently there does not appear to be the need to extend this supervision.

4. CONCLUSIONS

Based on the available data, the review indicates that the Directive has been effective in raising the standard of consumer protection and it has helped harmonise mortgage-lending practices across the Member States. Nevertheless, the level of protection still differs as the Directive gives many options to Member States. There is also a need to ensure that consumer protection rules remain fit for purpose as the market develops and new challenges arise,notably from digitalisation. The creditworthiness assessment process may also need to be adjusted to keep pace with progress in the use of Artificial Intelligence, depending also on the developments around the recent Commission proposal on artificial intelligence,and climate and environment-related policy objectives.

The Directive has had a limited impact on the creation of a single market for mortgages, mostly for reasons falling outside the scope of the MCD. However, gold-plating of the MCD by the Member States may also hinder the achievement of this goal. With the digitalisation of financial services comes the possibility that cross-border activity might increase in the near future. Peer-to-peer mortgage lending also has the potential to grow, bringing the need to ensure that the current rules remain fit for that purpose. There is also scope to increase the level of mortgage switching by consumers, which could potentially unlock huge benefits for consumers while increasing competition and innovation in the market.

Although stakeholders may not perceive the main objective of the Directive to be financial stability, it has resulted in consumers receiving loans that are in line with their financial capacity and that can help reduce their level of indebtedness. However, the crisis triggered by the COVID-19 pandemic may provide further information on the Directive's contribution to financial stability.

This review indicated that credit reference agencies are already subject to an appropriate degree of supervision by national data protection authorities and the European Data Protection Board regarding the conduct of their activity in processing personal data under the MCD.

[45] See Article 51(1) of the GDPR.