

Comments

Review of the Mortgage Credit Directive by the European Commission - Public consultation and call for evidence

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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The German Banking Industry Committee (GBIC) welcomes the opportunity to participate both in the public consultation and the call for evidence concerning the review of the Mortgage Credit Directive (MCD) by the European Commission and to provide an opinion on said directive.

According to the European Commission’s report on the review of the MCD published in May 2021, the directive has effectively increased the level of consumer protection and contributed to the harmonization of lending practices in the Member States. At the same time, consumer satisfaction and confidence in the granting of credits has increased. Offering European consumers a high degree of protection and a broad choice of products that meet their needs is an objective that GBIC shares.

In addition to our response to the online questionnaire, we would like to draw your attention to some important aspects that should be considered in the review process.

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1 Summary

The provisions of the Mortgage Credit Directive essentially remain suitable for ensuring a high level of consumer protection in the mortgage credit sector. The mortgage credit market is highly competitive and offers consumers a wide variety of products and providers.

Where changes in the market – especially in connection with digitalization – or practical experience necessitate adjustments to the directive, such adjustments should be made in a careful and targeted manner. This process should primarily be guided by pragmatic consumer protection considerations.

Any reconsideration of the requirements in relation to advertising materials and mandatory content of pre-contractual information must be directed towards scaling back the scope and level of detail to an extent that is manageable for the average educated and informed consumer. The content of credit agreements should also be streamlined, though we do not consider a model credit agreement to be a viable concept.

The requirements for the creditworthiness assessment have proven fit for purpose and do not need to be amended. The same is true for the provisions concerning credit registers.

A time limit should be implemented for the right of withdrawal. A standard form containing information about the right of withdrawal should be incorporated into the directive.

Adjustments to the rules on the digital distribution of financial products in the area of mortgage credit are also required. These should include both streamlining the aforementioned mandatory information and making text form the standard requirement for concluding a credit agreement without allowing Member States to exceed this requirement e.g. by requiring a written or a qualified electronic signature.

2 Review of the Consumer Credit Directive

As pointed out in the call for evidence, the Commission adopted a proposal revising the Consumer Credit Directive in June 2021. Although we agree that there are important similarities between both directives and that there is a need for overall consistency, the revision of the MCD must also take into consideration the main differences between the directives and their impacts on the credit market. For example, (simple) unsecured consumer loans generally differ both in the volume of credit taken out and in the commitment period of the contracting parties. Mortgage credit agreements, however, often represent the biggest financial decision that borrowers make once in their lifetime.

These essential differences must always be taken into account in the form of a different regulatory framework, be it for the (pre-)contractual information requirements or the creditworthiness assessment.

The revision should therefore be conducted in line with the principle of proportionality and the characteristic differentiation should be retained.

3 Cross-border lending

One aspect where the difference between unsecured consumer loans and mortgage credit agreements is very visible relates to the fact that the relevance and volume of cross-border transactions have remained

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very low in the segment of mortgage credit agreement despite the efforts of European institutions over the past decades. Dedicated studies have identified a multitude of reasons that have prevented the formation of a flourishing integrated market.

From the consumers' perspective, these include cultural idiosyncrasies of the individual EU Member States, language barriers, and the fact that entering into a mortgage credit agreement constitutes the biggest once in a lifetime financial decision. For pragmatic reasons, EU citizens thus tend to enter into such commitments with a provider near their place of residence.

From the lenders' perspective, there is also the fact that under the Rome I Regulation (Article 6) companies that target another Member State as a market for their operations (e.g. by advertising or using intermediaries in the country) have to comply with the consumer protection requirements of this country. This requirement cannot be excluded by the company's choice of law. Despite efforts to harmonize legislation through EU directives, the consumer protection laws of individual EU member states still differ significantly. These differences necessitate adjustments to contracts and processes, which – in turn – generate additional costs and expenditure, and having to implement foreign law in a legally secure manner can expose institutions to legal risks.

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

4 New types of market players

Extending the scope of the MCD to cover new types of market players is an important step towards ensuring a high level of consumer protection within the European Union and at the same time, ensuring a level playing field. Since more new and alternative forms of financing are emerging, particularly through digitalization, attention has to be given to the fact, that the extension should also cover these future forms. Harmonized competition conditions in the single market will help to improve financial stability and also unify the legal system.

5 Green mortgages

We welcome the idea of supporting the uptake of green mortgages. The criteria for determining what is green and sustainable are numerous, however. There are no common guidelines or definitions, resulting in go-it-alone strategies by Member States. To achieve a common EU-wide understanding of green mortgages, the EU taxonomy should be the leading and sole reference for the legal definition of green mortgages.

Even though the criteria for determining what constitutes "green" building-related activity are complex and ambitious, market participants and initiatives are already moving towards compliance with the taxonomy. A separate definition of green mortgages would hinder rather than support this process. Instead, the content and timing of a possible revision of the Mortgage Credit Directive should be harmonized with overlapping content with the EU taxonomy, ensuring that specifications or references are in line with the regulatory framework of the EU taxonomy.

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6 Advertising

With regard to the mandatory disclosures for advertising pursuant to Article 11 MCD, we would argue that it is impossible to comply with these requirements in a legally secure manner and that the prescribed disclosures are too extensive. In recent times, innovative new channels of communication with customers have been developed, which make it even more challenging to comply with Article 11 MCD. It is all but impossible to present the prescribed advertising content on digital channels in a way that provides potential customers with all necessary information at a single glance.

For instance, the requirement to provide a representative example cannot be fulfilled when promoting a new product, because the specification of the annual percentage rate of charge that would apply to at least two thirds of all customers – a mandatory component of the representative example – would require a forecast based on past experience that is simply not available for a new product. It is, therefore, impossible to calculate and specify this information in a reliable way.

In addition, the large amount of disclosure requirements for advertising has resulted in lenders advertising their products without specifying interest rates or borrowing costs at all in order to circumvent these requirements. It is understandable that this practice has become widespread because there is no reasonable need for such a large amount of contractual information to be divulged at such an early stage in the process. Therefore, it would be sensible to limit the requirements to certain key figures, such as the annual percentage rate of charge. A large volume of mandatory advertising content is also unsatisfactory for consumers, because it makes it difficult to make comparisons.

7 General information

The MCD implements into consumer credit law a detailed system of general information requirements, pre-contractual and contractual information requirements and information requirements for the duration of the contractual relationship. European legislators want to oblige lenders, who offer services in connection with mortgage credit to inform consumers about their range of services in advance in accordance with Article 13 MCD. This is meant to ensure that potential customers can gain an understanding of who their prospective contractual partner is and what services and financial products this lender offers.

In light of the broad product portfolios of most credit institutions, it seems questionable whether the information requirements under Article 13 MCD actually improve transparency for customers. Providing customers with detailed product descriptions presents the risks of confronting them with an unmanageable information overload, which will ultimately not improve their understanding.

We take the view that the European Standardised Information Sheet (ESIS) and the explanatory notes provide consumers with all the information they need and that further general information should therefore not be required.

8 Pre-contractual information

Consumers receive the same information multiple times at different stages of the process, creating an information overload. Furthermore, the current format of the pre-contractual information supplies a level

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of detail that is too much for consumers to process. This seriously undermines the intended consumer protection objectives.

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

A sensible revision of the pre-contractual information would require a streamlining and simplification of the information to be shared with customers. The information in the ESIS should therefore be rationalized and adapted for digital communication channels.

9 Contractual information and design of mortgage credit agreements

From the consumer's perspective, the relevant contractual information comprises the total amount of credit, the repayment plan, the default interest rate, and information about the typical consequences for the borrower during the performance of the contract (e.g. consequences of overdue payments, right of withdrawal, repayment conditions). Any information beyond this might overburden the consumers.

The multitude of mandatory information prescribed for mortgage credit agreements has resulted in a loss of product diversity. Yet it is important to maintain a broad range of product choices.

With regard to the new digital distribution channels and legal certainty, it is important to fully harmonize the mandatory standard for concluding a credit contract based on text form across Member States, hence, facilitating the digital conclusion of contracts without the burden of a qualified electronic signature.

10 Creditworthiness assessment

Overall, the provisions on the creditworthiness assessment contribute to an increased consumer protection. Practical experience with credit approvals has shown that there is no need for more extensive provisions in relation to the creditworthiness assessment.

11 Credit registers

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

Further measures regarding the cooperation of credit registers should only be implemented at the level of the national credit registers themselves on a reciprocal basis in consideration of the principle of non-discriminatory access. Credit institutions should neither be obliged to provide greater volume of data than the amount they are already sharing or nor be forced to access and use a database.

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12 Right of withdrawal

In order to provide legal certainty with regard to the right of withdrawal, the MCD could benefit from including an expiry provision as well as a standard form containing information about the right of withdrawal and an explanation of how to exercise this right.

13 Right to early repayment

In Germany there are no obstacles to consumers exercising the right of early repayment.

Customers can decide whether to choose a fixed- or a variable-rate mortgage credit. In the latter case they are free to terminate their loan agreement at any time with three months' notice and without the payment of compensation for early repayment.

If they choose a fixed-interest rate loan, it can be redeemed in full without an early repayment compensation at the end of every period for which a fixed rate of interest has been agreed or at least after a period of at ten years.

It is essential for customers to retain the ability to choose between these different options with different conditions. Consumer protection considerations are a major argument in favour of retaining the legal framework for fixed-rate credits in its present form. Long-term interest-rate and planning security for borrowers, coupled with mortgage interest rates which are among the lowest in Europe, represents a key element of consumer protection in the field of mortgage loans. The feasibility of offering long-term fixed interest rate loans with the highlighted benefits for customers depends on lenders' ability to refinance loans at matching maturities, not least with a view to the risk management of the individual bank and to financial stability as a whole. An unconditional right to early repayment would jeopardize this balanced system and put its existence at risk. It would make no sense from a consumer protection and market perspective to reduce product diversity and to indirectly ban certain national funding techniques from the market by changing the existing legal framework. This is even more important given that the vast majority of Germans intentionally opt for fixed-rate loan when financing their home.

14 Simplifying of contractual adjustments

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

15 Promotional loans

The possible exemption of promotional loans from the scope of the MCD, laid down in Article 3 paragraph 3 letter c in conjunction with paragraph 5, should be retained.

According to this provision „Member States may decide not to apply the MCD to credit agreements which relate to credits granted to a restricted public under a statutory provision with a general interest purpose, free of interest or at lower borrowing rates than those prevailing on the market...“

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These credit agreements are rightly excluded in principle from the mandatory scope of the MCD, due to the public-law promotional mandate and the implementation of state promotional measures.

16 Exceptional situations

Experience has shown that the Member States are able to introduce measures that protect the interests of borrowers and lenders in the event of exceptional and systemic economic disruption, such as that caused by the Covid-19 outbreak. Many EU countries have already implemented some kind of national insolvency legislation regarding credit moratoria, or can draw on other legislative texts (e.g. commerce law) that may be used in case of non-performance like force majeure, for example. Therefore, it is not necessary to introduce such measures in the MCD and the necessity for measures of this kind should be carefully weighed, especially considering the existence of other forms of borrowers' protection under existing law. It seems very ambitious to anticipate legal rules for exceptional situations, such as the corona crisis. It would be preferable to find appropriate rules on a case-by-case basis when these unforeseen situations arise.