

EBA/GL/2015/12

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Final Report

Guidelines on arrears and foreclosure

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1. Executive Summary

Article 28 of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (the Mortgage Credit Directive or 'MCD') sets out provisions in the area of arrears and foreclosure and specifically requires Member States (MS) to adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated.

In order to ensure that these high-level provisions are implemented and supervised consistently across the 28 EU MS, and to support the transposition of the MCD, the EBA is issuing Guidelines on arrears and foreclosure ('the Guidelines'). The Guidelines provide greater detail on how effect should be given to the relevant MCD provisions in Article 28 and thus contribute to the EBA's objective of achieving a convergence of supervisory practices for the Directives that fall into the EBA's scope of action.

The Guidelines set out requirements on the establishment of policies and procedures; engagement with the consumer; provision of information and assistance to the consumer; resolution processes; and documentation of dealings with the consumer and retention of records.

These guidelines were subject to a two-month consultation period between December 2014 and February 2015. Nineteen responses were received to the consultation. The Feedback Statement includes a summary of the comments received during the public consultation, the EBA's feedback to the consultation responses and any changes made to the draft Guidelines.

There was broad agreement amongst the respondents to the Guidelines. However, a number of respondents commented that they should be more high-level, whilst others commented that they were not detailed enough. As the aim of the Guidelines is to provide greater detail on how effect should be given to the relevant provisions in the MCD, they necessarily contain a certain level of detail. However, they do not aim to be prescriptive, allowing MS to comply in different ways, therefore preserving flexibility for national markets.

Clarification was sought by respondents on whether creditors were required to conduct meetings with all consumers in mortgage payment difficulties. The EBA has amended Guideline 2.2 to make it clearer.

Clarification was also sought by a number of respondents on whether the list of concessions in draft Guideline 4.1 was an exhaustive or non-exhaustive list, with some stating that the list as presented restricted creditors from considering other concessions.

Some respondents commented that some of the Guidelines were repetitious and suggested deletions and/or mergers of these Guidelines. The EBA has taken on board these comments and removed any repetition by merging some of the Guidelines.

2. Background and rationale

Background

1. Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (the Mortgage Credit Directive or 'MCD') was adopted on 4 February 2014 and published on 28 February 2014. The deadline for MS to transpose the provisions of the MCD into national law was 21 March 2016.
2. The MCD aims to develop a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to immovable property, while promoting sustainable lending and borrowing and financial inclusion, and hence providing a high level of consumer protection (Recital 6 MCD).
3. For most consumers the commitment to a mortgage credit agreement is the most significant financial commitment that they will ever make. While the benefit to consumers of mortgage credit is the financial assistance that it gives them to acquire private ownership of residential immovable property, there are also risks associated with this lending which can result in detriment to consumers, to creditors and to financial stability generally. For example, creditors may initiate foreclosure proceedings because of arrears accrued on mortgage credit agreements.
4. As the MCD sets out in Recital 27, foreclosure can have significant consequences on consumers, and it states that it is appropriate to encourage creditors to deal proactively with emerging credit risk at an early stage and that the necessary measures are in place to ensure that creditors exercise reasonable forbearance and make reasonable attempts to resolve the situation through other means before foreclosure proceedings are initiated. The MCD, in Article 28, sets out provisions on arrears and foreclosure, and specifically requires MS to adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated.
5. In order to ensure that these high-level provisions will be implemented and supervised consistently across the 28 EU MS, and to support the transposition of the MCD, the EBA is issuing guidelines. These Guidelines provide greater detail on how to give effect to the relevant MCD provisions in Article 28, and thus contribute to the EBA's objective of achieving a convergence of supervisory practices for the Directives that fall into the EBA's scope of action.
6. The Guidelines are based on the provisions of the Opinion of the European Banking Authority on good practices for the treatment of borrowers in mortgage payment difficulties ("the

Opinion”), which was published on 13 June 2013, i.e. before the MCD was adopted, and which was reviewed by the EBA when developing the Guidelines.

Rationale

7. As the MCD sets out in Recital 27, foreclosure can have significant consequences on consumers, creditors and financial stability. Therefore it is in the interests of all three to consider and adopt measures to resolve payment difficulties prior to initiating foreclosure. These guidelines will ensure that such measures are developed and adopted consistently across the MS.
8. In the development of these guidelines the EBA considered existing data to establish if the issue of consumer defaults on credit agreements for residential immovable property and subsequent foreclosure remains an issue across MS. A review of available statistics indicates that the level of household arrears has largely remained unchanged in the period 2010 to 2013 (inclusive). According to the EU-Statistics on Income and Living Conditions (EU-SILC)¹, the percentage of the population in the 28 MS which was in arrears on their mortgages or rent, utility bills or hire purchase instalments has largely remained consistent between 2010 and 2013, that is, 12% of the population was in arrears in 2010; 11.7% in 2011; 11.6% in 2012; and 11.8% in 2013.
9. The level of improvement in consumers’ abilities to meet their financial commitments has therefore been small across the 28 MS. Of the 32 states included in the statistics, 14 had arrears levels equal to or in excess of the level for the 28 MS in 2013 (11.8% of the population); 11 states had arrears levels less than the 2013 level and figures for the remaining seven states were unavailable. For the 25 states where figures for both 2012 and 2013 were available, the level of arrears increased in 12 states, decreased in 12 states and remained unchanged in one state. The statistics suggest that in the majority of states household arrears remain above the level for the 28 MS, thus suggesting that this remains a concern in those states.
10. While the level of arrears outlined above has largely been constant in the period 2010 to 2013, this trend may not be indicative of the trend for arrears going forward. The trend to date must be considered in the context of the current low interest rate environment and the positive impact this has on consumers’ ability to meet their credit commitments by maintaining or reducing their required payments. Current Eurozone and non-Eurozone interest rates are exceptionally low. While positive for borrowers a low interest rate environment has a negative effect on savers and pensioners and as such current interest levels are unsustainable. In a 2010 World Bank paper on mortgage debt in Central and

¹ Eurostat: Arrears (mortgage or rent, utility bills or hire purchase) from 2003 onwards (source: SILC)

Eastern Europe², consumers with variable interest credit agreements were identified as being particularly vulnerable to changes in interest rates. A change in interest rates was identified as a potential shock to consumers, similar to a change in consumers' income levels. Therefore the current level of arrears may deteriorate in an environment of increasing interest rates because the payment burden on consumers will also increase and may push currently performing loans into default.

11. As evidenced by the statistics above, household arrears persist in the 28 MS with little improvement. This lack of meaningful improvement coupled with the likelihood of increasing pressure on consumers' ability to meet their credit commitments in the future (following interest rate increases) indicates that the number of consumers in payment difficulties may increase going forward. This will be felt particularly in MS where the level of credit agreements that are subject to an adjustable rate is significant³. This likely upward trend will mean that dealing with consumers in payment difficulties will continue to be an on-going, if not a greater, task for creditors in the future. While foreclosure is an option for creditors when dealing with non-performing loans, the MCD, in Recital 27, encourages creditors to consider foreclosure as a last resort and instead to act with forbearance. The negative effects of foreclosure are identified in a paper on Household Debt and the European Crisis presented to the 2013 European Credit Research Institute Conference⁴, where it is asserted that foreclosure causes losses to society generally as well as failing to improve the situation of the creditors. This is because properties may be sold for less than they would achieve in an unforced sale; and as a result the prices of properties in the market decrease or properties become vacant which in turn can exacerbate the mortgage crisis.
12. In the context of the evidence set out above, it is important that consumers in payment difficulties are protected through requirements on arrears and foreclosure and that these consumers are treated consistently across the European Union. In that regard, the Guidelines provide assistance to MS in the transposition of Article 28 MCD and assistance to the national competent authorities ('CAs') in giving effect to the provisions within this Article.
13. These Guidelines were developed after consideration of good practices currently in use by National Supervisory Authorities and creditors, which had previously been identified in the Opinion⁵. Now that the MCD has been adopted, the EBA has reviewed the Opinion in the light of the provisions of Article 28 MCD.

² Policy Research Working Paper 5202: Mortgage Finance in Central and Eastern Europe Opportunity or Burden? by Thorsten Beck, Katie Kibuuka, Erwin Tiongson. The World Bank Europe and Central Asia Region Poverty Reduction and Economic Management Sector Unit, February 2010

³ Per the European Mortgage Federation's Hypostat 2013: A Review of Europe's Mortgage and Housing Markets, the level of variable rate or adjustable rate credit agreements differs across the MS. In a number of MS the share of the national mortgage market which is subject to an adjustable rate was significant for the period 2007 to 2012.

⁴ Household Debt and the European Crisis: Research paper No. 13, June 2013, by Ales Chmler. Paper presented at the European Credit Research Institute Conference, 16 May 2013.

⁵ The EBA Opinion on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties was published on 13 June 2013.

14. As a result, only relevant provisions within the Opinion were considered for these guidelines, and they will assist the CAs and financial institutions in giving effect to Article 28 MCD. The Opinion will be superseded by these guidelines and the accompanying Opinion on good practices for mortgage creditworthiness assessments and arrears and foreclosure, including expected mortgage payment difficulties.

3. Guidelines

EBA/GL/2015/12

EBA Guidelines

on arrears and foreclosure

Section 1 - Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁶. In accordance with Article 16(3) of Regulation No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [two months after publication of the translations into the EU official languages]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/2015/12'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

⁶ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

Section 2 - Subject matter, scope and definitions

Subject matter and scope of application

5. These guidelines provide further detail on requirements set out in Article 28 of Directive 2014/17/EU⁷ in respect of credit agreements which fall under the scope of Article 3 of Directive 2014/17/EU.

Addressees

Addressees of these Guidelines

6. The guidelines are addressed to:
 - a. competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 (EBA authority) which are also competent authorities as defined in point (22) of Article 4 of Directive 2014/17/EU. They apply to the extent that those authorities have been designated as competent for ensuring the application and enforcement of those provisions of Directive 2014/17/EU to which these guidelines relate; and
 - b. are also addressed to financial institutions as defined in Article 4(1) of Regulation (EU) No 1093/2010 which are creditors as defined in point (2) of Article 4 of Directive 2014/17/EU.

Addressees of information requirements

7. Irrespective of whether or not an EBA authority is addressed under paragraph 6(a), where a Member State has designated more than one authority in accordance with Article 5 of Directive 2014/17/EU and one of them is not an EBA authority, the EBA authority designated under that Article should, without prejudice to national arrangements adopted under Article 5 (3) MCD:
 - a. inform without delay the other designated authority of these guidelines and their date of application;
 - b. ask that authority in writing to consider applying the guidelines;

⁷ 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 (OJ L 60, 28.02.2014, p.34).

- c. ask that authority in writing to inform either the EBA or the EBA authority within two months of the notification under subparagraph (a) whether it applies or intends to apply these guidelines; and
- d. where applicable, forward without delay to the EBA the information received under subparagraph (c).

Definitions

8. Terms used and defined in Directive 2014/17/EU have the same meaning in the guidelines.

Outsourcing

9. In cases where the activity of the creditor is in whole or in parts outsourced to third parties, or carried out by another entity in other ways, creditors should ensure that in doing so, that they comply with the requirements established in the CEBS Guidelines on outsourcing.⁸ This includes, in particular, CEBS Guideline 2, which provides that “the ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with an outsourcing institution’s senior management”.

⁸ See CEBS (2006), *Guidelines on outsourcing*, at <https://www.eba.europa.eu/documents/10180/104404/GL02OutsourcingGuidelines.pdf.pdf>

Section 3 - Implementation

Date of application

10. These guidelines apply from 21 March 2016, except that the information requirements referred to in paragraph 2 apply from [publication date in the official languages + 1 day].

Section 4 - Requirements regarding arrears and foreclosure

Guideline 1: Establishment of policies and procedures

- 1.1 The creditor should establish, and keep up to date, procedures to detect, as early as possible, consumers going into payment difficulties.
- 1.2 The creditor should establish, and keep up to date, policies and procedures for the effective handling of and engagement with consumers in payment difficulties. The consumer engagement policy should include that the creditor provides adequate information, for example, through websites and written materials, and support for consumers in payment difficulties.
- 1.3 The creditor should provide adequate training for staff dealing with consumers in payment difficulties.

Guideline 2: Engagement with the consumer

- 2.1 When a consumer goes into payment difficulties, the creditor should work with the consumer to establish why the difficulties have arisen and for the creditor to take appropriate steps.
- 2.2 Any interaction by the creditor with the consumer in relation to their payment difficulties should respect the consumer's privacy.
- 2.3 The creditor, as well as any agents acting on behalf of the creditor, should maintain a level of contact and communication with a consumer in payment difficulties that is proportionate to the information requirements, and not excessive.

Guideline 3: Provision of information and assistance to the consumer

- 3.1 The creditor should communicate clearly and in plain language.
- 3.2 The creditor should provide support and, at least, the following information to consumers in payment difficulties:
 - a) the number of payments either missed or only paid in part;
 - b) the total sum of the payment shortfall;

- c) the charges incurred as a result of the payment shortfall;
- d) the importance of the consumer co-operating with the creditor to resolve the situation.

3.3 In cases where the consumer's payment difficulties persist, the creditor should provide the following information to the consumer:

- a) information regarding the consequences of missing payments (e.g. costs, default interest rate, possible loss of property, etc.); and
- b) information about available government/public schemes or support.

Guideline 4: Resolution process

4.1 The creditor should take into account the individual circumstances of the consumer, the consumer's interests and rights and his/her ability to repay when deciding on which steps or forbearance measures to take. Forbearance measures may include one or both of, the following concessions to the consumer:

1. a total or partial refinancing of a credit agreement;
2. a modification of the previous terms and conditions of a credit agreement, which may include among others:
 - a) extending the term of the mortgage;
 - b) changing the type of the mortgage (such as, changing the type of mortgage from a capital and interest mortgage to an interest only mortgage);
 - c) deferring payment of all or part of the instalment repayment for a period;
 - d) changing the interest rate;
 - e) offering a payment holiday.

Guideline 5: Documentation of dealings with the consumer and retention of records

5.1 The creditor should document the reasons why the option(s) offered to the consumer are appropriate for his/her individual circumstances and should make and retain adequate records of its dealings with the consumer in payment difficulties for a reasonable period of time.

4. Accompanying documents

4.1 Feedback on the public consultation

15. The EBA publicly consulted on the draft proposal contained in this paper. The consultation period lasted for two months and ended on 12 February 2015. A total of 19 responses were received, of which 15 were published on the EBA website.
16. This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary. In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.
17. Changes to the draft Guidelines have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

18. The EBA posed two questions in the consultation paper:
 - Question 1: Do you agree with the proposed Guidelines? If not, outline why you disagree and how the Guidelines could be improved. Please respond separately for each of the five guidelines.
 - Question 2: Are there any additional requirements that you would suggest adding to the Guidelines? If so, outline the reason(s) for each proposed additional requirement.
19. There was broad agreement amongst the respondents to the draft Guidelines. However, a number of respondents commented that the Guidelines should be more high-level so as to retain the flexibility, as intended in the MCD, for MS to give effect to the provisions of the MCD. In contrast, other respondents commented that the draft Guidelines were not detailed enough; and that some of the terms were vague and should therefore be defined, including for example, requests for a definition of “payment difficulties”. In addition, some respondents commented that the EBA does not have a mandate to issue these guidelines.
20. Some respondents called for the Guidelines to be amended to only include consumers in payment difficulties whilst other respondents called for the Guidelines to be expanded to include consumers in “expected mortgage payment difficulties”.
21. Clarification was sought by respondents on draft Guideline 2.2 and specifically on whether the Guideline required that creditors should conduct meetings with all consumers in

mortgage payment difficulties, over and above any other form of interaction. Clarification was also sought by a number of respondents on whether the list of concessions in draft Guideline 4.1 was an exhaustive or non-exhaustive list, with some stating that the list as presented restricted creditors from considering other concessions.

22. Comments were made by some respondents that some of the draft Guidelines were not consistent with Article 28 MCD. Other respondents commented that the Guidelines require that all consumers in mortgage payment difficulties are treated the same and do not allow for treatment on a case by case basis.
23. Some respondents stated that the draft Guidelines were incompatible with data protection laws. The addition of a requirement regarding consumers' co-operation with creditors was suggested by a number of respondents. Some respondents commented that some of the Guidelines, for example, draft Guidelines 1.2 and 3.2, were repetitious and suggested deletions and/or mergers of these Guidelines.
24. In addition to the responses received to the public consultation and following input regarding the potential supervisory structures that Member States might adopt in line with Article 5 of Directive 2014/17/EU, the EBA decided to clarify how the guidelines apply where there is a competent authority as defined in Article 4(2) of Regulation (EU) No 1093/2010 ('EBA authority') which has responsibility under Article 5(3) for cooperating with other authorities designated as competent for applying the Directive.
25. To that end, and as stated in paragraph 6 (a) of the Addressee Section of the Guidelines, the Guidelines will apply to EBA authorities alone, and only to the extent that the EBA authority has been designated as competent for ensuring the application and enforcement of those provisions of Directive 2014/17/EU to which the Guidelines relate.
26. If, for example, an EBA authority is not designated as competent for ensuring the application and enforcement of the main provisions of Directive 2014/17/EU to which the Guidelines relate, and only has the cooperation responsibility referred to above, then only the Information Requirements set out in Paragraph 2 of the Addressee Section of the Guidelines ('Information Requirements') are addressed to that EBA authority.
27. In that case the EBA authority can consider itself compliant with the Guidelines if it complies with the Information Requirements. The Information Requirements have been added to the Guidelines in order to encourage all competent authorities to apply consistent supervisory practices and ensure common application of Directive 2014/17/EU, while recognising that the structure of the Directive is such that the Guidelines can only be addressed directly to EBA authorities. Other competent authorities cannot be made subject to the same 'comply or explain' obligations that apply to EBA authorities, and so the Information Requirements encourage them to apply the Guidelines on a voluntary basis.

Summary of responses to the consultation and the EBA's analysis

No.	Summary of responses received	EBA analysis	Amendments to the proposals
General responses that were not linked to specific questions			
1.	<p>Five respondents stated their views that guidelines are not the right legal tool to address the concerns set out by the EBA in the consultation paper, because they commented that the Guidelines are vague; they questioned the use of guidelines as a tool for harmonisation while the MCD made provisions on arrears of minimal harmonisation; and some respondents stated that the primary European legal act does not give the EBA a mandate to issue these guidelines.</p> <p>Three respondents commented that the requirements on arrears are not detailed enough. Two respondents stated that the requirements are too detailed, and that they would have preferred an approach with high level principles, so as to leave flexibility to national bodies to adapt to their national markets.</p>	<p>As stated in the consultation paper, these guidelines are issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010. It is clear from the various tasks allocated to the EBA by the Directive that the MCD is within the area of EBA competence.</p> <p>The aim of the Guidelines is to provide greater detail on how financial institutions should give effect to the relevant arrears and foreclosure provisions in the MCD, consistent with the EBA's aim of greater supervisory convergence. The Guidelines are an appropriate tool for achieving supervisory convergence because they are legally binding on the addressees.</p> <p>The EBA considers that there is inevitably a balance between providing detail in the Guidelines and respecting the flexibility the MCD provides for MS. As the aim of the Guidelines is to provide greater detail on how financial institutions should give effect to the relevant arrears and foreclosure</p>	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>provisions in the MCD, they necessarily contain a certain level of detail. However, they do not aim to be prescriptive, allowing MS to comply in different ways, therefore preserving flexibility for national markets.</p> <p>Respondents' comments on individual guidelines are considered in the relevant sections below.</p>	
2.	<p>One respondent stated that the timetable for implementation of the Guidelines is very challenging (21 March 2016), principally because public consultation will be necessary at the national level. The respondent stated that additional time to implement these Guidelines should be given to the CAs.</p>	<p>The EBA notes these Guidelines do not introduce new requirements, but instead intend to provide clarity to the CAs and creditors on how to implement the creditworthiness aspects of the MCD. Therefore their aim is to aid MCD implementation, to the timetable set down in the Directive.</p>	None
3.	<p>One respondent noted that, to ensure a balanced approach, the Guidelines should include a requirement setting out the borrower's obligation to cooperate with the creditor.</p>	<p>The EBA intends these guidelines to provide greater detail on how financial institutions should give effect to the MCD's arrears and foreclosure provisions, so the audience being addressed is the CAs and creditors. Therefore the Guidelines would not be an appropriate medium for promoting cooperation with consumers. However, the EBA recognises the importance that consumers, who are in payment difficulties, co-operate and engage with their creditors. To that end, the creditor is required in Guideline 3.2 to inform the consumer in payment difficulties about the importance of co-operation to</p>	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
		resolve the situation.	
4.	<p>Five respondents commented that the meaning of the term ‘payment difficulties’ is unclear and should be defined. One respondent suggested that ‘payment difficulties’ suggests a transaction approach as opposed to ‘financial difficulties’ which suggests a debtor approach not just the specific loan. Another respondent commented that the EBA in its Implementing Technical Standards on Supervisory Reporting (Forbearance and Non-performing Exposures) uses the term ‘financial difficulties’ not ‘payment difficulties’. The respondents state that if the meaning of the two terms is the same then the wording of the terms should be the same.</p> <p>One respondent requested that the Guidelines include a clear stipulation that the creditor would be entitled to continue, based on the appropriate foreclosure principle, debt collection action, where there is a lack of reply from the customer.</p>	<p>The Guidelines do not aim to be prescriptive, allowing MS to comply in different ways, therefore preserving flexibility for national markets.</p> <p>Use of the term “payment difficulties” is intended to denote flexibility for MS, therefore the EBA does not consider that “payment difficulties” should be defined in the Guidelines. In implementing these guidelines the CAs should establish a definition of payment difficulties that is relevant to their own markets.</p> <p>In addition, the CAs may specify how creditors should treat consumers who do not co-operate with the creditors.</p>	None
5.	One respondent welcomed the fact that the Guidelines are also applicable to non-credit institutions offering mortgage products.	The EBA notes the comments by the respondent.	None
6.	One respondent questioned the linkage of these Guidelines with other directives. The respondent commented that the resolution process as set out in point 4 could lengthen the time required to complete the procedures, with an adverse impact on risk weighted asset in Regulation 575/2013.	The EBA does not agree that these guidelines are incompatible with other guidelines or directives.	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
7.	One respondent stated that the requirements go much further than those provided by the MCD, in particular procedures for early detection, procedures for handling, training of staff, and information given to consumers.	The EBA does not consider that the Guidelines are inconsistent with Article 28 or Recital 27 MCD.	None
8.	One respondent remarked that the Guidelines do not include guidance for creditors who have attempted for a reasonable amount of time to find a solution that works for the consumer.	The EBA confirms that it is for MS to implement the MCD through national regulation, and for the CAs to determine how to implement these guidelines, including the length of time that should be taken to find an appropriate solution for the consumer.	None
Responses to specific questions			
Question 1: Do you agree with the proposed guidelines? If not, outline why you disagree and how the guidelines could be improved. Please respond separately for each of the five guidelines.			
Guideline 1.1:	One respondent commented that Guideline 1.1 should be deleted from these Guidelines because, in their view, it goes beyond the intention of Article 28 MCD as the MCD does not reference pre-default interventions.	Guideline 1.1 has been amended as follows to reflect that the Guideline relates to consumers “going into payment difficulties” not consumers in a pre-arrears situation.	Guideline 1.1 has been amended as follows:
9.	Three respondents did not contest the need to identify early indications of consumers going into payment difficulties but stated that such an obligation should be an obligation of diligence not results oriented / should be on a best-efforts basis not an absolute obligation. The following re-wording was suggested: “The creditor should establish procedures to detect, as far as possible , early indications of consumers’ going into payment	The EBA does not consider that this guideline is inconsistent with the MCD. Recital 27 MCD states that “[...] it is appropriate to encourage creditors to deal proactively with emerging credit risk at an early stage [...]”.The EBA considers that it is beneficial to both the consumer and the creditor to identify and seek to resolve payment difficulties as early as possible.	‘The creditor should establish, and keep up to date, procedures to detect, as early as possible, consumers going into payment

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>difficulties.”</p> <p>Two respondents commented that the meaning of ‘to detect early indications’ could be subject to different interpretations and suggested that the EBA include an example in Guideline 1.1 to clarify the meaning. The following re-wordings for Guideline 1.1 were suggested:</p> <p>i. ‘The creditor should establish procedures to detect early indications of consumers going into payment difficulties, such as a borrower’s request to reduce/delay a payment.’</p> <p>ii. ‘The creditor should establish procedures to detect early indications of consumers going into under payment difficulties.’</p> <p>Three respondents commented that to detect early indications of consumers going into payment difficulties could be interpreted as ‘profiling’ from a data protection point of view. This may be incompatible with the forthcoming Data Protection Regulation which may enable data subjects to object to this (Article 19/20 in the proposed General Data Protection Regulation). One respondent stated that there should be a clear legal basis for the processing of data.</p>	<p>The EBA confirms that detecting as early as possible a consumer going into payment difficulties should not be interpreted as profiling.</p>	<p>difficulties.’</p>
10.	<p>One respondent suggested that the following text should be added to the end of Guideline 1.1: ‘and contact them immediately to provide financial advice and proper solutions quickly in order to prevent any potential damage to consumers.’</p> <p>One respondent commented that creditors should put in place</p>	<p>The Guidelines do not aim to be prescriptive, allowing MS to comply in different ways, therefore preserving flexibility for national markets.</p>	<p>None</p>

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	tools to detect early warning signs such as missed payments, requests to consolidate debt.		
11.	<p>One respondent suggested that the consumer should inform the creditor of payment difficulties and that Guideline 1.1 should be deleted and replaced with the following:</p> <p>‘The consumer shall timely inform the creditor of “payment difficulties” that have arisen.’</p>	Consumers are not the addressees of these guidelines and the EBA cannot place requirements on consumers.	None
12.	Two respondents commented that the most important ‘early warning system’ is communication between the creditor and borrower. Consumers can contact creditors at any time to inform them of difficulties. Creditors also monitor missed instalments and contact borrowers to discuss them and to reach a solution. The respondents commented that additional measures to detect difficulties early are not necessary and would not be practicable or cost-effective.	The EBA agrees that communication between the consumer and creditor is important to identify early indications of payment difficulties and this may form part of the procedures established to detect early indications of payment difficulties.	None
13.	One respondent stated its agreement that creditors should have procedures to detect early indications of consumers going into payment difficulties but suggested that for practical reasons it should be limited to data collected and processed by banks in the normal course, not specific requests to consumers to update creditors on the financial standing of their employer or of hereditary diseases that may affect them in the future.	The intention of this guideline is not that creditors would request that all consumers update them on their personal circumstances.	None
14.	One respondent commented that the early identification of consumers going into payment difficulties would benefit	The EBA agrees that detecting early indications of payment difficulties can be beneficial to creditors as	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
15.	creditors' business models because it warns them in advance of potential risks.	well as consumers.	Guideline 1.2 has been amended as follows:
Guideline 1.2:	<p>One respondent suggested that Guidelines 1.4 and 1.2 should be combined into a revised wording of Guideline 1.2, as below, and Guideline 1.4 should be deleted:</p> <p>'The creditor should establish policies and procedures, reflective of prevailing regulatory requirements, for the effective handling of and engagement with consumers in payment difficulties.'</p>	<p>The EBA confirm that it is for MS to implement the MCD through national regulation, and for CAs to determine how to implement these guidelines, including how to implement them compatibly with other relevant national laws and rules.</p> <p>The EBA agrees that Guidelines 1.2 and 1.4 should be merged but does not agree to the wording proposed by the respondent.</p>	<p>'The creditor should establish, and keep up to date, policies and procedures for the effective handling of and engagement with consumers in payment difficulties. The consumer engagement policy should include that the creditor provides adequate information, for example, through websites and written materials, and support for consumers in</p>

No.	Summary of responses received	EBA analysis	Amendments to the proposals
			payment difficulties.'
16.	<p>Two respondents commented that the following text should be added to the end of Guideline 1.2:</p> <p>'... or expected payment difficulties.'</p> <p>One of the respondents also suggested that the following text also be added to Guideline 1.2: '...especially preventing the loss of the debtor's residence.'</p>	<p>For consistency with Article 28 MCD the guidelines cover borrowers in mortgage payment difficulties.</p> <p>The EBA's Opinion on Good Practices mortgage creditworthiness assessments and arrears and foreclosure, including expected mortgage payment difficulties now also includes 'expected payment difficulties'.</p> <p>The EBA does not consider it necessary to add 'especially preventing the loss of the debtor's residence' to the guideline because Article 28 MCD refers to 'exercise reasonable forbearance before foreclosure proceedings are initiated.'</p>	None
17.	<p>One respondent commented that the Guidelines should allow for case to case reviews.</p>	<p>Guideline 1.2 does not prevent creditors from treating consumers according to their individual circumstances. The guideline states that the creditor should 'take appropriate steps'.</p>	None
Guideline 1.3:	<p>Two respondents suggested that the following text is added to Guideline 1.3:</p>	<p>For consistency with Article 28 MCD the Guidelines cover borrowers in mortgage payment difficulties.</p>	None
18.	<p>'...or expected payment difficulties.'</p>	<p>The EBA's Opinion on Good Practices mortgage creditworthiness assessments and arrears and foreclosure, including expected mortgage payment difficulties now also includes 'expected payment</p>	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
19.	<p>One respondent commented that the competence of staff should be developed across all areas of credit and not just debt collection and therefore it is not necessary for the EBA to regulate in this area.</p> <p>One respondent recommended that to develop the most suitable training for staff dealing with consumers in mortgage payment difficulties, creditors should engage with consumer organisations and consider involving them in the development of the training.</p> <p>One respondent suggested that the following text be added to Guideline 1.3 too: '... This training should take into consideration the recommendations made by consumer organisations.'</p>	<p>difficulties'.</p> <p>The EBA considers that staff who deal with consumers in payment difficulties require specialised training that takes into account the particular vulnerabilities, stresses and sensitivities of consumer's circumstances.</p> <p>The Guidelines do not aim to be prescriptive, allowing MS to comply in different ways, therefore preserving flexibility for national markets. The CAs, when implementing these guidelines, may specify how training should be developed.</p> <p>The EBA does not agree with the suggestion regarding training. However, it is open to the CAs to include the suggestion in their rules when they are implementing these Guidelines.</p>	None
20.	<p>One respondent commented that training staff who deal with consumers in payment difficulties will increase the probability of fulfilling consumers' obligations.</p> <p>One respondent agreed that well trained staff will always help in difficult situations and when difficult and stressful decisions have to be taken. The respondent outlined that training can take many forms such as coaching, mentoring, online or live courses.</p>	<p>The EBA agrees with the respondents' comments.</p> <p>The EBA in Guideline 1.3 does not seek to prescribe the specificities of the training.</p>	None
21.	<p>One respondent commented that case by case reviews should be allowed within the scope of the Guidelines and that staff are</p>	<p>Guideline 2.1 does not prevent creditors from treating consumers according to their individual</p>	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	already trained to conduct case-by-case reviews appropriately.	circumstances. The Guideline states that the creditor should 'take appropriate steps'. The EBA considers that staff who deal with consumers in payment difficulties require specialised training that takes into account the particular vulnerabilities, stresses and sensitivities of consumers' circumstances.	
Guideline 1.4:	<p>Two respondents commented that the review of policies and procedures should be conducted yearly and Guideline 1.4 should be amended to state this.</p> <p>One respondent agreed with the use of the word 'regular' in Guideline 1.4 because of the flexibility it gives to CAs in determining the frequency of the review of policies and procedures. Whilst another respondent commented that the word 'regularly' is too vague.</p>	<p>It is for MS to implement the MCD through national regulation, and for the CAs to determine how to implement these guidelines, including whether to specify the regularity with which processes and procedures should be reviewed and including ensuring in their implementation that the Guidelines are compatible with other relevant national laws and rules.</p>	<p>Guidelines 1.1 and 1.4 have been merged as follows:</p> <p>'The creditor should establish, and keep up to date, procedures to detect, as early as possible, consumers going into payment difficulties.'</p>
22.	<p>One respondent suggested that Guideline 1.4 and 1.2 should be combined into a revised wording of Guideline 1.2, as below, and Guideline 1.4 should be deleted:</p> <p>'The creditor should establish policies and procedures, reflective of prevailing regulatory requirements, for the effective handling of and engagement with consumers in payment difficulties.'</p>	<p>The EBA agrees to the proposed merging of Guidelines 1.2 and 1.4 and for consistency has also merged Guidelines 1.1 and 1.4.</p>	<p>Guidelines 1.2 and 1.4 have been merged as follows:</p> <p>'The creditor should establish, and keep up to date, policies and procedures for</p>

No.	Summary of responses received	EBA analysis	Amendments to the proposals
			<p>the effective handling of and engagement with consumers in payment difficulties. The consumer engagement policy should include that the creditor provides adequate information, for example, through websites and written materials, and support for consumers in payment difficulties.'</p>
<p>Guideline 2.1:</p> <p>23.</p>	<p>Three respondents commented that Guideline 2.1 does not take any account of the possibility of non-cooperation by the consumer. The following re-wordings were suggested:</p> <p>i. 'When a consumer goes into payment difficulties, the creditor should take reasonable steps to work with the consumer to establish why the difficulties have arisen and for the creditor to take appropriate steps.'</p>	<p>The EBA considers that the CAs when implementing these guidelines may take account of the suggested re-wordings to Guideline 2.1.</p> <p>The CAs when determining how to implement these guidelines may also consider setting out the appropriate steps that creditors should take when they become aware of payment difficulties, if they consider it necessary for their markets.</p>	<p>None</p>

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	<p>ii. 'When a consumer goes into payment difficulties, the creditor should aim to work with the consumer to establish why the difficulties have arisen and for the creditor to take appropriate steps.'</p> <p>One respondent commented that the specific response to payment difficulties should be left to the discretion of the creditor.</p>		
24.	<p>Two respondents commented that the Guidelines do not reflect that the consumer in payment difficulties is a person who has knowingly entered into an obligation, that his responsibility should not be transferred to the creditor and that the consumer should not be passive if his financial situation worsens.</p>	<p>The EBA intends these Guidelines to provide greater detail on how financial institutions should give effect to the MCD's arrears and foreclosure provisions, so the audience being addressed is the CAs and creditors. Therefore the Guidelines would not be an appropriate medium for promoting cooperation with consumers. However, the EBA recognises the importance that consumers, who are in payment difficulties or going into payment difficulties, co-operate and engage with their creditors. To that end, the creditor is required in Guideline 3.2, to inform the consumer in payment difficulties about the importance of co-operation to resolve the situation.</p>	None
25.	<p>One respondent commented that establishing why the consumer is experiencing payment difficulties will not solve the main problem of arrears and possible foreclosure. If all of the information about income and expenditure is provided to the creditor then there is no need to establish why the difficulties</p>	<p>The EBA considers that it is necessary to establish why difficulties have arisen so as to enable sustainable solutions to be developed, i.e. to limit a re-occurrence of the payment difficulties.</p>	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>have arisen. The respondent suggested that the following be deleted from Guideline 2.1 ‘the creditor should work with the consumer to establish why the difficulties have arisen’.</p>		
26.	<p>One respondent commented that it is unreasonable to expect creditors to treat all consumers in payment difficulties in the same way.</p>	<p>Guideline 2.1 does not prevent creditors from treating consumers according to their individual circumstances. The guideline states that the creditor should ‘take appropriate steps’ and in fact the intention of the Guidelines is that consumers will be treated appropriately according to their individual circumstances not that all consumers in payment difficulties will be treated in the same way.</p>	None
27.	<p>Guideline 2.2: Three respondents commented that the wording ‘should conduct meetings’ in Guideline 2.2 should be clarified. Two respondents suggested that the word ‘meetings’ be replaced with the word ‘dialogue’. Two respondents suggested that the word ‘meeting’ be expanded to include any interaction with the consumer not just face to face interaction. Other respondents understood that the guideline meant that if meetings are held with the consumer the meeting should be held privately, but suggested that because of the ambiguity of the wording the guideline may be interpreted to mean that meetings must be held with consumers in payment difficulties. The following re-wordings were suggested:</p> <p>Two respondents commented that Guideline 2.2 does not take any account of the possibility of non-cooperation by the</p>	<p>EBA confirms that Guideline 2.2 does not require that creditors have meetings with consumers. All of the creditor’s interactions with the consumer should be respectful of the consumer’s privacy, having regard to data protection legislation and not disclosing personal information to a third party without a consumer’s consent. The EBA has amended this guideline to make it clearer.</p>	<p>Guideline 2.2 has been amended as follows: ‘Any interaction by the creditor with the consumer in relation to their payment difficulties should respect the consumer’s privacy.’</p>

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>consumer.</p> <p>One respondent commented that Guideline 2.2 does not work for online creditors who do not have local branches to facilitate meetings.</p>		
28.	<p>Five respondents commented that the reference to data protection legislation in Guideline 2.2 should be clarified to reflect that it relates to personal information such as the causes of default and does not require consumer consent to communicate payment default information to credit bureaux or the sale of terminated loan receivables of defaulting consumers. One respondent commented that ‘and not disclosing personal information to a third party without a consumer’s consent’ should be deleted.</p>	<p>Guideline 2.2 refers to the disclosure of a consumer’s personal information in the context of applicable legislation. To avoid confusion the specific reference to data protection law has been deleted</p>	<p>Guideline 2.2 has been amended as set out above.</p>
29.	<p>Guideline 2.3:</p> <p>Two respondents stated that the exact aim and meaning of Guideline 2.3 is unclear.</p>	<p>The aim of this guideline is to ensure that creditors and their agents consider their level of contact and communication with consumers and whether the contact is necessary to their information needs and whether the contact could be deemed to be excessive, particularly considering the obvious stresses that a consumer in payment difficulties may be under.</p>	None
30.	<p>One respondent commented that a clear message to discourage the harassment of consumers by representatives of creditors should be added to Guideline 2.3.</p>	<p>The EBA considers that reference in this Guideline to contact and communication not being excessive also addresses issues such as harassment. Also in some MS harassment may be defined in criminal or</p>	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
		other national laws.	
31.	One respondent requested a directive or guideline about 'what is proportionate to the information requirements' and what is 'excessive'. One respondent commented that the term 'not excessive' is vague and that consumers in payment difficulties can expect a reasonable increase in communication from creditors	The EBA confirms that it is for MS to implement the MCD through national regulation, and for the CAs to determine how to implement these guidelines, including defining the terms 'not excessive' and 'what is proportionate to the information requirements' if they consider it necessary for their markets.	None
32.	One respondent commented that the proportionality principle is a general standard business practice in credit institutions so the Guideline is not necessary.	The EBA notes that as the requirements set out in this guideline are already part of creditors' practice, there should be a limited impact on creditors in complying with this guideline.	None
Guideline 3.1:	One respondent said that the purpose of Guideline 3.1 was unclear. Two respondents said that draft Guideline 1.2 is sufficient and can include the format and channels in which information is to be provided to consumers, therefore Guideline 3.1 should be deleted and the title of Guideline 3 reworded as 'Provision of information and assistance to the consumer in, or concerned about, payment difficulty.' Another respondent also suggested deleting draft Guideline 3.1. One respondent interpreted the draft guideline to mean that creditors should provide information to customers in payment difficulties as to how to interact with the creditor, and expressed concern that this draft guideline may be interpreted to require creditors to publicly disclose refinancing/renewal policies. This	The EBA agrees that draft Guidelines 1.2 and 3.1 should be merged.	Guidelines 1.2 and 3.1 have been merged as follows: 'The creditor should establish, and keep up to date, policies and procedures for the effective handling of and engagement with consumers in payment

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	<p>respondent was concerned that the consumer engagement policy would be required to be public as in its view this may encourage creditors to have vague policies or be less helpful to consumers in payment difficulties in order to comply with the policies. This respondent suggested the following instead: establishing a set of bad practices, or a non-disclosing policy for consumers in payment difficulties</p>		<p>difficulties. The consumer engagement policy should include that the creditor provides adequate information, for example, through websites and written materials, and support for consumers in payment difficulties.'</p>
34.	<p>Three respondents supported a consumer engagement policy, and one of these respondents recommended that the draft Guideline should go further.</p>	<p>The EBA confirms that it is for the MS to implement the MCD through national regulation, and for the CAs to determine how to implement these Guidelines, including whether to place further requirements on creditors in the area of engagement policy.</p>	None
35.	<p>Four respondents submitted that as draft Guideline 3.1 refers to borrowers in pre-arrears, it does not reflect the aim of Article 28 MCD, which refers to arrears and foreclosure.</p>	<p>For consistency with Article 28 MCD the Guidelines cover borrowers in mortgage payment difficulties. The EBA's Opinion on Good Practices mortgage creditworthiness assessments and arrears and foreclosure, including expected mortgage payment difficulties now also includes 'expected payment</p>	<p>The text 'or concerned about' has been removed from the now merged Guideline 1.2 (merged with Guideline 3.1)</p>

No.	Summary of responses received	EBA analysis	Amendments to the proposals
		difficulties’.	
36.	These respondents stated that it is the role of either the advice sector or public authorities to provide adequate information to consumers, not creditors. Two respondents stated that consumers already receive adequate information so a consumer engagement policy is unnecessary. One of these respondents suggested that the Guidelines should stress that creditors are not to take over the role of debt-counselling agencies.	As some respondents indicated that consumers already receive adequate information and support from the creditor, and 28% of CAs already meet or exceed this draft guideline's requirements, the EBA considers that creditors do have a role in providing this information and support to consumers.	None
Guideline 3.2:	<p data-bbox="353 699 958 726">One respondent suggested deleting the draft Guideline.</p> <p data-bbox="353 762 1070 1129">One respondent explained that one of the most important challenges for consumers is to understand technical banking language, therefore supported the draft Guideline and recommended that creditors should also take measures to be sure that the information provided is clear and well understood by all categories of consumers. Another respondent noted that it can be difficult to communicate in legally correct and at the same time clear and plain language. This respondent suggested rewording the Guideline to ‘The creditor should communicate as clearly and in plain language as possible.’</p>	<p data-bbox="1104 699 1675 762">The EBA does not agree that this guideline should be deleted.</p> <p data-bbox="1104 794 1675 1155">The EBA considers that requiring the creditor to communicate clearly is sufficient. Requiring creditors to ensure that the information is well understood is unlikely to be practical and would impose an unduly large burden on creditors. The EBA considers that creditors should be able to communicate in both legally correct and plain language, as over 50% of the CAs have indicated that they already have to comply with this requirement.</p>	None
Guideline 3.3:	One respondent generally supported the draft guideline.	The EBA notes the comments made by the respondent.	None
38.			
39.	One respondent suggested deleting this Guideline. Two respondents suggested that “known by the creditor” be added to	Charges incurred as a result of the payment shortfall may vary between countries. The MCD	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	the end of draft Guideline 3.3 c). One respondent requested clarity as to which costs would be classified as 'the charges incurred as a result of the payment shortfall'.	addresses the imposition of charges in Article 28. The EBA is of the view that more detail is unnecessary.	
40.	One respondent suggested that the word 'importance' in draft Guideline 3.3 (d) could be the wrong word, and suggested the guideline be reworded to 'the possible legal consequences for the consumer if he/she does not cooperate with the creditor to solve the situation'. This respondent also submitted that clarity is needed on how long difficulties must persist in order to trigger the disclosure of additional information.	The EBA considers that it is important that the consumer cooperate with the creditors. The EBA confirms that it is for MS to implement the MCD through national regulation, and for CAs to determine how to implement these guidelines, including the length of time that difficulties should persist before additional information is provided.	None
41.	Guideline 3.4: Four respondents submitted that Guideline 3.4 imposes a new information disclosure requirement on creditors in addition to other information disclosure requirements under the MCD, and does not reflect the aim of Article 28 MCD. One of these respondents said that MS' legislatures should determine this detail and such requirements are already included in loan agreements. This respondent further submitted that consumers may consider such information provision as prohibited unofficial pressure. One respondent suggested deleting this draft guideline.	The information disclosure requirement in Guideline 3.4 is applicable in cases where the consumer is in payment difficulties, and supports Article 28 of the Directive. The other information disclosure requirements in the MCD are pre-contractual requirements. The EBA is of the view that while care must be taken to ensure that not too much pressure is placed on consumers in payment difficulties, the provision of this information is important, in order to ensure that consumers are fully informed.	None
42.	Two respondents agreed with the Guideline in principle. One of these respondents expressed concern that the Guideline may directly or indirectly require the CAs to introduce	The guideline only requires creditors to provide information to consumers about available government/public schemes or support. Therefore,	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>government/public schemes or support.</p> <p>Two respondents requested clarification on the meaning of 'government/public scheme or support'. The first respondent was also of the view that creditors should not be liable for the information provided as a creditor cannot act as a legal advisor. The other respondent emphasised that third parties such as charity organisations may be able to provide information and offer debt management advice.</p> <p>Another respondent asked for clarity that creditors will not be required to deliver debt counselling.</p> <p>One respondent suggested that the Guideline be more specific as to the actual signposting needed for consumers in difficulty (e.g., debt advice agencies rather than general schemes to encourage house buyers).</p> <p>Another respondent was of the view that information about government/public schemes should be the responsibility of public authorities, not creditors. This respondent also submitted that premature disclosure by the creditor of information about government/public schemes could lessen the consumer's feeling of responsibility.</p>	<p>this guideline will not require the CAs to introduce such schemes or support if they do not already exist.</p> <p>The EBA is of the view that it is helpful for consumers to be notified by the creditor of government/public schemes if they are available. This is because the creditor is best placed to know when the consumer is in payment difficulties and therefore may need to avail of such support. As government/public schemes and support differ, the EBA thinks that the wording is sufficient as it is to capture all types.</p> <p>The EBA does not consider that the addition of a reference in this Guideline to schemes or support provided by charities is necessary and that the current wording is adequate.</p>	
Guideline 4.1:	Eight respondents stated that Guideline 4.1 seems to impose an obligation on creditors to make concessions to borrowers.	The MCD provides in Article 28(1), that 'Member States shall adopt measures to encourage creditors to exercise reasonable forbearance before	None
43.	In that regard, many of them argued that this could result in		

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	<p>borrowers purposely not paying their instalments in the knowledge that they would receive concessions, and that it could have a significant impact on risk-weighted assets, thus increasing the costs of mortgage loans together with the risk of credit crunch phenomena.</p>	<p>foreclosure proceedings are initiated.’</p> <p>As a consequence of that, the Guidelines provide greater detail on how financial institutions should give effect to this, by encouraging creditors to make reasonable concessions towards a consumer facing, or about to face, difficulties in meeting his/her financial commitments.</p>	
44.	<p>Four respondents indicated that the requirement on a creditor to offer total or partial refinancing of a credit agreement could present a risk of action being taken against the lender on grounds of a kind of ‘abusive assistance’ (this notion exists in France, for example, in commercial collective actions) in the event that the borrower is still unable to meet his/her repayments.</p> <p>Three respondents highlighted that some concessions could be judged as being an ‘unfair preference’ (a legal term arising from some MS’ bankruptcy/insolvency laws), if the consumer afterwards is still unable to pay his/her debt. The respondents stated that concessions that creditors have made after the consumer’s foreclosure could be interpreted as evidence for their knowledge of an impending illiquidity. In such cases the creditor can be obliged to repay each payment. The respondents commented that to avoid such scenarios, creditors might feel the need to file for bankruptcy/insolvency comparatively early, which would also not be in the consumers’ interests.</p> <p>One respondent stated their view that changing the type of mortgage is not a viable action for creditors in their efforts to</p>	<p>The EBA has amended the wording of Guideline 4.1 to reflect that the list of concessions in the guideline is not an exhaustive list and is instead a list of concessions that could be included in the forbearance measures taken by the creditor.</p> <p>The forbearance measures to be applied, how they are implemented, and their scope are decisions to be made by the creditor.</p> <p>In addition, the Guideline sets out a list of ways in which a credit agreement might be modified but if one of them could represent a problem for the creditor, other measures are not excluded.</p> <p>These Guidelines should be applied without prejudice to the Member State’s legal framework.</p>	<p>Guideline 4.1 has been amended as follows:</p> <p>‘The creditor should take into account the individual circumstances of the consumer, the consumer’s interests and rights and his/her ability to repay when deciding on which steps or forbearance measures to take. Forbearance measures may</p>

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	<p>work out their receivables, taking into account the fact that the types of mortgages grant different levels of loan security. Thus, changing a real estate mortgage into a mortgage on some movables would reduce the level of loan security and therefore, the chances for banks to work out their receivables decrease significantly.</p> <p>One respondent argued that it is essential to take into account national statutes of limitations regarding forbearance measures (e.g. national time limit on the validity of claims on outstanding payments).</p>		include one or both of, the following concessions to the consumer: [...]
45.	Two respondents requested clarification on whether the refinancing arrangements as described in Guideline 4.1 are subject to consumer credit regulation or not (linked to the exemptions under Article 2(2)(j) CCD or Article 3(2)(f) MCD).	<p>The refinancing agreements – conceived as refinancing of a credit agreement- referred in the Guidelines fall under the scope of Article 3 MCD, as the concept of ‘credit agreement’ in the Guidelines is the same as the one included therein, which indicates that the MCD should apply to i) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property; and ii) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.</p> <p>As a consequence of that, refinancing arrangements as described in the Guideline are not subject to consumer credit regulation.</p>	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
46.	Two respondents indicated that the legal principle ‘pacta sunt servanda’ could be affected by the forbearance measures included in the Guidelines.	The binding character of the credit agreement is not affected by the forbearance measures, as they are based on the agreement of both parties – which is the premise of the binding effect of the contract.	None
Guideline 5.1:	Six respondents stated their views that the requirement to establish records in the final part of Guideline 5.1 places a significant burden of administrative bureaucracy on the creditor and could hamper the process of finding a speedy and non-bureaucratic solution for the consumer.	The EBA considers it important that a record be maintained of the reasons why option(s) offered to the consumer are appropriate for his/her individual circumstances so that this information is available for supervisors and/or consumers.	None
47.	Two respondents agreed with the existence of such records but asked to soften the apparent demand on the documentation duty and to clarify the concept ‘adequate’ records.	The Guidelines provide further detail on how financial institutions should document and register the measures adopted towards consumers according to Article 28 MCD. These requirements are considered necessary to protect the borrower in order to ensure that creditors comply with their level 1 obligation; therefore the EBA considers that such requirements are fully consistent with the Directive’s aim.	None
48.	One respondent asked to clarify Guideline 5.1 in the sense that	The EBA does not consider that any amendment is	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	the information should only be available for the CAs.	necessary to Guideline 5.1.	
49.	<p>Four respondents considered that the interests of the creditor and the borrower are not always aligned and therefore this provision could be an additional and unjustified source of litigation (where the burden of the proof would be assumed solely by the creditor).</p> <p>Another respondent asked for the total deletion of this guideline because the creditor (and its creditors) have a different interest from the borrowers.</p>	EBA considers that, despite the different interests in play, the proposed guidelines are beneficial to the creditor as a whole because ultimately the purpose of the Guidelines, according to Article 28 MCD, is to avoid the initiation of foreclosure proceedings.	None
50.	<p>One respondent asked to adequately reflect in the Guideline that each decision of the creditor on a concession is at the same time a decision to waive its related claims under the contract, i.e., the creditor's decision is based upon a number of components often related to the individual debtor and his/her situation.</p>	The Guidelines do not prevent the creditor from considering each consumer's situation on a case by case basis and making a decision on the appropriate concession for a consumer based on components related to the individual consumer and his/her situation.	None
51.	<p>One respondent indicated that the content of the entire guideline should be addressed by a published policy option on this issue. Therefore, documenting the reason why a decision is made based on a clear policy could be redundant.</p>	The establishment of a general policy might be indeed a good measure to assure an equitable treatment of the borrowers of an entity. However, from the EBA's point of view, it should be a priority to comply with these requirements as they are designed regarding the individual circumstances of each consumer.	None
52.	<p>Three respondents asked to clarify the terms and conditions to achieve the records required in Guideline 5.1. One considered</p>	The Guidelines allow flexibility for the CAs, in implementing these guidelines, to specify further	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	that the records should be retained for at least 3 years and another respondent commented that the period should be limited to a certain time and should consider national regulations.	requirements on the retention of documentation and the timeline that should apply to retention.	
Question 2: Are there any additional requirements that you would suggest adding to the Guidelines? If so, outline the reason(s) for each proposed additional requirement.			
General comments: 53.	Four respondents commented that the Guidelines are complete and that no additional requirements are necessary.	The EBA notes the comments made.	None
54.	Four respondents commented that the Guidelines should include a requirement setting out the consumer's obligation to cooperate with the creditor. Two respondents further suggested that the protections of the Directive should not apply to non-cooperative consumers.	This is outside of the scope of the EBA's mandate.	None
55.	Where the guidelines cover non-primary dwelling type residential mortgage borrowers, because of the national discretion in the MCD to include buy-to-let properties within the scope, two respondents requested that the guidelines be formulated so as to avoid giving rise to legal uncertainty, and to avoid unnecessarily extending mortgage resolution processes to properties other than the family home.	The EBA states in the Scope of the Guidelines that these guidelines deal with the requirement set out in Article 28 MCD in respect of credit agreements which fall under the scope of, and as specified in, Article 3 MCD.	None
56.	One respondent asked for a change in the wording 'The creditor should provide support ... to consumers in payment difficulties...'	The EBA does not agree to the proposed wording change because it is the majority of the consumers	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	Since some customers in payment difficulties are not available to the creditor, i.e. they are serving a life sentence in prison, the respondent asks that the word 'should' be changed to 'provide adequate support'.	that should be protected. Even if a minority might be unavailable for the creditor, the vast majority needs the protection of a support if there will be payment difficulties.	
57.	One respondent commented that the Guidelines do not state how long a creditor should pursue forbearance measures.	The EBA is of the opinion that this should be decided by the individual company since it is both in the interest of the company and the creditor to find a good solution to the problem.	None
58.	One respondent commented that the Guidelines should reference that the choice of the appropriate credit form, for example, long term fixed rates, can help to prevent payment defaults. The respondent also commented that it must be ensured that the creditor is entitled to compensation if the mortgage is repaid before the fixed-rate term ends.	The EBA is of the view that this comment falls outside of the scope of these guidelines and is dealt with by Article 25(3) MCD.	None
Guideline 1:	Two respondents commented that:	All these suggestions are welcome. However, guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. As a consequence of that, the Guidelines provide broad European minimum standards on how financial institutions should give effect to the provisions stated in Article 28 MCD, by encouraging creditors to make concessions towards a consumer facing, or about to face, difficulties in meeting his/her financial	
59.	<p data-bbox="353 1023 1061 1238">i. Creditors should identify consumers susceptible to arrears, and have appropriate strategies to treat them fairly, if variable-rate loan indices increase or if the exchange rates for foreign currency mortgages increase. One respondent commented that early detection procedures should be aligned to the way that credit was provided.</p> <p data-bbox="353 1278 1061 1378">ii. Creditors should develop information on impairment and a performance tracking system to proactively segment the pre-arrears population. Creditors should develop strategies to</p>		

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>proactively engage with consumers who are most likely to be affected by rate increases including consumers who have had payment difficulties in the past or have a high debt-to-income ratio.</p> <p>iii. Creditors should use tools to detect and act upon early warning signs such as consumers requesting to consolidate debt or missing other financial commitments.</p> <p>iv. There should be a common definition of alerts incorporating situations of risk of failure. The example of the Portuguese Action Plan for the Risk of Failure was given.</p> <p>v. Senior management should have a duty to promote a culture of delivering outcomes based on the best interests of consumers. Senior management should ensure that decisions on forbearance and repossession are suitable to the individual circumstances of the consumer and are sensitive to the consumer's particular vulnerabilities.</p> <p>vi. '... or expected payment difficulties' should be added to the end of Guidelines 1.2 and 1.3.</p>	<p>commitments.</p> <p>Therefore, very specific approaches are not deemed appropriate at this stage. However, these practices could be considered by the MS either in the MCD transposition period or by the financial institutions while applying the Guidelines.</p> <p>For consistency with Article 28 MCD the Guidelines cover borrowers in mortgage payment difficulties, not expected payment difficulties.</p> <p>The EBA's Opinion on Good Practices mortgage creditworthiness assessments and arrears and foreclosure, including expected mortgage payment difficulties now also includes 'expected payment difficulties'.</p>	None
60.	<p>One respondent commented that a new guideline should be inserted, as follows: 'The creditor should ensure that the structure of remuneration, reward and performance management schemes for staff dealing with consumers in payment difficulties are aligned with the need to exercise reasonable forbearance.'</p>	<p>The EBA is developing guidelines on remuneration which will be published separately.</p>	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
<p>Guideline 2:</p> <p>61.</p>	<p>Two respondents commented that:</p> <p>i. creditors should provide to a consumer, who notifies them that they are at risk of payment difficulties, a document acknowledging the notification from the consumer and outlining the consumer's rights and duties.</p> <p>ii. consumers in pre-arrears or in arrears should receive, free of charge, information, advice and assistance from debt advice entities.</p> <p>iii. Consumers should be entitled to bring third parties, e.g. lawyers, relatives, etc., to meetings with creditors.</p> <p>iv. creditors should engage sensitively with consumers who have specific needs or circumstances which may impact on their ability to engage effectively with the creditor, for example, illness, marital breakdown, grief, etc.</p> <p>v. Guideline 2.3 should include a statement to discourage creditors or third parties acting for them from harassing consumers or not respecting consumers' privacy.</p>	<p>The Guidelines do not aim to be prescriptive, allowing MS to comply in different ways, therefore preserving flexibility for national markets.</p> <p>v. Guideline 2.2 has been re-worded to include 'any interaction by the creditor with the consumer' and includes the requirement that this interaction 'should respect the consumer's privacy'. The EBA considers that this adequately addresses the respondents' comments about privacy.</p>	<p>Guideline 2.2 has been revised as set out above.</p>
<p>Guideline 3:</p> <p>62.</p>	<p>Two respondents commented that the information provided to consumers should be clear and easily understood by all consumers. The respondents also pointed out the difficulties experienced by consumers because of poor record keeping.</p>	<p>The EBA considers that Guideline 3.1 addresses the issues raised by the respondents as it requires that the 'creditor should communicate clearly and in plain language'.</p> <p>Guideline 5.1 requires that a creditor should '[...] retain adequate records of its dealings with the</p>	<p>None</p>

No.	Summary of responses received	EBA analysis	Amendments to the proposals
		consumer in payment difficulties [...]’.	
63.	<p>Two respondents suggested that an additional guideline should be added relating to charges:</p> <p>‘Creditors should only levy a charge where they are able objectively to justify that the charge is equal to or lower than a reasonable calculation of the cost of the additional administration required as a result of the customer being in payment difficulty’.</p>	<p>The EBA considers that the proposed additional guideline is not required as Article 28(2) MCD relates to charges and states that ‘[...] those charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of default.’</p>	None
Guideline 4:	<p>Two respondents pointed out that the Guidelines need to be more detailed. In that regard, they suggested adding the following statements:</p> <ol style="list-style-type: none"> a. Borrowers in arrears on obligations under their credit agreements should have a right to enter into a settlement procedure that should apply to all types of mortgage credits, which should not depend on compliance with any conditions for access, nor specifically requested by the borrower. b. Borrowers have a right to receive a document informing them about their rights and duties under the settlement procedure. Following the assessment of the borrower’s creditworthiness, the creditor should present one or more restructuring proposals deemed adequate to the borrower’s financial situation. c. The borrower should be granted a series of guarantees. Among these, creditors should be prohibited from 	<p>All these suggestions are welcome. However, Guidelines set out the EBA’s view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. As a consequence of that, the Guidelines provide broad European minimum standards on how financial institutions should give effect to the provisions stated in Article 28 MCD, by encouraging creditors to make concessions towards a consumer facing, or about to face, difficulties in meeting his/her financial commitments.</p> <p>Therefore, very specific approaches are not deemed appropriate at this stage. However, these practices could be considered by the MS either in the MCD transposition period or by the financial institutions while applying the Guidelines.</p>	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>terminating credit agreements, bringing legal proceedings against household customers with a view to redeeming credits or assigning the said credits to third parties.</p> <p>d. Borrowers with difficulties in paying housing credit instalments may request a re-negotiation of the loan's financial conditions with a view to reducing the debt burden.</p> <p>e. In the case of re-negotiation, creditors cannot increase the charges or interest on credit agreements for the purchase or construction of owner-occupied homes, if such re-negotiation has resulted, in particular, from a change in the borrower's circumstances due to, for example, divorce, legal separation, dissolution of a life partnership or death of either one of the spouses.</p> <p>f. Household customers in arrears on credit agreements for owner-occupied homes who are in a particularly difficult economic situation should, on request, benefit from an extraordinary regime which could include the adoption of exceptional measures, which may lead to a partial or full cancellation of the debt. Such borrowers should benefit from a series of guarantees, notably the prohibition of creditors from foreclosing the mortgage.</p> <p>g. Creditors should also actively engage in co-operating with social services and other actors as the situation a consumer faces can require tailored responses that</p>		

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>require the successful co-operation of multiple actors.</p> <p>h. Creditors should be also encouraged to include in their mortgage contracts a clause allowing the borrower to modify the amount of his monthly repayment; this clause could provide for a minimum monthly payment below which it would not be possible to go down, and eventually a maximum monthly payment (to be used in case of increase of income - relevant in particular for independent workers who have irregular income). Once a year, the borrower could choose to decrease or increase monthly payments, allowing the borrower to more easily manage a decrease in income.</p> <p>i. Where creditors did not act in line with the principles of 'responsible lending', all consumers should have the right to relief, in part or even to the full extent, from their debt. Creditors should adopt a special attitude in cases where the consumer became unemployed, is affected by a serious illness, etc.</p>		
65.	Five respondents suggested amending Guideline 4 in order to stress that concessions given to consumers are at the entire discretion of creditors.	The Guideline sets out a list of ways in which a credit agreement might be modified in order to cope with the borrower's situation, but other measures are not excluded. Guideline 4.1 has been amended accordingly.	None
66.	One respondent recommended adding to the concessions included in the Guideline 'the consolidation of various debts in a	The Guideline sets out a list of ways in which a credit agreement might be modified in order to	None

No.	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>single loan’.</p> <p>Two respondents proposed to extend the list of possible solutions to i) debt relief – writing-off of a portion of any outstanding debt, ii) debt cancellation – writing-off of all remaining outstanding debt and (iii) datio in solutum – borrowers who cannot repay their mortgage are released in full from the outstanding debt by handing their mortgage property over to the lender in cases that have been agreed between creditor and borrower.</p>	<p>cope with the borrower’s situation, but other measures are not excluded.</p> <p>In addition, Article 28(4) MCD stipulates that ‘Member States shall not prevent the parties to a credit agreement from expressly agreeing that return or transfer to the creditor of the security or proceeds from the sale of the security is sufficient to repay the credit.’</p>	
<p>Guideline 5:</p> <p>67.</p>	<p>Two respondents commented that the Guideline should require that the records be retained for at least 3 years.</p>	<p>See above comment.</p>	<p>None</p>

4.2 Cost-benefit analysis / impact assessment

4.2.1 Problem identification

28. Mortgage borrowing for the purchase of private real estate property is one of the most important financial commitments of a large number of consumers of financial services. Firstly, the borrowed amount often significantly exceeds the actual wealth and annual income of mortgage borrowers. Secondly, the length of the commitment often exceeds a specific period in the life cycle of borrowing individuals. Thirdly, the decision to borrow and purchase private real estate property by a mortgage loan significantly affects multiple areas of the consumer's life, including his/her family situation.
29. For this set of reasons, problems related to, for instance, the repayment of a mortgage loan and potential foreclosure proceedings risk causing severe detriment to consumers. At the same time, despite having some incentive to seize and sell the property, creditors entering foreclosure proceedings might only be able to achieve a reduced price, all the more so in an environment of declining real estate markets and market-wide asset devaluation dynamics. Depending on the size of the national mortgage market, the degree of conservativeness of lending decisions, and general economic conditions, defaults of a large number of individual borrowers can put banks and mortgage lenders (creditors) under severe stress, threatening the solvency of individual institutions and potentially even the soundness of national and global banking systems. Recent economic history provides illustrative examples of the risks which destructive developments in real estate markets can pose to the stability of the entire financial system.⁹¹⁰

4.2.2 Policy objectives

30. The general, high-level objectives of these Guidelines are the protection of consumers, the safety and soundness of the European banking system, and the stability, efficiency and integrity of the financial system. In addition, they aim at promoting convergence of regulatory frameworks and the functioning of the internal market in the EU. More specifically, these Guidelines are intended to improve the protection of mortgage borrowers in payment difficulties. At a technical level, they are meant to assist with the implementation of Article 28 MCD and its application to credit institutions and non-credit institutions.

⁹ EBA: Consumer Trends Report (2014)

¹⁰ EU COM: National Measures and Practices to avoid Foreclosure Procedures for Residential Mortgage Loans (2011)

4.2.3 Baseline scenario and options considered

31. To address the above-mentioned issues, EBA could either:

- i. Keep its 2013 Opinion on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties (Option 1), or
- ii. Convert the practices of that Opinion which are relevant to Article 28 MCD into Guidelines and revise the remaining parts of that Opinion (Option 2)

whereby Option 1 coincides with the baseline scenario.

4.2.4 Analysis of costs

32. There would be no incremental costs for the CAs in choosing Option 1, nor for creditors or consumers. Analogously, none of the potential benefits could be reaped.

Survey

33. In order to inform the Impact Assessment of the adoption of Option 2, and in particular, the impact of the draft EBA guidelines in terms of the compliance effort that will need to be made by financial institutions, the EBA gathered information from the CAs about the extent to which their existing national requirements already met the draft Guidelines. The EBA received detailed responses regarding credit institutions from 22 CAs and responses regarding non-credit institutions from 13 CAs. In a number of MS, non-credit institutions did not provide mortgage credit, while in other cases it had not yet been determined which authority will supervise non-credit institutions when providing mortgage credit. Therefore, several MS did not include responses to the survey for non-credit institutions.

34. Table 1 below shows, for each draft guideline and for each creditor type (credit institution and non-credit institution), the extent to which existing national requirements met, exceeded or were lower than the proposed Guidelines, or whether there were no national requirements in place at all.

Table 1: Overview of responses

			Number of MS where proposed Guidelines were already met		Number of MS where proposed Guidelines were not currently met		Total responses	Percentage of MS where the proposed Guideline was already met or exceeded
			MS where the proposed Guidelines were already met	MS where higher requirements than the proposed Guideline were already in place	MS where lower requirements than the proposed Guideline were in place	MS where no requirements at all were in place		
G1	1.1*	CI	14	2	3	3	22	73%
		NCI	7	0	2	4	13	54%
	1.2*	CI	10	3	6	3	22	59%
		NCI	5	2	1	5	13	54%
	1.3	CI	7	1	7	7	22	36%
		NCI	4	1	1	7	13	38%
G2	2.1	CI	11	1	6	4	22	55%
		NCI	5	1	2	5	13	46%
	2.2*	CI	14	0	3	5	22	64%
		NCI	6	0	0	7	13	46%
	2.3	CI	10	2	3	7	22	55%
		NCI	5	1	0	7	13	46%
G3	3.1	CI	11	1	2	8	22	55%
		NCI	6	1	0	6	13	54%
	3.2	CI	9	1	8	4	22	45%
		NCI	7	1	3	2	13	62%
	3.3	CI	8	2	7	5	22	45%
		NCI	6	2	3	2	13	62%
G4	4.1*	CI	9	2	5	6	22	50%
		NCI	4	2	2	5	13	46%
G5	5.1	CI	5	2	4	11	22	32%
		NCI	2	2	0	9	13	31%

*The survey of CAs conducted as part of the impact assessment was based on the draft guidelines as published in the consultation paper (Consultation Paper EBA/CP/2014/43) which had slightly different content to the final guidelines.

35. The following is a summary analysis of the likely cost impact to creditors in implementing each of the proposed Guidelines.

G1: Establishment of policies and procedures

36. The majority of MS already had requirements in place on credit institutions (16 of 22 MS) and non-credit institutions (seven of 13 MS) that met or exceeded proposed Guideline 1.1. Therefore there should be limited costs to creditors in implementing this Guideline.
37. To a lesser extent, the MS already had requirements in place on credit institutions (13 of 22 MS) and non-credit institutions (seven of 13 MS) that met or exceeded the terms of proposed Guideline 1.2. It is likely therefore that costs will be incurred by creditors in a small number of MS when establishing policies and procedures for the effective handling of and engagement with consumers in payment difficulties. Compliance with this Guideline will also place on-going costs on creditors as they update their consumer information.
38. In respect of proposed Guideline 1.3, a significantly lower number of MS had requirements in place for both types of creditor that met or exceeded the proposed Guidelines. Eight MS had requirements on credit institutions and five MS had requirements on non-credit institutions that meet or exceed this guideline. It is likely therefore, that creditors will incur initial set up costs and on-going costs to implement this proposed guideline.

G2: Engagement with the consumer

39. More than half of MS already had requirements in place on creditors that met or exceeded each of the points under this Guideline. For credit institutions, there were lower requirements or no requirements in place in 10 MS for proposed Guideline 2.1, eight MS for proposed Guideline 2.2 and 10 MS for proposed Guideline 2.3. A similar situation existed for non-credit institutions whereby lower requirements or no requirements at all were in place in seven MS for proposed Guideline 2.1, seven MS for proposed Guideline 2.2 and seven MS for proposed Guideline 2.3. Costs will be incurred by both creditor types to put systems in place to implement these guidelines in the MS where such requirements are not already in place.

G3: Provision of information and assistance to the consumer

40. More than half of MS already had requirements on credit institutions in place that met or exceeded the terms of proposed Guideline 3.1 (12 MS), proposed Guideline 3.2 (10 MS) and proposed Guideline 3.3 (10 MS). However, costs will be incurred by creditors in half of the MS in implementing these guidelines.

G4: Resolution process

41. Currently 11 MS who responded to the survey had national requirements on credit institutions that met or exceeded this guideline. Six of 13 MS also placed requirements on non-credit institutions that met or exceeded the Guideline. Therefore, in some MS both types of creditor would need to incur one-off costs for the implementation of this Guideline and potentially also

some modest, but unavoidable, costs related to the more frequent use of forbearance policies and abstinence from quick foreclosure proceedings¹¹.

G5: Documentation of dealings with the consumer and retention of records

42. Where systems are not already in place to document the reasons why the option(s) offered to the consumer are appropriate for his/her individual circumstances and to make and retain adequate records of dealings with the consumer in payment difficulties for a reasonable period of time, creditors may incur some one-off, as well as on-going costs in introducing and maintaining these systems. This is likely to be a cost to both types of creditor as 15 of 22 MS in the case of credit institutions and nine of 13 MS in the case of non-credit institutions did not already have requirements in place that meet or exceed this guideline.
43. In summary, as Table 1 shows, there is a divergence in the level of requirements that are already in place across MS. This will result in creditors having to incur once-off and ongoing costs to implement these guidelines.
44. Also Option 2 would imply one-off costs for the CAs in the form of adjustments to national regulatory frameworks and on-going costs due to the required modifications of supervisory practices. While costs will be incurred to implement these guidelines, cooperation between CAs could be facilitated across the EU as consequence of the more harmonised framework on arrears and foreclosure in residential mortgage markets.

4.2.5 Analysis of benefits

45. The largest benefits of Option 2 would accrue to mortgage borrowers who would see their exposure to detriment and adverse economic and social effects to be significantly reduced by these guidelines^{12 13}. Furthermore, consumers would benefit from more integrated EU mortgage markets.
46. As illustrated by Table 1, there is currently inconsistency across MS in terms of requirements on arrears and foreclosure, with many MS having few requirements currently in place. The harmonisation of the regulatory framework across different types of mortgage lenders would reduce the risk of intersectoral regulatory arbitrage and improve market integrity in general.

4.2.6 Overall assessment and conclusion

47. Having regard to stakeholders' costs and benefits, the conversion of the practices of the current EBA Opinion relevant to Article 28 MCD into guidelines and the revision of the remaining parts of that Opinion is the preferred option.

¹¹ EU COM: Impact Assessment accompanying the Directive on Credit Agreements relating to residential property (2011)

¹² EU COM: The Costs and Benefits of Integration of EU Mortgage Markets (2005)

¹³ EU COM: Study on the Costs and Benefits of the different policy options for mortgage credit (2009)

5. Next steps

48. The Guidelines will be translated into the official EU languages and published on the EBA website. The deadline for the CAs to report whether they comply with the Guidelines will be two months after the publication of the translations. A compliance table will be published on the EBA website after the expiry of the two-month period pursuant to Article 16(3) of the EBA's Founding Regulation.
49. The Guidelines apply from 21 March 2016, except that the information requirements referred to in paragraph 2 apply from [publication date in the official languages + 1 day].