



Study on switching of financial services and products

Final report

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List of abbreviations

ACM	The Netherlands Authority for Consumers and Markets
AER	Annual Equivalent Rate
AFM	Dutch Financial Markets Conduct Authority
AISP	Account Information Service Providers
ANP	Account Number Portability
APRC	Annual Percentage Rate of Charge
ARM	Adjustable Rate Mortgages
ATM	Automated Teller Machine
BaFin	German Federal Financial Supervisory Authority
BBVA	Banco Bilbao Vizcaya Argentaria
BIC	Business Identifier Codes
CASS	Current Account Switching Services
CEE	Central and Eastern Europe
CEL	Compte Epargne Logement
CPI	Credit Protection Insurances
CZK	Czech Koruna
DDK	Danish Krona
DG FISMA	Directorate General Financial Stability, Financial Services and Capital Markets Union
DG JUST	Directorate General Justice and Consumer Affairs
EACB	European Association of Co-operative Banks
EBA	European Banking Authorities
EBA COREP	European Banking Authorities Common Reporting
EBF	European Banking Federation
ECB	European Central Bank
EEA	European Economic Area
EJS	Electronic Journals Service
EMF	European Mortgage Federation
ESIS	European Standardised Information Sheet
EU	European Union
EUR	Euro
EU-SILC	European Union Statistics on Income and Living Conditions
FCA	Financial Conduct Authorities
FIN-FSA	Finnish Financial Supervisory Authority
FRM	Fixed Rate Mortgages
FSUG	Financial Services User Group

HMRC	Her Majesty's Revenue and Customs
HSBC	Hongkong and Shanghai Banking Corporation
GBP	Great Britain Pound
GDP	Gross Domestic Product
GS	Goldman Sachs
HRK	Hrvatska Kuna
IBAN	International Bank Account Number
IDD	Insurance Distribution Directive
IMLA	International Municipal Lawyers Association
JRC	Join Research Centre
KNF	Polish Financial Supervision Authority
LtV	Loan to Value
LIBOR	London Inter-bank Offered Rate
MCD	Mortgage Credit Directive
MS	Member State
VAT	Value Added Tax
PAD	Payment Account Directive
PEA	Plan d'épargne en action
PEL	Plan épargne logement
PISP	Payment Initiation Service Provider
PPI	Payment Protection Insurance
PSD2	Payment Service Directive 2
SEPA	Single Euro Payments Area
SVR	Standard Variable Rate
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty of European Union
TPPP	Third Party Payment Processor
UK	United Kingdom
UOKIK	Polish Office of Competition and Consumer Protection
USD	United States Dollar

Abstract

The ability and willingness of consumers to switch products and services is central to well-functioning markets. Relatively 'low' rates of switching in the retail financial services and products sector has long been of concern to policy makers and consumer organisations. Although there is no optimal rate of switching, switching is believed to be inhibited in these markets due to the existence of related costs or barriers.

This is an independent study on switching of financial services and products. More specifically, it assesses the savings forgone by consumers by not switching to more advantageous residential mortgages and payment accounts, provides a comprehensive overview of the legal and commercial barriers to switching in the case of five selected retail financial products, and provides a comprehensive overview of existing (and prospective) measures to increase switching rates across those five financial products. Study evidence was gathered through a mixed-methods approach, comprising both quantitative and qualitative research techniques.

The study concludes that there is a considerable number of mortgage and payment account consumers who would benefit from switching, albeit to various degrees, depending on the country and product. At the same time, in some Member States, there is a not insignificant number of consumers who still do not manage to obtain a better deal, despite switching. While the study finds that there are no major legal and commercial barriers to switching of payment accounts, saving accounts, mortgage and home insurance products, switching of residential mortgages is typically more challenging given the conditions required for early repayment or refinancing of mortgages, the plethora of fees that may apply to switch a mortgage, or difficulties related to comparing the various mortgage offers by consumers, among others.

The study finds that there is no single measure - whether a well-tailored legal provision or new service/market structure - that could be implemented seamlessly in isolation (or replicated easily across the Member States) to substantially increase the switching rate. However, there seems to be greater scope for incremental improvements to residential mortgages compared to the other products examined here.

Résumé

Il est essentiel au bon fonctionnement des marchés que les consommateurs aient la capacité et la volonté de changer de fournisseurs pour leurs produits et services. Les taux de changement relativement « faibles » dans le secteur des services et produits financiers de détail préoccupent depuis longtemps les responsables politiques et les organisations de consommateurs. Bien qu'il n'y ait pas de taux de changement optimal, on estime que le changement de fournisseur est inhibé sur ces marchés par l'existence de coûts ou d'obstacles connexes.

Ce document est le fruit d'une étude indépendante sur le changement de fournisseurs de services et produits financiers. Plus précisément, il évalue les économies potentielles auxquelles les consommateurs renoncent en n'optant pas pour des crédits hypothécaires au logement et des comptes de paiement plus avantageux, donne un aperçu complet des obstacles juridiques et commerciaux au changement de fournisseur dans le cas de cinq produits financiers de détail sélectionnés et dresse le tableau complet des mesures existantes (et futures) visant à augmenter les taux de changement pour ces cinq produits financiers. Les données de l'étude ont été recueillies au moyen de diverses méthodes, comprenant à la fois des techniques de recherche quantitative et qualitative.

L'étude conclut qu'un nombre considérable de consommateurs de crédits hypothécaires et de comptes de paiement bénéficieraient d'un changement de fournisseur ou de compte, quoiqu'à des degrés divers, selon le pays et le produit.

Dans le même temps, un nombre non négligeable de consommateurs dans certains États membres ne sont toujours pas en mesure d'améliorer leur situation en dépit d'un changement de fournisseur ou de compte. Bien que l'étude révèle qu'il n'existe pas d'obstacles juridiques et commerciaux majeurs au changement pour les comptes de paiement, les comptes d'épargne, les crédits hypothécaires et les produits d'assurance habitation, le changement dans le segment des crédits hypothécaires au logement est généralement plus difficile, compte tenu des conditions imposées au remboursement anticipé ou au refinancement des crédits hypothécaires, des nombreux frais qui peuvent s'appliquer au transfert d'un prêt ou des difficultés liées à la comparaison des diverses offres hypothécaires des consommateurs, entre autres facteurs.

L'étude montre qu'il n'y a pas de mesure unique – qu'il s'agisse, en l'occurrence, d'une disposition juridique bien adaptée ou d'une nouvelle structure de service/marché – à mettre en œuvre de manière transparente et isolée (ou facilement reproductible dans les États membres) pour augmenter sensiblement le taux de changement. Cela étant, il semble qu'il y ait plus de latitude pour améliorer progressivement les crédits hypothécaires au logement que les autres produits examinés ici.

Executive Summary

This report presents the results of the study on switching of retail financial services and products. The study was commissioned by the Directorate-General for Financial Stability, Financial Services and Capital Markets (DG FISMA). The work was undertaken by ICF in collaboration with Grimaldi, LISTEN and independent experts specialising in research methodologies and retail financial products respectively.

Background to the study

The ability and willingness of consumers to switch is critically important for markets to function well. If switching is discouraged or impeded, this could impact not only on the demand-side (in the form of savings or welfare gains forgone by consumers by not switching to more advantageous offers), but also potentially raise supply-side barriers by deterring new entrants from entering the market in the belief that it will be difficult to displace incumbents. This could diminish the effectiveness of competition in a market, thus reducing choice and quality for consumers.

The relatively 'low' rates of switching in the retail financial services and products sector has long been a concern of policy makers and consumer organisations. Although there is no optimal rate of switching, there are concerns that switching is inhibited in these markets due to the existence of switching costs or barriers.

This study seeks to establish whether switching in the retail financial services and products sector is an issue requiring policy intervention by estimating the potential order of magnitude of savings forgone by consumers by not switching to more advantageous products and by compiling evidence on legal and commercial barriers to switching in these markets.

Purpose and scope of the study

The study consisted in three main analytical tasks that also reflect the main study objectives:

- Task 1: to assess the savings forgone by consumers by not switching to more advantageous products;
- Task 2: to provide a comprehensive overview of the legal and commercial barriers to switching retail financial products;
- Task 3: to provide a comprehensive overview of existing (and prospective) measures to increase switching rates across selected financial products.

It is envisaged that this study may inform the European Commission's upcoming review of Directive 2014/92 (Payment Accounts Directive (PAD)) and Directive 2014/17 (Mortgage Credit Directive (MCD)).

The geographical and product scope of the study differed across the various study tasks described above. Task 1 focused exclusively on payment accounts and residential mortgages in 14 selected Member States, while Tasks 2 and 3 covered payment accounts and residential mortgages for EU-28, complemented by an analysis covering saving accounts, mortgage insurance and home insurance products for 11 Member States. Table 2 summarises the geographical and product scope of the study.

Table 1. Geographical and product scope of the study

Task	Product scope	Geographical scope
Task 1	<ul style="list-style-type: none">• payment accounts• residential	14 Member States ¹

¹ Austria, Belgium, Czech Republic, France, Germany, Ireland, Italy, Latvia, Netherlands, Poland, Portugal, Spain, Sweden and the UK.

Task	Product scope	Geographical scope
	mortgages	
Task 2 & 3	<ul style="list-style-type: none"> • payment accounts • residential mortgages 	28 Member States
	<ul style="list-style-type: none"> • saving accounts • mortgage insurance • home insurance 	11 Member States ²

The rationale for the selection of products was, inter alia, their high penetration and their financial weight for European households. For instance, 87 per cent of all EU-28 consumers held at least one payment account, while the outstanding value of residential mortgages as a share of EU-28 GDP was 39 per cent (EUR 7 trillion) in 2016 (the latest year for which data are available). Other factors that were taken into consideration in selecting the product scope were relatively low switching rates for selected products and evidence of consumer complaints. In addition, the geographical scope was intended to reflect a good spread across the EU and the inclusion of different banking practices and cultures.

Behavioural aspects that may determine switching rates across some financial products (e.g. 'consumer inertia') are largely outside the scope of this study, although they are still considered as relevant contextual factors for a number of specific aspects analysed.

Methodology

This study was based on a mixed-methods approach. It relied on various qualitative and quantitative techniques to establish a comprehensive evidence base for the study and to provide the basis for the triangulation of findings. The following methods were used to build the evidence base for the study:

- *Desk research*, entailing a review and analysis of documentation provided by DG FISMA including relevant legal sources, in particular related to Mortgage Credit Directive (MCD) and Payment Account Directive (PAD), Commission reports and available internal statistics (e.g. on switching rates) as well as other sources such as press articles and recent independent reports pertinent to each of the three tasks. The desk research drew also on the review of relevant databases including EBA, ECB, Consumer Scoreboard and Eurobarometer data;
- *Literature review*, that covered several types of publications, including academic sources, policy documents and grey literature, as well as targeted searches in specialised press (e.g. The Economist, Financial Times). The review covered all EU-28 Member States (and selected non-EU countries where relevant, e.g. the US) and focused predominantly on Task 1 and 3;
- *Semi-structured interviews*, with key stakeholders, of which the majority were undertaken over the phone. Interviews were held with, inter alia, relevant staff from DG FISMA, DG JUST, Joint Research Centre in the European Commission, select members of the Financial Services User Group, national competent regulators including relevant financial supervisory authorities and ministries and consumer and industry associations (both national and the EU level). In total, sixty semi-structured interviews were conducted as part of this study and in a

² Belgium, Czech Republic, Denmark, Finland, France, Germany, Italy, the Netherlands, Poland, Spain and Sweden.

number of instances follow-up contact was made to request written feedback on predefined questions;

- *An online consumer survey* to collect data on the costs of holding a mortgage and payments account as well as any savings resulting from switching. The survey covered 14 Member States. An average of 350 responses per product and per Member State were received;
- *An online survey of banks* to collect information on their commercial practices, views on legal barriers to switching and feedback on tools and measures facilitating switching. Forty-three banks across eleven Member States were part of the survey;

In addition, five meetings with the Steering Committee composed of DG FISMA, DG JUST and JRC experts were held during the assignment where methodological aspects of the study were discussed and subsequently refined to reflect the progress and ongoing needs.

The results presented in the report were subject to scrutiny and challenge by external experts and industry representatives at a roundtable session that took place on 3rd October 2019.

Findings and conclusions of the study

Task 1 potential savings forgone by consumers by not switching to more advantageous products

This task entailed a quantitative assessment of the savings forgone by consumers as a result of not switching to more advantageous products. It focused on residential mortgages and payment accounts respectively and covered 14 Member States in each case. The key input data used to compute the savings were responses to the consumer survey.

Savings as a result of switching of residential mortgages

According to the survey of mortgage consumers, the share of consumers who would benefit from switching³ as a percentage of the total number of customers who currently hold a mortgage loan varies significantly between the Member States (e.g. 22 per cent in Sweden versus 78 per cent in Portugal).

An average monthly saving from switching per consumer (the difference between monthly mortgage payments pre and post switching) varies considerably across Member States, with the largest average monthly savings observed in a few euro-zone countries, namely the Netherlands (EUR 110), Germany (EUR 87) and Austria (EUR 65). The lowest monthly savings were observed in France (EUR 5) while in Poland and Spain average monthly savings were nil or negative. The average monthly savings across the sample were estimated at EUR 37.

At the sample level, the aggregate savings could reach up to EUR 1.7 bln per month, or over EUR 20 bln per year. The key driver of the savings has been the spread in the interest rates between the current and the past mortgage.

The survey, however, reveals that not all consumers benefit from switching and indeed, there are some consumers who are actually worse off after switching. There could be several reasons for this, e.g. a consumer's inability to make optimal choice, possibly due to low levels of financial literacy, difficulties in comparing the offers given available tools, or unfavourable circumstances at which the switch took place (e.g. prior to a material fall in interest rates on the market/ after substantial change in forex for foreign denominated loans). The percentage of such consumers with 'negative savings', as the share of all those who switched in a given Member State,

³ Those who make savings on the interest rates paid on the new mortgage after switching from the initial one.

varied from 3 per cent of those who switched in the Netherlands to 31 and 32 per cent in Poland and France respectively. The average across the sample was 16 per cent.

The abovementioned estimates include switching of product with the existing lender ('internal switching') as well as moving to a new lender ('external switching').

In addition, the estimates do not take account of the value of time that a consumer would need to invest in the switching process, fees related to switching, and (if relevant) forgone benefits stemming from 'bundling' of mortgages to other products (e.g. saving accounts or personal loans with promotional interest rates). Therefore, the estimates of the average monthly savings and the estimates at the aggregate level constitute 'upper bound' estimates.

Savings as a result of switching of payment accounts

It is methodologically challenging to quantify the potential savings that could result from switching payment accounts. This is due to the fact that the costs of holding a payment accounts in any given year are driven by usage patterns. Not only do usage patterns vary from consumer to consumer but could also vary on an annual basis for the same consumer depending on personal circumstances (e.g. use of overdraft) and external environment (interest rates). As such, it is not possible to reliably define an average usage pattern or customer profile.

Given the above methodological constraints the study adopted, a simplistic approach to determining the potential savings from switching by extrapolating the self-reported savings of those who switched.

The headline results of our research are as follows:

- Across the sample of 14 countries, 83 per cent of the population aged 18 to 64 reported having a payments account;
- Ten per cent of the payment account holders reported having switched their payments account, either with the same provider (27 per cent of those who switched) or another provider (73 per cent of those who switched) during the last three years;
- Almost half of those who switched (47 per cent), reported having benefitted financially from switching. On the other hand, 41 per cent of those switching claimed that they had not benefitted financially from switching, while roughly 11 per cent (or 1 in 10) of those who switched did not know whether they had benefitted financially from switching or not;
- The average self-reported savings per year amounted to EUR 79. The response patterns to the survey suggest that consumers may have difficulties in correctly recalling the costs of their payment accounts and the savings resulting from switching;
- Extrapolating the average annual savings reported by consumers who switched and benefitted financially from it (EUR 79) to consumers who might benefit from switching (defined as payment account users who have not switched during the last three years), the potential scale of annual savings from switching payments accounts amounts to EUR 884 million across the 14 sample countries.

The above figure should, however, be interpreted with caution as it is based entirely on self-reported savings by consumers.

Task 2

Residential mortgages

The presence of a specific legal framework regulating the switching of mortgages has not been found to be a prerequisite for the system with high switching capability.

Indeed, even if some obstacles could be eliminated with effective and precise provisions on a national level, other aspects such as the level of competition in the banking sector, quality of regulatory supervision and the overall level of interest rates significantly influence the switching rates of mortgages. However, while the existence of a legal framework may not be indispensable, if adequate, it may play important role in facilitating switching.

Legal provisions related to the early repayment or refinancing of mortgages largely apply to the context of switching. While early repayment is a borrower's right enshrined in the MCD, the conditions that may be attached to it (notice period or minimum contract elapse) and the amount of compensation to be paid to the lender, especially in fixed interest rate mortgage, may discourage consumers. This is particularly relevant in jurisdictions where a cap on the compensation does not exist, usually disguised under the generic expression of a "fair and objective compensation", like, *inter alia*, in Ireland, Cyprus (for partial repayment) and Luxembourg. On the other side, industry view shared also by some regulators is that the compensation for early repayment allows the lender to recoup costs incurred and avoids "mutualisation" of costs across other borrowers. And yet, while one need to be careful with direct inferences, Italy with one of the most consumer-friendly provisions on early repayment reports currently one of the lowest prices of mortgage across the EU.

Regarding the transparency requirements for mortgages, the MCD sets the rules and the content for pre-contractual information, introducing the European Standardized Information Sheet (ESIS). ESIS has been found a fairly helpful tool, yet some stakeholders pointed to certain shortcomings e.g. the point in time (too late) when it is presented to consumer, non-adaptability to on-line purchase, or generally lengthy mortgage contracts in the context of which information provided via ESIS sometimes 'gets lost'.

Fees related to switching operations by different stakeholders may also discourage consumers, in particular those related to notary deeds, stamps and other administrative fee to change the beneficiary of the *in rem* security. Finally, the selling of bundled products, with the complexity and the number of legal steps related, deters consumers from switching mortgages in some cases. In particular, ancillary services such as payment account and insurance bundled with the mortgage may add layers of administrative and contractual complexities and increase the time and the costs required to switch mortgage provider.

Payment accounts

The study finds that legal framework provided by the PAD and its transposition by Member States makes the switching of payment accounts an easy and relatively fast operation across all Member States.

While the PAD provides for minimum rules for switching payment account, Member States retain some discretion concerning certain aspects, for example concerning the switching fees. However, even in such cases, national legislators' freedom of choice is conditioned by safeguards, thereby any fee, if applied, is required *inter alia* to be reasonable and in line with the actual costs incurred by the payment service provider. In practice, the payment accounts' switching is typically free of charge.

Some limitations may emerge from the interaction between the PAD and other legislative acts, mainly the national rules concerning mortgages. In certain cases, the transfer of a payment account linked to a mortgage is not possible due to the fact the national legislation allows bundled products (allowed under strict conditions, in both PAD and MCD) or, instead, because of the fact that the mortgage may be considered as an "outstanding obligation" which prevents the consumer's payment account from being closed.

No specific legal barriers were found concerning switching of payment accounts while number of stakeholders, including regulators, point to persisting consumer's inertia

driven also by behavioural aspects (out of the scope of this study) that keep the switching rates lower.

Saving accounts

In Member States where a specific legal framework for switching saving accounts is not provided, high fees related to the closing and the transfer of saving products have been indicated as preventing consumers from switching, in particular when the saving account is linked or used as investment account and the investment portfolio must be transferred.

Saving accounts are not specifically covered by the PAD; however, in many Member States, the provisions related to switching applicable to payment accounts are applied to saving accounts when they have the same legal features of payment accounts as well. No specific provisions have been identified with regard to switching of saving accounts, with the exception of France, where specific provisions were introduced by the *Loi Macron*⁴ for the transfer of certain saving accounts, namely the housing savings plan (*PEL, Plan épargne logement*), the housing savings account (*CEL, Compte Epargne Logement*), the savings plan in shares (*PEA, Plan d'épargne en action*) as well as the ordinary securities account.

In Italy, the general rule is that bank cannot charge any fee for closing a saving account, with the exception of the linked securities account. In Belgium, a specific rule is provided for internal switching across saving accounts, in order to keep the accrued interests.

Mortgage insurance

Switching of mortgage insurance does not present significant issues. However, in some Member States this could be complicated by the practice of bundling insurance and mortgage products in a single complex contract. This is particularly the case when the mortgage insurance has been taken out in order to reduce the interest rate (bundling practices). While termination of insurance is allowed with a notice period, based on general contract rules, it can result more complex when bundled with mortgage. In France, where the mortgage insurance is mandatory, a specific legislation has been recently introduced to allow switching insurance provider. The main legal barriers were identified in particularly long notice timeline for termination of the contract, and the obligation to be punctual with mortgage payments in order to be able to terminate the contract.

A different and material obstacle emerged in Italy, with reference to the mortgage insurance paid in one single instalment, which is the most common type of payment for the mortgage insurance bundled with the mortgage. Due to the specific structure and its ancillary nature, according to the consistent case-law of Italian national courts, it is not possible to switch insurance provider without early repaying the mortgage.

Home insurance

No specific legal barriers were identified concerning home insurance.

In France, a legislative framework introduced in 2014 (*Loi Hamon*) simplified the process to change insurance provider and reduce administrative and contractual burdens for the policyholder. In terms of commercial barriers, at present, no specific commercial barriers have been identified by consumers concerning home insurance. The bundling of mortgages with other ancillary products, including home insurance, in order to obtain better rates, can add complexity in the switching to another insurer.

Task 3

The findings from Task 3 were driven primarily by the results from the analysis on the existing legal and commercial barriers, as part of Task 2. Potential remedies were

⁴ Law n. 990 of 6 August 2015.

sought to the key barriers identified under Task 2. In addition, some measures stemming from existing/ prospective market initiatives such as, inter alia, new services offered by the fintech industry, complemented the set of analysed remedies that could potentially un-lock the markets and lift up the switching rates.

The term 'measure' was considered broadly under Task 3 and, apart from some possible changes in existing laws, includes also some market developments, such as the expansion of neo-banks and the introduction of Account Number Portability (ANP) with respect to payment accounts, or the role of financial advisors/ brokers in the UK that have encouraged very effectively consumer switching with respect to mortgages.

Overall, the study found that there is currently no single measure, whether a well-tailored legal provision or new service/ market structure, that could be implemented seamlessly in isolation (or replicated easily across the Member States) to increase the switching rate. There seems to be, however, greater scope for improvement among mortgages than other products such as payment accounts and saving accounts.

For instance, the study found that the role of mortgage intermediaries in the UK is very effective in nudging UK consumers to switch. Yet, a similar market structure may be challenging to replicate across other Member States as the UK arrangement is very much linked to the particular structure of the mortgage product.

Also, there are some jurisdictions with legal frameworks that are comparatively very consumer friendly (with Italy being an emblematic example) and may serve as a relevant example for other Member States. In the same vein, some discrete legal measures such as Hamon Law in France have the potential to increase a consumer's propensity to switch.

Furthermore, certain potential legal measures analysed as part of Task 3 that would be likely to shift the balance between the lender and the borrower for the benefit of the latter, such as a possibility of unilateral early repayment of the mortgage by the borrower at any moment and without any type of other limitation (and no compensation), could potentially increase the switching rate. Those may imply some trade-offs such as increased price of the mortgages for consumers, though Italy with consumer-friendly provisions on the early repayment and simultaneously comparatively low prices of residential mortgages provides an intriguing case that it does not have to be the case.

In the context of incentivising cross-border switching of mortgages, the common mortgage instrument (*Eurohypotheck*), may have some potential to enhance the share of cross-border borrowing and subsequently the switching of mortgages, though there is no consensus here. Any serious considerations of *Eurohypotheck* would warrant further research to provide the evidence on its feasibility and potential costs and benefits.

Regarding the neo-banks such as N26, Monzo or Revolut, they certainly have had some impact on switching rates of payment accounts, even though there is very limited data available to gauge how meaningful that impact has been. Yet, their entrance and competitive offers they may provide vis-à-vis main retail banks may allow consumers to maximise their gains in a different way. Rather than switching, they may 'multibank' and adjust their usage pattern to optimise the benefits offered by more than one provider.

The study also found that the introduction of ANP, while potentially adding to the consumer's ability to switch, still could not bring much added value in many Member States where lower switching of payments account in some cases may be more of a matter of consumer inertia than existing legal and commercial barriers, while the costs of its implementation by the industry could be substantial and the material benefits for consumers uncertain.

Note de synthèse

Ce rapport présente les résultats de l'étude sur le changement de fournisseur ou de compte dans le secteur des services et produits financiers de détail. Cette étude a été commandée par la Direction générale de la stabilité financière, des services financiers et de l'union des marchés de capitaux (DG FISMA). Les travaux ont été entrepris par ICF en collaboration avec Grimaldi, LISTEN et des experts indépendants respectivement spécialisés dans les méthodologies de recherche et les produits financiers de détail.

Contexte de l'étude

Il est essentiel au bon fonctionnement des marchés que les consommateurs aient la capacité et la volonté de changer de fournisseur pour leurs produits et services. Si le changement de fournisseur est découragé ou entravé, cela peut non seulement avoir une incidence sur la demande (sous la forme d'économies ou de gains de prospérité auxquels les consommateurs renoncent en n'optant pas pour des offres plus avantageuses), mais peut aussi faire obstacle à l'offre en dissuadant les nouveaux acteurs de pénétrer ce marché, de crainte qu'il ne leur soit trop difficile de se substituer aux opérateurs historiques. Or, tout cela risque d'amoindrir l'efficacité de la concurrence sur un marché, et donc de limiter le choix et la qualité pour les consommateurs.

Les taux de changement relativement « faibles » dans le secteur des services et produits financiers de détail préoccupent depuis longtemps les responsables politiques et les organisations de consommateurs. Quoiqu'il n'y ait pas de taux de changement optimal, le changement de fournisseur ou de compte semble être inhibé sur ces marchés par l'existence de coûts ou d'obstacles.

Cette étude vise à déterminer si le changement de fournisseur dans le secteur des services et produits financiers de détail est une question qui requiert une intervention des pouvoirs publics en estimant l'ordre de grandeur potentiel des économies que les consommateurs sacrifient en n'optant pas pour des produits plus avantageux et en compilant des données sur les obstacles juridiques et commerciaux au changement sur ces marchés.

Objet et portée de l'étude

L'étude a consisté en trois grandes tâches analytiques, qui reflètent également les principaux objectifs de l'étude :

- Tâche 1 : évaluer les économies auxquelles les consommateurs renoncent en n'optant pas pour des produits plus avantageux.
- Tâche 2 : donner une vue d'ensemble des obstacles juridiques et commerciaux au changement de fournisseur de produits financiers de détail.
- Tâche 3 : donner une vue d'ensemble des mesures existantes (et futures) visant à augmenter les taux de changement de fournisseur de certains produits financiers.
- Le but est que cette étude puisse éclairer la prochaine révision, par la Commission européenne, de la directive 2014/92 (Directive sur les comptes de paiement, DCP) et de la directive 2014/17 (Directive sur le crédit hypothécaire, DCH).
- La portée géographique et la portée par produit de l'étude ont différé selon les diverses tâches de l'étude décrites ci-dessus. La tâche 1 s'est concentrée exclusivement sur les comptes de paiement et les crédits hypothécaires au logement dans quatorze États membres sélectionnés, tandis que les tâches 2 et 3 se sont intéressées aux comptes de paiement et aux crédits hypothécaires au logement pour l'UE-28, complétées par une analyse couvrant les comptes d'épargne, les assurances hypothécaires et les produits d'assurance habitation

pour onze États membres. Le tableau 1.1 résume la portée géographique et par produit de l'étude.

Table 2. Portée géographique et portée par produit de l'étude

Tâches	Portée par produit	Portée géographique
Tâche 1	<ul style="list-style-type: none"> comptes de paiement crédits hypothécaires au logement 	14 États membres ⁵
Tâches 2 et 3	<ul style="list-style-type: none"> comptes de paiement crédits hypothécaires au logement 	28 États membres
	<ul style="list-style-type: none"> comptes d'épargne assurance hypothécaire assurance habitation 	11 États membres ⁶

Le choix des produits s'est justifié, entre autres, par leur forte pénétration et leur poids financier pour les ménages européens. Par exemple, 87 % de l'ensemble des consommateurs de l'UE-28 détiennent au moins un compte de paiement, tandis que l'encours des crédits hypothécaires au logement en pourcentage du PIB de l'UE-28 est de 39 % (7 000 milliards €) en 2016 (la dernière année pour laquelle des données sont disponibles). D'autres facteurs ont été pris en considération dans le choix de la gamme de produits, notamment les taux relativement faibles de changement pour certains produits sélectionnés et les réclamations des consommateurs. En outre, la portée géographique est censée refléter une bonne répartition au sein de l'UE et couvrir différentes pratiques et cultures bancaires.

Les aspects comportementaux susceptibles de déterminer les taux de changement pour certains produits financiers (ex. : l'inertie des consommateurs) sont largement hors du champ de cette étude, bien qu'ils demeurent considérés comme des facteurs contextuels pertinents pour un certain nombre d'aspects spécifiques analysés.

Méthodologie

Cette étude est fondée sur une approche à méthodes mixtes. Elle s'est appuyée sur diverses techniques qualitatives et quantitatives afin de constituer une base de données probantes exhaustive pour l'étude et de servir de base à la triangulation des résultats. Les méthodes suivantes ont ainsi été appliquées pour constituer la base de données probantes de l'étude :

- *Recherche documentaire*, comprenant un examen et une analyse de la documentation fournie par la DG FISMA, ainsi que de sources juridiques pertinentes, afférente notamment à la Directive sur le crédit hypothécaire (DCH) et la Directive sur les comptes de paiement (DCP), des rapports de la

⁵ Allemagne, Autriche, Belgique, Espagne, France, Irlande, Italie, Lettonie, Pays-Bas, Pologne, Portugal, République tchèque, Royaume-Uni et Suède.

⁶ Allemagne, Belgique, Danemark, Espagne, Finlande, France, Italie, Pays-Bas, Pologne, République tchèque et Suède.

Commission et des statistiques internes disponibles (ex. : sur les taux de changement), ainsi que d'autres sources telles que des articles de presse et des rapports indépendants récents concernant chacune des trois tâches. La recherche documentaire s'est également appuyée sur l'examen de bases de données pertinentes, en particulier l'ABE, la BCE, le Tableau de bord des consommateurs et les données de l'Eurobaromètre.

- *Analyse documentaire*, couvrant plusieurs types de publications, dont des sources universitaires, des documents de politique générale et de la littérature grise, ainsi que des recherches ciblées dans la presse spécialisée (ex. : The Economist, Financial Times). L'examen a porté sur tous les États membres de l'UE-28 (et certains pays tiers, le cas échéant, comme les États-Unis) et s'est principalement concentré sur les tâches 1 et 3.
- *Entretiens semi-structurés* avec des parties prenantes stratégiques, dont la majorité a été réalisée par téléphone. Ces entretiens se sont tenus, entre autres, avec le personnel concerné de la DG FISMA, de la DG JUST, du Centre commun de recherche de la Commission européenne, certains membres du Groupe des utilisateurs de services financiers, des régulateurs nationaux compétents, parmi lesquels des autorités de surveillance financière et des ministères concernés, et des associations de consommateurs et sectorielles (au niveau national et au niveau communautaire). Au total, soixante entretiens semi-structurés ont été conduits dans le cadre de cette étude et, dans un certain nombre de cas, des contacts de suivi ont été établis afin de solliciter des retours d'information écrits sur des questions prédéfinies.
- *Enquête de consommation en ligne* pour recueillir des données sur les coûts de détention d'un prêt hypothécaire et d'un compte de paiement, ainsi que sur les économies éventuelles résultant d'un changement de fournisseur ou de compte. L'enquête a porté sur quatorze États membres. En moyenne, 350 réponses par produit et par État membre ont été reçues.
- *Enquête bancaire en ligne* pour recueillir des informations sur les pratiques commerciales des banques, leurs points de vue sur les obstacles juridiques au changement de banque, ainsi que des retours d'information sur les outils et les mesures facilitant le changement. Quarante-trois banques ont participé à l'enquête, dans onze États membres.
- En outre, cinq réunions ont été organisées avec le Comité directeur composé d'experts de la DG FISMA, de la DG JUST et du CCR durant la mission, au cours desquelles les aspects méthodologiques de l'étude ont été débattus puis affinés afin de refléter les progrès et les besoins courants.
- Les résultats présentés dans le rapport ont été examinés et débattus par des experts externes et des représentants de l'industrie lors d'une table ronde tenue le 3 octobre 2019.

Résultats et conclusions de l'étude

Tâche 1

Cette tâche a impliqué une évaluation quantitative des économies auxquelles les consommateurs ont renoncé en ne changeant pas de fournisseur pour obtenir des produits plus avantageux. Elle s'est concentrée sur les crédits hypothécaires au logement et les comptes de paiement, couvrant quatorze États membres dans chacun des cas. Les principales données utilisées pour calculer les économies ont été les réponses obtenues à l'enquête menée auprès des consommateurs.

Économies réalisées suite au changement de fournisseur de crédits hypothécaires au logement

Selon l'enquête réalisée auprès des consommateurs de crédits hypothécaires, la part de consommateurs qui bénéficieraient d'un changement de fournisseur⁷ en pourcentage du nombre total de clients détenant actuellement un crédit hypothécaire varie considérablement entre les États membres (ex. : 22 % en Suède contre 78 % au Portugal).

Les économies mensuelles moyennes par consommateur réalisées suite à un changement de fournisseur (différence entre les paiements hypothécaires mensuels avant et après le changement) varient considérablement d'un État membre à l'autre, les économies mensuelles moyennes les plus élevées étant observées dans quelques pays de la zone euro, à savoir les Pays-Bas (110 €), l'Allemagne (87 €) et l'Autriche (65 €). Les économies mensuelles les plus faibles sont observées en France (5 €), tandis que, en Pologne et en Espagne, ces économies mensuelles moyennes sont nulles ou négatives. Les économies mensuelles moyennes sur l'ensemble de l'échantillon sont estimées à 37 €.

Au niveau de l'échantillon, les économies globales pourraient atteindre 1,7 milliard d'euros par mois, soit plus de 20 milliards d'euros par an. Le principal moteur de ces économies est l'écart des taux d'intérêt entre la nouvelle hypothèque et l'ancienne.

L'enquête révèle toutefois que tous les consommateurs ne tirent pas profit d'un changement de fournisseur et que, de fait, certains d'entre eux se retrouvent dans une situation plus difficile après avoir changé de fournisseur. Il peut y avoir plusieurs raisons à cela, par exemple l'incapacité du consommateur à faire un choix optimal, peut-être en raison d'un manque d'éducation financière, de difficultés à comparer les offres avec les outils disponibles ou de circonstances défavorables lors du changement (ex. : avant une baisse importante des taux d'intérêt sur le marché ou après une variation importante des taux de change pour les prêts libellés en devises étrangères). Le pourcentage de consommateurs réalisant des « économies négatives », en part de consommateurs ayant changé de fournisseur dans un État membre donné, varie de 3 % aux Pays-Bas à 31 et 32 % en Pologne et en France, respectivement. La moyenne pour l'ensemble de l'échantillon est de 16 %.

Les estimations susmentionnées incluent le changement de produit auprès du prêteur existant (« changement interne ») ainsi que le changement pour un nouveau prêteur (« changement externe »).

En outre, les estimations ne tiennent pas compte de la valeur du temps qu'un consommateur consacre au processus de changement, des frais liés au changement et (le cas échéant) des avantages auxquels il renonce en raison du « regroupement » d'hypothèques vers d'autres produits (ex. : comptes d'épargne ou prêts personnels à taux promotionnels). Par conséquent, les estimations des économies mensuelles moyennes et les estimations au niveau agrégé constituent des estimations de la « limite supérieure ».

Économies réalisées suite au changement de compte de paiement

Il est difficile, d'un point de vue méthodologique, de quantifier les économies potentielles susceptibles de découler d'un changement de compte de paiement. Cela s'explique par le fait que les coûts liés à la tenue d'un compte de paiement au cours d'une année donnée sont déterminés par les habitudes d'utilisation. Non seulement les habitudes d'utilisation varient d'un consommateur à l'autre, mais elles peuvent aussi varier d'une année sur l'autre pour le même consommateur, selon les circonstances personnelles (ex. : utilisation d'un découvert) et l'environnement externe (taux

⁷ En faisant des économies sur les taux d'intérêt payés sur la nouvelle hypothèque après avoir quitté leur fournisseur initial.

d'intérêt). Il n'est donc pas possible de définir de manière fiable un profil d'utilisation ou un profil client moyen.

Compte tenu des contraintes méthodologiques susmentionnées, l'étude a adopté une approche simpliste pour déterminer les économies potentielles issues d'un changement de compte en extrapolant les économies déclarées par les personnes qui ont changé de compte.

Les principaux résultats de notre recherche sont les suivants :

- Dans l'échantillon de quatorze pays, 83 % de la population âgée de 18 à 64 ans ont déclaré avoir un compte de paiement.
- Parmi les titulaires de compte de paiement, 10 % ont déclaré avoir changé de compte de paiement, soit auprès du même fournisseur (27 % de ceux ayant changé de compte), soit auprès d'un autre fournisseur (73 % de ceux ayant changé de compte) au cours des trois dernières années.
- Près de la moitié de ceux qui ont changé de compte (47 %) ont déclaré avoir tiré des avantages financiers de ce changement. D'autre part, 41 % des personnes ayant changé de compte ont affirmé qu'elles n'avaient pas tiré de bénéfices financiers du changement, tandis qu'environ 11 % (soit 1 personne sur 10) de celles ayant changé de compte ne savaient pas si elles avaient bénéficié financièrement de ce changement ou non.
- Les économies annuelles moyennes déclarées s'élèvent à 79 €. Les réponses à l'enquête suggèrent que les consommateurs peuvent avoir des difficultés à se rappeler correctement les frais associés à leurs comptes de paiement et les économies résultant du changement de compte.
- En extrapolant les économies annuelles moyennes déclarées par les consommateurs qui ont changé de compte et en ont bénéficié financièrement (79 €) aux consommateurs qui pourraient bénéficier de ce changement (définis comme les utilisateurs de comptes de paiement qui n'ont pas changé de compte au cours des trois dernières années), le volume potentiel des économies annuelles réalisées en changeant de compte s'élève à 884 millions € sur les quatorze pays échantillonnés.

Le chiffre ci-dessus doit toutefois être interprété avec prudence, car il est entièrement fondé sur les économies déclarées par les consommateurs.

Tâche 2

Crédits hypothécaires au logement

L'existence d'un cadre juridique spécifique régissant le transfert des hypothèques ne semble pas constituer une condition préalable à des taux de changement élevés. En effet, même si certains obstacles pourraient certes être éliminés par des dispositions efficaces et précises au niveau national, d'autres aspects tels que le niveau de concurrence dans le secteur bancaire, la qualité de la surveillance réglementaire et le niveau global des taux d'intérêt influencent considérablement les taux de changement concernant les crédits hypothécaires. Cela étant, quoique l'existence d'un cadre juridique ne soit pas indispensable, un tel cadre, s'il est adéquat, peut jouer un rôle important en facilitant la transition.

Les dispositions légales relatives au remboursement anticipé ou au refinancement d'hypothèques s'appliquent en grande partie au contexte du changement. Si le remboursement anticipé est un droit de l'emprunteur inscrit dans la DCH, les conditions qui peuvent y être attachées (délai de préavis ou durée minimale de contrat) et le montant de l'indemnité à verser au prêteur, notamment en cas d'hypothèque à taux fixe, peuvent dissuader les consommateurs. Ce point est particulièrement pertinent dans les pays qui ne plafonnent pas l'indemnisation, une pratique généralement déguisée sous l'expression générique « indemnisation juste et

objective », comme, entre autres, l'Irlande, Chypre (pour les remboursements partiels) et le Luxembourg. Par ailleurs, l'opinion de l'industrie partagée par certains régulateurs est que l'indemnisation pour remboursement anticipé permet au prêteur de récupérer les coûts engagés et évite la « mutualisation » des coûts entre les autres emprunteurs. Et pourtant, bien qu'il faille se méfier des inférences directes, les prix hypothécaires pratiqués par l'Italie, où les dispositions en matière de remboursement anticipé figurent parmi les plus favorables aux consommateurs, sont actuellement parmi les plus bas de toute l'UE.

Concernant les exigences de transparence applicables aux hypothèques, la DCH fixe les règles et le contenu des informations précontractuelles avec la fiche d'information standardisée européenne (Fise). La Fise se révèle être un outil assez utile, mais quelques parties prenantes dénoncent certaines lacunes, par exemple le moment (trop tardif) où il est présenté au consommateur, son inadéquation avec l'achat en ligne ou les contrats hypothécaires généralement longs qui entraînent parfois la « perte » des informations fournies via la Fise.

Les frais liés aux opérations de changement effectuées par différentes parties prenantes peuvent également décourager les consommateurs, en particulier les frais liés aux actes notariés, aux timbres et autres frais administratifs imposés pour le changement de bénéficiaire de la garantie *in rem*. Enfin, la vente de produits groupés, qui sont par définition complexes et supposent différentes étapes juridiques, dissuade les consommateurs de changer de prêt hypothécaire dans certains cas. En particulier, les services auxiliaires comme le regroupement du compte de paiement et de l'assurance avec l'hypothèque peuvent ajouter des complexités administratives et contractuelles et accroître les délais et les coûts associés au changement de fournisseur hypothécaire.

Comptes de paiement

L'étude montre que le cadre juridique instauré par la DCP et sa transposition par les États membres font du changement de compte de paiement une opération facile et relativement rapide dans tous les États membres.

Bien que la DCP prévoie des règles minimales pour le changement de compte de paiement, les États membres conservent une certaine latitude en ce qui concerne certains aspects, par exemple les frais de transfert. Cependant, même dans de tels cas, la liberté de choix des législateurs nationaux est subordonnée à certains mécanismes de protection ; par exemple, si des frais sont appliqués, ceux-ci doivent, entre autres, être raisonnables et correspondre aux coûts réellement engagés par le prestataire de services de paiement. Dans la pratique, le changement de compte de paiement est généralement gratuit.

Certaines limitations peuvent procéder de l'interaction entre la DCP et d'autres instruments législatifs, principalement les règles nationales concernant les hypothèques. Dans certains cas, le transfert d'un compte de paiement lié à une hypothèque n'est pas possible parce que la législation nationale autorise les produits groupés (autorisés dans de strictes conditions par la DCP et par la DCH) ou, au contraire, parce que l'hypothèque peut être considérée comme une « obligation non honorée » qui interdit toute fermeture du compte de paiement du consommateur.

Aucun obstacle juridique spécifique n'a été constaté en ce qui concerne le changement de compte de paiement, tandis que de nombreuses parties prenantes, y compris des régulateurs, indiquent que l'inertie persistante des consommateurs est également le fruit d'aspects comportementaux (ne relevant pas de la présente étude) qui maintiennent les taux de changement à un bas niveau.

Comptes d'épargne

Dans les États membres où il n'existe pas de cadre juridique propre au changement de compte d'épargne, il semble que le montant élevé des frais liés à la clôture et au transfert de produits d'épargne empêche les consommateurs de changer de compte,

en particulier lorsque le compte d'épargne est lié ou utilisé comme compte de placement et que le portefeuille de placements doit aussi être transféré.

Les comptes d'épargne ne sont pas spécifiquement couverts par la DCP ; toutefois, dans de nombreux États membres, les dispositions en matière de changement applicables aux comptes de paiement sont appliquées aux comptes d'épargne lorsque ceux-ci présentent les mêmes caractéristiques juridiques que les comptes de paiement. Aucune disposition spécifique n'a été identifiée en ce qui concerne le changement de comptes d'épargne, à l'exception de la France où des dispositions spécifiques ont été introduites par la Loi Macron⁸ pour le transfert de certains comptes d'épargne, à savoir le PEL (Plan épargne logement), le CEL (Compte épargne logement), le PEA (Plan d'épargne en actions) ainsi que le compte-titres ordinaire.

En Italie, la règle générale veut que la banque ne facture aucuns frais de clôture pour les comptes d'épargne, à l'exception des comptes-titres associés. En Belgique, une règle spécifique s'applique au changement interne de comptes d'épargne, le but étant de conserver les intérêts cumulés.

Assurance hypothécaire

Le changement d'assurance hypothécaire ne présente pas de problèmes importants. Toutefois, dans certains États membres, il pourrait être compliqué par la pratique consistant à regrouper les produits d'assurance et les produits hypothécaires en un seul et même contrat complexe. C'est particulièrement le cas lorsque l'assurance hypothécaire a été souscrite dans le but de réduire le taux d'intérêt (pratiques de regroupement). Bien que la résiliation de l'assurance soit permise moyennant un délai de préavis, elle peut, d'après les règles contractuelles générales, se révéler plus compliquée lorsqu'elle est combinée à une hypothèque. En France, où l'assurance hypothécaire est obligatoire, une législation spécifique a été récemment introduite pour autoriser le changement d'assureur. Les principaux obstacles juridiques identifiés sont les délais particulièrement longs pour la résiliation du contrat et l'obligation de faire preuve de ponctualité dans les paiements hypothécaires afin de pouvoir résilier le contrat.

Un obstacle différent et tout aussi important a été observé en Italie avec l'assurance hypothécaire payée en un seul versement, qui est le mode de paiement le plus courant pour l'assurance hypothécaire regroupée avec une hypothèque. En raison de sa structure spécifique et de son caractère accessoire, il n'est pas possible, selon la jurisprudence des tribunaux nationaux italiens, de changer d'assureur sans remboursement anticipé de l'hypothèque.

Assurance habitation

Aucun obstacle juridique spécifique n'a été identifié concernant l'assurance habitation.

En France, un cadre législatif introduit en 2014 (Loi Hamon) a simplifié le processus de changement d'assureur et réduit les charges administratives et contractuelles de l'assuré. En ce qui concerne les obstacles commerciaux, à l'heure actuelle, aucun obstacle commercial spécifique n'a été identifié par les consommateurs en matière d'assurance habitation. Le regroupement des crédits hypothécaires avec d'autres produits auxiliaires, dont l'assurance habitation, en vue d'obtenir de meilleurs taux, peut compliquer le passage à un autre assureur.

Tâche 3

Les conclusions de la tâche 3 sont principalement tirées des résultats de l'analyse des obstacles juridiques et commerciaux existants, menée dans le cadre de la tâche 2. Des mesures correctives potentielles ont été recherchées afin de lever les principaux obstacles identifiés dans le cadre de la tâche 2. En outre, quelques mesures découlant

⁸ Loi n° 990 du 6 août 2015.

d'initiatives existantes ou futures du marché, telles que, entre autres, les nouveaux services proposés par l'industrie des technologies de l'information, ont complété l'ensemble des mesures correctives analysées susceptibles de débloquer les marchés et d'augmenter les taux de changement.

Le terme « mesure » a été globalement examiné dans le cadre de la tâche 3 et, hormis certains amendements possibles des lois existantes, il couvre certains développements du marché, comme l'expansion des néobanques et l'introduction de la portabilité du numéro de compte bancaire pour les comptes de paiement, ou encore le rôle des conseillers financiers/courtiers au Royaume-Uni qui ont très efficacement encouragé les consommateurs à changer de fournisseurs de crédits hypothécaires.

Dans l'ensemble, l'étude montre qu'il n'y a pour l'heure aucune mesure unique – qu'il s'agisse, en l'occurrence, d'une disposition juridique bien ficelée ou d'une nouvelle structure de service/marché – à mettre en œuvre de manière transparente et isolée (ou facilement reproductible dans les États membres) pour augmenter le taux de changement. Il semble toutefois qu'il y ait plus de possibilités d'amélioration au niveau des crédits hypothécaires qu'à celui d'autres produits tels que les comptes de paiement et les comptes d'épargne.

Par exemple, l'étude a montré que le rôle des intermédiaires en crédit hypothécaire au Royaume-Uni est très efficace pour inciter les consommateurs britanniques à changer de fournisseur. Cela étant, une structure de marché similaire peut être difficile à reproduire dans d'autres États membres, car le dispositif britannique est étroitement lié à la structure particulière du produit hypothécaire.

De même, certaines juridictions disposent de cadres juridiques qui sont comparativement très favorables aux consommateurs (l'Italie étant un exemple phare) et peuvent faire fonction d'exemple pour d'autres États membres. Dans le même ordre d'idées, certaines mesures juridiques discrètes, telles que la Loi Hamon en France, ont le potentiel d'accroître la propension du consommateur à changer de fournisseur ou de compte.

En outre, certaines mesures juridiques potentielles analysées dans le cadre de la tâche 3 et susceptibles de modifier l'équilibre entre le prêteur et l'emprunteur au profit de ce dernier, telles que la possibilité d'un remboursement anticipé unilatéral de l'hypothèque par l'emprunteur à tout moment et sans autre limitation (et sans indemnisation), pourraient fort bien augmenter le taux de conversion. Cela peut impliquer certains compromis, comme la hausse du prix des crédits hypothécaires pour les consommateurs, bien que l'Italie, avec ses dispositions favorables aux consommateurs en matière de remboursement anticipé et ses prix relativement bas pour les crédits hypothécaires au logement, nous indique que de tels compromis ne sont pas nécessairement obligatoires.

Dans le contexte de l'incitation au changement transfrontalier de fournisseurs de crédits hypothécaires, l'instrument hypothécaire commun (Eurohypothec) peut avoir un certain potentiel pour accroître la part des emprunts transfrontaliers et, par la suite, favoriser le changement de fournisseurs de crédits hypothécaires, mais cette mesure ne fait pas consensus. Toute considération sérieuse d'Eurohypothec exigerait des recherches plus approfondies afin de démontrer sa faisabilité et de justifier de ses coûts et avantages potentiels.

En ce qui concerne les néobanques comme N26, Monzo ou Revolut, elles ont certainement eu un impact sur les taux de changement de comptes de paiement, même si les données disponibles sont très limitées pour évaluer l'importance de cet impact. Cependant, leur entrée et leurs offres compétitives par rapport aux principales banques de détail peuvent permettre aux consommateurs de maximiser leurs gains d'une manière différente. Plutôt que de passer d'un fournisseur à l'autre, ils peuvent devenir « multibancaires » et adapter leurs habitudes d'utilisation pour optimiser les avantages offerts par plusieurs fournisseurs.

L'étude a également montré que l'introduction de portabilité du numéro de compte bancaire, tout en accroissant potentiellement la capacité du consommateur à changer de fournisseur ou de compte, ne pouvait malheureusement pas créer beaucoup de valeur ajoutée dans de nombreux États membres, où le bas taux de changement de compte de paiement est, dans certains cas, davantage le fruit de l'inertie des consommateurs que des obstacles juridiques et commerciaux existants. De plus, les coûts de sa mise en œuvre par le secteur pourraient être substantiels et les avantages matériels pour les consommateurs incertains.

1 Introduction

1.1 This Report

This is the Final Report for the study on switching of financial services and products. The study was commissioned by the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) in January 2019 and is undertaken by ICF in collaboration with Listen and Grimaldi.

The Final Report constitutes the fourth deliverable of the study. This document presents the findings on Task 1 and 2, covering all Member States, as per the scope defined for each of these tasks. Finally, the report sets out also the findings on Task 3, whose results have not been covered under previous deliverables.

1.2 Purpose and scope of the study

The study comprises three main analytical tasks that can be also interpreted in line with the main study objectives:

- Task 1: to assess the savings forgone by consumers as a result of not switching to more advantageous products;
- Task 2: to provide a comprehensive overview of the legal and commercial barriers to switching retail financial products;
- Task 3: to provide a comprehensive overview of existing (and prospective) measures to increase switching rates across selected financial products.

More generally, study's conclusions and recommendations will inform the Commission's upcoming review of Directive 2014/92 (Payment Accounts Directive (PAD)) and Directive 2014/17 (Mortgage Credit Directive (MCD)).

In terms of the geographical and product scope of the study, those differed by task. Task 1 focused exclusively on payment accounts and residential mortgages in 14 selected Member States, while Tasks 2 and 3 covered payment accounts and residential mortgages for EU-28, complemented by the analysis covering saving accounts, mortgage insurance and home insurance products for selected 11 Member States. Table 2 outlines the geographical and product scope of the study.

Table 3. Geographical and product scope of the study

Task	Product scope	Geographical scope
Task 1	<ul style="list-style-type: none"> • payment accounts • residential mortgages 	14 Member States ⁹
Task 2 & 3	<ul style="list-style-type: none"> • payment accounts • residential mortgages 	28 Member States
	<ul style="list-style-type: none"> • saving accounts • mortgage insurance • home insurance 	11 Member States ¹⁰

The rationale for the selection of products was, inter alia, their high penetration and their financial weight for European households. For instance, as of 2016, 87 per cent

⁹ Austria, Belgium, Czech Republic, France, Germany, Ireland, Italy, Latvia, Netherlands, Poland, Portugal, Spain, Sweden and the UK.

¹⁰ Belgium, Czech Republic, Denmark, Finland, France, Germany, Italy, the Netherlands, Poland, Spain and Sweden.

of all EU-28 consumers hold at least one payment account, while the outstanding value of residential mortgages as share of EU-28 GDP was 39 per cent (EUR 7 trillion). Low switching rates (particularly for mortgages), together with some evidence of consumer complains (particularly for mortgage insurance), suggested some substantial scope for improvement and thus potential reduction in consumer detriment. The geographical scope was intended to reflect a good spread across the EU and the inclusion of various banking cultures.

Behavioural aspects that may determine low switching rates across some financial products (e.g. 'consumer inertia') are largely out of the scope of this study, although they are still considered as relevant contextual factor for number of specific aspects analysed.

1.3 Methodology

- A variety of research methods were used to collect the data for the above analysis, including:
- Desk research, including documentation provided by the DG FISMA and the Joint Research Centre (JRC) and review of the relevant datasets;
- Systematic literature review focusing on relevant aspects across all three tasks;
- Legal analysis focusing on national legislation, including case-law;
- Large-scale consumer panel survey;
- Survey of credit institutions;
- Extensive interview programme, comprising a wide range of stakeholders, including European Commission officials, representatives of national regulators, consumer associations and industry associations;
- Half-day roundtable session (at the ICF premises in Brussels), where the findings from the Draft Final Report were discussed and critically challenged by selected stakeholders.

1.4 Structure of this report

This document is structured as follows:

- Background of the study (Section 2);
- Methodological approach (Section 3);
- Results from Task 1 (Section 4);
- Results from Task 2 (Section 5);
- Results from Task 3 (Section 6);
- Conclusions (Section 7);
- Recommendations (Section 8).

This report is also accompanied by the standalone document (shared separately) that contains number of specific Annexes:

- Annex 1: Survey questionnaire – consumer survey;
- Annex 2: Survey questionnaire – industry members;
- Annex 3: Task 2 – 28 country fiches;
- Annex 4: List of completed interviews;
- Annex 5: Literature review.

2 Background of the study

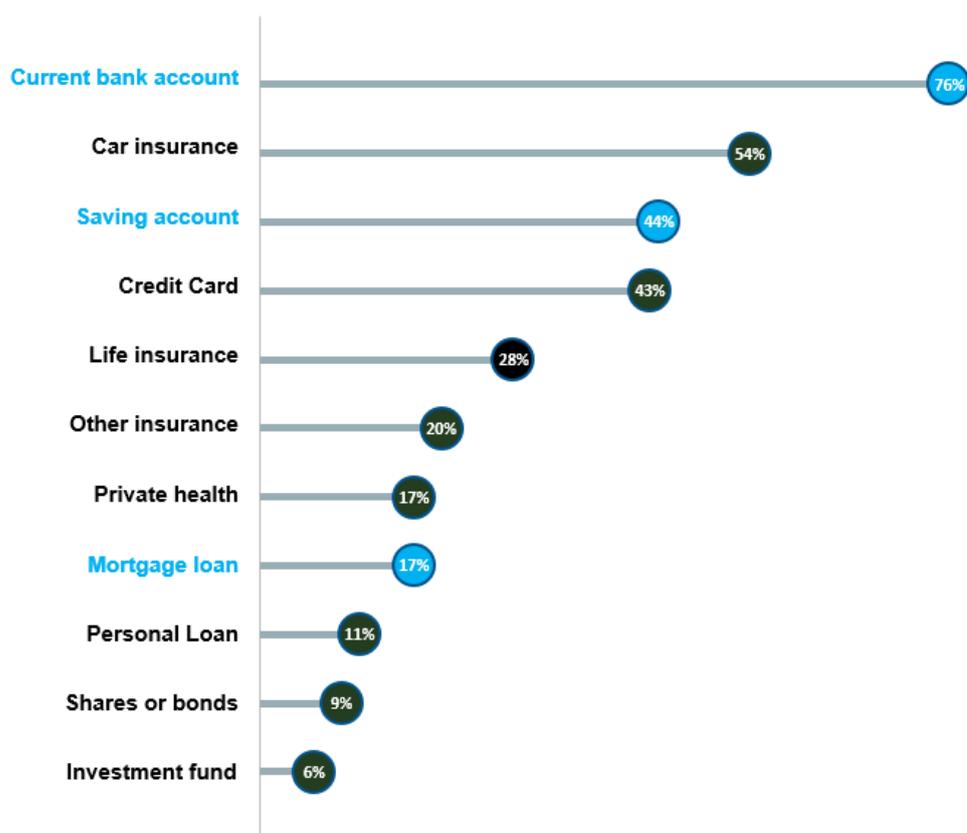
This section provides an overview of the key features and the size of the EU markets for the five selected financial products that will be covered under Task 1, 2 and 3 of the current study, namely personal current accounts, saving accounts, residential

mortgages, mortgage insurance products and home insurance products. It then discusses the current level of switching in these markets.

2.1.1 The retail financial services sector in the EU is sizeable, but heterogeneous and remains fragmented largely along national lines

A **payments account** is one of the most commonly used (and essential) financial product. Around 76 per cent of Europeans aged 15 and above have at least one payments account, though there are substantial variations in penetration rates across EU Member States¹¹. 45 per cent of Europeans have a **savings account**, 17 per cent have a **residential mortgage** (Figure 1). Aggregated data at the EU level for **home insurance** and **mortgage insurance products** are not available, though some national data suggest penetration of those financial products has been generally on rise in most of the Member States over the recent years¹².

Figure 1. Prevalence of selected financial products in the EU, % of population (at age of 15 and above)



Source: Eurobarometer 446, 2016.

A **payment account** usually has a range of different services attached to it, such as the ability to place money in an account, to withdraw cash, to execute payment transactions, to conduct direct debits and credit transfers as well as the provision of a payment card. Payment accounts in the EU typically offer low or no interest rates while the fees related to their maintenance vary across MS. In some MS they are minimal or reduced to zero (the UK has a tradition of free payment accounts whereas in most of continental Europe, bank accounts and corresponding banking services are historically paid-for services). The main differences between providers and across the

¹¹ Special Eurobarometer 446, 2016. Financial Products and Services. Available at: https://data.europa.eu/euodp/data/dataset/S2108_85_1_446_ENG

¹² EBA, 2017. Consumer Trend Report. Available at: <http://www.eba.europa.eu/documents/10180/1720738/Consumer+Trends+Report+2017.pdf>

Member States relate to the range and costs of services offered by payment account providers e.g. domestic payments and transfers, direct debits and standing orders, overdrafts and withdrawal of the cash from ATMs (domestically and abroad), costs of accounts statements. Fees from those transactions may constitute an important revenue stream for banks, even though it is not unusual for banks to cross-subsidise the payment account from other products given their importance e.g. payment accounts used as a platform to offer other products.

One of the recent trends shaping the retail banking industry, at least in some Member States, is the emergence and growing popularity of digital-only banks (e.g. Monzo, N26, Revolut, Starling). These digital banks mostly offer their services (including payment accounts) free of charge, although some have extended their offering to include paid-for premium services in order to create a revenue stream. These premium features include different types of insurance, unlimited free transfers/withdrawals, faster payment settlement or concierge services etc.

Saving accounts are a heterogeneous category of products. They may differ in terms of the pre-conditions for their access (e.g. some require the opening of a personal current account first), the ease of access to the deposited cash (e.g. instant access *versus* constraint access for defined period subject to penalty fees), availability of some introductory bonuses (e.g. more attractive interest rates over initial period of time) and the calculation of the interest rates (e.g. may be defined by the regulation as in France), the way in which interest rates are accrued (e.g. on the daily, monthly basis or annual basis). Taxation treatment, although not a feature of the product per se, may also alter the attractiveness of a saving account (e.g. interest rates from deposits up to certain ceiling may be exempted from the tax on capital gains). In contrast to personal current accounts, saving accounts typically offer limited transaction functions. As of 2016, amount of capital held on saving accounts by EU households exceeded EUR 10 trillion¹³ or around 65 per cent of the EU 28 GDP for that year. Quantitative Easing pursued by the ECB and some other central banks as well as an ultra-low interest rates environment has led to a compression of interest rates offered to savers across the EU and the available data on household saving rates suggests that this has been on decline since the crisis¹⁴. The average interest rate on banks' deposits with an agreed maturity of over one and up to two years for the residents in the euro-area dropped from 3.22 per cent over the period 2007-2012 to 0.87 per cent over the period 2013-2018 (and just 0.31 per cent as of January 2018)¹⁵.

Outstanding **residential mortgages** were worth nearly EUR 7 trillion (compared to EUR 9.2 trillion in the US – the largest market in the world), or 47 per cent of the EU28 GDP¹⁶. The EU mortgage market has been dominated by five countries: UK, Germany, France, Netherlands and Spain¹⁷ and there is some clear demarcation line between the value of outstanding mortgage credit per capita in many Western European countries and those from the CEE Region (e.g. EUR 808 in Romania *versus* EUR 53,653 in Denmark¹⁸). Generally, the absolute value of outstanding mortgages increased markedly since the financial crisis in majority of the EU Member States,

¹³ BEUC, 2015. Saving accounts in Europe – Dormant Market?. Available at: http://www.beuc.eu/publications/beuc-x-2015-101_savings_accounts_in_eu-a_dormant_market-study.pdf

¹⁴ Eurostat, 2018. Data on gross household saving rate. Available at: <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

¹⁵ ECB, 2018. MFI interest rates on euro-denominated deposits and loans by euro area residents. Available at: <http://sdw.ecb.europa.eu/browse.do?node=bbn47>

¹⁶ European Mortgage Federation. 2017 Report. Available at: <https://hypo.org/app/uploads/sites/3/2017/09/HYPOSTAT-2017.pdf>

¹⁷ European Mortgage Federation. 2017 Report. Available at: <https://hypo.org/app/uploads/sites/3/2017/09/HYPOSTAT-2017.pdf>

¹⁸ Ibidem.

except Spain and Ireland where past volumes were the result of the property bubbles. Yet, in terms of the share of outstanding mortgages relative to national GDP, the picture is less clear-cut as the share of outstanding residential mortgages in the output has decreased in nearly half of the countries between 2006 and 2017¹⁹.

Importantly, the mortgage often accounts for the lion's share of a household liabilities and therefore choosing the right product is one of the most important financial decisions that a consumer makes. Most mortgages in the EU are lent on a capital repayment basis where consumer steadily repays the amount of money he/she borrowed plus the interest rate (as oppose to interest only mortgages). The chief difference between mortgages is whether the interest rate is fixed (Fixed Rate Mortgages - FRM) or variable (Adjustable Rate Mortgages - ARM). In terms of ARM, several variants exist²⁰. In addition, different fees, for instance related to early repayment or mortgaging, may also apply depending on the provider. Typically, the lower loan-to-value (LTV) ratio is and shorter term of the overall deal, the lower mortgage rate is likely to be. The price of the mortgage may also factor in the fees for any intermediation that may take place (e.g. fees for mortgage broker/ advisor).

Mortgage insurance, also commonly referred to as mortgage protection insurance, is intended to cover the cost of a person's mortgage payments if he/she becomes unwell or loses his/her job. There are different types of mortgage insurance offered in Member States, including protection in the event of: 'unemployment only', 'accident and sickness only', 'accident, sickness and unemployment.' Mortgage insurance costs will generally vary on the basis of insurance holders' age and/or the cost of their mortgage repayments. Life insurance, which is designed to pay out a lump sum in the event of death, is also often taken out in the form of mortgage protection. Mortgage life insurance can then be used to help support dependants and allow them to meet any future mortgage payments in the event of the insurance holder's demise. Data pertaining to the size of the EU's overall mortgage protection market is sparse, though some data is available for certain Member States. In the UK, for instance, it is reported that almost one in five households currently have mortgage protection²¹.

Property insurance provides protection against risks to property, such as fire, theft and some weather damage. The business line includes specialised forms of insurance, such as fire, flood, earthquake or home insurance. In 2017, property insurance premiums in Europe increased 3.5 per cent to reach EUR 101 bln. This equates to an average of EUR 170 per inhabitant²².

2.1.2 Switching rates seem low considering the comparatively high levels of consumer dissatisfaction with retail financial services

Patterns of switching behaviour provide an important indicator that the demand-side of a market is well-developed and that consumers are sufficiently empowered to participate actively. The motivation to switch is generally a function of consumers' assessment of the benefits derived from their existing choice of product or performance of their existing supplier; and whether or not they believe there are better alternative products and suppliers available.

The ability and willingness of consumers to switch is critically important for efficient markets and to reduce risks of consumer detriment. If switching is discouraged or

¹⁹ ECRI, 2017. Recent Trends and Developments in European Mortgage Markets. Available at: https://www.ceps.eu/system/files/No%2021%20SB_Trends%20in%20Mortgage%20Markets.pdf

²⁰ For instance: (i) reviewable-rate loan, a product where lender can unilaterally change the interest rate i.e. standard variable rate in the UK, (ii) variable-rate loan, a product that systematically ties the interest rate change to an index or other variable i.e. Euribor loan, (iii) hybrid adjustable rate loans where the interest rate is fixed for initial period followed by variable or reviewable rate periods i.e. the initially period is typically 2 years

²¹ Association of British Insurers. 2013. 'UK Insurance – Key Facts and Figures.' Available at:

²² Insurance Europe (2018), Key Facts

impeded this could impact not only on the demand-side but also potentially raise supply side barriers. This is because new entrants could be deterred from entering the market in the belief that it will be difficult to persuade consumers to switch from their existing provider. This could diminish the effectiveness of competition and serve to limit the benefits that consumers would otherwise derive from it²³. Consumers' choice and engagement with the market thus, play an important role in boosting competition and in improving overall quality of service in a given market.

There is, however, no optimal rate of switching and consumers do not automatically benefit as a result of switching, as has been demonstrated, *inter alia*, by empirical evidence gathered from the retail financial markets specifically²⁴, but also other retail markets such as energy²⁵. Likewise, consumers who have not switched will not necessarily be worse off.

High switching levels do not automatically signify that a market is competitive. First, if pricing is unclear and products complex, price differentials and subsequently switching can occur over a long period of time, without the market becoming more competitive. Second, if suppliers coordinate their behaviour to keep prices high, the market will not be competitive, regardless of switching levels. Third, high switching levels can conceal certain undesirable activities, such as mis-selling.

Conversely, low switching levels do not automatically indicate that markets are uncompetitive. Indeed, once price differentials have been exhausted through intensive switching, and prices have been driven down to a competitive level, only limited switching may occur. In such circumstances, the market is most likely to be competitive. On the other hand, low levels of switching can be indicative of the existence of switching costs. Switching costs can be defined as the real or perceived costs that are incurred when changing providers. Switching costs arise in a variety of everyday situations ranging from early redemption penalties when changing credit suppliers, to the uncertainty costs faced with trying a new product or provider.

Low switching rates among consumers of financial products has been a persistent issue that has preoccupied policy makers and consumer organisations for a long time, driven by concerns that switching is constrained by the existence of potential behavioural, legal and commercial barriers in these markets. At the EU level, the *Green Paper on Retail financial services* published in 2015 prior to the adoption of the *Consumer Financial Services Action Plan* in 2017 acknowledged low levels of consumer switching and insufficient competition in the area of retail financial services, pointing also to payment accounts and mortgages as two products where switching is most challenging²⁶. Subsequent legislative changes, in particular Payment Account Directive (PAD) that includes provisions related to the switching of personal current accounts, brought in concrete measures²⁷ (while many other products still lack some essential provisions). At the national level, the issue of suboptimal switching rates has been a

²³ The National Consumer Council in its research titled "Switched on to switching? A survey of consumer behaviour and attitudes, 2000–2005" states that "*when markets function properly, consumers can identify which product is best for them and switch if they want to get a better deal. This, in turn, encourages companies to compete vigorously to retain current customers and attract new ones. It ensures that companies cut costs and innovate in order to offer products that meet consumers' needs at low prices.*"

²⁴ See for instance the results from the consumer survey conducted as part of this study presented in Section 4 as well as results of literature review presented in the Annex

²⁵ See for instance Wilson, Chris and Waddams Price, Catherine (2005) 'Irrationality in consumers' switching decisions: when more firms may mean less benefit, CCP Working Paper CCR 05-4. Centre for Competition and Regulation and School of Management, University of East Anglia.

²⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:630:FIN>

²⁷ i.e. consumer's right to switch an account within 14 days with provider taking care of the process, or a requirement of at least one price comparison website in each MS

key point on the agenda of the national supervisory authorities (e.g. FCA in the UK²⁸, AMF in France, BaFin in Germany, Central Bank in Ireland or KNF in Poland²⁹).

The Special Eurobarometer survey carried out in April 2016³⁰ shows that on average for the EU 28, personal current accounts are most frequently switched products (7 per cent changed the provider over the last five years) while the providers of the residential mortgages are the least likely to be changed (only 2 per cent). There are, though, substantial cross-country variations in the switching rates. For instance, Danish market is characterised by the comparatively high switching rates across all four products with Swedish one not lagging far behind. In contrast, switching rates in some Member States from the Central and Eastern Europe (CEE³¹) Region tend to be substantially lower. Also, the average switching rates for mortgages fell compared to the Special Eurobarometer survey conducted in 2012, while the switching rates for payment accounts increased slightly (see Figure 2).

On the question why they have not switched, the respondents to the Special Eurobarometer 446 pointed to the '*satisfaction with current providers and products*' as the most common reason of not switching (46 per cent), albeit nearly one third (30 per cent) still even did not consider switching.

The results of the 2016 Consumer Market Scoreboard³² also shed some light on the consumers' self-reported rationale behind the absence of switching. In terms of three relevant financial products that were covered by the Scoreboard – bank accounts, insurance services³³ and mortgages – the vast majority of the EU 28 consumers were not interested in switching. Among those who tried to switch but gave up because of obstacles faced and those who thought it might be too difficult to switch, mortgage products stand out as most problematic (see Figure 3). More generally, retail financial services constitute a market where consumers are most dissatisfied with the services they obtain, with mortgages scoring particularly poorly³⁴.

Against the above background section 5 seeks to quantify the savings forgone by consumers by not switching to more advantageous mortgage and payments accounts offers while section 6 examines the legal and commercial barriers preventing consumers from switching select financial products.

²⁸ FCA, April 2017. Future personal current accounts prompts and alerts. Available at: <https://www.fca.org.uk/publication/research/future-personal-current-account-prompts-and-alerts.pdf>

²⁹ Gazeta Wyborcza, February 11, 2018. Na porównywarke kont poczekamy jesszcze rok. Available at: <http://wyborcza.biz/biznes/7,147582,23004439,na-porownywarke-kont-poczekamy-jeszcze-rok-bez-pomocy-bankow.html>

³⁰ EU Open Data Portal, 2016. Special Eurobarometer 446. Available at: https://data.europa.eu/euodp/data/dataset/S2108_85_1_446_ENG

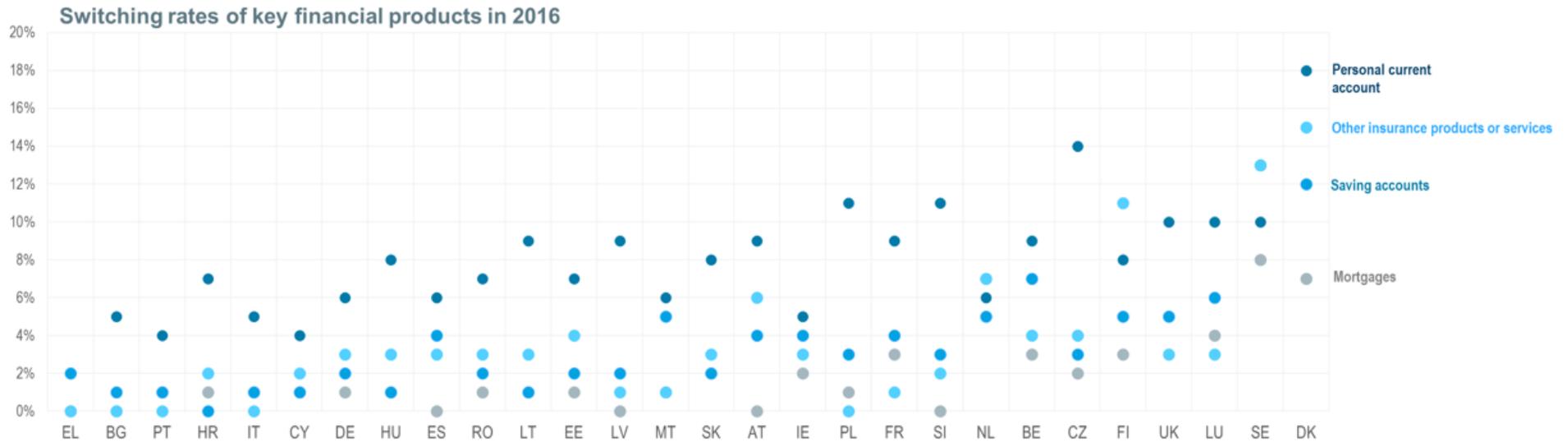
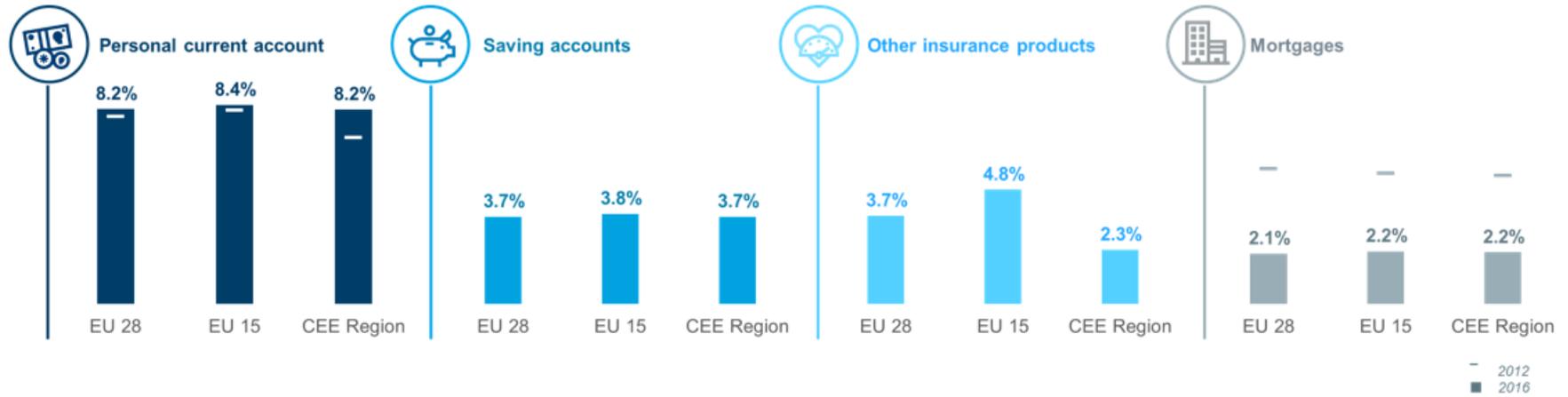
³¹ Includes: PL, CZ, SK, HU, RO and BG.

³² European Commission, 2016 Consumer Market Scoreboard. Available at: https://ec.europa.eu/info/policies/consumers/consumer-protection/evidence-based-consumer-policy/consumer-scoreboards_en

³³ Not mortgage insurance specifically though

³⁴ See Market Performance Indicator (MPI) for all type of goods and services available at 2016 Consumer Scoreboard.

Figure 2. Switching rates for selected products – Special Eurobarometer surveys in 2016 and 2012



Source: 446 Special Eurobarometer and 373 Eurobarometer

Figure 3. Reasons for not switching – Consume Market Scoreboard



Source: 2016 Consumer Market Scoreboard

Note: the scales for each chart represent the percentage of all consumers. The sum of responses for all three charts does not add up to 100% as it does not include those who did not switch for 'other reasons' (fourth response option provided in the survey).

3 Methodological approach

This section describes the design and overall approach to the study, as well as the specific methods used to collect and analyse data. It concludes with a discussion of the limitations of the evidence base underpinning the study, and an assessment of the consequent reliability and validity of the study findings.

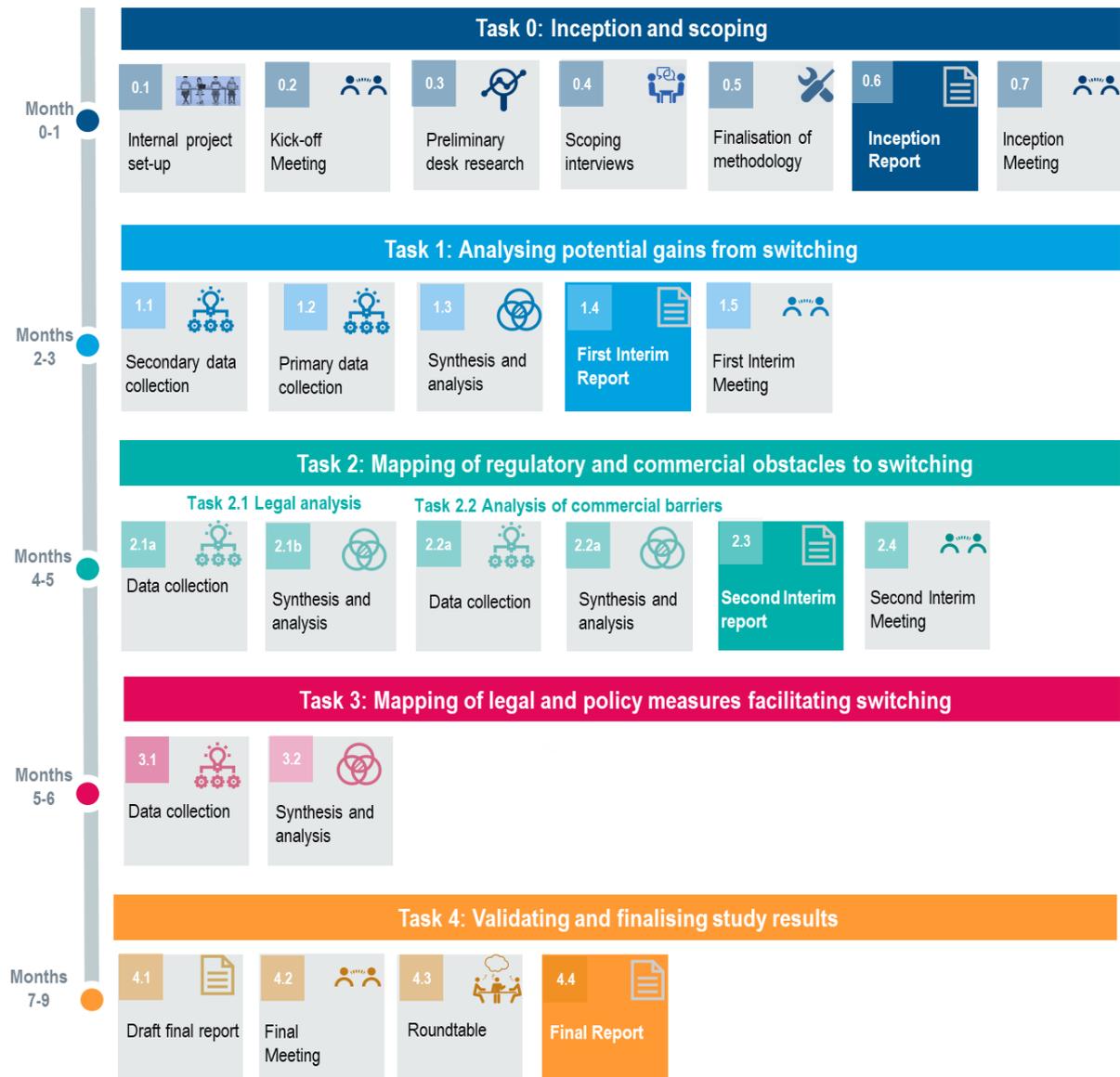
3.1 Study design

The study was designed to respond to a specific set of objectives, as set out in the Terms of Reference (ToR). An approach was developed at the bidding stage and then refined during the inception phase of the assignment to guide the choice and design of specific research methods, as well as to provide a framework for subsequent data analysis and interpretation. The approach specified:

- the questions addressed by the study (determined based on the ToR);
- the evidence required to answer those questions;
- the data sources and methods used to gather evidence;
- the sequence of specific tasks, within the anticipated timeline.

Figure 4 gives a step-by-step overview of the methodology.

Figure 4. Step-by-step methodology



Source: ICF

Key elements of the approach are:

- *Theory-based* – this involved drawing out the underlying theory underpinning policy interventions (e.g. aiming to reduce consumer detriment), and then testing that theory and the relevant policy mix to draw conclusions about actions that could boost switching rates;
- *Participatory approaches to data collection and analysis* – the survey of consumers and credit institutions, as well as the roundtable session and the extensive interview programme, promoted discussions with key stakeholders. This allowed the study team to develop a shared understanding of the current state of play and the relevant context, and to provide additional layers of insight and interpretation to the data;
- *Use of mixed methods* – the approach combined both quantitative and qualitative research methods to facilitate a deeper understanding of the key issues and to build a rich and comprehensive evidence base for the study.
- *Triangulation* – multiple lines of inquiry and evidence were used to investigate the key aspects of interest in each of the three tasks.

- *Critical challenge* – the initial findings and subsequent results were the subject of critical challenge within the study team and by the Steering Committee (comprising experts from DG FISMA, as well as external stakeholders), who were actively encouraged to critically assess the emerging findings and subsequent results.

3.2 Methods and data sources

Table 3 provides a high-level overview of the data collection methods and analytical techniques used in each task. A description of how each of these methods was applied to this study is provided in the sub-sections that follow.

Table 4. Mapping of research methods against study tasks

	 Literature review	 Stakeholder interviews	 Consumer survey	 Industry survey	 Desk research	 Roundtable
Task 1	●	●	●●●	●	●●	●
Task 2	●●●	●●●	●	●	●●	●
Task 3	●	●●●	●	●	●	●

●●● *main source of data*

●● *complementary source of data*

● *sources for validation*

3.2.1 Desk research

The purpose of the desk research was to ensure the study team’s comprehensive understanding of the key issues across the three tasks, including the limitations of existing evidence and any gaps requiring primary research.

The desk research relied primarily on documentation provided by DG FISMA at the outset of the study. This comprised relevant legislation (related to the MCD and PAD), Commission reports, internal statistics (e.g. switching rates), and pointers to external sources, including reports and articles relevant to the three tasks.

The desk research also focused on the identification and review of several key Commission databases, as described in Table 4.

Table 5. Databases reviewed

Source Name	Indicator/ variable	Time series available	Product coverage	Geographical coverage
Consumer Scoreboard	<ul style="list-style-type: none"> • Consumer satisfaction with the number of suppliers per market • Consumers' ability to compare products/services • Percentage of consumers who complained to third parties • Extent of consumer detriment as a result of problems with products/services • Consumers' perceived ease of switching • Percentage of consumers who thought it might be difficult to switch • Percentage of consumers who are not interested in switching • Percentage of consumers who tried to switch but gave up because of the obstacles encountered • Consumer trust in suppliers of selected financial products • Market Performance Index 	2008-2017	<ul style="list-style-type: none"> (i) bank accounts (ii) insurance services (iii) loans, credit and credit cards (iv) mortgages 	EU countries
Eurobarometer	<ul style="list-style-type: none"> • Percentage of population with selected financial products, by Member State • Products purchased cross-border, by Member State • Main concerns about purchasing financial products, by Member State • Reasons for not changing financial products during the last five years • Perception of 'transparency' related to 	2016 (and some other relevant versions of the survey for selected questions)	<ul style="list-style-type: none"> (i) bank accounts (ii) savings account (iii) different types of loans, credit and credit cards (iv) mortgages (v) other insurance 	EU countries

Source Name	Indicator/ variable	Time series available	Product coverage	Geographical coverage
	selected types of transactions		products (vi) services shares or bonds	
European Central Bank (ECB)	<ul style="list-style-type: none"> Total outstanding residential mortgages of households, by Member State Annualised Agreed Rate/ Narrowly Defined Effective Rate for mortgages with fixed and variable rates for maturity up to 1 year/over 5 years/over 10 years Share of variable rate loans in total loans 	Q1 1999 – Q1 2018	(i) mortgages (ii) loans	EU countries
		2003-2018		
	<ul style="list-style-type: none"> Exposure of banks to households with mortgage credit, with breakdown by Member State/type of banking group (domestic/ foreign), size of banking group (large/medium/small size) 	2007-2017	(i) mortgage credit	EU countries
EBA	<ul style="list-style-type: none"> Number of credit institutions, by Member State Herfindal-Hirschman Index for CIs in all EU Member States 	1997-2017	Not applicable	EU countries
	<ul style="list-style-type: none"> Mortgage exposure, by largest bank groups in each Member State EBA COREP data cover approx. 200 	2013-2017	(i) mortgage	EU countries

Source Name	Indicator/ variable	Time series available	Product coverage	Geographical coverage
	banks, accounting for c.70% of total CI assets in the EU			
InsuranceEurope	<ul style="list-style-type: none"> • Insurance premiums by country/region • Insurance claims by country/region • Number of insurance companies by country/region • Breakdown for life, health and P&C insurance products 	2007-2016	(i) insurance products	EU countries
European Mortgage Federation	<ul style="list-style-type: none"> • Total outstanding residential loans • Representative interest rate by Member State • Average amount of mortgage granted • Total outstanding mortgages to GDP ratio 	2010-2016	(i) mortgage	EU countries
Eurostat	Population	2007-2017	Not applicable	EU countries

3.2.2 Literature review

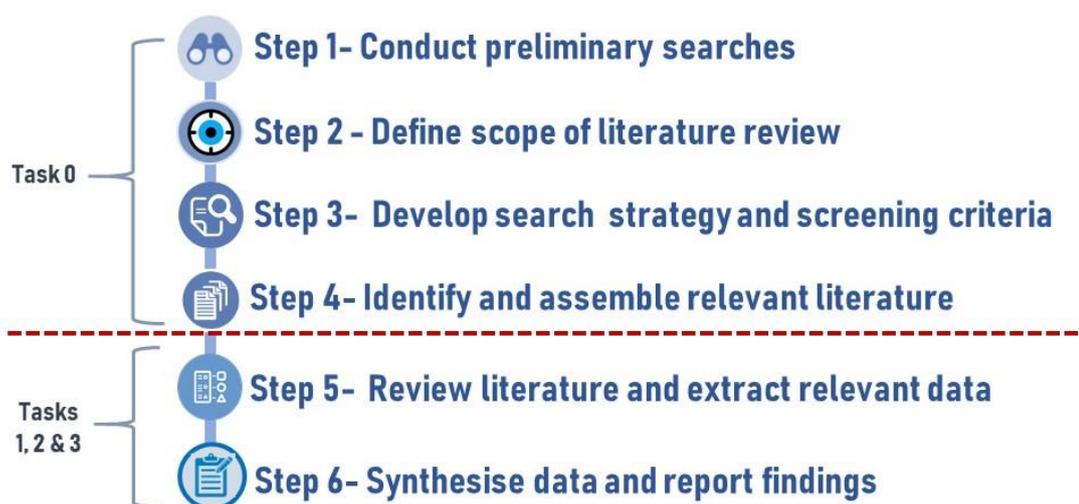
The purpose of the literature review was to obtain a comprehensive overview of the current literature. The topics of key interest were guided by the thematic scope of each of the three tasks and are presented in 7.2.3.

3.2.3 Topics of literature review

- Potential gains from switching of financial products and consumer detriment resulting from non-switching (Task 1);
- Legal barriers to switching³⁵ (Task 2);
- Commercial barriers to switching (Task 2);
- Legal and public policy measures facilitating or promoting switching (Task 3);
- Commercial practices or tools supporting switching (Task 3).

The overall approach to the literature review is illustrated in Figure 5

Figure 5. The steps involved in conducting a systematic literature review



Source: ICF (2019)

The review covered several types of publications, including academic sources, policy documents and grey literature, as well as targeted searches in the specialised press (e.g. The Economist, the Financial Times). The review covered all EU-28 and selected non-EU Member States (e.g. the US) where other market perspectives were deemed relevant.

The scope of the literature review was defined in light of the previous literature review conducted by the JRC in 2018-19 as part of its study on applying behavioural insights to encourage consumer switching of financial products. The thematic scope of the review was tailored, as were the search databases (the study team relied heavily on EBSCO³⁶), while specific screening criteria were applied to avoid unnecessary duplication. Searches were mainly in English, complemented by targeted searches in French, German, Polish and Spanish.

³⁵ To a limited extent, as the legal analysis itself comprised a review of the national legislation.

³⁶ EBSCO is a leading provider of online information resources to researchers in colleges and universities, research organisations, and government institutions. EBSCO hosts the Electronic Journals Service (EJS), which acts as a gateway to 20,000 e-journals containing millions of articles from hundreds of different publishers.

The final list of relevant literature was reviewed systematically, using an extraction matrix and summary synthesis, resulting in a concise summary description.

Under the three tasks, a total of 68 publications were subject to in-depth review. The results of the literature review feed into the analysis across all three tasks. The full review is presented in Annex 5.

3.2.4 Stakeholder interviews

Sixty-one semi-structured interviews were conducted with the key stakeholders, with results used across all three tasks. Most of the interviews took place over the phone or face-to-face, with several interviewees providing their insights in the writing.

Table 5 indicates the number of interviews broken down by the types of stakeholders consulted as part of the interview programme. (See Annex 3 for a detailed list of all interviewees)

Table 6. Interview programme for Tasks 1, 2 and 3

Stakeholder type	Number of interviews completed
EU level	
European Commission	4
EU Agencies	2
JRC	1
FSUG	2
EU level industry associations	5
Other	1
National level	
National competent authorities	23
National consumer associations	9
National industry associations	8
Ombudsman	2
Other	4
Grand Total	61

Source: ICF and Grimaldi (2019)

In addition, ICF followed-up (via email) with already interviewed stakeholders across all types (and some selected new ones who were not interviewed before) to request additional insights in writing on specific issues to address gaps and substantiate already existing evidence. Those are not captured in the final number of interviews completed as per Table 5.

The main focus of the interviews varied according to the stakeholder type. The semi-structured questionnaire that was used to guide the discussion was provided to interviewees in advance to aid preparation.

The interviews were generally valuable, with the stakeholders being well-informed, well-prepared and candid in expressing their perspectives (across all types of stakeholder). On several occasions, the study team followed up with additional questions (typically via email) to clarify and/or expand on issues discussed at interview.

3.2.5 Consumer survey

As part of Task 1, a consumer survey – comprising consumer panels for residential mortgage and payment I account consumers – sought to address the potential benefits of switching and, conversely, the detriment from staying with the same products. The survey questionnaire was designed by ICF, in collaboration with Listen, DG FISMA and the JRC. The first part contained specific questions on residential mortgages, while the second focused on payment accounts. Respondents completed one or both parts, depending on the products they have held.

The threshold of 300 responses per product and Member State had been targeted to ensure the representativeness of the results and their comparability across the Member States, which was subsequently exceeded for both products and all Member States with the average sample size of ~350 responses. Consequently, a total of 8,588 individual consumers across 14 Member States responded to the survey. Table 6 provides an overview of the number of responses per product and by Member State.

Table 7. Responses, by Member State and product

	Personal accounts – number of responses	Residential mortgages – number of responses
Austria	356	354
Belgium	353	350
Czech Republic	352	354
France	352	350
Germany	353	358
Ireland	352	350
Italy	356	352
Latvia	353	350
Netherlands	351	357
Poland	351	354
Portugal	352	358
Spain	355	354
Sweden	355	357
UK	356	350
Grand Total	4947	4948

Source: Listen, 2019

Note: some consumers responded to both questionnaires (payment accounts and residential mortgages)

The draft questionnaire was piloted, with quality controls carried out during and after the fieldwork³⁷. Overall, the quality of responses received across both products was satisfactory, which was confirmed also by checks against available secondary sources of data. To maximise the quality of responses, the survey questionnaire was translated into 11 languages (see Annex 1 for the final survey questionnaire).

³⁷ Aspects that were checked as part of the quality control process included minimum completion time, evidence of straight-lighting by respondents, consistency checks of answers, and checks on the quality and relevance of the answers to open questions. Respondents whose answers fell below the quality thresholds were discarded and new responses sought instead.

The analysis of the survey data was carried out using both STATA and Excel software.

3.2.6 Survey of industry members

An online survey targeting all credit institutions across the EU 28 sought industry perspectives on areas of interest in each of the three tasks. The survey questionnaire was designed in collaboration with DG FISMA, the JRC and the European Banking Federation. Its launch was preceded by a pilot survey.

The European Banking Federation and European Association of Co-operative Banks facilitated distribution of the survey, liaising with national industry associations that, in turn, disseminated the survey to their members (see Annex 2 for the final survey questionnaire).

Forty-three survey responses were received from credit institutions across 11 Member States (see Table 7).

Table 8. Number of responses, by Member State

Member State	Number of responses
Belgium	4
Croatia	1
Czech Republic	6
Denmark	3
Germany	4
Ireland	6
Italy	1
Luxembourg	1
Portugal	5
Romania	8
Sweden	4

Source: ICF

3.2.7 Roundtable

Half a day roundtables session was organised at the ICF premises in Brussels and gathered eighteen participants including representatives from some national regulators, industry associations and consumer association along with the DG FISMA, JRC and the members of the study team.

The objective of the session was to validate the selected findings presented in the Draft Final Report on the one hand, and to discuss aspects where there were still some gaps/ inconclusive evidence on the other.

3.3 Limitations of the study

Table 8 describes the limitations of certain aspects of the methodology, the mitigation measures and overall impact of those limitations.

Table 9. Overview of the main methodological limitations

Element of the method	Issue	Mitigating measure(s)	Judgement
Stakeholder interviews (1)	<p>Unavailability of some consumer associations for interview</p> <p>While the study team observed a (very) high consent level for interviews from national competent authorities and industry associations, this was not the case for several national consumer associations, whose low response rate was disappointing. This appeared to be driven by consultation <i>fatigue</i>, with organisations recently approached by at least three other research projects taking place in parallel to this study.</p>	Cross-verification of material insights with other primary/secondary data	Limited
Stakeholder interviews (2)	<p>Narrow specialisation of some stakeholders</p> <p>In some instances, stakeholders with expertise in one specific product (e.g. mortgages) were not able to comment on other types of products (e.g. payment accounts or insurance products). Secondary sources were thus used to seek the relevant evidence.</p>	Cross-verification of material insights with other secondary data/complementary interviews with the stakeholders, covering missing products	Limited
Reliability of the data from the survey of industry members	<p>Relatively limited response rate (with patchy geographical coverage) to the survey of credit institutions</p> <p>Piloting the survey questionnaire, and its concise form, extension of the life of the survey (eventually to six weeks), multiple follow-ups and extensive support from the European Banking Federation (EBF) and European Association of Co-operative Banks (EACB) in identifying key respondents and disseminating the online survey yielded a relatively limited number of responses (43, from 11 Member States). These excluded some large Member States, such as France, Poland</p>	Cross-verification of material insights with other secondary data/interviews with national industry associations	Limited

Element of the method	Issue	Mitigating measure(s)	Judgement
	and the UK. As with the interview programme and national consumer associations, consultation <i>fatigue</i> was evident (the EBF noted four parallel surveys of EU banks). In addition, the response rate from credit institutions was low compared to most other types of stakeholders.		
Reliability of consumer survey data (1) NB: responses related to residential mortgages	Reliability of consumer survey responses to selected questions on mortgages Overall, the quality of responses to selected questions on mortgages was satisfactory and in line with other existing sources of data for the EU market related for instance to average size of mortgages, prevailing interest rates at MS level or value of monthly payments. In a limited number of cases, respondents were either unable to provide the answer, or the answer (e.g. on annual interest rates of a mortgage) deviated substantially from the typical terms available on the market.	Winsoring of outliers/ increase of sample sizes/ clear caveating of findings	Limited
Reliability of consumer survey data (2) NB: responses related to payment accounts	Reliability of consumer survey responses to selected questions on payment accounts Responses to selected questions on payment accounts, in particular Q.40 (gauging self-reported saving from switching of payment accounts), revealed high discrepancies within and between Member States, with generally substantial numbers of responses pointing to high annual savings resulting from switching (in selected case in excess of EUR 200).	Winsoring of outliers/ increase of sample sizes/ reliance on alternative approach to the estimation of annual savings from switching payment accounts rather than reliance on self-reported figures/ clear caveating of the findings	Moderate

Element of the method	Issue	Mitigating measure(s)	Judgement
	Unlike residential mortgages, where the pricing of products is more straightforward to compare as it is largely driven by interest rates, actual savings from switching of payment accounts are challenging to compare, given various usage patterns of payment accounts and considerable number of specific fees/ charges that contribute to the aggregate annual cost of payment accounts (e.g. cost of overdraft, ATM withdrawals, standing orders, etc.).		

Source: ICF and Grimaldi (2019)

4 Task 1: Assessment of the savings forgone by consumers as a result of not switching to more advantageous products

This task has comprised two main layers:

- **First layer: Design and implementation of a consumer survey.** The consumer survey focuses on consumers of payment accounts and residential mortgages respectively and was designed by the study team in close collaboration with DG FISMA. It was launched in April 2019 and completed in May 2019. For each product, the sample of 14 Member States³⁸ was constructed with the threshold of 350 responses per product and per Member State. In total, nearly 9,000 responses were collected across all 14 Member States;
- **Second layer: Analysis of the survey results.** The analysis of potential consumer savings for residential mortgages across 14 Member States was completed and the results are presented under section 4.2.

4.1 Task Overview

4.1.1 Product scope

This task covers the following products:

- Residential mortgages as defined by the Mortgage Credit Directive (MCD)³⁹; and,
- Payment accounts covered by the Payment Account Directive (PAD)⁴⁰.

4.1.2 Geographic scope

The report contains the results of the estimation of potential savings from switching for the sample of 14 Member States.

Collectively, these countries account for 87 per cent of the payments account market and 92 per cent of the mortgage market in terms of the number of consumers and provide a good geographical spread and mix of different banking traditions and consumer cultures.

4.1.3 Methodological approach

This section outlines the approach to the estimation of potential savings that would accrue to consumers from switching residential mortgages (Section 4.1.3.1) and personal current accounts (Section 4.1.3.2).

4.1.3.1 Residential mortgages

This section details the methodological approach to estimating potential savings accruing to consumers from switching residential mortgages. It describes the survey data analysis undertaken, including data cleaning and the treatment of extreme values as well as any limitations of the analysis.

³⁸ Austria, Belgium, Czech Republic, France, Germany, Ireland, Italy, Latvia, Netherlands, Poland, Portugal, Spain, Sweden, and the UK

³⁹ 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, 28.2.2014 (Mortgage Credit Directive).

⁴⁰ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, OJ L 257, 28.8.2014.

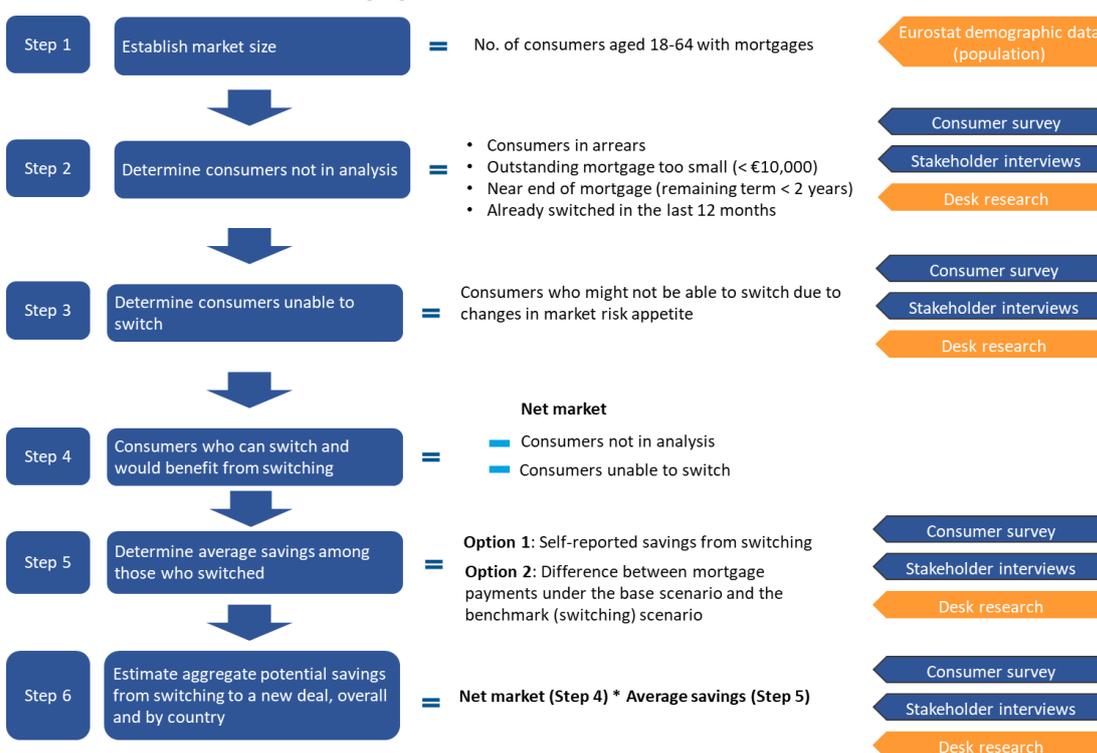
Description of the approach

The aim of this task was to estimate the potential benefits from switching, as described in the formula below:

$$\text{Consumers' benefit from switching} = \text{Market size} * \text{Average saving from switching}$$

In order to arrive to this estimate, we followed a stepwise framework, as per Figure 6. The approach involved six sequential steps.

Figure 6. Framework for the estimation of the potential consumer savings - residential mortgage



Source: ICF

Step 1: Establish market size

The first step was to establish the market size in each country, that is, the total number of consumers across 14 selected Member States who would potentially be eligible to switch.

The market size was estimated by calculating the share of people with a mortgage⁴¹ within the population aged 18 to 64⁴². The next step was to narrow down the figures to exclude the non-eligible population (steps 2 and 3).

Step 2 and 3: Determining consumers not in analysis and unable to switch

From the subpopulation aged 18 to 64 with mortgages, the following type of consumers were excluded from the analysis:

- consumers in arrears (at least one-month delay in mortgage payment) – identified based on responses to survey question 12;
- consumers with mortgages too small (> EUR 10,000) to reasonably consider a switch – derived from responses to survey questions 4 and 5;

⁴¹ Eurostat [ilc_lvho02], for all type of household

⁴² Eurostat [demo_pjan]

- consumers near the end of their mortgage who would not typically consider a switch – survey question 3;
- consumers who switched in the last 12 months, typically not having a strong reason to switch – excluded those who switched in 2019 and 2018 as per survey question 14; and
- consumers unable to switch due to changes in the market resulting in lower risk appetite of lenders (consumers with LTV>90 per cent) – derived from responses to survey questions 4, 5 (current value of mortgage left to pay) and 11 (value of property).

Step 4: Establishing consumers who can switch and would benefit from switching (net market)

This step followed from the netting of Step 1, 2 and 3. In other words, the number of people who can switch is the market size net of those consumers excluded in Steps 2 and 3.

Step 5: Average saving from switching

The average monthly saving from switching was then estimated in two ways:

- Approach 1: Using the self-reported question in the consumer survey⁴³; and
- Approach 2: Calculating the difference between the consumer's current monthly payment and the payment before switching:
 - Approach 2a: retaining respondents with negative savings⁴⁴; and
 - Approach 2b: keeping only respondents with positive savings.

The aim of presenting two separate approaches (along with their strengths and limitations) was to allow critical assessment of each.

The proportion of respondents with negative savings varied, ranging from 4 per cent in Portugal to 30 per cent in France of those who switched (see row 7 in the Table 10).

The monthly average saving by respondent was estimated by calculating the difference between the current monthly payment and the same before switching. The current monthly payment was calculated as shown in the formula below:

$$\text{Current monthly payment} = \text{Amount borrowed} * Rm * \left(\frac{(1 + Rm)^{(n)}}{(1 + Rm)^{(n)} - 1} \right)$$

- Amount borrowed: as stated in Q4
- Rm: monthly interest rate (Q7a and Q7b/12/100)
- N: number of monthly periods (Q2*12)

The monthly payment depends on three variables: amount borrowed⁴⁵, monthly interest rates before/after switching⁴⁶, and the number of periods (months) corresponding to the mortgage⁴⁷.

This is done in a similar fashion for the monthly payment before switching.

⁴³ This corresponds to Q23Yes in the consumer survey

⁴⁴ In this case, the average is calculated on all consumers who switched regardless their sign of results, while Option 2a displays mean estimation for only those with positive savings.

⁴⁵ This corresponds to Question 4 in the consumer survey

⁴⁶ These correspond to questions Q7a and Q7b as well as Q16a and Q16b, respectively for after and before switching. These rates are the annual interest rates on a current mortgage which are divided by 12 to get the corresponding monthly value and 100 because the response was in %.

⁴⁷ This is obtained from Q2 in the survey

$$\text{Previous monthly payment} = \text{Amount borrowed}(Q4) * Rm * \left(\frac{(1+Rm)^{(n)}}{(1+Rm)^{(n)-1}} \right)$$

- Amount borrowed: Amount borrowed (Q4)
- Rm: monthly interest rate (Q16a and Q16b/12/100)
- N: number of monthly periods (Q2*12)

Step 6: Aggregate potential savings from switching

This is the final step and consists of estimating the average monthly savings determined in Step 5 over the number of people who would benefit from switching (Step 4).

These estimations have been done using three approaches (1, 2a and 2b) across Member States and for the overall sample (see Table 10). The sample mean was rescaled by Member State population to consider the relative size of the country. For example, in the survey, small and large countries have similar sample sizes (~350), while both have different population sizes. This is adjusted in the sample mean to take this difference into account.

A final step that needs to be performed is to estimate the net present value (NPV) of savings over the life of the remaining term of the mortgage, net of the costs incurred in switching.

Step 7: Calculating savings in net present value terms

This step aimed to estimate the average savings per consumer and at MS level in present value terms. In essence, the calculation for individual consumers considered the value of average annual saving per consumer, which was then extrapolated for the remaining time (in years) of the outstanding mortgage at discounted present value terms. Results for each consumer were then aggregated for each Member State.

The following formula was used to discount savings in present value term:

$$\text{Discounted sum of monthly savings per person} = \frac{\text{Monthly saving per person} * (N)}{(1+d)^N}$$

Where:

N = number of months left after switching until the end of the mortgage⁴⁸

d = monthly equivalent social discount rate⁴⁹

Survey data cleaning and processing

The survey data were cleaned and inspected to deliver robust and sound estimations.

The first step was to develop the set of selected variables to calculate both market size and savings. Some questions on financial magnitudes (e.g. interest rates, amount borrowed) gave respondents the chance to indicate either an exact figure or an interval. For these types of questions, we merged them into a unique variable, where the intervals were converted to their respective midpoints and integrated into the final variable. This approach was adopted for any other quantitative response to the extent possible. We tested by checking the distribution of both variables – that is, the original numerical and the categorical converted to midpoints – and we verified that both were aligned.

The second step was to inspect any patterns in the data and identify extreme values. Our team inspected the dataset and addressed (as explained below) extreme values

⁴⁸ N has been calculated as= Q3 (# of years left until mortgage extinction) +(2019 – Q14); Q14 corresponds to the year of switching, and then this has been multiplied by 12 to obtain the values in month

⁴⁹ The annual social discount rate is 4% according to the Better regulation guidelines, in this case we have used the equivalent monthly rate 0.33%

for some of the most relevant variables which showed values out of the norm. Each of the variables was sense-checked considering expected values from the literature to judge which value or threshold would be considered extreme.

There are two main approaches to deal with outliers in survey analysis: trimming and winsorizing (Dixon et al, 1974)⁵⁰. Trimming consists of excluding extreme values from the analysis while winsorizing retains the responses based on a certain proportion or count of the distribution (top and bottom 4). For example, if we had a variable that is expected to assume values between 0-100, trimming would drop any observation above and below the interval 0-100, while winsorizing would replace any value below 0 with 0, and any value above 100 with 100.

Van Kerm (2007) applied both methods to EU-SILC to analyse income data.⁵¹ Both trimming and winsorizing can give similar results depending on the variable and thresholds, but winsorizing is particularly preferred when sample sizes are small, and the impact of missing data is high. Considering sample sizes were small, our team decided to adopt winsorizing.

In Table 9 we detail the thresholds and proportion of data that was winsorized by each variable.

Table 10. Winsorizing of selected variables

Variable code	Description	Threshold or count winsorized
Q4_eur	Q4 "What was the total amount you borrowed as part of your current mortgage? Please provide a rough value in local currency" This is converted by exchange rate.	Top and bottom 4% of the distribution: values below € 10,000 and above € 1.
q23yes_EUR	Q23yes "Could you please indicate roughly the order of magnitude of savings per month? Please provide a value in local currency" This is converted by exchange rate.	Top and bottom 20% of the distribution.
q7_all_mnthly	This is a derived variable combining: -Q7a "What is the interest rate on your mortgage? - Please provide a percentage value:" -Q7b "If you cannot recall precisely the interest rate on your mortgage, please indicate the range within which it falls" Q7_all is divided by 12 to obtain the equivalent monthly rate and divided by 100 as this was expressed in %.	Top and bottom 1% of the distribution.
Q16_all_mnthly	This is a derived variable combining:	Top and bottom 1% of the distribution.

⁵⁰ Dixon, W.J. and Yuen, K.K., 1974. Trimming and winsorization: A review. *Statistische Hefte*, 15(2-3), pp.157-170.

⁵¹ Van Kerm, P., 2007. Extreme incomes and the estimation of poverty and inequality indicators from EU-SILC. IRISS Working Paper Series 2007-01, CEPS/INSTEAD.

Variable code	Description	Threshold or count winsorized
	<p>-Q16a "What is the interest rate on your mortgage before switching? - Please provide a percentage value:"</p> <p>-Q16b "If you cannot recall precisely the interest rate on your mortgage, please indicate the range within which it falls"</p> <p>Q16_all is divided by 12 to obtain the equivalent monthly rate and divided by 100 as this was expressed in %.</p>	
cons_unable	<p>This is a derived variable estimated the LTV ratio:</p> <p>Total amount left in the mortgage / valuation of the property. Both variables are in EUR.</p> <p>This variable is used to calculate the proportion of consumers unable to switch due to market reasons.</p>	<p>This variable is expected to assume values within 0-100, so any value above that ceiling was winsorized.</p>

The data processing (inspection, tabulation) and coding was done in Stata©. The winsorizing was implemented by using the user-written command -winsor, developed by Cox (1998)⁵².

4.1.3.2 Payment accounts

It is methodologically challenging to estimate an exact figure for the potential savings from switching payments accounts because these savings depend on a wide and complex array of different costs that might vary by users.

Costs of holding a payments account are mainly driven by pattern of usage. In addition, the habits and pattern of usage varies considerably which makes it difficult to come up with an average or 'representative user'. This is due to the high diversity in the typologies of customer as each type has their own particular usage pattern in terms of services utilised (online versus branch-based banking, duration and amount of overdraft, use of cheques, bank transfers, etc.) as well as the number and variety of number of transactions.

Some studies have attempted to develop a range of user profiles to illustrate how different ways of using a payments account can affect the levels of fees charged⁵³. The present study originally intended to follow a similar approach. As such, the consumer survey contained questions relating to usage patterns (Q.29 on the types of services used by payments account customers and Q.30 on the intensity of usage). The responses to the survey, however, did not reveal any typical or average usage pattern which would allow us to construct representative profiles of payments accounts users⁵⁴. Moreover, the sample sizes were too small to allow such a granular analysis.

In light of these limitations, the present study adopted a second-best approach to quantifying the scale of savings from switching payments accounts. The consumer

⁵² Nicholas J. Cox, 1998. "WINSOR: Stata module to Winsorize a variable," Statistical Software Components S361402, Boston College Department of Economics, revised 09 Aug 2006.

⁵³ VDMC (2009) Data collection for prices of current accounts provided to consumers

⁵⁴ The responses to these particular survey questions were hugely diverse within and across the countries of study.

survey contained a specific self-reported question (Q.40) to collect the following information:

- (1) Whether consumers benefit financially from switching their main payments account;
- (2) And if so, the amount of money they had saved on an annual basis.

As per the approach to estimation of mortgage, winzoring has been also applied (25 per cent) to Q40. Although this information is self-reported, the figures were triangulated with some figures from the literature so as to come up to realistic boundaries.

As for the estimations for mortgages, the results have been also presented in present value terms.

4.2 Residential mortgages – findings

The findings from the analysis for residential mortgages falling under Task 1 are summarised in Table 10.

Based on the survey responses, and as presented in this table, the average mortgage size (*row 1* in the Table) in an analysed sample of 14 Member States varied from nearly EUR 57,000 in Latvia to around EUR 155,000 in the UK with the average maturity (*row 2* in the Table) ranging from 16 years in Germany to 27 years in Portugal, and average monthly mortgage payments spanning from EUR 88 in the Czech Republic to EUR 898 in Ireland (*row 3* in the Table). These figures are broadly consistent with other available statistics on mortgage loans across the EU⁵⁵.

⁵⁵ See for instance the main statistics from the UK [<https://www.finder.com/uk/mortgage-statistics>], Polish [<https://zbp.pl/raporty-i-publicacje/raporty-cykliczne/raport-amron-sarfin>], and Spanish and German markets [<https://hypo.org/app/uploads/sites/3/2017/09/HYPOSTAT-2017.pdf>]

Table 11. Summary results – 14 Member States

R o w		Sample	Austria	Belgium	Czech Republic	France	Germany	Ireland	Italy	Latvia	Netherlands	Poland	Portugal	Spain	Sweden	UK
		1	Average size of mortgage [in €]	€ 131,029	€ 142,565	€ 147,395	€ 57,925	€ 134,936	€ 137,656	€ 191,047	€ 118,940	€ 56,639	€ 183,206	€ 59,500	€ 99,897	€ 122,467
2	Average maturity of mortgage [in years]	20	22	20	21	18	16	24	21	20	22	21	27	23	21	20
3	Average monthly payment [in €]	€ 634	€ 701	€ 755	€ 88	€ 769	€ 832	€ 898	€ 600	€ 324	€ 648	€ 165	€ 351	€ 477	€ 104	€ 784
4	Number of consumers with mortgages	83,100,285	1,370,935	2,985,291	1,370,543	12,089,771	13,246,935	943,152	5,036,522	128,170	6,407,414	2,731,191	2,358,234	8,657,360	3,128,084	15,262,754
5	Number of consumers who would benefit from switching	45,168,271	978,652	1,836,874	766,690	5,006,582	6,538,206	532,893	2,650,982	83,560	3,693,627	1,886,756	1,837,666	5,102,769	685,035	5,795,018
6	% of all customers with mortgages	54%	71%	62%	56%	41%	49%	57%	53%	65%	58%	69%	78%	59%	22%	38%
7	Number of consumers who switched	20,933,394	234,685	576,795	432,234	2,127,986	2,890,363	230,247	1,358,968	18,110	1,347,782	244,173	218,592	1,829,095	1,510,025	6,594,235
8	% of consumers with mortgages who switched	25%	17%	19%	32%	18%	22%	24%	27%	14%	21%	9%	9%	21%	48%	43%
9	Consumers who switched as % of all those who would benefit from switching	22%	16%	26%	22%	27%	31%	18%	35%	2%	24%	13%	13%	17%	18%	37%
10	Number of consumers who switched with negative savings	4,359,790	45,327	110,497	47,625	723,291	363,118	46,784	243,047	3,992	202,460	83,351	26,006	454,696	367,011	1,800,682
11	% of all those who switched	16%	15%	16%	10%	32%	11%	17%	15%	19%	3%	31%	9%	22%	4%	23%
Estimation of savings																
12	Average spread in interest rates between old and current mortgage [in pp]	0.052%	0.07%	0.04%	0.10%	0.01%	0.10%	0.05%	0.06%	0.09%	0.11%	-0.01%	0.05%	0.01%	0.02%	0.03%
13	Average monthly savings per consumer [in €] – Approach 1	€ 117	€ 153	€ 121	€ 78	€ 151	€ 158	€ 136	€ 21	€ 110	€ 158	€ 90	€ 100	€ 146	€ 88	€ 100
14	Average monthly savings per consumer [in €] – Approach 2a	€ 37	€ 65	€ 28	€ 32	€ 5	€ 87	€ 45	€ 49	€ 18	€ 110	-€ 3	€ 30	€ 0	€ 9	€ 30
15	Average monthly savings per consumer [in €] – Approach 2b	€ 55	€ 71	€ 45	€ 37	€ 32	€ 93	€ 71	€ 60	€ 28	€ 125	€ 16	€ 38	€ 30	€ 24	€ 53
16	Average total savings per consumer in present value [in €] - [2a]	€ 6,434	€ 9,195	€ 3,319	€ 3,110	€ 5,852	€ 11,820	€ 12,393	€ 7,237	€ 2,027	€ 18,648	€ 111	€ 1,975	€ 2,238	€ 1,265	€ 4,254
17	Aggregate saving per Member State [in mln €] – Approach 1	€ 5,289	€ 150	€ 223	€ 60	€ 754	€ 1,034	€ 72	€ 57	€ 9	€ 582	€ 169	€ 184	€ 745	€ 60	€ 578
18	Aggregate saving per Member State [in mln €] – Approach 2a	€ 1,678	€ 64	€ 51	€ 24	€ 24	€ 569	€ 24	€ 129	€ 2	€ 406	-€ 5	€ 54	€ 0	€ 6	€ 172
19	Aggregate saving per Member State [in mln €] – Approach 2b	€ 2,489	€ 69	€ 82	€ 29	€ 159	€ 609	€ 38	€ 158	€ 2	€ 462	€ 31	€ 69	€ 154	€ 16	€ 307
20	Aggregate saving per Member State in present value [in mln €] – [2a]	€ 290,594	€ 8,998	€ 6,096	€ 2,384	€ 29,297	€ 77,280	€ 6,604	€ 19,185	€ 169	€ 68,877	€ 209	€ 3,629	€ 11,419	€ 867	€ 24,649

Source: ICF calculations

Following the Step 1 of approach to estimation of consumer savings (see Figure 6), we have arrived with the estimate of the total number of consumers who would potentially benefit from switching (row 5 in the Table). Furthermore, those who would benefit from switching as a percentage of the total number of customers who currently hold a mortgage loan (row 6 in the Table) varied from 22 per cent in Sweden to 78 per cent in Portugal. And of those who would benefit from switching, the percentage who switched ranged from 2 per cent in Latvia to 37 per cent in the UK (row 9 in the Table).

There is a group of customers who have not benefitted financially from switching their mortgage, in particular in France and Poland (row 11 in the Table). This could be for several reasons such as insufficient ability to evaluate the optimal deal at a given point of time (e.g. related to a lower level of financial literacy or confusing manner in which details of the offer are presented), the time at which the switch took place (e.g. prior to a material fall in base rates on the market), or after a substantial change in forex for foreign denominated loans. Consequently, this group of customers ends up paying more than they used to, most typically due to higher interest rates on the new mortgage compared to the previous one. The percentage of such consumers with 'negative savings', as the share of all those who switched, varied from 3 per cent in the Netherlands to 32 per cent in France⁵⁶.

Estimation of potential savings from switching of mortgages

As part of the estimation of potential savings from the switching of mortgages, we applied three approaches that resulted in three different estimates of the average monthly saving per customer/ per Member State (rows 13-15) and at an aggregate level per Member State (rows 17-19):

- *Approach 1*: An estimate was derived based on the self-reported amount of savings in reply to a specific survey question;
- *Approach 2a*: An estimate was derived as per the approach presented in Section 4.1.3.1. Under this approach, savings' levels are adjusted by some losses taken by customers who did not strike a better deal, despite switching;
- *Approach 2b*: An estimate was derived as per the approach presented in Section 4.1.3.1 with one exception – savings' levels are not adjusted by the losses incurred by customers who did not strike a better deal, despite switching.

Figure 7 shows the differences in average savings per approach across Member States for those three approaches.

Overall, Approach 1 yields the largest average savings per month at an individual and aggregate level. Average savings would oscillate around EUR 117 per month for the

⁵⁶ The additional analysis of the underlying reasons behind comparatively high share of negative savings in France was performed by the study team based on the consumer survey results. It involved the comparison of the key characteristics such as income, age, educational and employment status, type of mortgage (fixed/variable interest rates) as well as the assessments of the switching process itself by respondents from both subsets, those who incurred positive savings and those who incurred negative ones. Overall, no major differences between both groups of respondents were revealed. Income, educational and employment status between both cohorts were not materially different. Likewise, there were no material differences in terms of the type of the mortgage (fixed/ adjustable/ variable) and whether consumer incurred positive or negative saving. Interestingly, in terms of age, exactly 50 per cent of those who reported negative savings were from the age bracket of 25-34 (versus 49 per cent for those with positive savings). Crucially though, 46 per cent of those who incurred the negative savings stated in the survey (response to Q21b) that 'comparing different offers and selecting the best deal' was either *difficult* or *very difficult* while further 34 per cent found it *neither easy nor difficult* (only 20 per cent of those who incurred negative savings found comparing of different offers and selecting the best deal *easy*). Analogous figures for those who incurred positive savings were 39 per cent (*very difficult* and *difficult*) 24 per cent (*neither easy nor difficult*) and 27 per cent (*easy*) respectively.

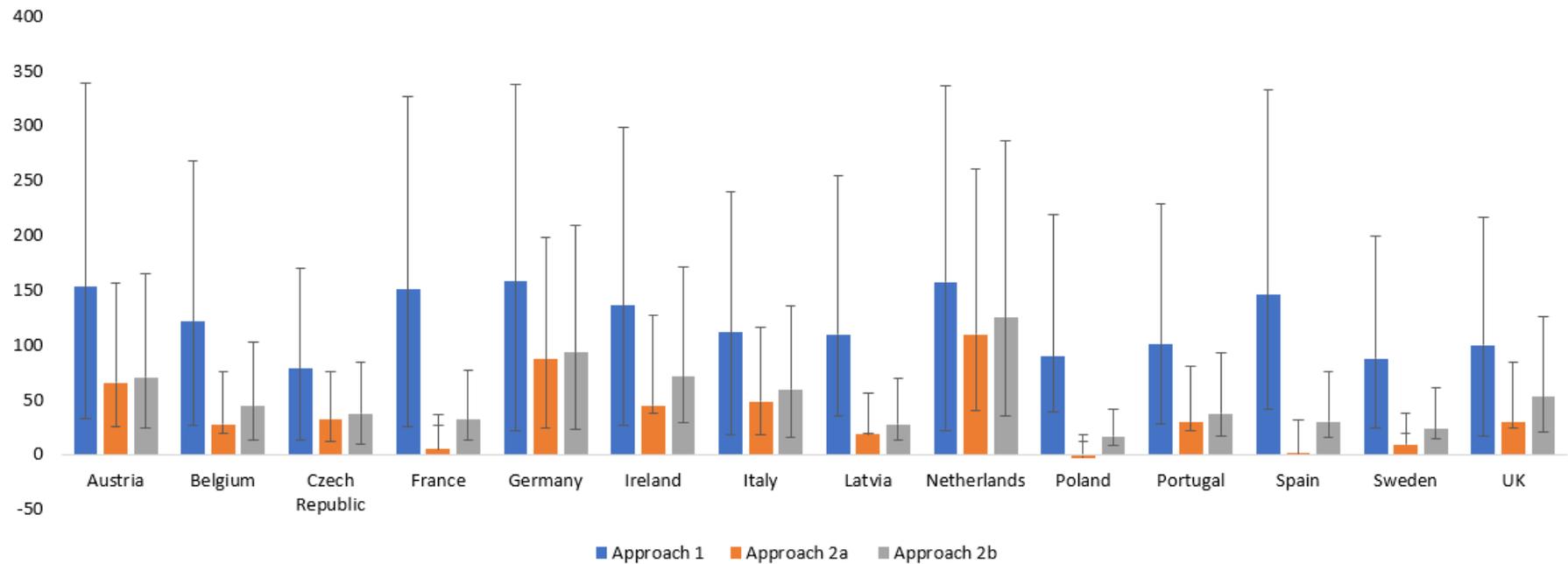
whole sample of 14 Member States, rising to nearly EUR 160 per month in the Netherlands (versus only EUR 21 per month in Italy).

However, we believe that Approach 2a is the *central* approach and the one that yields the most robust and plausible results. This is because it considers that it is perfectly plausible that some customers may indeed be worse off after switching, for the reasons discussed above. Under this approach, the largest average monthly savings are seen in a few euro-zone countries, namely the Netherlands (EUR 110 per month), Germany (EUR 87 per month) and Austria (EUR 65 per month) respectively. In turn, in a few Member States (such as Spain and France), customers would not have made meaningful savings had they switched their mortgages, or de facto would not have saved at all (as is the case in Poland). At aggregate level, Germany and Netherlands are two countries with highest savings reaching EUR 569 mln and EUR 406 mln per month (*row 18*), or EUR 6.8 bln and EUR 4.9 bln annually. When aggregated at the whole sample level (*row 13*), the total savings could reach up to EUR 1.7 billion per month, or over EUR 20 bln annually, across all 14 Member States.

Finally, the Table 10 provides also the estimates of average savings per consumer (*row 16*) and per Member State (*row 20*) in present value terms. For instance, average savings per Dutch consumer, given the remaining time to pay off a mortgage, could accrue to EUR 18,648 in present value terms over the remaining payment period.

The key driver of the average monthly savings has been the spread in the interest rates between the current and the past mortgage (*row 8*). In short, the greater the spread in interest rates between the current and the previous mortgage, the greater the average monthly savings a customer could make. For instance, the average spread in interest rates, as per survey responses, varies from 1.1 per cent in Netherlands to -0.1 per cent in Poland.

Figure 7. Average monthly savings in EUR – estimates for three separate approaches (1, 2a, 2b)



Source: ICF estimates

Note: vertical lines represent the confidence intervals for respective approach, estimated for a 95% level of confidence

While interpreting the results, it should be noted that the estimates do not take account of the value of time that a consumer would need to invest in the switching process, any fees related to switching, and (if relevant) forgone benefits stemming from 'bundling' of mortgages to other products (e.g. saving accounts or personal loans with promotional interest rates), albeit the latter may be offset by the benefits stemming from a new contract. Therefore, the estimates of the average monthly savings and the estimates at the aggregate level constitute 'upper bound' estimates.

Limitations

Overall reliability of the analysis depends on self-reported data for mortgage values, interest rates, etc. In our view, the quality of the data received from the survey of mortgage consumers has been satisfactory. Several sense checks were performed to determine the quality of the responses. Only a very limited number of outliers were identified and the key figures that emerged from the responses (e.g. average interest rates and average mortgage size) were broadly in line with other statistics. Yet, some data still needs to be interpreted with caution. For instance, average monthly savings, as per self-reported figures corresponding to survey question 23 and used for the estimation of savings under Approach 1, appeared rather high. This demonstrates that consumers think that the savings on their mortgages from switching are higher than they are. This merits further investigation through behavioural research.

Not all consumers have benefitted from positive savings as result of switching. It may be that sometimes consumers are worse off due to switching and this could be due to changes in economic conditions – for example, changes in the interest rate environment. As such, the estimations of savings could be heavily altered in the case of material changes in interest rates that could take place as a result of changes in the economic cycle. For instance, a major expansion of an economy could result in an increase in the interest rates of available mortgages, and potentially existing spreads between interest rates offered vis-à-vis interest rates available prior to it.

Furthermore, some consumers may deliberately not select the cheapest suitable deal, sometimes for valid reasons (e.g. where an individual consumer values speed of service, brand recognition or lender reputation over cost, or where their eligibility depends on the criteria that are not available in our data). In these circumstances the potential savings would be an overestimation.⁵⁷

4.3 Payment accounts – findings

Table 11 describes the results for 14 Member States included in the sample. The headline results are as follows:

- Across the sample of 14 countries, 83 per cent of the population aged 18 to 64 reported having a payments account;
- Ten per cent of the payment account holders reported having switched their payments account, either with the same provider (27 per cent) or another provider (73 per cent) during the last three years. Switching rate varied across the countries. Italy and Spain have relatively high levels of switching (17 per cent and 18 per cent respectively) as compared to other countries in the sample⁵⁸.

⁵⁷ See for instance the caveats for the FCA, 2018. Mortgages Market Study. Available at: <https://www.fca.org.uk/publication/market-studies/ms16-2-2-interim-report.pdf>

⁵⁸ These figures are not directly comparable with the results of the Eurobarometer 373 survey reported in Section 3 and Table 14 due to difference in sampling, time period of the field work and the phrasing of the question

- Almost half of those who switched (47 per cent), reported having benefitted financially from switching. On the other hand, 41 per cent of those switching claimed that they had not benefitted financially from switching, while roughly 11 per cent (around 1 in 10) of those who switched did not know whether they had benefitted financially from switching or not;
- Despite a relatively high share of payments account holders switching their accounts in Italy and Spain, a disproportionately low share of switchers (37 per cent and 31 per cent respectively) reported having benefitted financially from doing so in these countries. In countries like the Czech Republic and Portugal on the other hand, a much higher share of switchers (76 and 77 per cent respectively) reported having benefitted financially from switching;
- The average self-reported savings per year amounted to EUR 79. The highest average savings were reported by consumers in Belgium (EUR 102) while the lowest savings from switching were reported by consumers in Poland (EUR 40).

These self-reported savings from switching look fairly plausible (and even on the lower side) when compared to the very limited evidence available from existing literature. According to a study conducted in France⁵⁹, switching to the least expensive payments account could result in savings ranging between EUR 132 and EUR 260 per annum for younger cohorts, while among senior cohorts, savings could be in the order of EUR 470 per annum. The results of this study are, however, not directly comparable with our survey as the former is based on hypothetical savings from switching to the cheapest bank while the latter is based on actual savings reported by consumers who have switched. There have been very few studies that focused on the consumer savings from switching of personal accounts so far.

Notwithstanding the evidence available from literature, there are some doubts about the reliability of the self-reported savings (*column 9* in the Table 11 overleaf) when comparing these with the annual cost of holding a payments account as reported by consumers (*column 5*). The self-reported savings appear sometimes to be disproportionately high relative to the costs. This suggests that consumers may have difficulties in correctly recalling the costs and savings associated with their payment accounts.

Extrapolating the average annual savings reported by consumers who switched and benefitted financially from it (EUR 79) to consumers who might benefit from switching (defined as payment account users who have not switched during the last three years), the potential scale of annual savings from switching payments accounts amounts to EUR 884 million across the 14 sample countries. While this figure provides an indicative order of magnitude of potential savings from switching, it should be interpreted with caution. Firstly, it is based entirely on self-reported savings by consumers and therefore the caveats discussed above apply. Secondly, the payment accounts' usage pattern of survey respondents who reported savings from switching varies greatly across consumers, countries and time. Thirdly, unlike the mortgage consumer survey, the payments account consumer survey did not include questions on the annual cost of holding a payments account before and after switching (this was to keep the questionnaire length manageable, to avoid bias from loss of recall and to avoid asking consumers to access payments accounts statements for multiple years – bearing in mind that payments accounts providers were not required to provide annual ex-post statements until the payments accounts directive came into force). Moreover, this approach has its own limitations (see 8.3.1).

Box 1. Limitations of measuring savings from switching as the difference between costs pre and post switching.

⁵⁹ UFC. 2014. 'Mobilité bancaire: mythes et réalités.' Available at: file:///C:/Users/30205/Downloads/141209_Etude%20Mobilit%C3%A9%20bancaire.pdf

The savings from switching cannot simply be measured as the difference in the annual cost of holding a payments account before and after the switch. This is because a change in costs can be a result of one or more of the following factors at play:

- Change in usage pattern of the customer – a customer’s usage pattern might have changed after the switch, either intentionally or simply due to changes in personal circumstances. For example, a customer might have made more/ fewer cash withdrawals when travelling abroad post switching. This could be simply be due to the fact that the customer has to travel more/ less in the year following switching. Likewise, a person’s personal circumstances might have changed resulting in more or less use of overdraft. These examples serve to demonstrate that a change in the cost of holding a payments account post switching could be caused by factors other than switching;
- Change in macroeconomic conditions such as change in interest rates;
- Change in costs as a result of switching to a better deal.

Calculating the savings from switching as the difference between the costs of holding a payments account pre and post switching does not take account of the impact of the first two scenarios above.

Table 12. Summary results – 14 Member States

Indicator	Market size						Saving from switching				Country weights for pop adj.
	1	2	3	4	5	6	7	8	9	10	
	Population aged 18 to 64	% population with payment accounts	Population aged 18 to 64 with payment accounts	Consumers who switched (%)	Total average fees and charges for using a personal current account over last 12 months (in €)	Number of consumers who might benefit from switching	% of consumers who benefited from switching ⁶⁰	Estimated number of consumers who benefited	Self-reported savings per year	Estimated benefits of switching	
All sample	268,065,436	83%	222,494,312	10%	110	200,244,881	47%	106,129,787	€ 79	€ 883,971,257	
Austria	5,641,706	86%	4,834,162	15%	92	4,115,065	44%	1,955,832	€ 91	€ 178,800,467	0.020
Belgium	6,958,720	96%	6,691,438	9%	40	6,101,600	43%	3,530,917	€ 102	€ 360,132,023	0.028
Czech	6,620,982	85%	5,601,146	16%	14	4,677,110	67%	3,543,913	€ 48	€ 168,999,223	0.025
France	39,125,472	92%	35,995,078	15%	90	30,485,114	38%	13,215,882	€ 86	€ 1,133,036,688	0.136
Germany	51,544,494	92%	47,420,934	12%	48	41,534,820	54%	22,247,283	€ 73	€ 1,616,071,367	0.180
Ireland	2,965,888	84%	2,500,317	11%	81	2,236,712	52%	1,265,769	€ 78	€ 98,859,441	0.029
Italy	37,033,253	70%	25,782,332	17%	59	21,436,473	33%	7,924,907	€ 85	€ 677,037,444	0.138
Latvia	1,186,761	82%	978,843	12%	29	857,496	58%	633,725	€ 49	€ 31,021,254	0.004
Netherlands	10,555,872	99%	10,408,826	8%	121	9,613,465	38%	4,508,696	€ 73	€ 331,007,405	0.041
Poland	24,605,321	72%	17,706,459	16%	20	14,788,824	59%	9,449,869	€ 40	€ 375,329,624	0.092
Portugal	6,322,344	80%	5,079,675	14%	38	4,359,189	66%	3,340,626	€ 74	€ 247,839,568	0.025
Spain	29,346,982	88%	25,917,485	18%	46	21,218,349	29%	6,651,518	€ 86	€ 572,309,409	0.120
Sweden	5,992,498	98%	5,852,603	10%	38	5,260,687	45%	2,665,178	€ 75	€ 200,058,827	0.024
UK	40,165,143	87%	34,810,583	13%	39	30,298,442	44%	15,133,978	€ 84	€ 1,270,158,304	0.155

Source: ICF calculations

⁶⁰ 25% winsorizing of self-reported values applied

To complement the above analysis, we drilled deeper into the survey data to examine:

- Demographic characteristics of persons most likely to switch;
- Underlying patterns of payments account usage to check if these had any bearing on whether consumers financially benefitted from switching (as per self-reported values);
- The most commonly incurred charges/ fees on payments accounts.

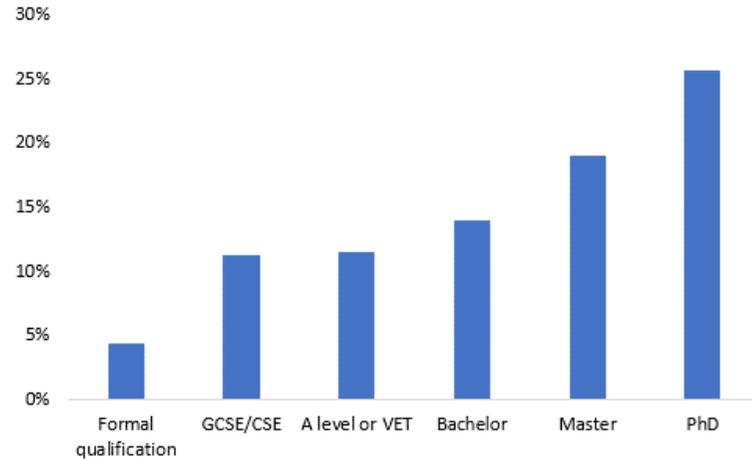
The findings from this analysis are presented below.

Demographic characteristics of people most likely to switch

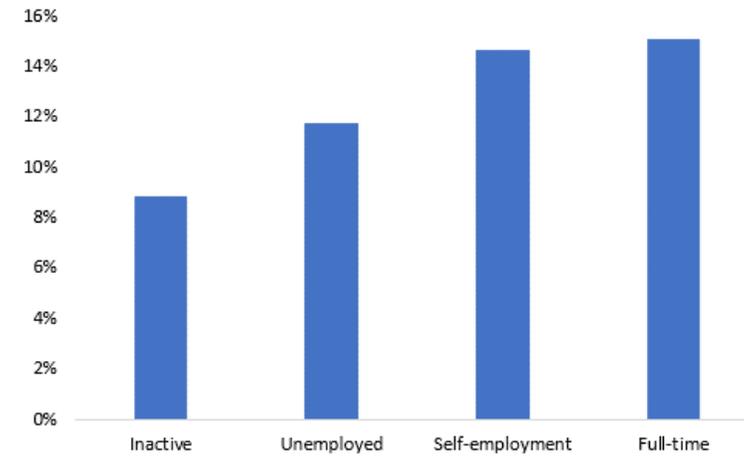
The analysis reveals that highly educated consumers (with a Master's degree or PhD) are more likely to switch than those with lower qualifications. Moreover, those who switch tend to be self-employed or employed and under 45. There is no clear pattern as far as income levels are concerned (Figure 8).

Figure 8. Proportion of people having switched payment accounts by demographic variables

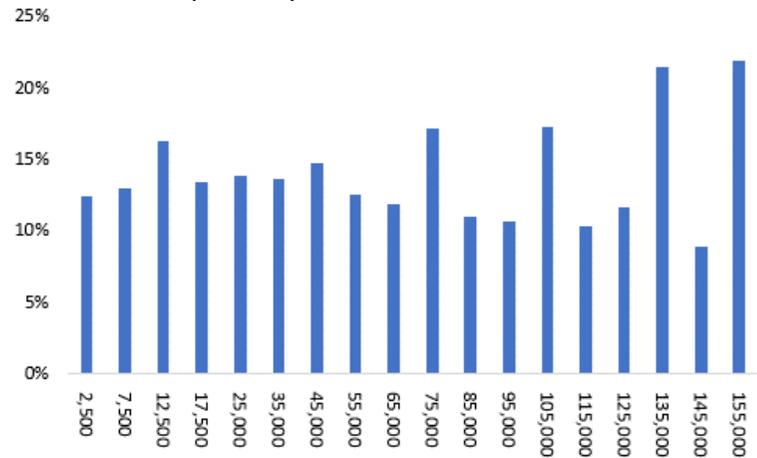
Educational attainment



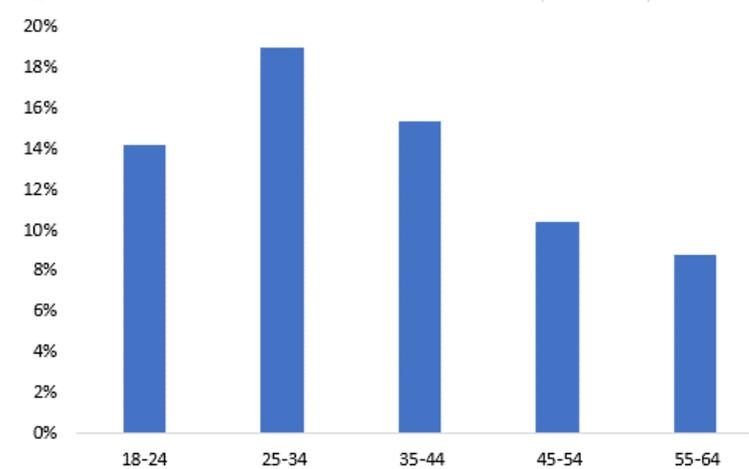
Employment status



Income level (in EUR)



Age



Source: ICF calculations

Relationship between payments account usage patterns and financial benefits from switching

Figure 9 depicts the coefficients for regression analysis using a logit model⁶¹. The aim of the analysis was to explore the association of each factor on the likelihood of responding 'Yes, I have benefitted financially from switching' (Q40). A positive sign of the coefficient suggests positive association between an option and the saving from switching while a negative sign indicates a negative association.

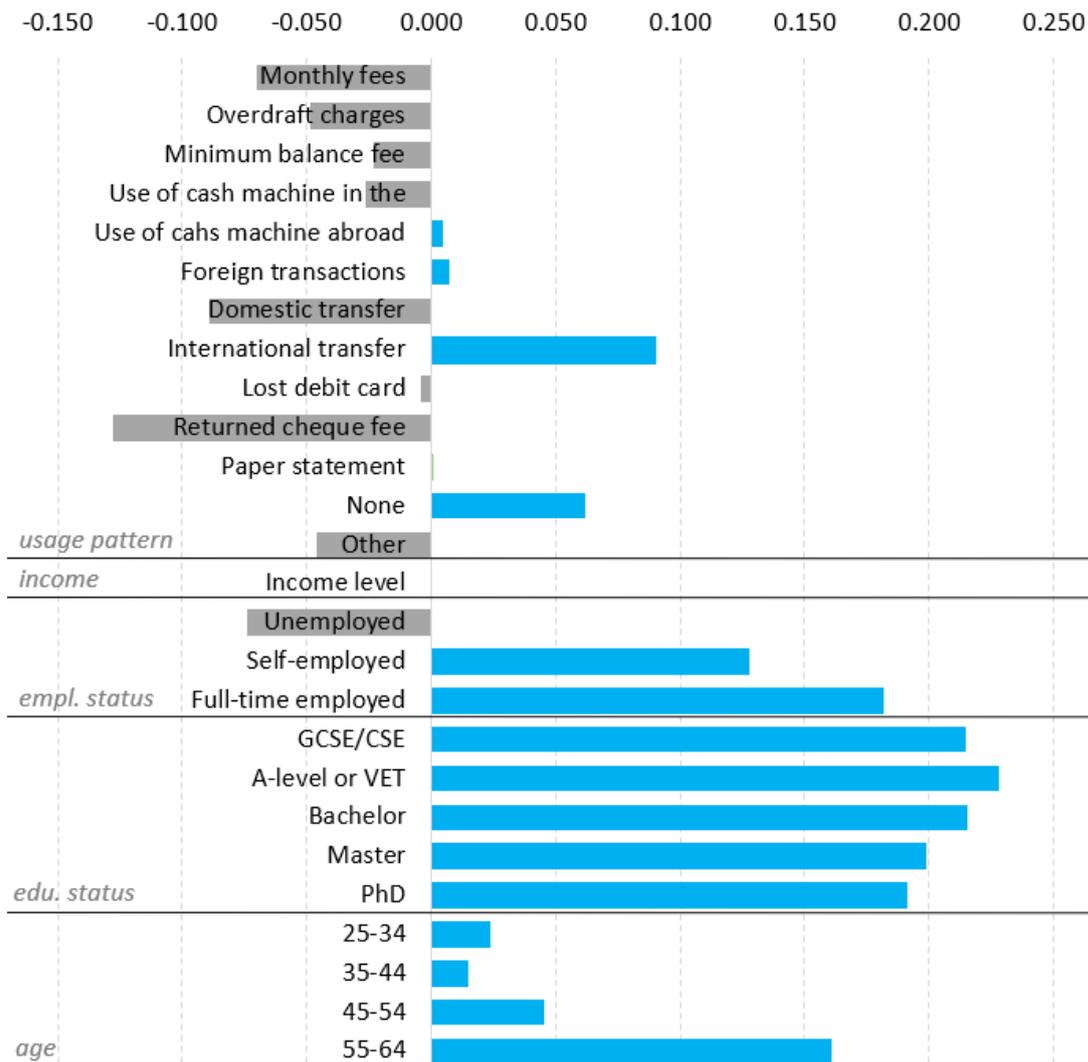
Most of the coefficients are not statistically significant, except for 'returned cheque fee'⁶², 'full-time employee' and being aged '55-64'. Some of the key insights stemming from this analysis are as follows:

- Consumers who had incurred monthly fees and overdraft charges in the last 12 months were less likely to report positive gains from switching;
- Being older is positively correlated with the likelihood of benefiting financially from switching;
- Unemployed users are less likely to benefit from switching than those who are self-employed and full-time employed.

⁶¹ Functional form of the regression model used: $\log\left(\frac{p}{1-p}\right) = \beta_0 + \beta_1X_1 + \beta_2X_2 + \beta_mX_m$ with dependent variable being a binary outcome of '1' – yes I have benefitted financially from switching or '0' – no, I have not benefitted financially from switching, and independent variables being specific response options, as per Figure 4.3

⁶² Return check is a cheque that the bank does not honour.

Figure 9. Logit regression coefficients for Q40 on Q31 and other demographic variables



Note 1: Q40: Have you benefitted financially from switching your main payments account? Yes/No; Q31: Which of the following fees and charges have you incurred on your payments account in the last 12 months? (multiple response allowed).

Note 2: For options falling under 'usage pattern', number of responses per option varied from 36 per cent for *monthly fees* to only 8 per cent and 2 per cent for *returned cheque fees* and *other* respectively

The most commonly incurred charges/ fees on payments accounts

The consumer survey contained a multiple-choice question asking respondents to indicate the fees and charges incurred by them in the last 12 months (Q.31). The figure below shows the overall responses as well as the responses for the following two groups:

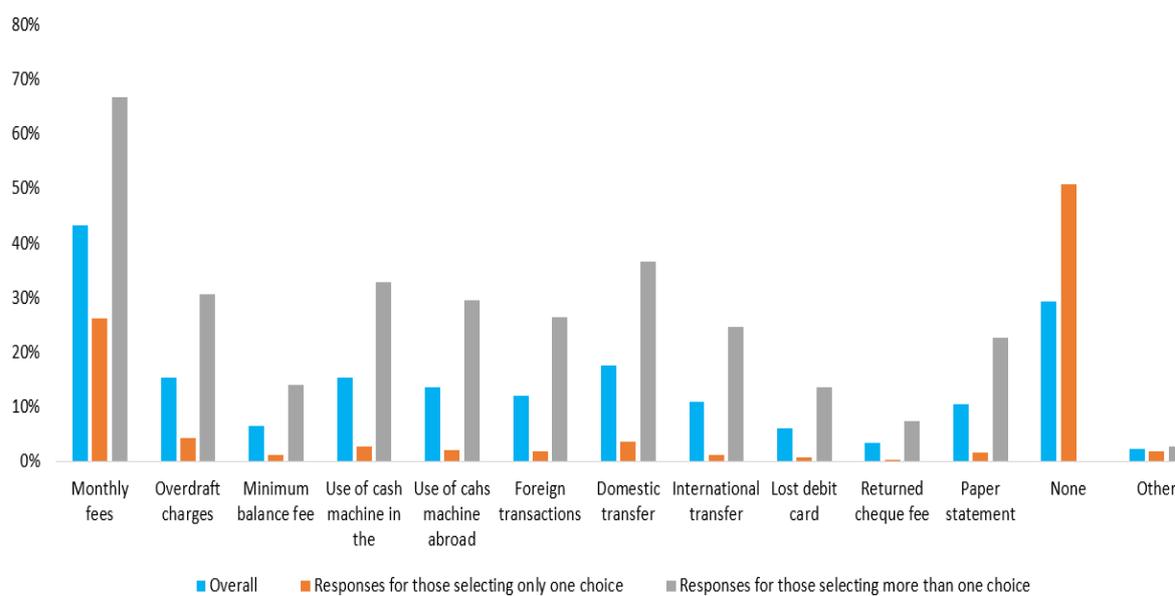
- Those selecting just one option (e.g. just one type of fee/charge) in response to Q.31;
- Those selecting more than one option (e.g. multiple fees/charges).

From Figure 10 below it can be seen that:

- Over 40 per cent of all respondents reported paying monthly fees on their payments account in the last 12 months;

- Among those respondents selecting only one option in response to Q.31, 50 per cent chose “None of the above”⁶³, while almost 30 per cent selected monthly fees. This suggests that for 15 per cent of the survey respondents, monthly fees were the main driver of the cost of holding a payments account;
- Among those selecting more than one option, almost 70 per cent reported having incurred monthly fees. Other fees and charges were more broadly distributed within the group.

Figure 10. Proportion of consumers incurring specific fees and charges, by group of respondents



Source: ICF calculations

Note: this figure reports the proportion of people saying yes to each of the options for Q31: *Which of the following fees and charges have you incurred on your payments account in the last 12 months?* Please tick all that apply. Then this is divided by respondents only clicking once, or more than once.

5 Task 2: Mapping of legal and commercial barriers to switching

This task comprised two layers of research and analysis:

- **First layer: legal barriers.** Mapping of the national legal provisions which may act as barriers to switching retail financial services. In particular, this layer focused on mapping national legislative provisions on switching, transparency of information, termination of contracts and additional legal requirements which may render difficult to switch service provider;
- **Second layer: commercial barriers.** Identification of commercial barriers to switching such as fees, contractual provisions (minimum length linked to interest rates) and commercial practices and behaviours (e.g. automatic renewal of contracts, loyalty schemes etc.).

Legal barriers are stemming directly from the legislation, while commercial barriers arise from contractual elements introduced by the service provider or are function of commercial practices such as cross selling, loyalty schemes etc. However, the two

⁶³⁶³ However, several of these respondents did provide a figure for the annual cost of running a payments account.

elements are strictly intertwined. It is often difficult to disentangle the commercial aspects from the legal framework, especially when the latter contains few prescriptive elements and leaves it to the enforcement authorities to identify potential consumers' violations.

5.1 Task overview

5.1.1 Product scope

This task covers the following products:

- Residential mortgages as defined by the Mortgage Directive (MCD)⁶⁴;
- Payment accounts covered by the Payment Account Directive (PAD)⁶⁵;
- Saving accounts;
- Mortgage Insurance;
- Home Insurance.

5.1.2 Geographic scope

The Final Report contains the results of the desk research and of the interviews carried out until October 2019. It covers all 28 Member States (MS):

For 11 MS, namely Belgium, Czech Republic, Denmark, Finland, France, Germany, Italy, Poland, Spain, Sweden, and The Netherlands all the selected products (e.g. mortgages, payment accounts, saving accounts, mortgage insurance and home insurance) were covered, while for the remaining MSs only two products, (e.g. mortgages and payment accounts) were covered.

5.1.3 Methodological approach

This Report is the output of the research which comprised a number of tasks:

- Desk research covering national rules for switching for the selected products, in particular those provisions, if applicable, aimed at facilitating switching, improving transparency and enhancing consumer protection more generally. Concerning the PAD, the study looked at its transposition, implementation and interpretation (case law);
- A series of phone interviews with key stakeholders in the selected Member States: national consumer and industry associations, ombudsmen and financial supervisory authorities with competence for market conduct (see the full list in Annex 4);
- Evidence gathered from the survey of banks and consumers;
- Critical review of the advanced draft of the report provided by individual product's experts;
- Evidence gathered from the roundtable session.

5.2 Legal barriers to switching

Legal barriers to switching refer to legislative provisions which hinder the possibility of consumers to switch credit institution. Legal barriers are different based on the financial product concerned.

⁶⁴ 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, 28.2.2014 (Mortgage Credit Directive).

⁶⁵ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, OJ L 257, 28.8.2014.

In addition, it is important to take into account the EU legislation that has been adopted to harmonize the legal framework, notably in case of the payment account and mortgages. While only the Payment Accounting Directive (PAD) harmonises rules on switching of payment accounts, the Mortgage Directive (MCD) contains specific provisions which aims at “flexible and fair credit agreements relating to immovable property”⁶⁶ allowing consumers to make an informed choice and avoid unnecessary burdens and costs. No specific provisions have been introduced at EU level covering saving accounts, mortgage and home insurance. At national level, only a few Member States (Italy, Ireland, Spain and Portugal) have introduced some provisions to facilitate the switching of mortgages while Belgium France and Italy have also some rules concerning saving accounts, mortgage and home insurance. The Italian model on mortgage switching has been in place for 12 years and it has proved to be very helpful in helping consumers to reduce their mortgage costs. No specific drawbacks were identified concerning the Italian legislation. Other initiatives are more recent, and their impact has not been fully assessed yet (while it may be noted that the Spanish mortgage market showed some increase in the price of mortgages after the new legislation in 2019, this is unlike to be related to the switching measures implemented).

5.2.1 EU legal framework for mortgages and payment accounts

The Mortgage Credit Directive (MCD)⁶⁷ applies to all loans granted to consumers, secured by a mortgage or a similar guarantee, for the purchase of residential immovable property or for the acquisition or retention of property rights in land or in an existing or projected building. It provides that all consumers who take out a mortgage to purchase a property are adequately informed and protected against the risks.

The basic principles of the Directive are:

- to allow borrowers to early repay the mortgage, albeit subject to certain conditions imposed by the Member States (Article 25);
- prohibition of tying practices, unless the financial service or product offered together with the credit agreement could not be offered separately as it is a fully integrated part of the credit (e.g. a secured overdraft), although allowing bundling (Article 12);
- to provide consumers with better appropriate pre-contractual and contractual information on available mortgage products, including the European Standardised Information Sheet (ESIS) enabling them to identify the right product for them;
- a guaranteed cooling-off period or right of withdrawal for borrowers before they are bound by the credit agreement; new EU-wide rules to assess the creditworthiness of borrowers to ensure that borrowers can meet their repayment obligations.

The MCD does not provide specific provisions about mortgage switching and its consequences: however, certain provisions, in particular those related to early repayment and transparency, are relevant also in the context of switching. In fact, the ESIS shall be provided in case of new mortgage as well as of switching, in order for the consumer to be able to compare the offers.

As noted above, consumers have a general right to repay the loan early (Article 25), thus benefiting from a reduction in the total remaining cost of the mortgage. In such cases, EU Member States may impose certain legal conditions to early repayment,

⁶⁶ Recital 6.

⁶⁷ 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, 28.2.2014.

such as the existence of a legitimate interest on the part of the consumer (in the event of divorce or unemployment).

5.2.2 Legal framework for switching

Based on the results of the legal analysis, as result of the implementation of the PAD by MS, the national frameworks for switching **payment accounts** are very detailed and, as a consequence, no major legal barriers have been identified concerning payment accounts. However, some inconsistencies remain which may render the cross-border switching difficult.

By contrast, the situation is more diversified with regard to the switching of other products. For instance, legal rules to switch mortgages are not framed by the MCD; therefore, the regulation is up to the Member States. In addition, mortgages are complex products which involve a sizable loan for a long duration and an *in rem* security in favour of the lender. The legal and contractual complexities related to the *in rem* security may increase the difficulties of switching mortgage provider.

From the results of the legal analysis, it has emerged that the lack of a specific legal framework for switching mortgage provider might (but does not always have to) constitute a relevant obstacle to switching, mostly because credit institutions may take advantage of legislative gaps to adopt various commercial practices that may make it difficult to, or altogether prevent consumers from, switching financial products.

Furthermore, the lack of specific legal framework drawn up for switching gives rise to the necessity for consumers to early repay and close their first mortgage and then apply and register for a new one. This operation, legally required, usually requires meaningful time,⁶⁸ effort, and various fees, which might deter consumers to initiate the procedure.

Legal framework for switching exists only in Italy and Spain. Ireland, Portugal and Denmark only laid down few provisions to facilitate mortgage switching.⁶⁹

As already mentioned, the Italian subrogation increased the competition on the Italian mortgage market. The banks are encouraging the subrogation with their advertisements as well as the consumers' associations, which are encouraging switching towards fixed interest rates. The comparison of the offers is facilitated by some large online credit brokers. It is important to note that the switching legal framework is the same for variable and fixed-interest rates, with no differences. In Spain the switching framework in place up to 2007 increased competition and consumer mobility. Concerning the new one introduced in 2019, according to the Spanish authorities, *"the new provisions on switching mortgages might not impact on mortgage costs, since these changes now establish the right of the client to decide whether to remain with the same creditor or to change providers, even in cases were the current lender offers the same or better conditions than those offered by the new creditor.* However, other measures foreseen in Law 5/2019 could have a direct impact on the cost of the credit. For instance, Law 5/2019 - as modified due to some controversy raised in the public opinion as a consequence of uncertain case law from the Supreme Administrative Court - now determines that any notary and land registry fees, as well as taxes directly applicable to a mortgage deed need to be borne by the credit provider.

5.2.3 Early repayment (of residential mortgages)

At national level, the research found out that, conditions imposed by the legislation for early repayment (which is a pre-requisite for switching), although allowed under the Mortgage Credit Directive, may constitute a legal barrier to switching mortgage provider. These conditions may entail:

⁶⁸ For instance, in Ireland and Spain switching mortgage can take up to three months.

⁶⁹ Where only few legal provisions specifically encompass switching.

- elapse of a minimum time (Germany⁷⁰, UK);
- mortgages with a certain maximum Loan to Value (LTV) ratio (France);
- termination/switching of the bundled product, such as the mortgage insurance, which have different rules for early termination, not automatically related to mortgage early repayment.

Similarly, the possibility for a bank to impose compensations for early repayment (which are allowed under MCD) may act as a constraint. This is particularly relevant in jurisdictions where a cap on the compensation does not exist, usually disguised under the generic expression of a "fair and objective compensation", like, inter alia, in Ireland, Cyprus (for partial repayment) and Luxembourg.

Only in Italy and in Romania, the law does not allow charging consumers with compensation fees in case of transfer of the mortgage, and therefore the costs incurred by consumers are reduced. In some other Member States (see Table 5.1) the law allows to charge a compensation for early repayment only if the consumer does not fill in specific conditions (e.g. in France it can be avoided in specific cases, which must be duly justified, such as the sale of the property, a change of workplace, a forced termination of professional activity, etc.). In such cases PSPs will bear the costs of switching themselves, but they will benefit from new clients.

5.2.4 Fees related to switching of residential mortgages

- Furthermore, the costs/fees related to switching, required or allowed by law, e.g. notary registration, taxation, new property valuation fees like in Belgium, but also Bulgaria, Croatia, Denmark, Finland, France, Germany, Ireland, Luxembourg, Portugal, and the UK, may put off some consumers. This legal barrier does not exist in those Member States where specific rules have been adopted in order to relieve consumers from the burden of fees, namely:
- In Italy, according to the law, switching mortgage is completely free of charge,⁷¹ except for the notary tax (i.e. registration fee);
- In Denmark a recent reform (July 2019) extended the applicability of already existing rules on the reuse of the registration fee when switching;
- In Spain the new Mortgage Credit Law 5/2019 requires the new lender to pay the expenses, except those for property valuation.

It should be noted that these legal barriers do not prevent banks to make attractive commercial offers to incentivize switching, such as covering some switching costs and fees. This may also explain why Member States such as Sweden and the United Kingdom, with no switching rules but with highly competitive banking market, have high switching rates.

5.2.5 Mortgage and home insurance products

Concerning the mortgage and home insurance products, the main legal barriers were identified in the notice timeline for termination of the contract, such as a two-month timeline over a one-year contract (Italy) and the obligation to be punctual with instalment payments in order to be able to terminate the contract (Belgium, Germany). These barriers can make switching more burdensome, but they cannot completely obstacle switching.

A specific obstacle emerged in Italy with reference to the mortgage insurance paid in one single instalment, which is the most common mortgage insurance bundled with the mortgage. Due to the specific structure and its ancillary nature, according to the

⁷⁰ ~90 per cent of mortgages in Germany are fixed interest rate (currently at around 1%) leaving lender potentially more exposed to losses in case of early repayment.

⁷¹ Including the notary fee which is covered by banks.

consistent case-law, it is not possible to switch insurance provider without early repaying the mortgage.

In this specific context, benefits provided by the borrower friendly mortgage framework are reduced by legislative interpretation.

Conversely, other jurisdictions, such as Germany and Sweden, clarify that the mortgage insurance is a personal insurance; therefore, the insured person is allowed to switch insurance provider during the life of the mortgage.

In France, a specific legal framework (Loi Hamon) is in place for switching of insurance contracts.

5.2.6 Saving accounts

Across the examined Member States, no specific provisions have been identified with regard to switching of saving accounts, with the exception of France, where specific provisions were introduced by the *Loi Macron*⁷² for the transfer of certain saving accounts, namely the housing savings plan (*PEL, Plan épargne logement*), the housing savings account (*CEL, Compte Epargne Logement*), the savings plan in shares (*PEA, Plan d'épargne en action*) as well as the ordinary securities account.

In Italy, the general rule is that bank cannot charge any fee for closing a saving account, with the exception of the linked securities account. In Belgium, a specific rule is provided for internal switching across saving accounts, in order to keep the accrued interests.

In the other examined Member States, only when the saving account is assimilated to a payment account, the PAD rules apply, including switching provisions.

5.2.7 Transparency

As to transparency provisions for all five products assessed as part of this study, the legislation in place requires to provide to the consumer detailed information, especially relating to fees and termination. In some cases, national law on transparency are the result of the transposition of EU requirements (although in some countries as, *inter alia*, Germany, they already existed before). For mortgages, transparency related rules are laid down by Article 13 of MCD, which stipulates the minimum content of the European Standardised Information Sheet (ESIS) as well as the requirement to provide consumer with the personalised information needed to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a credit agreement. The ESIS shall be provided also in case of an offer from a new lender to switch the mortgage provider.

During the stakeholder consultation, we have checked the effectiveness of the ESIS with the consumers' and industry association and the national regulators. The findings are presented in 9.2.10.1

For the switching of payment accounts, standardised information concerning the contractual, commercial and marketing information to consumers on payment accounts is required to be provided in standardised term sheets, according to Article 6 of the PAD. No specific issues were identified concerning the effectiveness of the information provided by the service providers.

No specific rules were found concerning transparency for other products, for which the general rules apply, in particular concerning the obligations to provide clear and correct information to the customer. In addition, for insurance products, the rules of the Insurance Distribution Directive (IDD)⁷³ are applicable.

⁷² Law n. 990 of 6 August 2015.

⁷³ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), *OJ L 26, 2.2.2016*.

The following part of this section further discusses the legal barriers for switching of each product separately, namely Mortgages (5.2.8); Personal accounts (5.2.9); Saving accounts (5.2.10); Mortgage insurance (Section 5.2.11) and Home insurance (Section 5.2.12).

5.2.8 Residential mortgages

Concerning switching of mortgages, the analysis covering 28 Member States suggests that there is a diverse and fragmented situation, but the lack of a complete legal framework does not necessarily prevent the switching. Table 12 provides the summary overview of the existing legal requirements and regulatory conditions for switching of mortgages in each of the Member State with a special focus on existing national frameworks in terms of the termination of the mortgage agreement, transparency, and fees. Details on each of these elements are then discussed.

The conditions set by Member States may also provide that the creditor is entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit.

Most Member States have chosen to make use of the possibility to impose conditions for early repayment, not only the fair compensation for the lender, but also non-monetary conditions, such as a minimum time limit before the exercise of the repayment (Germany), and percentage of the loan to value (France).

In addition, in Luxembourg, the legislation allows a specific tied product with mortgage: under Art. L. 226-11, lenders may require the consumer to open or maintain a payment or savings account for the sole purpose of accumulating capital to repay the principal and interest on the loan, to pool resources for the purpose of obtaining credit or to provide the lender with additional guarantees in the event of default.

In addition, the table provides an indication on the level of competition in the national banking industries (share of total assets of five largest credit institutions as commonly used proxy⁷⁴), and outlines also the available data on switching rates as per both, survey conducted as part of this report (ICF, 2019), and Eurobarometer. Note that the underlying questions in both surveys differed in terms of whether they focused on external switching only as in case of Eurobarometer⁷⁵, or external and internal switching as in case of the ICF survey⁷⁶. In addition, the timeframe for switching defined in the survey questions also differed. Therefore, some substantial differences between results can be seen and those should be interpreted with caution.

⁷⁴ Data as of 2018. Note that the share of total assets of five largest credit institutions (along with the Herfindahl Index) is commonly used proxy for the level of competition in the country's banking sector. See ECB, 2018. Structural Financial Indicators. Available at: https://www.ecb.europa.eu/pub/pdf/annex/ecb~10913d25c1.pr190604_ssi_table.pdf

⁷⁵ As per Eurobarometer (446 data), 2016. Respondents were asked whether: '*In the last 5 years have you changed provider of these products and services?*'. The question therefore implies *only* external switching

⁷⁶ As per the results from the consumer survey (ICF, 2019). Respondents were asked whether: '*They switched mortgage to a new lender or within the same lender*'. This question therefore implies both internal and external switch. NB: the question did not specify within which timeframe (i.e. last 5 years) they switch should take place

Table 13. Overview of legal provisions for switching mortgages – 28 Member States

	Does the law allow early termination of mortgages?	Does the law contain specific provisions regulating the switching procedure?	Is early termination subject to certain conditions? (e.g. compensation, time limits, etc.)	Is the amount of compensation eventually due to the creditor set by law?	Other fees that might be relevant when switching?	Existence of legal provisions relating to information transparency?	Share of total assets of five largest credit institutions ⁷⁷	Switching rates		External Switching rates
								Internal	External	
AT	Yes	No	Yes, (i) compensation can be asked for fixed term rate unless: (a) there is insurance contract to guarantee the repayment of the credit; (b) the amount repaid < EUR 10 000 over any 12-month; (c) credit granted in the form of an overdraft facility; (ii) notice period of a max of 6 months	"Fair and objective", and not exceeding the financial loss of the creditor	Yes	Yes	36%	9%	8%	0%
BE	Yes	No	Yes, (i) compensation, (ii) notice period	Compensation is capped by law	Yes	Yes	73%	16%	10%	3%
BG	Yes	No	Yes, compensation in case of early repayment before the payment of 12 monthly instalments).	Compensation is capped by law	Yes	Yes	60%	:	:	0%

⁷⁷ As per 2018. Note that the share of total assets of five largest credit institutions in a country is common measure used to gauge the level of concentration in the banking sector. See ECB, 2018. Structural Financial Indicators. Available at: https://www.ecb.europa.eu/pub/pdf/annex/ecb~10913d25c1.pr190604_ssi_table.pdf

CY	Yes	No	Yes, compensation only for fixed interest rate and unless there is insurance contract to guarantee the repayment of the credit.	Compensation is capped by law	Yes, but no taxes shall be paid to Cadastre.	Yes	87%	:	:	1%
CZ	Yes	No	Yes, compensation	Compensation is capped by law	Yes	Yes	65%	6%	17%	1%
DE	Yes	No	Yes, only for fixed rate: (i) compensation; (ii) justified interest of the borrower. In some cases: (iii) time limit: termination is only possible after ten years ⁷⁸ (iv) six-month notice	Compensation is capped by law	Yes	Yes	29%	20%	12%	1%
DK	Yes	Yes (Registration fee act 69)	Yes, compensation	Compensation shall be reasonable and determined on the basis of objective criteria	Yes, but reuse of the registration fee is possible	Yes	65%	:	:	7%
EE	Yes	No	Yes, compensation if the termination of the credit falls within the period for which the interest rate is fixed	Compensation is capped by law	Yes	yes	91%	:	:	1%

⁷⁸ The contract can be terminated earlier only if a) this is agreed in the contract; b) in case the borrower pays back the whole loan and in addition a prepayment penalty; or c) the fixed interest rate was agreed for a shorter time than ten years.

EL	Yes	No	Yes compensation	The law provides that the creditor shall be entitled to reasonable and objectively justified compensation	Yes	Yes	97%	:	:	0%
ES	Yes	Yes, comprehensive regulation	Yes, (i) compensation for both variable (lower compensation) and fixed (higher compensation) rate loans. In case of switching from a variable interest rate loan to a fixed one (both within the same lender or switching to a new one), even lower compensation during first 3 years and no compensation from the 4 th year on. (ii) the parties may agree on a prior notice period that may not exceed one month	Compensation is capped by law	No, except for valuation fees	Yes	69%	9%	9%	0%
FI	Yes	No	Yes, compensation if the amount of the granted credit exceeds EUR 20,000 and the interest rate of the credit is not bound to the reference rate (e.g. there is a fixed interest rate) or the reference rate period is at least 3 years	Compensation is capped by law	Yes	Yes	82%	:	:	3%
FR	Yes, however the law allows the	No	Yes, compensation if early repayment is not justified by a legal reason (such as the sale of the property, a change of workplace, a forced termination of	Compensation is capped by law	Yes	Yes	48%	14%	16%	3%

	lender to prohibit partial prepayments of less than 10% of the original loan amount.		professional activity, the death of the person the consumer was living with as a couple)							
HR	Yes	No	Yes, (i) compensation for fixed rate: provided that the early repayment amount exceeds HRK 75,000 within 12 months; (ii) written notification	Compensation is capped by law	Yes	Yes	79%	:	:	0%
HU	Yes	Yes	Yes, compensation: the creditor shall be entitled to compensation, where justified, for possible costs directly linked to the early repayment	Compensation shall be reasonable and determined on the basis of objective criteria's	Yes	Yes	50%	:	:	1%
IE	Yes	Yes, timeline for mortgage application and standardised , information to encourage providers to advice consumers	Yes, compensation only for fixed rate or rate that may not be changed over a period of at least 1 year, or may not, for a period of at least 5 years, exceed the rate applicable on the date of the making of the credit agreement by more than 2%	"Fair and objective", and not exceeding the financial loss of the creditor	Yes	Yes	46%	8%	10%	2%

to switch.											
IT	Yes	Yes, detailed regulation of the switching procedure	No		No compensation can be charged. Any different clause added to the mortgage contract is considered void by law	No fees, except for the notary deed (35 EUR).	Yes	46%	18%	20%	0%
LT	Yes	No	Yes, compensation		Compensation capped by law	Yes	Yes	90%	:	:	1%
LU	Yes	No	Yes, compensation only if the amount of the early repayment exceeds EUR 10,000 over a one-year period; and for fixed rate. No compensation is due if the early repayment has been made under an insurance contract guaranteeing credit or in the event of an overdraft on a bank account		Compensation is capped by law	Yes	Yes	26%	:	:	4%
LV	Yes	No	Yes, (i) compensation, (ii) notice period		The consumer may only be required to pay a reasonable compensation for the direct costs	Yes	Yes	81%	7%	6%	0%

				of re-crediting, if any						
MT	Yes	No	Yes, (i) compensation only in case of fixed rate; (ii) time limitations, (iii) a different treatment depending on the type of the borrowing rate or when the consumer exercises the right, (iv) restrictions with regard to the circumstances under which the right may be exercised	"Fair and objective", and not exceeding the financial loss of the creditor. Consideration shall be given to the impact of early repayment on administrative costs irrespective of the borrowing rate	Yes	Yes	77%	:	:	1%
NL	Yes	No	Yes, (i) compensation only when the consumer wants to pay more than 10-20% of the total value within 1 year. (ii) time limitations or other conditions may be agreed	Compensation is capped by law	Yes	Yes	85%	14%	12%	7%
PL	Yes	No	Yes, compensation both in case of a fixed and variable rate, however: In relation to the variable interest rate, only if the credit, in whole or in part, has been repaid within 36 months from the	Compensation is capped by law	Yes	Yes	50%	6%	8%	1%

			day the credit agreement was concluded								
			With reference to the fixed interest rate for a given period, the creditor may demand compensation within the period to which the fixed rate applies								
PT	Yes	Yes (art. 24 Decree law 74-A/2017)	Yes, (i) compensation; (ii) ten day notice to the creditor	Compensation is capped by law	Yes	Yes	73%	4%	9%	1%	
RO	Yes	No	No	No compensation can be charged.	Yes	Yes	62%	:	:	1%	
SE	Yes	No	Yes, compensation, only in case of fixed rate if a reservation to that effect has been made in the credit agreement and to the extent it coincides with generally accepted lending practices	Compensation is capped by law for residential mortgages	Yes	Yes	54%	8%	11%	8%	
SK	Yes	No	Yes, compensation	Compensation is capped by law	Yes	Yes	61%	:	:	1%	
SL	Yes	No	Yes, compensation in case of fixed rate provided that the sum of early repayments in the period of 12 months exceeds EUR 10,000	Compensation is capped by law	Yes	Yes	76%	:	:	0%	
UK	Yes	No	Yes,(i) compensation ; (ii) time limitations (iii)restrictions with regard to the circumstances in which the right may be exercised;	"Fair and objective", and not exceeding the financial loss of the	Yes	Yes	32%	23%	16%	5%	

(iv) if the exercise of the right falls within a period for which the borrowing rate is fixed, the existence of a **legitimate interest** on the part of the borrower.

creditor

Source: ICF and Grimaldi

5.2.8.1 Legal requirements and regulatory conditions for switching

In the examined sample of 28 Member States, there is no specific legislation in place to regulate switching of mortgage lenders, with the exception of Italy, Spain, and, to some extent, Ireland, Portugal, Denmark and Hungary.

In Italy and Spain specific and detailed legislative provisions have been introduced in order to allow borrowers to switch lender during the contract's duration, without having to perform two different operations, namely termination/early repayment of the first mortgage and application of a new one.

The switching process, under the national legal framework, is a "subrogation", the substitution of the lender in the existing contract, including the notary deed. The legal framework defines the rights and obligations of the borrower and of the new and the old lender, as well as the process according to which the new lender replaces the former in the relevant rights and duties.

In Denmark, there is a provision on the reuse of registration fees when switching credit institution. In Portugal, even if there is not a comprehensive regulation of the switching procedure, a specific provision regulates the early repayment with a view to transfer the credit and it prevails over any contrary contractual clause that may have been introduced in the contract.

In Ireland, new rules have been introduced in January 2019 to make it easier to switch mortgage provider. The legal framework provides for a 10-day timeline for the new lender to decide on a fully completed mortgage application. The new rules require the credit institution to provide a complete "switching pack" which shall include standardised and prescribed information on the switching process and costs. Additionally, the legislation encourages providers to advise consumers of those products available to them that may reduce their mortgage payments⁷⁹.

Besides, in all the remaining Member States switching is generally possible by way of refinancing⁸⁰ or early repayment of the existing mortgage, within the limits provided by the legislation, and application for a new one with a different credit institution. Hence in the latter case, the switching process to switch to a new lender is the same as applying for a new mortgage. This operation might therefore entail costs, especially linked to the new mortgage application (e.g. registration fees, notary and legal fees, taxes, etc.), In addition, the consumer may be required, to pay compensation to the bank. Compensation is allowed by the MCD as long as it remains within the economic loss of the lender.

The process of terminating a mortgage with one lender and applying for a new one with another lender may present additional obstacles given the need to obtain the release of the *in rem* security or of the pledge from the older lender and its assignment to the new one. The process can be particularly complex and costly (e.g. in BE).

Some additional interesting legal options have been found in certain Member States which can make it easier to switch mortgage provider. For example, in Czech Republic, while there are no explicit procedures for switching mortgages, in case of early repayment, a vacant pledge can be attached to another secured debt (however, not amounting to more than the ceased debt) so that the registered pledge (including

⁷⁹ In terms of potential switching savings measures, on request of the consumer, lenders will be required to provide existing borrowers with an indicative comparison with alternative or new rates offered, and the link to the comparison website. In addition, there will be enhanced mortgage transparency measures on variable rates on Loan-to-Value (LTV) which would mean lenders would notify consumers on an annual basis of whether they can, or cannot, move LTV interest rate bands, subject to the provision of an up-to-date valuation to their lender.

⁸⁰ Refinancing a mortgage in the context of switching means that the new lender accepts to pay off the existing loan to the first lender and replace it with a new one.

mortgage) is used as security for other financing, without having to bear excessive costs for switching.

Additionally, at national level, switching options may also depend on the legal structure of the mortgage operation: in Denmark, certain types of mortgage are linked to a securitisation operation performed by the lender. The mortgage loans are secured by mortgages on real estate, which are funded by issuing and selling bonds. The borrower receives the proceeds from the sale of the bonds as the loan amount. Depending on the contract, in case of early repayment, the borrower may be asked to repurchase the bonds at market value, which may entail significant costs.

In addition, under the Danish "mortgage deed pledge agreement", the mortgage can be pledged more than once without additional registration fees being charged.

A more detailed description on the relevant regulatory conditions for switching in each Member State is outlined in the individual country fiches presented in Annex 3. We provide below the most relevant elements that emerged across the legal analysis of the national framework concerning mortgage switching.

Box 2. Regulatory switching conditions – snapshot on specific Member States

In **Belgium**, as explained above, apart from the general discipline on credit subrogation enshrined in the Civil Code,⁸¹ the legislation only provides for mortgage refinancing and for the portability of the mortgage from an immovable property to another, where the loan is requested to the same financial institution. Portability allows the borrower to obtain a new loan for another property without having to pay transfer and registration fee (1% on the amounts of the mortgage guarantee) or mortgage fees (0.30 per cent of these same amounts). However, there will still be deed costs to be faced because the transfer is made by notarial deed, plus a fee charged by the State for the mortgage termination, although their amount is much lower than the cumulative costs of the deeds of release and new registration as would be the case of switching the mortgage provider. Therefore, under Belgian legislation, switching lender for a mortgage over the same property is a solution that can be prohibitive due to very high costs, including taxes, linked to the termination of the contract.

In **Czech Republic**, a specific characteristic of the mortgage security is that after the original secured debt is paid, it is also possible to keep the registered pledge (*zástavní právo*) vacant⁸². A vacant pledge can attach to another secured debt (however, not amounting to more than the ceased debt) so that the registered pledge (including mortgage) is used as security for other financing. This could be used in case of early repayment of a loan and new mortgage for the property: the early repayment, except in case of termination condition, would leave the mortgage vacant which could be attached to a new loan for a maximum amount corresponding to the old debt.

In **Denmark**, residential mortgages are regulated by single rules on consumer protection and the contractual basis between the consumer and the mortgagee. Furthermore, in relation to fees for switching, the Danish Registration Fee Act⁸³

⁸¹ Law of 21 March 1804, n 1804-03-21/30.

⁸² This is not a special feature for Czech Republic only though. This exists also in Germany and in Switzerland.

⁸³ The Act on fees to be paid on registration of owner's rights and mortgages, etc. is hereby promulgated, cf. Act no. 382 of 2 June 1999, as amended by section 2 of Act no. 944 of 20 December 1999, section 3 of Act no. 1100 of 29 December 1999, section 46 of Act no. 165 of 15 March 2000, section 49 of Act no. 1029 of 22 November 2000, Act no. 485 of 7 June 2001, section 16 of Act no. 458 of 9 June 2004, section 36 of Act no. 325 of 18 May 2005, section 70 of Act no. 428 of 6 June 2005, section 4 of Act no. 560 of 24 June 2005, section 10 of Act no. 513 of 7 June 2006, section 10 of Act no. 514 of 7 June 2006, section 4 of Act no. 526 of 7 June 2006, section 8 of Act no. 539 of 8 June 2006 and section 1 of Act no. 106 of 7 February 2007.

contains rules relating to reuse of registration fees when switching credit institution. Section 26 and 26 (a) in the Danish Act on Credit Agreements⁸⁴, which applies to mortgage-backed loans, grants the borrower the right to prepay the loan (in whole or in part). The rules on registration fees as well as additional costs connected to refinancing are also important parameters (and potential obstacles) when considering the (commercial) incentive of switching mortgage loan. As per July 2019, change in legislation provided for greater flexibility in terms of reusing the registration fee when refinancing a real estate loan. In addition, certain types of mortgage are linked to a securitisation operation performed by the lender. The mortgage-credit institutes provide loans secured by mortgages on real estate, which are funded by issuing and selling bonds. The borrower receives the proceeds from the sale of the bonds as the loan amount. Depending on the contract, in case of early repayment, the borrower may be asked to repurchase the bonds at market value, which may entail significant costs.

In **France** the Loi Lagarde⁸⁵ amended the legislative framework to cover the mortgage buyback, where the consumer requests another credit institution to take over the remaining part of the mortgage, in order to renegotiate the rates. However, the legislation allows the lender to include in the loan agreement a condition which prohibits early repayments equal to or less than 10% of the original loan amount.

In **Ireland**, following a public consultation process on “Enhanced Mortgage Measures: Transparency and Switching (CP112)”, which took place in June 2018, new rules have been introduced in January 2019 to make it easier to switch mortgage, such as a required 10-day turnaround for a decision on a fully completed mortgage application by the new lender. In addition, the lender’s switching pack to be provided to the applicant, shall include standardised, prescribed information, as well as information on the products available to help to reduce mortgage payments.

In **Italy**, Article 120-quater of Italian Consolidated Banking Law⁸⁶ explicitly regulates the mortgage switching procedure which shall occur under the conditions stipulated between the customer and the new bank, preventing the original lender from charging any penalty or charge of any kind. In addition, the law regulates the fees applicable to the notary transfer of security, which in 2018 were established at EUR 35. To further facilitate switching, according to the law, the current lender is prevented from opposing to switching. Indeed, as per paragraph 6 of Article 120-quarter, any agreement, even after the conclusion of the contract, by which the exercise of the right of subrogation is prevented or made burdensome for the debtor, is null and void. The nullity of the agreement does not imply the nullity of the contract. Subrogation is also possible in case of not immediately payable debt⁸⁷ or when there is the provision of a contractual term on benefit of the creditor (Article 120-quarter, para. 1). The borrower is entitled to preserve the fiscal and tax benefits from the original loan contract.

In **Luxembourg** there is not specific legislation on switching; however, law no. 7025 of 23 December 2016 amended the Consumer Code adding specific provisions on the early repayment of mortgages. Prior to an early repayment, the consumer is supposed to notify its intention to refund all or part of its credit to the Bank. The

⁸⁴ The Danish Consumer Contracts Act. In force and effect. Publication date: 18 December 2013
The Danish Ministry of Justice

⁸⁵ Act No. 2010-737 of 1 July 2010.

⁸⁶ Legislative Decree of the 1st of September 1993 n. 385.

⁸⁷ Under the Italian law a debt is immediately payable when no conditions or time limits are attached to it or when the time limit has expired, and the creditor can demand the relevant payment or rely thereon in court to obtain an order. An example of a payable debt could be a contract that requires the debtor to pay a sum of money only after a certain number of days have elapsed since the invoice was delivered. Only after this period does the claim become due.

latter will then inform him on the amount of the compensation to be paid. The consumer will have a period of 14 calendar days to notify his/her acceptance of the conditions for early repayment, via the communication channel of his/her choice. The compensation can only be asked if the amount of the early repayment exceeds EUR 10,000 over one year; and the borrowing rate was fixed. No compensation is due if the early repayment has been made under an insurance contract guaranteeing credit on a bank account or if it occurs in a period for which the borrowing rate is not fixed.

In **Poland** the provisions of the Mortgage Credit Act⁸⁸ do not expressly provide for switching of the lenders. Nonetheless, the transfer of mortgages is possible using one of the following methods: (i) refinancing, (ii) credit consolidation, or (iii) statutory subrogation. Among the listed methods, refinancing appears to be the most frequently used way for the switching of the lenders, although there is no statistical information or study that would expressly confirm the latter⁸⁹. The refinancing procedure generally consists of using funds granted under a new credit agreement with a new lender to repay the previous one, with details depending on the procedures and practice of the particular lender. A credit consolidation usually happens if the borrower wants to refinance more than one liability (e.g. mortgage and debit card). As part of the consolidation, the lender granting the consolidation credit releases the borrower from various liabilities in exchange for concluding a new credit agreement. The Civil Code provides for an additional basis to switch lenders in the relationship between the borrower (debtor) and the lender (creditor), which is statutory subrogation. The subrogation consists of the new creditor repaying the old creditor and thus obtaining the receivable against the debtor (up to the amount actually repaid). Such repayment may be based on the right of early repayment stated in Article 38 of the Mortgage Credit Act.

In **Portugal**, according to the Decree Law No 74-A/2017,⁹⁰ entered into force on 1 January 2018, mortgages can be repaid at any moment and transferred. The law contains an express provision on early repayment with a view to transfer the credit (Article 24), which prevails over any contractual clause that in any way aggravates the position of the insured or the consumer in credit transfer. In the event of early termination for the transfer of the credit, the consumer's current creditor is required to provide, within 10 working days, the new creditor with all the information and the elements necessary to carry out the transfer, namely the value of the principal outstanding and the time period of the loan already elapsed. In addition, it is stated that the total early repayment with a view to transferring the credit to a different creditor does not affect the validity of insurance contracts, without prejudice to the replacement of the beneficiary of the insurance contracts by the new creditor, under conditions that do not affect the risks covered by the insurance policies entered into to guarantee the payment obligation.

In **Spain**, since 1994, borrowers are granted the right to switch mortgage lenders in order to obtain better loan conditions (e.g. borrowing rate and/or term of the loan). Since June 2019, the new Mortgage Law 5/2019 provides for early repayment of the mortgage, also improving the framework for the subrogation. Under the new legislative framework, when the consumer has accepted the offer of a new entity, he/she will notify its current bank, which will have seven calendar days to certify the amount that will be subrogated. The current lender has 15 days to submit a counter-offer to the borrower. If the customer does not accept the counter offer (this is a possibility that already existed in the original Act 2/1994, but which has been overridden by the aforementioned Act 41/2007), the subrogation will have to

⁸⁸ Act of 23 March 2017 on mortgage credit and on supervision over mortgage brokers and agents.

⁸⁹ Interview with the representative of the UOKiK on 6th May 2019.

⁹⁰ Decree Law No 74-A/2017, of 23 June 2017, implementing the Directive 2014/17/EU, published in DR, 1st Series, No. 120, 23-06-2017.

be performed. Law 5/2019 also sets forth the right of any client to pay early a mortgage loan, at any point in time since the signing of the contract.

In the **UK** there are no specific legal provisions on the switching of residential mortgage but the Mortgage Credit Directive Order 2015 contains provisions on early termination of the mortgage. Nevertheless, according to the Financial Conduct Authority (FCA) the absence of a specific legal framework describing the switching procedure does not represent a material barrier to switching. The switching rates for residential mortgages is circa 75 per cent, of which most accounts for internal switching. Most customers in the UK market switch their mortgage before interest rates move to 'reverse' rate after initial 2-3 years of favourable fixed rate. The switching process may take up to a few weeks and involve, inter alia, at least two appointments with mortgage advisor, paperwork done by the borrower, and potential follow-up from a new lender.

5.2.8.2 Termination following early repayment

Early repayment of the mortgage loan is relevant especially when the legislative framework does not provide for a switching procedure. Swift and simple procedures for early repayment of the mortgage could allow the borrower to change the lender and take advantage of better offers. High compensation or burdensome requirements for early repayment may prevent the borrower from starting the process and offset the economic benefits of a new mortgage offer.

On the other side, the industry considers that minimum compensation is justified by the losses incurred as well as the increase in funding costs for the lender in case of the early repayment. Without any compensation for the lender, the costs of the mortgages would be likely to rise because they should also factor in the financial losses that would occur in the event of early repayment. In addition, further costs could be passed on to the clients who would not make use of such early repayment option.

In all analysed Member States, the early repayment of the mortgage is allowed by national provisions, in accordance with the requirements of the MCD, albeit the national legislation may impose certain conditions.

In particular, early termination may be subject to the payment of compensation to the lender. When consumers discharge fully or partially their obligations under a mortgage credit agreement, the creditor is entitled to a "fair and objective" compensation for possible costs directly associated with the early repayment of a credit.

Member States that made use of such option offered by the MCD have regulated in different ways the conditions under which such compensation can be required by the creditor. In Italy and Romania, the law expressly prohibits the lender to charge a compensation fee to the borrower for early repayment of the mortgage, with no exception. In addition, in these two Member States early termination is always possible without any restrictions. It has to be noted that, in Italy, no specific increases in the costs of the mortgages or of interest rates was observed following the introduction of the switching legislation with no fees for early repayment⁹¹. As confirmed by the consumers' association, banks are competing to attract clients with switching packages.

Some Member States have only literally transposed the Directive, generally stating that the compensation shall be "fair and objective" and "not exceeding the financial loss of the creditor", therefore leaving to the creditor to establish the due compensation. Violations of the fairness and objective elements may only be ascertained by a court (e.g. AT, DK, IE, UK).

⁹¹ As expressed by the Italian Consumer Association. In addition, Italian banks have not conducted any lobbying activities to have the law amended or removed. It is in place since 2007 and according to another stakeholder, the Bank of Italy, it works well.

The majority of the Member States have established in detail the ceilings that shall not be exceeded (e.g. BU, CY, CZ, FI, FR, HR, LU, NL, PT, SL, SE, DE, PL, ES).

In these Member States the maximum compensation is capped with the indication of a percentage (usually 0.5 or 1 per cent) of the amount repaid. In Cyprus the law sets a fixed compensation that will never exceed the amount of 100 EUR.

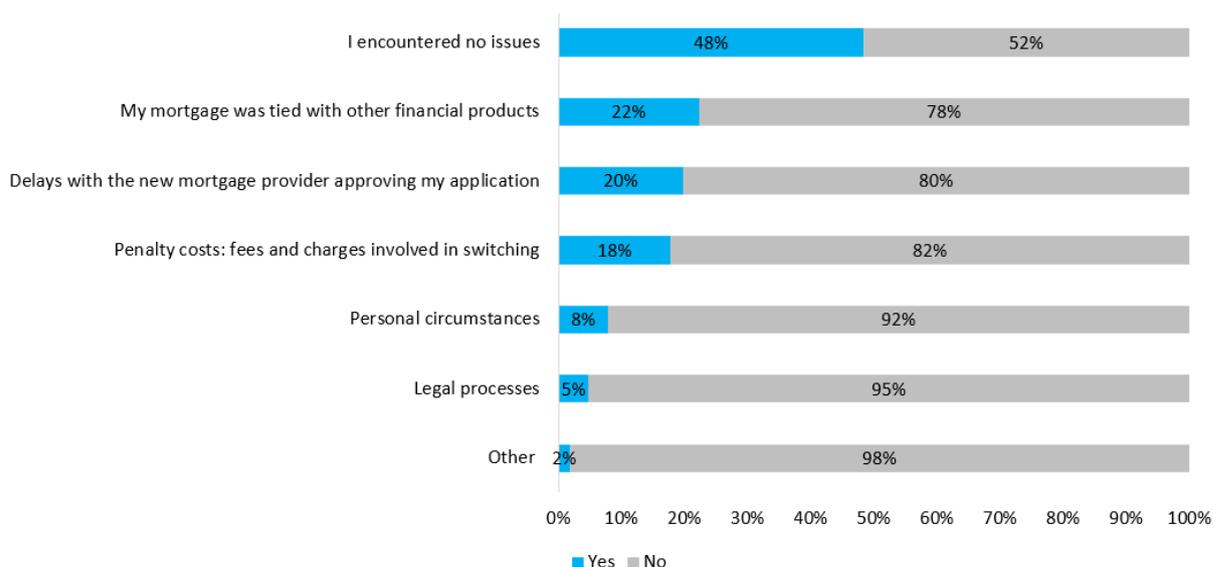
In other Member States, this can be charged only when the mortgage agreement has certain features, such as fixed interest rate (in Croatia, Cyprus, Finland, Germany, Ireland, Luxembourg, Malta, Slovenia, Sweden), or when the amount of the granted credit or of the repayment exceeds a certain threshold (see Box 5.2) and if repayment is not justified by a legal reason such as the sale of the property, a change of workplace, a forced termination of professional activity, or other circumstances personally affecting the borrower such as the death of the cohabitant (as in the case of France).

In addition, early termination may also be subject to other conditions imposed by lenders, such as time limits (DE, MT, UK), a specific justified interest of the borrower (DE, UK), a different treatment depending on the type of the borrowing rate (fixed or variable, such as ES) or on the moment the consumer exercises the right, or restrictions with regard to the circumstances under which the right may be exercised (MT).

In particular, it emerges that there is a quite different approach to compensation between mortgages at fixed and variable rates. In case of variable rates, the rules are extremely detailed in order to keep into account the potential losses related to changes in interest rates, especially when the early repayment occurs in the first years of the contract. The rationale for this, from the perspective of lenders, is that early repayment is possible at any time, as the applicable interest rate is variable (and usually higher than a fixed interest rate for a loan having the same maturity). This means that the flexibility for the borrower comes with a price, of the higher applicable interest rate, and the fact that this rate is likely to evolve in the future.

The survey of consumers conducted as part of this study that covered 14 Member States revealed that out of those who switched, 18 per cent faced penalty costs (Figure 11).

Figure 11. Issues encountered by consumers while switching



Source: Consumer survey (ICF, 2019)

Note: N=1077, among those who switched only

A more detailed description of the relevant provisions on termination in each Member State is provided in the box below while full overview of the current state in each Member State is outlined in the individual country fiches contained in Annex 3.

Box 3. Provisions on termination for early repayment - snapshot on specific Member States

In **Austria**, under the HIKrG the creditor may demand from the borrower reasonable and objectively justified compensation for the direct financial disadvantage which is likely to result from the early repayment, unless: (i) the early repayment is made with an insurance benefit from an insurance contract which, according to the agreement, is to guarantee the repayment of the credit; (ii) the repayment falls within a period for which no fixed debit interest rate has been agreed; (iii) the amount prematurely repaid does not exceed EUR 10,000 over any 12-month period. In the case of a mortgage-backed loan, a period of notice of a maximum of six months or until the end of any agreed period with a fixed borrowing rate may be agreed for early repayment. If the borrower does not comply with the agreed period of notice, the lender may demand compensation for the part of the period of notice not complied with.

In **Belgium**, mortgages automatically last for a 30-year period (after that, a request for a new mortgage can be submitted by the lender). In order to terminate the mortgage before its automatic termination period of 30 years, the lender's agreement to waive its right of mortgage must be recorded in a deed called "*acte de mainlevée*" (deed of release). The deed of release is a notarial act signed by the parties. A copy of the act is sent to the mortgage office which carries out the cancellation. If the lender does not agree, the judge may order the discharge if the mortgage is no longer justified, e.g. if any amount is no longer due to the lender. The law provides for a cap of 3 months of interest if the consumer makes early repayment.

In **Bulgaria**, pursuant to Article 41 of the CCRIPA, when consumers discharge fully or partially their obligations under a credit agreement the creditor is entitled to fair and objectively justified compensation for possible costs directly associated with the early repayment of a credit, whereby the compensation may not exceed one (1) per cent of the early repaid amount in the case of repayment before the expiration of 12 monthly instalments following its drawdown. No compensation or penalty applies in case of early repayment following the payment of 12 monthly instalments following its drawdown.

In **Croatia**, under the Obligations Act, the Consumer Credit Act, and Residential Consumer Loans Act applies, when the consumer discharges fully or partially his obligations under a residential consumer loan agreement prior to the expiry of that agreement. The credit institution cannot charge the consumer a fee for early, in full or in part, fulfilment of obligation arising out of the residential consumer loan agreement. However, in case of early repayment during application of fixed interest rate, the lender can charge "fair and objective" compensation for costs related to early repayment provided that the early repayment amount exceeds HRK 75,000 within 12 months. The fee cannot exceed 1 per cent of the loan or of the total interest that the borrower would have to pay between early repayment date and the original termination of the contract..

In **Cyprus**, under article 25 of Law 41(I)/2017, transposing the Directive 2014/17/EU, a consumer has a right to discharge fully or partially his obligations under a residential consumer loan agreement prior to the expiry of that agreement. In such a case, the consumer is entitled to reduction of total costs of the loan, which consists of reduction of interest and other costs for the remaining loan period. Where the consumer makes a full repayment of the obligations under the credit agreement, the creditor's damages shall be calculated in accordance with the mathematical formula set out in Annex IV of the law. In any case of early repayment of the credit agreement, the creditor may claim administrative costs directly related to the early repayment, which shall not exceed: 1,25 per cent of the difference between the repaid amount and the remaining

amount, including interest and charges or; the amount of EUR 100, whichever is the lower.

In **Finland**, under Chapter 7a, Section 19 of the CPA, the creditor has a right to receive compensation from the consumer in the event of early repayment, if the amount of the granted credit exceeds EUR 20,000 and the interest rate of the credit is not bound to the reference rate (e.g. there is a fixed interest rate) or the reference rate period is at least three years. The maximum compensation that may be collected shall be the difference between the interest agreed upon and the corresponding credit with fixed interest for the remaining credit period or the period for the determination of the reference interest rate.

In **France**, early repayment is allowed but the Consumer Code allows the bank to impose a clause which prohibits partial prepayments of less than 10 per cent of the original loan amount. Some banks add a prepayment compensation clause (IRA) to their mortgage contract. If so, there is the risk of a penalty if early repayment is not justified by a legally justified reason (such as the sale of the property, a change of workplace, a forced termination of professional activity, the death of the person the consumer was living with as a couple). The amount of this penalty is regulated. Under no circumstances can the bank ask for more than the equivalent of 6 months' interest on the principal repaid early at the average rate of the loan or 3 per cent of the principal remaining due before the loan is repaid.

e.g. In **Greece**, according to article 24 of Law 4438 transposing Directive 2014/17/EU, a consumer has a right to discharge fully or partially his obligations under a residential consumer loan agreement prior to the expiry of that agreement. In such a case, the consumer is entitled to the reduction of total costs of the loan, which consists of reduction of interest and other costs for the remaining loan period. The consumer's right to an early repayment is of imperative nature and it cannot be waived.

e.g. In **Poland**, Article 39 of the Mortgage Credit Act provides that in case of early repayment, the lender is entitled to compensation only if it is included in the mortgage contract and with certain limitations. In the case of a mortgage with variable interest rate, the creditor can only demand compensation if the credit, in whole or in part, has been repaid within 36 months from the day the credit agreement was concluded. This compensation cannot be greater than: (i) the interest that would be charged on the credit amount that has been repaid early within a year from the date of actual repayment; and (ii) more than 3 per cent of the amount of early repayment. Moreover, if the credit agreement with a variable interest rate expires in less than a year, the compensation cannot be higher than interest that would fall for the period remaining until the expiration of the agreement. In the case of credit with a fixed interest rate for a given period, the creditor may demand compensation within the period to which the fixed rate applies.

In **Portugal**, Article 23 specifies the conditions for early repayment to which the consumer is entitled at any time during the term of the contract, upon provision of a 10 days' notice to the creditor. The consumer may be asked to pay a compensation, but this has to be clearly and expressly stated in the contract and there are legal caps (the credit providers cannot charge more than 0.5 per cent of the repaid capital when the agreement has variable interest rate; and they cannot charge more than 2% of the repaid capital when the agreement has fixed interest rate).

In **Slovakia**, under Section 18 of the Housing Loans Act, the consumer has a right to discharge fully or partially his obligations under a housing loan agreement prior to the expiry of that agreement. In such cases, the credit institution may require the consumer to pay only the interest for the relevant time period, and actual costs directly related to his/her request for an early repayment; such costs cannot exceed 1 per cent of the sum thus paid early (the conditions may vary depending on whether the agreement provides for fixed or variable interest rates). Credit institutions may not impose on consumers any penalty for an early repayment.

In **Spain**, in case of early termination the parties may agree on a prior communication period that may not exceed one month. The new Article 23.5-7 L 5/19 provides that the lender may not collect compensation or commission for early repayment for both variable (which are the majority in Spain) and fixed rates mortgages where the parties may contractually establish compensation or commission in favour of himf Thus, for variable rate mortgages, in case of: a) full or partial repayment or early repayment of the loan during the first 5 years of validity of the loan contract. In this case the compensation cannot exceed the amount of financial loss that the lender may suffer, with a limit of 0.15 per cent of the remaining value repaid in advance, or b) in case of early or partial repayment during the first 3 years of the mortgage, the compensation is capped at 0.25 per cent of the capital repaid in advance. There is no cost if the early repayment is made after five years. For fixed rate mortgages compensations are higher: not exceeding 2 per cent during 10 first years and 1.5 per cent from then on. But in case of switching from a variable interest rate loan to a fixed one, regardless within the same lender or to a new one, compensations are reduced: 0.15 per cent if this is done during the 3 first years and no compensation possible from then on.

In **Sweden**, pursuant to Section 32 of the CCA the consumer is entitled to early repayment upon the payment of the compensation only if the mortgage was agreed at a fixed rate. The compensation is capped at a maximum corresponding to 1 per cent of the amount of the prepayment or, if at the time of prepayment, less than one year is left on the term of the loan, 0.5 per cent of the amount of the prepayment.

5.2.8.3 Transparency obligation

In all analysed 28 Member States, specific rules on transparency are in place. Transparency requirements are detailed in respect to the form and content of pre-contractual and contractual information to be given to consumers.

Transparency obligations mainly stem from the MCD. Lenders are required to provide, free of charge, general information regarding residential mortgages which they offer to consumers and, in respect of a residential mortgage, information concerning the mortgage in accordance with the European Standardised Information Sheet (ESIS).

Furthermore, the lender shall promptly provide the consumer with information regarding the consequences of early re-payment of the debt, upon request of the borrower. In the event that such payment would lead to costs for the consumer, the consumer shall receive an estimate of the costs and an explanation of the assumptions on which the estimate is based. The information shall be provided in a document or in another readable and durable form which is accessible to the consumer.

The lender is also generally required to adequately inform the consumer, in the case of the optional associated sale of ancillary services, on the possibility of separately terminating the contract for each service and on their consequences.

While the Mortgage Directive makes it mandatory to provide such information, each lender provides them according to the provisions of national law and their internal models. In the UK, according to the HMRC the ESIS is not a popular tool, *'it is often provided at the end of the mortgage process and seen as a ticking box exercise/ administrative burden'*, number of banking associations had also mixed views regarding how effective has ESIS been. While the merit of having ESIS has been widely recognised, some stakeholders pointed to specific weaknesses of it. 9.2.11 presents some more details.

Box 4. Snapshot of perceptions on ESIS

In **Slovenia**, according to the national consumer organization (ZPS), most consumers are making comparisons based on informative loan calculations, not using the ESIS form, which is in practice given to the customer only shortly before the contract is signed.

In **Sweden**, the National Industry Associations considered that the ESIS has not been as effective as one would hope. They argued that *'the ESIS does not really fit into our mortgage process – it is not streamlined'*. According to those, ESIS could be structured in a much better way. However, no further elements were added. It is not given in the right time (too late) and it is not appropriate for on-line process. The Swedish Supervisory Authorities could not comment as no comprehensive study on the assessment of the ESIS has been done in the country so far.

In **Belgium**, the Belgian Federation of Financial Sector is of the opinion that that ESIS contains too much information and therefore misses its objective to provide a clear overview on the conditions of the mortgage. Considering ESIS should be handed over as early as possible, the lender must make a lot of assumptions when preparing it, also because consumers tend to provide more detailed information only at the later stage of interaction with a lender. The Belgian Ombudsman stated that *"Concerning ESIS, we have noted that some institutions transmit this document at the same time as they hand over the credit offer. The law in Belgium permits this. It is possible that a consumer has to make a decision while he has not yet received the ESIS of all the institutions that he has contacted"*.

In **Germany**, The Association of German Banks feels that the idea behind ESIS is very well founded but a general amount of information provided for consumers who are already overwhelmed and need to deal with very long contracts makes it sometimes more difficult to grasp by consumers.

In **Italy**, according to one of the consumers' associations, the ESIS is delivered too late, when the choice is already made just before the signing of the contract when the bank has already accepted the customer's request. Therefore, it cannot be considered true pre-contractual information. A similar issue related to the fact that the ESIS is delivered too late to the consumers was raised by the BEUC during the roundtable session.

Similarly, the **Irish** Ministry of Finance believes the amount of information in the mortgage contracts is an issue and it may therefore reduce the effectiveness of ESIS.

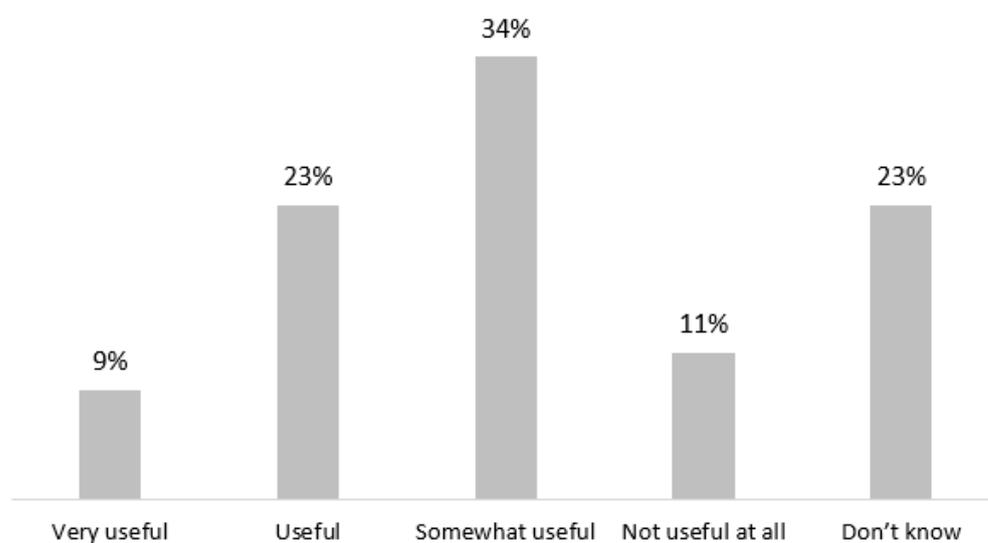
In **Poland**, the competition authority stated that given that ESIS is not provided online, the consumers would need to go to the bank personally. Furthermore, the authority reported: *"Our observation is that the biggest benefit of ESIS is that it summarises the information in the contract (sometimes up to 50 pages). But the idea that consumers gets ESIS from several banks does not exist in practice – which was indeed the initial idea behind ESIS."*

In the **UK**, some industry members pointed out to the fact that providing the APRC (Annual Percentage Rate of Charge) for the whole duration of the process (for variable interest rate mortgages) may be misleading as market conditions may change substantially making the estimate substantially off the actual cost.

In **Spain**, according to the national authority, new transparency and conduct requirements foreseen in Law 5/2019 might have an impact on the price of the credit, since now providers will have to comply with a set of very prescriptive transparency requirements.

Figure 12 provides some assessment of the usefulness of the ESIS based on the responses provided by 43 European banks, as part of the survey conducted for this study.

Figure 12. Usefulness of ESIS, according to some banks



Source: Survey of banks (ICF, 2019)

Note: N = 43

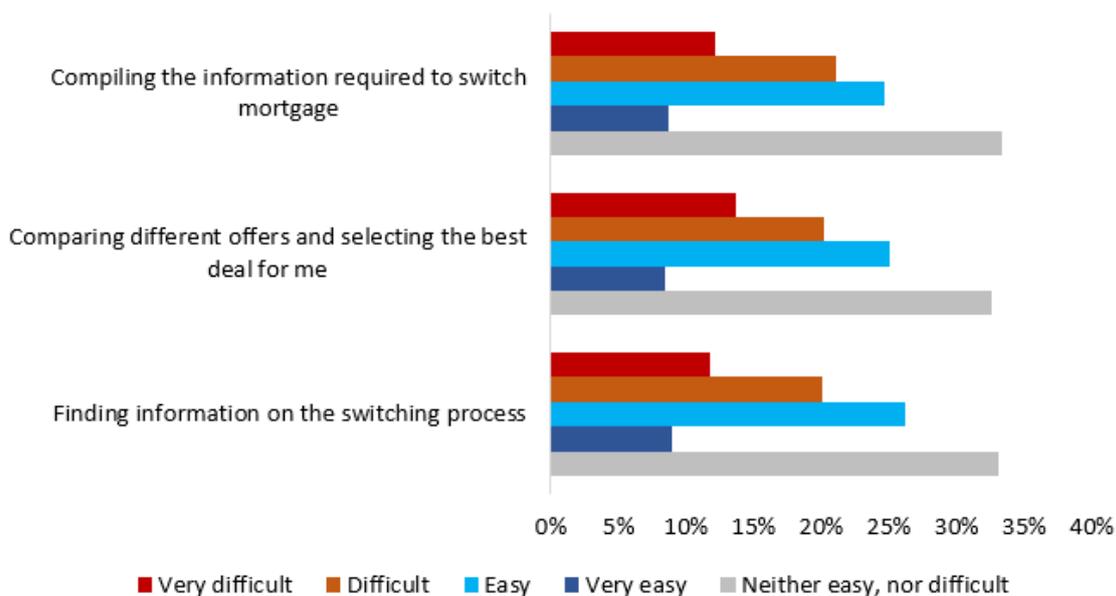
In **Ireland**, recent changes have been made to the Consumer Protection Code specifically aiming at improving transparency. As a result of the new rules in force, borrowers on a fixed rate mortgage need to be informed at least 60 days before the expiry of the fixed rate by the lender and the lender needs to provide them with information on other options that might be available to them. Consumers on variable rate mortgages (since 2016) have to be informed once a year about other potential mortgages that could save money that are offered by the lender, allowing them to move to a cheaper interest rate.

In addition, the banks shall provide, upon request, a comparison of the total interest payable on the consumer's existing mortgage and the interest payable on any new mortgage or alternative existing rate on offer by the same bank, in order to obtain a better rate from the same lender.

Obstacles to transparency may also emerge from the fact that certain Member States (such as Spain and Italy), still have not implemented national comparison tools and consumers may still rely on private comparison websites only.

The survey of consumers conducted as part of this study that covered 14 Member States sought also to establish how easy or difficult may three main steps involved in switching of a mortgage be namely, (i) finding information of switching process, (ii) comparing different offers and selecting the best deal and (iii) compiling the information required to switch mortgage. Figure 13 provides an overview of the responses.

Figure 13. Degree of difficulty to perform the pre-mortgage search

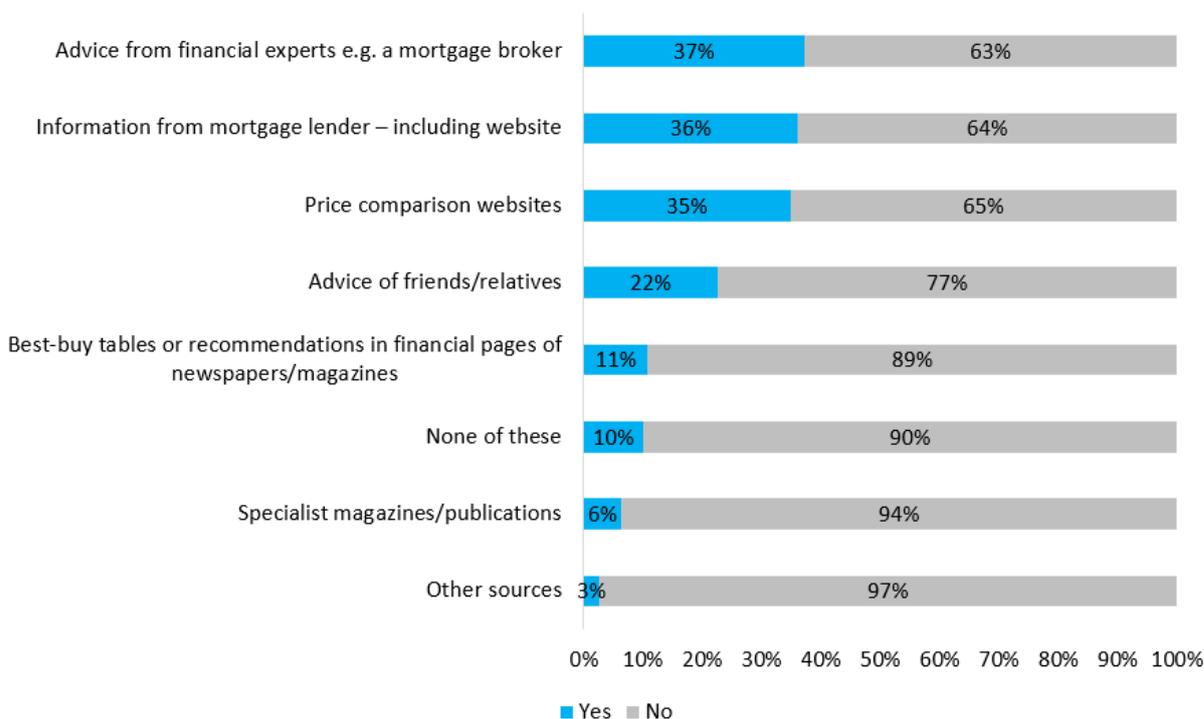


Source: Consumer survey (ICF, 2019)

Note: N=1077, among consumers who switched only

Furthermore, as part of the same survey respondents were also asked about the sources of information they used to switch the mortgage (Figure 14).

Figure 14. Most frequently used sources of information while switching mortgage



Source: Consumer survey (ICF, 2019)

Note: N=1076, among those who switched only

5.2.8.4 Fees

On top of the compensation for early repayment (breakage fee) (section 4.2.1.4, *Termination*) other fees might be also charged stemming from the operation of

mortgage switching, in particular for the valuation of the estate and for the notary registration/cancellation of the *in rem security*, as well as taxes, administrative fees, and valuation fees.

Such fees are relevant as they may possibly make the switch not desirable for the borrower if their total amount exceeds the savings that the consumer may obtain by switching to a mortgage with a lower interest rate. In the cost/benefit balance consumers might consider, *inter alia*, if they are entitled to preserve the fiscal benefits from the original loan contract, especially when the first mortgage was related to the purchase of primary dwellings. This is the case, for example, in Italy, while in Belgium there is the need to repay the taxes that were pre-deducted.

In some cases (e.g. Ireland, Slovakia) the credit institutions require (or encourage) the presence of a legal expert to go through the relevant documentation, which might entail some further costs for the borrower.

Absent specific switching rules, switching mortgage provider can be prohibitive due to very high costs related to the termination of the contract.

This is specifically the case of Belgium, where switching the mortgage provider is severely constrained by the fact that the change of the lender for the same property requires the termination of the mortgage contract, which in turn implies that the borrower needs to bear the costs (e.g. deed costs) up to a total of around EUR 6,000. However, it must be noted that, according to the industry, the switching rate is around 8 per cent (and even higher according to consumer survey conducted as part of this study – 26 per cent), which seems to suggest that there is considerable share of consumer who decide to switch the mortgage.

Similarly, in Bulgaria, the transferability of residential mortgages is subject to the very strict and expensive procedures for registration of the assignment and transfer of receivables secured by mortgages under the general civil laws.

In order to avoid these additional costs, Member States regulating the switching have also provided rules concerning the fees. Italy is most striking example - all the costs for switching a mortgage for a primary dwelling have been eliminated, with the exception of 37 EUR of notary fees.

In Denmark, the new legislation provides for the reuse of the registration fees, in order to reduce costs of the mortgage transfer.

The Romanian legislator eliminated not only the fees for early termination of mortgage but also the costs related to the establishment and valuation of the new mortgage.

A more detailed description of the provisions on fees in some Member States is provided in the box below while full overview of the current state in each Member State are outlined in the individual country fiches presented in Annex 3.

Box 5. Provisions on fees - snapshot on specific Member States

As already mentioned above, **Belgium**, has emerged as a Member State where the costs of switching are so high that they make it practically impossible to use the option. The costs rise up also in case of transfer of the mortgage within the same financial institution, due to the registration fee (1 per cent on the amounts of the mortgage guarantee) or mortgage fee (0.30 per cent of these same amounts. In addition, there are deed costs to be faced because the transfer is made by notarial deed, plus a fee charged by the State for the mortgage termination. Conversely, in case of refinancing with another bank, the costs amount to about EUR 6000. This includes the average cost of the reemployment allowance, which amounts to a maximum of three months' interest on the remaining capital⁹²; administrative fees, which vary depending on the bank⁹³; the

⁹² This is a compensation for the lender because the borrower will no longer pay interest as she will benefit from a lower financing rate or change banks.

cost of the release of the current mortgage loan and the implementation of the new loan in favour of the new bank; the appraisal fees, asked by the new bank to estimate the value of the estate; as well as other costs which might be due, related to closing and opening of a bank account.

In **Croatia**, the new lender may charge its fees for approving refinancing loans. Additionally, costs of switching may include new real property evaluation, which is likely to amount to several hundred euros; new security documents execution – several hundred euros, depending on the value of the real property serving as collateral; land register registration and de-registration fees (which are not significant). The credit institution cannot impose fees that would put the consumer in a less favourable position compared to before refinancing. But on the other hand there is no provision strictly underlining that the consumer cannot bear any costs.

In **Denmark**, in case of mortgage switching the Registration Fee Act provides for the reuse of registration. According to the Act, a basis registration fee of DKK 1,660 (approximately EUR 200) applies to every mortgage submitted for registration. Furthermore, a fee of 1.5 per cent of the face value of the pledge applies both to ordinary indemnity and owner's mortgages. Upon reuse of an indemnity and owner's mortgage in connection with a refinancing, only the basis registration fee of DKK 1,660 has to be paid in connection with the registration of the new mortgagee over the indemnity or owner's mortgage. It is possible to increase the face value against payment of a registration fee of 1.5 per cent of the increased amount. Furthermore, it is in some situations possible to reuse the variable fee of 1.5 per cent of the face value of the pledge on already registered mortgages on real estate. With respect to ordinary mortgage, the mortgagee will also have to pay a registration fee of DKK 1,660 when refinancing a mortgage loan, if the face value of the loan is not increased and the new mortgage registered is of the same type as the mortgage refinanced. Besides a potential registration fee, refinancing of a mortgage may entail additional costs, including charges for administration by the current mortgage credit institute, fees of administration and establishment by the receiving mortgage institute, capital losses when raising the new mortgages, etc. With effect from 1 July 2019, amendments to the Registration Fee Act allow for reusing the variable registration fee without distinguishing between different types of mortgages, and hence it will be possible to (re)use an already paid variable registration fee in a real estate mortgage bond even when the form of mortgage is not identical. Furthermore, the law reform entails a minor reduction of the register fee rates.

In **France**, the main guidelines are laid down in Art. L. 314-22/314-23 of the Consumer Code. In general, the fees may amount to 1% of origination/arrangement fee, with a EUR 350 minimum (plus VAT). New lenders may require a valuation survey, which typically costs EUR 250.

In **Latvia**, some fees can be charged by banks in case of refinancing and are estimated between EUR 400 and EUR 1000, depending on the refinanced amount

In **Luxembourg**, on top of the indemnity of early repayment (breakage cost), there is a prepayment fee which is currently set at EUR 200. Additionally, the granting of the new mortgage credit will generate various costs, namely: registration fees; credit opening tax paid to the State by the notary when the deed is registered in the mortgage registry; notary fees (whose rates are set by law); real estate expertise (which varies according to the credit organization); bank application fees (which vary depending on the credit institution and the capital borrowed); miscellaneous costs (research costs,

⁹³ In some cases a credit refinancing costs more than a new mortgage loan, whereas this is not the case with other banks. There are also banks whose application fees vary according to the amount of the remaining balance of the outstanding credit. The application fees for a credit refinancing vary from 250 up to EUR 700 (i.e. Argenta: EUR 250; ING: EUR 350; KBC: EUR 500; BNP Paribas Fortis: EUR 700; Hello Bank: EUR 350; AXA Bank: EUR 350; Belfius: EUR 350 (credit up to EUR 250.000), EUR 370 (EUR 250.000 – EUR 375.000), EUR 430 (EUR 375.000 – EUR 500.000) and EUR 530 (credit over EUR 500.000).

stamps, etc.). These fees vary depending on the amount of the loan.

In **Portugal**, when switching the mortgage, the consumer may therefore incur in expenses related to the registration of the mortgage and may have to pay initial fees charged by the new credit provider. Mortgage-related fees can include deed registration with the Securities and Exchange Commission of Portugal under the terms of the applicable legislation (Decree-Law No 74-A/2017 23-06-2017); notary fees (which are priced per deed, e.g. acquisition deed and mortgage deed, and vary depending on the notary, mortgage administration fees; non-refundable commitment fee; survey and appraisal (as well as optional legal fees (varying depending on the solicitor) although not imposed by legislation. According to the Bank of Portugal⁹⁴ registration fee and other related costs are not an issue for switching.

In **Slovakia**, a credit institution cannot impose on the consumer any penalties for an early repayment in full or in part, of the housing loan. The consumer may be charged actual costs incurred by the credit institution directly related to the early repayment capped at 1% of the amount being paid early, unless such repayment does not exceed 20% of the principal loan, or unless the repayment is made in relation to the end of application of the fixed interest rate period, or, in case of a variable interest rate, at an adjustment of such rate (in such cases, no fee can be charged whatsoever). Costs of switching may include: New real property expert evaluation and; New security documents execution which may carry significant costs.

In **Spain**, according to Article 14.1 of Spanish Mortgage Credit Law 5/2019, the new lender will compensate the first lender proportionally for the costs, taxes and fees of the origination of the mortgage. The new bank will therefore pay all the expenses, except for the valuation.

In **UK**, on top of the early repayment charge (where applicable) to terminate a current deal, in some cases, the consumer has to pay a deeds release fee ("or "admin charge") ranging from £0 to £300. This is to pay for the current lender to forward on the title deeds to the consumer's solicitor. However, not all lenders charge them. In addition, the process involving a new charge on national land registry involves some fees, provided by national laws and regulations (such as the Law of Property Act 1925).

5.2.9 Payment Accounts

The Payment Account Directive (PAD) establishes a legal framework for switching payments accounts. It seeks to improve:

- Transparency and comparability of fee information on payment accounts to make consumers more aware of the fees and charges applied by account providers. It also makes it easier to compare account offerings (e.g. by introducing the obligation of at least one Price Comparison Website per Member State), which may lead to more competition and better deals for consumers;
- Switching of payment accounts by establishing minimum standards to make switching easier and more attractive for consumers and to promote competition. In particular, the PAD establishes a quick procedure (maximum 12 days) for consumers who want to switch their account from one bank to another in the same EU country. The switch has to be conducted by the recipient bank (Article 10). The banks bear the costs of any financial loss in the event of errors made in the process. When a consumer wants to switch accounts between two EU countries, the bank hosting the account which will be closed must assist in the process.

⁹⁴ Interview of 18th April 2019.

While the PAD provides for minimum rules for switching payment account, Member State retains discretion concerning some aspects, in particular concerning the switching fees.

Some limitations may emerge from the interaction between the PAD and other legislative acts, mainly the national rules concerning mortgages.

In certain cases, the transfer of a payment account linked to a mortgage is not possible due to the fact the national legislation allows bundled products (allowed under both PAD and MCD) or because of the fact that the mortgage may be considered as an "outstanding obligation" which prevents the consumer's payment account from being closed. This is an issue which has been raised by consumer association and national authorities in France and Spain.

In the following paragraphs an overview of the existing legal requirements and regulatory conditions for switching of payment accounts in each Member State is provided, with a particular focus on existing national frameworks on the termination, transparency, and fees.

Table 13 presents a high-level overview of legal provisions relating to payments account switching. In addition, it provides the proxy for the level of competition in the national banking systems⁹⁵ and it also outlines the switching rates as per two sources of data, Eurobarometer survey and the ICF survey. Similarly to reported switching rates for mortgages presented in Table 12, the underlying methodologies for both surveys differed⁹⁶ and therefore the results need to be interpreted with caution (and may not be directly comparable).

⁹⁵ Data as of 2018. Note that the share of total assets of five largest credit institutions (along with the Herfindahl Index) is commonly used proxy for the level of competition in the country's banking sector. See ECB, 2018. Structural Financial Indicators. Available at: https://www.ecb.europa.eu/pub/pdf/annex/ecb~10913d25c1.pr190604_ssi_table.pdf

⁹⁶ As per the results from the consumer survey (ICF, 2019). Respondents were asked whether: '*they changed their payments account in the last three years – this could be from one bank/ provider to another bank/ provider, or from one account to another within the same bank/ provider*'. This question therefore implies internal and external switching. In turn, as per Eurobarometer (373 data), 2016. Respondents were asked whether: '*In the last 5 years have you changed provider of these products and services?*'. The question therefore implies *only* external switching

Table 14. Overview of legal provisions for payment accounts – 28 Member States

	Does the law contain specific provisions for switching of payments account?	Existence of specific provisions in law regarding early termination of contract?	Existence of legal provisions relating to information transparency?	Are fees and charges applicable to termination?	Are fees and charges applicable to the switching service?	Share of total assets of five largest credit institutions	Switching rates		External switching rates
							Internal	External	
AT	Yes	No	Yes	Yes	Yes	36%	4%	15%	8%
BE	Yes	Yes	Yes	No	No, with the exception of any postage costs	73%	3%	9%	9%
BG	Yes	No	Yes	Yes	Yes	60%	:	:	4%
CY	Yes	Yes	Yes	Yes	Yes	87%	:	:	4%
CZ	Yes	Yes	Yes	Yes	Yes	65%	3%	16%	13%
DE	Yes	Yes	Yes	No	Yes	29%	4%	12%	5%
DK	Yes	Yes	Yes	Yes	Yes	65%	:	:	18%
EE	Yes	Yes	No	Yes	Yes	91%	:	:	7%
EL	Yes	N/A	N/A	N/A	N/A	97%	:	:	0%
ES	Yes	Yes	Yes	Yes	Yes	69%	9%	18%	6%
FI	Yes	Yes	Yes	N/A	Yes	82%	:	:	8%
FR	Yes	Yes	Yes	No	No	48%	5%	15%	9%

HR	Yes	Yes	Yes	No	Yes	79%	:	:	6%
HU	Yes	Yes	N/A	Yes	Yes	50%	:	:	7%
IE	Yes	Yes	Yes	Yes	Yes	46%	5%	11%	4%
IT	Yes	Yes	Yes	No	No	46%	7%	17%	4%
LT	Yes	Yes	Yes	No	Yes	90%	:	:	8%
LU	Yes	Yes	Yes	Yes	Yes	26%	:	:	9%
LV	Yes	Yes	Yes	No	Yes	81%	2%	12%	9%
MT	Yes	Yes	Yes	Yes	Yes	77%	:	:	5%
NL	Yes	No	Yes	Yes	Yes	85%	4%	8%	6%
PL	Yes	Yes	Yes	Yes	Yes	50%	5%	17%	10%
PT	Yes	Yes	Yes	No	Yes	73%	5%	14%	3%
RO	Yes	Yes	Yes	Yes	Yes	62%	:	:	4%
SE	Yes	Yes	Yes	Yes	Yes	54%	8%	10%	10%
SI	Yes	Yes	Yes	Yes	Yes	61%	:	:	11%
SK	Yes	Yes	Yes	Yes	No	76%	:	:	7%
UK	Yes	Yes	Yes	Yes	Yes	32%	7%	13%	9%

Source: ICF and Grimaldi

5.2.9.1 Legal requirements and regulatory conditions for switching

In all 28 Member States specific and detailed provisions on switching of payment account are in place, in line with the PAD requirements. The purpose of the study is not to evaluate the correct transposition of the PAD, but to identify if certain elements at national level may increase the difficulties of switching providers.

In some Member States, switching services were specifically regulated even prior the implementation of the PAD. In Poland, transferring bank accounts has been made possible since many years, using the *Ognivo* system, supervised by the National Clearing House. Similarly, Sweden has chosen to codify the previous industry practice between payment service providers concerning switching of payment accounts. Similarly, in Germany, United Kingdom and the Netherlands payment accounts' switching systems were already in place before the PAD.

The procedure laid down by the PAD involves three parties: (i) the receiving payment service provider, (ii) the consumer and (iii) the transferring payment service provider. The new payment service provider is responsible for initiating the switching process after reception of a written authorisation from the consumer. Specific duties are imposed on both the old and the new institution since the new provider is obliged to arrange the switching in cooperation with the previous.

In terms of the overall assessment of the PAD and its transposition to national law, most national competent authorities interviewed as part of this study expressed the view that the PAD has been adequate and transposition was effective, providing for a sound legal framework which allows switching payment service provider easily and swiftly.

5.2.9.2 Transparency obligations

Since all Member States transposed the PAD, transparency rules on payment accounts' switching are very detailed and are almost identical in every country. One of the main goals of the Directive is, indeed, to overcome the lack of transparency in the sector.

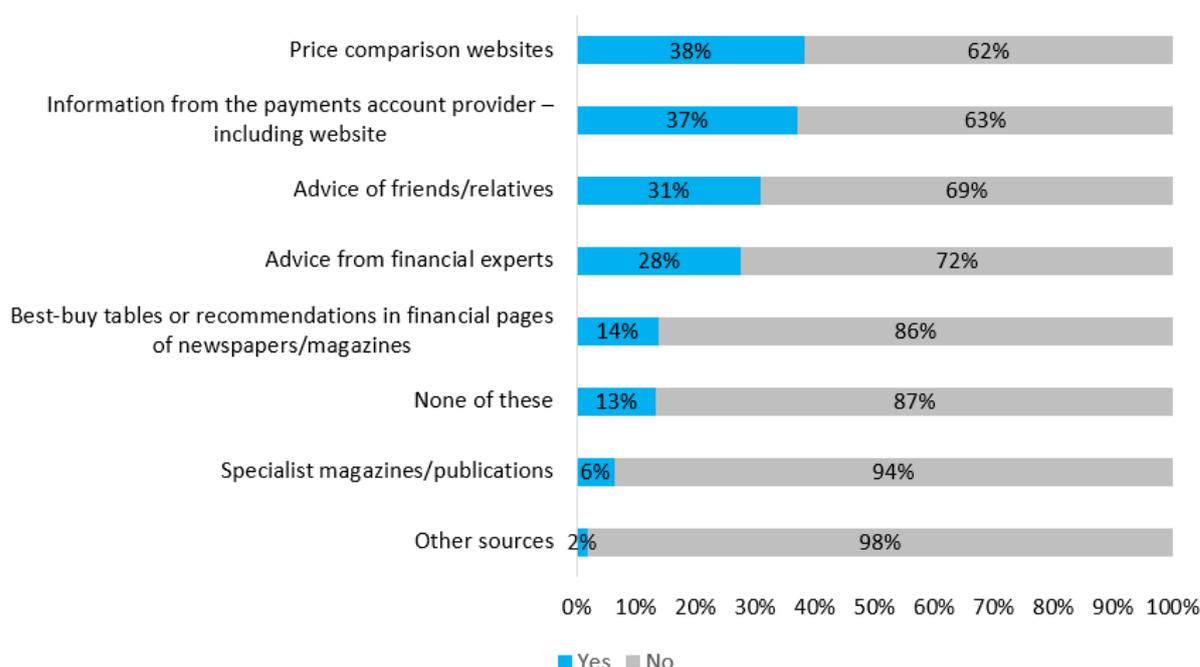
To this end, in accordance with the PAD (especially Articles 3 to 6), Member States' implementing laws ensure that, *'...in good time before entering into a contract for a payment account with a consumer, payment service providers provide the consumer with a short and stand-alone fee information document on paper or another durable medium, containing the standardised terms in the final list of the most representative services linked to a payment account and, where such services are offered by a payment service provider, the corresponding fees for each service'*.

The characteristic of such document are specified by the PAD and transposed into national laws. Additionally, a statement of all fees incurred, as well as, where applicable, information regarding the interest rates for services linked to a payment account is provided at least once per year and free of charge to the consumers.

Furthermore, in all 28 Member States the payment service provider is required by the law (implementing Article 14 of the PAD) to make it available to the consumer a list of information about the account switching service, including (i) the roles of the transmitting and receiving payment service provider in each step of the account change procedure; (ii) the time limits for completing the various stages; (iii) any fees charged for changing accounts; (iv) the information that the consumer may have to produce; (v) the procedures for the out-of-court settlement of disputes; (vi) where applicable, the deposit guarantee scheme under the payment service provider. Such information is provided free of charge, at any time, in electronic form and shall be immediately and permanently accessible in a place clearly visible to the consumer.

In terms of the key source of information that consumers used when they switched providers or changed payment account, the survey of consumers conducted as part of this study revealed that price comparison websites and websites providers are two most common sources of information.

Figure 15. Sources of information used to switch payment account



Source: Consumer survey (ICF, 2019)

Note: N=876, among those who switched only

5.2.9.3 Fees

In all analysed 28 Member States the legal framework provides that the consumer has free access to his or her personal information concerning existing standing payment orders and direct debits held by either the transferring or the receiving payment service provider. In addition, all Member States ensure that the transferring payment service provider provides the information requested by the receiving payment service provider without charging the consumer or the receiving payment service provider. Such provisions are alike in all Member States as this is expressly mandated by the PAD (Article 12).

From the analysis of the national legal frameworks, it emerged that only 4 examined Member States (Belgium, Italy, United Kingdom and France) explicitly prohibit the service providers to charge fees both for carrying out the switching and for closing the account.

In **Italy**, the law specifically states that no costs can be charged on the customer, even indirectly, “for the execution of the formalities related to subrogation operations”. The new bank must bear all the costs of the operation.

In **Belgium** no charges may be addressed to the consumer for the closure of the account and for the account switching service, with the exception of any postage costs.

In **France**, the L 312-1-7 (Monetary and Financial Code) provides expressly that Bank are not allowed to charge any fee both for the closing of the payment account both for the switching.

In the **UK**, the Payment Accounts Regulations 2015 provides that, in general, the credit institution shall not charge any fee for services (open, close and operate) if these services are provided as part of a payment account with basic features.

In all other cases the law allows the provider and the costumer to agree that the provider is entitled to a fee for switching the account, which, however, has to be reasonable and correspond to the actual costs of the payment service provider, to be

limited to their coverage, not to lead to additional revenue for the payment service provider or discourage the consumer from unilaterally terminating the contract.

Another fee can be charged to closing the payment account. In most of Member States, law lays down that the provider and the consumer may agree that the provider is entitled to a fee for the termination.

In some cases such fee can be applied only upon certain conditions. For example, in **Austria**, the supplying payment service provider may charge the consumer a fee for closing the payment account held with him only if the agreement has been concluded for a period not exceeding twelve months. In addition, the consumer may be charged for the switching services that the payment service providers are required to provide.

In **Luxembourg** and **Romania**, fees charged by the payment service provider to the consumer for closing his/her payment account are not due if the relevant contract for payment services is concluded for an indefinite period of time or a definite period of time exceeding 12 months and the termination is requested by the consumer after 12 months.⁹⁷

In **Croatia** and **Portugal**, the payment service provider institution is not allowed to charge any fees for closing the payment account agreements, so the payment account is terminated free of charge.⁹⁸ However fees can still be applied for the switching services.

In **Latvia**, Art. 75.3 of Law 2017/54.4 deals with switching fees. According to para. (5) a fee might be applied to the account switching service, provided that this is commensurate with the actual cost of the service.

In any case, the closing fee, when foreseen by the national laws, has to be agreed between the consumer and the payment service provider at the conclusion of the contract and shall be reasonable and correspond to the actual costs borne by the provider.

In most cases, in the event of delays in the transfer, compensation is provided for the consumer.

However, across all the examined Member States, no specific penalties have been introduced for delays attributable to banks for delays in switching process. The only notable exception is **Italy** again, where under the Legislative Decree 15 March 2017 n.37,⁹⁹ in case of delay attributable to bank, the compensation must be paid to the consumer in the amount of 40 euros which shall be increased of a penalty proportionate to the damage suffered for the delay (Article 126-septiesdecies, paragraph 2, of the Consolidated Banking Law). The Italian Financial Ombudsman has adopted various decisions imposing penalties over banks for delays.

Finally, it is worth noting that, even where the legislation allows in principle the charging of (reasonable) fees for closing the personal current account or for the offered switching service, the payment service providers in their commercial practice may decide not to charge any fee. For instance, in the UK, although the legal framework allows banks to charge fees in some cases, in practice switching is usually free.

⁹⁷ In accordance with respectively Article 74(2) and (4) of the amended law of 10 November 2009 on payment services and provisions Government Emergency Ordinance no. 113/2009.

⁹⁸ In Croatia Art. 26 (6) of the Act on the Comparability of Fees and Art. 27 of the Payment Services Act. In Portugal Article 22 of Decree-Law No. 107/2017.

⁹⁹ Legislative Decree of the 15th of March 2017, n. 37 “Attuazione della direttiva 2014/92/UE, sulla comparabilità delle spese relative al conto di pagamento, sul trasferimento del conto di pagamento e sull'accesso al conto di pagamento con caratteristiche di base” (O.J. of the Italian Republic n.75 of the 30th of March 2017) (<http://www.gazzettaufficiale.it/eli/id/2017/03/30/17G00051/sg>).

5.2.10 Saving Accounts

Saving accounts are not covered by the PAD provisions on switching. As a consequence, Member States are not obliged to draw up a switching service, as in the case of payment accounts.

In some cases, the provisions of national legislations implementing the PAD are also applicable to saving accounts, when they have specific features. However, with the exception of few cases, there is a lack of specific legal framework for switching saving accounts, which could, to some extent, represent a regulatory barrier and explain the low switching rates registered in the majority of Member States.

In addition, customer mobility may be reduced due to the specific characteristics of such product, where saving accounts have lock-in periods, during which the deposited amount may not be withdrawn from the account without forfeiting the deposit rate.

The relevant legislation of 11 Member States with regard to saving accounts has been analysed.

In the following paragraphs an overview of the existing legal requirements and regulatory conditions for switching of saving accounts in each Member State analysed will be provided, with a special focus on existing national frameworks on the termination, transparency, and fees.

Table 14 presents high level overview of legal provisions relating to savings account switching.

Table 15. Overview of legal provisions for saving accounts – 11 Member States

	BE	CZ	DK	FI	FR	DE	IT	NL	PL	ES	SW
Does the law contain specific provisions for switching of savings account?	No (only for switching with the same institution)	No (although some types of saving accounts are treated as payment accounts)	No (although some saving account can be encompass ed by the regulation of payment account)	No (Saving accounts to which the account owner may deposit or withdraw funds without separately agreeing with the service provider are considered as payment accounts)	Yes, for certain types of saving accounts	No	No	No	No	No	No
Existence of specific provisions in law regarding early termination of contract?	Yes – payments accounts provisions apply	Yes – if saving account is considere d a payment account	No	No (they may be regulated by the payment services Act)	Yes for certain types of savings account	Notice period of 3 months for unlimited saving accounts	General provisions of law applicable to banking contracts	General provisio ns of law applicab le to banking contracts	No (accordi ng to the civil Code, indefinite period contract may be conclud ed at any time)	No, but the Central bank has clarified that fixed term deposits can be terminat ed early	No
Existence of legal	Yes – no	Yes – if	No	No (only if	No	No	General	General	No	Yes	No

	BE	CZ	DK	FI	FR	DE	IT	NL	PL	ES	SW
provisions relating to information transparency?	fees can be charged	saving account is considered a payment account		the saving account falling with the scope of the Payment services Act)			provisions of law applicable to banking contracts	provisions of law applicable to banking contracts			
Existence of legal provisions relating to fees and charges applicable to early termination or switching?	Yes – no fees can be charged	Yes – if saving account is considered a payment account	Yes	No (if the saving account are considered as payment account	N/A	No	Yes – no fees can be charged	No	Yes. For saving accounts that do not constitute payment accounts there is no a express prohibition.	Yes – only fees and charges specified in the contract can be charged	No (However, the contract between the consumer and the saving accounts provider is subject to mandatory Swedish law on contract)

Source: ICF and Grimaldi

5.2.10.1 Legal requirements and regulatory conditions for switching

The national legislative provisions in 11 examined Member States do not provide specific provisions for switching of saving accounts, with the exception of Belgium and France. Therefore, moving from a bank to another can only take place by opening a new saving account and closing the previous one. In France, this is mainly due to the specificities of saving accounts products.

From the analysis, a heterogeneous framework applicable to saving accounts has emerged, with legislative provision or rules covering only some specific aspects, as explained below. According to the industry, there is large diversity of products and an uniform procedure is difficult to be defined.

For instance, the Association of German Banks¹⁰⁰ noted that, in Germany, freedom of contract is to be welcomed and any complaint was registered in this respect in the out-of-court arbitration procedure Ombudsman Scheme offered by the Association.

In **Belgium**, the Code of Economic Law provides for a specific form of switching¹⁰¹, the transfer from a saving account to another saving account opened in the name of the same holder with the same institution. However, the provision does not apply in the case the same institution has several bank brands, or in case of transfer of savings account from one bank to another. This provision aims at ensuring that in case the customer changes saving account products with the same bank, the retention period of the fidelity premium on the first saving account shall continue to apply, provided that some specific conditions are met, namely, (i) the amount transferred is minimum EUR 500 and (ii) the holder has not already made three transfers, from the same saving account, over a calendar year. The fidelity premium shall start to run at the latest from the day following the day of the payment.

In **France**, the *Loi Macron*¹⁰² introduced specific provisions for the transfer of certain saving accounts, namely the housing savings plan (*PEL, Plan épargne logement*), the housing savings account (*CEL, Compte Epargne Logement*), the savings plan in shares (*PEA, Plan d'épargne en action*) as well as the ordinary securities account. The law allows for the transfer of these kinds of accounts from one service provider to another while retaining the benefits acquired in terms of tax advantages and interest rates.

Certain saving accounts can be assimilated to payment accounts¹⁰³ and therefore, they enjoy the switching procedures provided by the PAD.

In **Czech Republic**, some types of saving accounts are considered as payment accounts under the Czech law. If the account is used for the execution of payment transactions, it is considered as payment account. Therefore, the conditions for switching are the same as the ones for payment accounts. Some types of saving accounts (such as the fixed term deposit accounts) do not meet the definition, as the possibility of disposing of the funds is highly limited. There are no special provisions for transferring the remaining types of saving accounts.

Saving accounts are not encompassed by the regulation of payment accounts under **Danish** law. However, certain saving accounts (in Danish "indlånskonti") can be covered by the Danish Payment Services Act depending on whether the account is from time to time used for the execution of payment transactions. There is no specific regulation regarding switching of saving accounts. However, based on case law from the Danish Financial Services Complaints Board, - as a general rule - the bank cannot oppose the switching of savings accounts.

¹⁰⁰ Interview of 10th of July 2019.

¹⁰¹ Law of 21 September 2013.

¹⁰² Law n. 990 of 6 August 2015.

¹⁰³ If "consumers are able to carry out the following transactions: place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers" (Recital (12) PAD)

In **Finland**, saving accounts as such are not defined under Finnish law. Saving accounts to which the account owner may deposit or withdraw funds without separately agreeing with the service provider are considered as payment accounts within the meaning of the Payment Services Act. However, being identified as a payment account under the Payment Services Act does not necessarily entail that those saving accounts are subject to the payment account switching obligations under Credit Institutions Act. Saving accounts could be either classified as follows: saving accounts falling within the scope of the Payment Account Directive subject to the explicit switching obligations under Chapter 15a of the Credit Institutions Act; saving accounts falling within the scope of the Payment Services Act and switching possibility under the termination and annulment of the framework agreement; saving accounts falling outside the scope of Payment Services Act subject to the rules on deposits.

Under **German** law, saving deposits, which may comprise saving accounts, have largely been deregulated. Thus, the general provisions of the BGB on loan agreements apply. There are no special regulations governing the transfer of saving accounts. However, like contracts in general, a savings deposit can generally be transferred to a third party by taking over the contract ("Vertragsübernahme"). Another conceivable option is the "transfer" of savings deposits by assignment of claim ("Forderungsabtretung", Sections 398 ff. BGB) and assumption of debt ("Schuldübernahme", Sections 414 ff. BGB).

In **Poland**, the legal basis for offering saving accounts is provided in the Act of 29 August 1997 Banking Law ("Banking Law").¹⁰⁴ The Banking Law does not however regulate the transfer of the saving account to another account service provider. Therefore, if the saving account enables at least: (i) making payments to this account; (ii) withdrawing funds from the account; and (iii) ordering and receiving payment transactions – provisions of Payment Services Act regarding transfer of accounts apply accordingly. Otherwise, in the case of saving accounts not enabling the consumer to carry out actions listed above, the consumer may transfer the account by closing the current one and opening a new account. In this section we only describe the requirements applicable to saving accounts that are not subject to the switching mechanism under the Payment Services Act.

In **Spain**, under the Article 15 (3) Order EHA / 2899/2011, of October 28, on transparency and protection of the client of banking services, credit institutions must actively collaborate and exchange all the information that is necessary, with each other and with the client, in order to facilitate the efficient and agile transfer to another credit institution of the most common financial services provided, included the supported operations, , such as periodic direct debits, permanent transfer orders and periodic transfers received.

5.2.10.2 Termination

Due to the lack of specific legislative provisions on saving accounts, few elements have been found concerning the closing of the saving accounts in order to switch provider. Where the saving accounts are assimilated to payment accounts, the same rules apply.

In **Belgium**, the provision for terminating payment accounts under Article VII.25.1 of Code of Economic Law applies to saving accounts as well.

In **Czech Republic**, if a saving account is considered as a payment account, the rules for termination of payment accounts apply.

In **Finland**, regarding saving accounts falling within the scope of Section 34 of the Payment Services Act, a payment service user may terminate the contract (both fixed-term and permanent contract) with immediate effect, unless the parties have agreed on a period of notice. The payment service provider cannot claim a period of notice of

¹⁰⁴ Consolidated text: Journal of Laws 2018 item 2187.

more than one month. Regarding saving accounts falling outside the scope of Payment Services Act, in this case, this kind of accounts would be subject to the Credit Institutions Act. There are no specific rules on termination of deposit account agreements. If this type of saving account agreement has a fixed-term contract period, the customer's right to terminate will be determined based on the specific agreement. However, unfairness of contract terms under the CPA may be assessed in case of unfair termination clauses.

In **France**, termination of CEL or PEL before 18 months entails the loss of the accrued interest.

In **Germany**, in the case of a saving account of unlimited duration, which is legally meant to be regarded under the German Civil Code as an unlimited loan agreement, the notice period is three months for terminating the saving account.

In **Italy**, the general provisions¹⁰⁵ concerning the termination and withdrawal of a customer from a banking contract are applicable. The customer can exercise the right at any time and with no penalties and expenses.

In **Poland**, according to the Civil Code, the account holder may terminate the bank account contract concluded for an indefinite period, at any time, without giving any justification, and the termination shall take effect at the moment when the addressee receives such notice. It is also considered that an account holder may terminate at any time a bank account contract concluded for a definite period, unless otherwise stipulated in the contract.

In **Spain**, there are no specific legislative provisions concerning the termination of saving accounts. However, the Spanish Central Bank has clarified that in case of fixed term deposits, termination before the expiration can be made, according to the agreement, at the request of the client. The entity may also do so, if so provided in the contract. In fixed-term deposits it is usual for contracts to include the possibility of tacit renewal of the deposit, as well as the conditions in which it will be made.

Under **Swedish** law, there are no provisions regulating the termination of saving accounts. However, there are mandatory provisions that can be used to modify or set aside terms and conditions which are considered unreasonable or unfair.

5.2.10.3 Transparency obligation

In **Belgium**, credit institutions shall make available to the consumer, free of charge and in a clearly visible place, information on the basic banking services available, at least in paper form, at the premises accessible to the public.

In **Czech Republic**, if a saving account is considered as a payment account, the transparency obligation is the same than for payment accounts. Otherwise, general banking obligations of information and transparency apply.

In **Denmark, France** and Sweden, there are no specific rules on transparency.

In **Finland**, regarding saving accounts falling with the scope of the Payment Services Act, under Chapter 2, Section 10-15 of the Payment Services Act, the payment service provider shall provide in writing or by other durable medium the information on the service provider, the payment services provided, communications between parties, precautionary measures, liabilities, legal remedies and the method of amending the framework agreement and its termination. For saving accounts falling outside the scope of Payment Services Act, under Chapter 15, Section 2 and 5 of the Credit Institutions Act, the credit institution has to provide all information, which may impact on the customer's decision. Incorrect or misleading information may not be provided or otherwise unfair practice may not be used. Under the Finnish Financial Supervisory Authority's (the "FIN-FSA") Regulations and Guidelines 16/2013, the FIN-FSA also

¹⁰⁵ Article 120-bis of the Consolidated Banking Law

recommends that the following information shall be provided before the deposit agreement is concluded with the customer: the different interest rate options and structures; the mutual termination terms and with respect to the fixed-term deposits, whether the agreement can be terminated early before its due date and the level of costs of the termination and other related costs for the customer; all costs incurred due to the agreement; tax treatment of the agreement and the possible withdrawal limitations and other types of limitations for the use of the account.

In **Italy**, the general provisions on transparency and information on the banking services are of application, which shall also include the synthetic cost indicator and the criteria used to identify the user riskiness' profile. Specific provisions apply for the portable saving passbook, for which every year a statement must be sent to the client.

In **Germany**, extensive obligations of the provider must be observed, in particular with regard to the publication of a sales prospectus, the asset investment information sheet and investor information when the saving accounts is linked to securities portfolios (Sections 6 ff. VermAnlG). The asset investment information sheet must i.a. contains information on the term, notice period and conditions for interest payment and repayment (Section 13 paragraph 3 no. 4 VermAnlG).

In **the Netherlands**, transparency rules on banking products and services provides the obligation to inform the customer on interest, fees, conditions as provided in the Financial Act Art. 4. 20 Wft.

In **Poland** there are no specific transparency obligations. The new bank must provide all the information concerning the account as provided in the Banking Law. According to the Banking Law, a bank account agreement should specify, among other things, the conditions and procedures for the termination of the bank account agreement.

In **Spain**, Order EHA/2899/2011 provides transparency obligations of the bank towards the clients and the type of information which must be provided before the opening of the saving accounts, including the fees for the termination of the contract. As far as these last ones are concerned, according to article 7(1)(d) Order ECC / 2316/2015, of November 4, relating to the obligations of information and classification of financial products, entities shall include, in addition to the risk indicator, where appropriate, an updated alert at the time of delivery in accordance with the provisions of Article 10 of the same Act on possible limitations with respect to liquidity and on the risks of early sale of the financial product, which will be elaborated and graphically represented in accordance with the provisions of this order. In addition, information must be provided on the existence of commissions or penalties for the early repayment of a part or the entire principal invested or deposited or for the rescue of the life insurance product for savings purposes.

5.2.10.4 Fees

Fees for closing saving accounts are not regulated in most of the examined Member States. Notable exceptions are **Italy**, where no fees can be charged for closing a saving account, including for the transfer of securities linked to the saving account, and **Belgium** where no fee can be charged for the termination of a saving account.

In **Czech Republic**, if a saving account is considered as a payment account, the fees are the same. If a saving account is not considered as a payment account, the fees are up to the agreement between the costumer and the provider.

In **Denmark**, the bank is entitled to charge a fee in case of switching of a saving account. A ministerial order (2010-10-24 nr. 1210) on information to consumers regarding fees in financial institutions sets out that financial institutions are obliged to inform the consumers on the specific fees and charges relating to different types of products.

In **Finland**, regarding saving accounts falling within the scope of the Payment Services Act: under Section 36 of the Payment Services Act, the payment service provider may not charge any costs from the payment service user for the termination of the agreement. The payment service user is obliged to pay the regularly charged costs to the extent that those costs are related to the contract period before the termination. If the payment service user has paid such costs in advance, the payment service provider shall refund costs, which had been collected for the contract period post-termination. Regarding saving accounts falling outside the scope of Payment Services Act, there are no specific rules on fees. Fees may be agreed in the specific agreement. However, unfairness of contract terms under the CPA may be assessed in case of unfair fee clauses.

In **France**, the Loi Macron on switching of certain saving products does not regulate the fees' ceiling. No fees can be imposed for the termination of a passbook (*livret d'épargne*). According to a consumer association, transfer fees for savings products have increased at record rate since 2012. While 32 per cent of consumers have an administered savings product (CEL/PEL) and 4.5 million securities accounts are opened, the costs associated with their transfer reached EUR 91 (+18 per cent in 5 years) and EUR 87 (+13 per cent) respectively, on average, in 2017.

Germany, Netherlands, Poland, Spain, and Sweden do not provide for specific rules but they leave to the contractual freedom. In Poland, consumer law may limit the possibility of charging fees depending on their nature.

5.2.11 Mortgage insurance

The relevant legislation of ten Member States with regard to mortgage insurance has been analysed.

In the following paragraphs an overview of the existing legal requirements and regulatory conditions for switching of mortgage insurance in each Member State analysed will be provided, with a special focus on existing national frameworks on the termination, transparency, and fees.

Table 15 High-level overview of legal provisions relating to mortgage insurance switching.

Table 16. Overview of legal provisions for mortgage insurance – 11 Member States

	BE	CZ	DK	FI	FR	DE	IT	NL	PL	ES	SE
Does the law contain specific provisions for switching of mortgage insurance?	No	No	No	No	Yes	No	No	No	No	No	No
Existence of specific provisions in law regarding early termination of contract?	Yes	No - general insurance rules apply	Yes	Yes	Yes	No - general insurance rules apply	Yes	No - general insurance rules apply	No - general insurance rules apply	Yes	Yes
Existence of legal provisions relating to information transparency?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Existence of legal provisions relating to fees and charges applicable to early termination or switching?	Yes	No	Yes	No	Yes	No	No	No	No	Yes	No

Source: ICF and Grimaldi

5.2.11.1 Legal requirements and regulatory conditions for switching

In general, mortgages offered by banks, credit institutions or other financial intermediaries are backed by insurance contracts to guarantee repayment of the amounts borrowed, known as PPI policies (Payment Protection Insurance) or CPI (Credit Protection Insurances) with which the company assumes the obligation to pay the beneficiary a benefit corresponding to the sum financed, upon the occurrence of the event deducted in risk. These contracts make the insurance service subject to the occurrence of one or more events that may affect the person of the debtor (death, permanent disability, accident and/or illness, involuntary loss of employment, reduction in pay).

Specifically, mortgage insurances are life insurance for the death of the borrower, aimed at preventing the heirs from defaulting as well as insurance against the risk of loss of employment by the debtor.

Member States have introduced provisions in order to avoid the tying of mortgage insurance with mortgage and to provide consumers with a free choice of the insurer, when the mortgage insurance is requested in order to grant a mortgage. This is due to the implementation of the MCD, which prohibits tying but allows for bundled products (Article 12). However, Article 12(3) MCD allows Member States to permit tying practice in exceptional cases. **Spain** made use of such option, allowing tying under the main condition, imposed by the law, that the lender can demonstrate that the linked products or the categories of products offered, under similar conditions to each other, which are not presented separately, *result in a clear benefit to the borrowers*, taking due account of the availability and prices of the relevant products offered in the market.

In order to protect borrowers and consumers and to ensure comparability and better conditions, all the examined Member States provides for the possibility to terminate the mortgage insurance before its expiry date and to change providers.

In general, automatic renewal of the contract at his annual expiration is the rule. National provisions for termination and change of insurance provider vary. Nonetheless, only France provides for a specific legal framework for switching mortgage insurance.

Only in **France and Spain**, mortgage insurance is mandatory by law.

In **France**, the Loi Lagarde allows borrowers to purchase insurance from another company than the bank to reduce total costs. The framework was improved by the Loi Hamon that allows borrowers to switch their mortgage insurance during their first year of contract. In addition, a new legislative mechanism (Loi Bourquin, in force since 22 February 2017) further strengthened the consumers' freedom in this area by introducing the principle of annual termination of the borrower insurance. The borrowers who have taken out mortgage loan insurance can terminate their contract on each of its expiry/anniversary dates.

In **Belgium**, the most common form of mortgage insurance is the outstanding balance insurance for mortgage loans, which is a form of decreasing term life insurance regulated by Article 121 of the Insurance Act. Even if at the conclusion of the loan/credit agreement the lender may require such insurance to be taken out, he cannot however require the potential client to conclude such insurance with an insurer of his choice. The borrower has the free choice of the company from which to purchase the insurance.

In **Czech Republic**, if a conclusion of a mortgage contract is conditional upon the conclusion of an insurance contract, the bank may not limit the consumer's choice of the insurer.

In **Denmark**, the use of mortgage insurance seems to be somewhat limited, and there is no specific regulation in relation to switching of mortgage insurance. In general, the

legal area of insurance switching is not regulated in detail, thus the question is primary subject to contractual regulation between the insurance company and the insurance holder. With respect to Danish insurance law in general, the Danish Insurance Contracts Act and the Danish Financial Business Act contain limitations and regulation on certain insurance contract issues.

In **Finland**, mortgage insurances consist of both life insurances and non-life insurances, when the policyholder may be insured in the event of death, disability or unemployment. There are no specific requirements or conditions for switching mortgage insurances under Finnish law.

Mortgage insurance is defined by the **German** law as residual debt insurance ("Restschuldversicherung"). A loan contract and residual debt insurance are two independent contracts that can be concluded independently from each other. In practice, credit institutions sometimes offer the granting of credit only on conclusion of a residual debt insurance policy. In principle, this is permissible without the borrower being entitled to take out a residual debt insurance other than the one offered. It is also common practice for the credit institution to take out residual debt insurance as a group insurance contract under which the bank customer is the insured person. There are no special provisions for a change of residual debt insurance. Since a loan agreement and residual debt insurance are two independent contracts, the residual debt insurance in principle continues to exist even if, for example, the loan is rescheduled ("umgeschuldet"), unless it is terminated by one of the parties; there is no legal obligation to conclude the residual debt insurance with the new lender.

In **Italy**, the legislation on insurance combined with financing is somewhat uneven. The provisions dedicated to the contracts in question, even when referring to the same profile of interest, can be found within regulatory frameworks of different matrix, sometimes of primary rank, other than a regulatory source. This can be considered attributable to the transversal nature of the relative problems and to their impact on contiguous and increasingly interpenetrated sectors. There is complex legislative doctrine concerning mortgage insurance, where the most common form of mortgage insurance is that with a single premium, paid in advance. The combination of insurance and a loan normally translates, from a legal point of view, into the existence of a contractual link between the mortgage and the insurance. More precisely, it is believed that there is a functional link of a unilateral type, under which the insurance contract finds its justification in the loan contract, but not vice versa. It follows that only the early repayment of the loan or financing can produce the dissolution of the insurance contract, while the termination of the insurance guarantee cannot in any way prejudice the continuation of the loan or loan relationship¹⁰⁶.

In **the Netherlands**, mortgage insurance (overlijdensrisicoverzekering) is not mandatory under the annuities mortgage (annuïteitenhypotheek) and it is considered a personal insurance and subject to the general rules of civil code on insurance contracts.

In **Portugal**, where more than 90 per cent of mortgages have variable rate (this is specific of the Portuguese market), the residential mortgages usually require life and permanent inability to work insurance and/or home insurance. However, it is not necessary to switch the insurance when switching a mortgage. According to the Bank of Portugal¹⁰⁷, bundling is widely used as a commercial practice and this is the most significant constraint for switching mortgages.

¹⁰⁶ Farenga, *La distribuzione di prodotti assicurativi in abbinamento a mutui*, cit., p. 269. Frignani e Paschetta, *Le polizze vita abbinate ai mutui immobiliari ed al credito al consumo (il provv. lsvap n. 2946 del 6 febbraio 2011 e l'art. 28 del d.l. n. 1/2012, convertito con legge 24 marzo 2012, n. 27)*, in *Dir. fisc. ass.*, 2012, p. 413 ss

¹⁰⁷ Interview of 18th April 2019.

Under **Swedish** law there are no specific requirements or conditions for switching mortgage insurances. For the purposes of the Swedish Insurance Contracts Act (SFS 2005:104, as amended) (the "Insurance Contracts Act"), a mortgage insurance is considered: (i) a personal insurance (Sw. personförsäkring) in cases where the insurance policy covers income loss that is typically covered by a life insurance or a health and accident insurance; and (ii) a consumer insurance (Sw. konsumentförsäkring) where the insurance policy covers loss of income due to unemployment which has no connection to health or illness, for example redundancies. Different sets of provisions in the Insurance Contract Act apply depending on the nature of the insurance e.g. if the insurance is considered a personal insurance or consumer insurance. Both sets of provisions could apply for mortgage insurances (depending on its coverage).

5.2.11.2 Termination

In **Belgium**, termination before the automatic renewal requires a three-month notice sent via registered mail or notified by the bailiff. General provisions on termination of insurance contracts apply. In case of refinancing of the mortgage with another lender, outstanding balance insurance can sometimes be terminated automatically, if provided by the contract. A new insurance shall be subscribed for the new loan.

In **Czech Republic**, no specific provisions have been found. General provisions are applicable and are established in the section 2802 et seq. of the Civil Code. However, the parties may agree on different rules as the provisions are mostly non-mandatory. The policyholder may terminate the insurance: by giving eight days' notice within two months from the date of conclusion of the contract, or by giving one month's notice within three months from the date of notification of the insured event. The policyholder may also terminate the insurance by giving eight days' notice: within two months from the date on which he became aware that the insurer determined the amount of insurance premiums or insurance indemnity on the basis of a consideration prohibited under section 2769 (e.g. the insurer took into consideration nationality, racial or ethnic origin, or any other consideration contrary to the principle of equal treatment), or within one month from the date on which a notice of transfer of insurance portfolio or its part, or on the transformation of the insurer was delivered to him, or within one month from the date of publication of the notification that the insurer's licence to pursue insurance business has been revoked.

In **Denmark**, termination of the insurance contract is subject to the contractual relationship between the insurance company and the insurance holder. In pursuance of Section 57(1) of the Danish Financial Business Act, the insurance company is obliged to offer consumers an insurance policy with a 30 days' notice period, however, the insurance company may of course offer policies with longer notice periods (and cheaper insurance rates), entailing that the consumer can choose between different termination periods and corresponding rates. For the avoidance of doubt, it must be noted that said rules do of course not prevent that the insurance company can offer a notice period shorter than 30 days.

In **Finland**, under Chapter 3, Section 12 of the Finnish Insurance Contracts Act (the "Insurance Contracts Act")¹⁰⁸ (in Finnish: vakuutus sopimuslaki), the policyholder is entitled to terminate an insurance contract at any time during an insurance period with a written notice. Termination by any other means shall be null and void. If the holder has not specified the date of termination, the insurance shall be considered as terminated, when the notice of termination has been given or dispatched to the insurer. However, insurances with a term less than 30 days may not be terminated by the holder.

¹⁰⁸ Act. 543/1994, as amended

In **France**, as noted above, the Loi Hamon¹⁰⁹ has extended the possibility of substitution/cancellation provided for by the Loi Lagarde to the 12 months following the credit offer. The Loi Borquin¹¹⁰ introduced, for all contracts in force as from 1 January 2018, the principle of annual termination of the borrower insurance, allowing borrowers to terminate their mortgage insurance on each of its expiry dates. The termination of the mortgage insurance must be done with two-month notice. The cancellation must be accompanied by the conditions of the new contract (membership certificate, profit delegation, standardized information sheet) and acceptance by the bank that there are equivalent guarantees between the old and the new contract. If the borrower informs his/her bank that he wishes to switch his loan insurance, the bank is prohibited from changing the previously negotiated loan terms, e.g. it cannot ask for financial compensation, or charge new application fees or increase the interest rate.

In **Germany**, there are no special provisions for termination of residual mortgage insurance. Only two provisions have been found: If the loan is restructured ("umgeschuldet") or repaid prematurely, there is usually a special right of termination because the purpose of the insurance no longer applies and if a customer is involved in a group insurance contract where the bank is the policy holder and the customer is the insured person the customer may as well terminate the contract himself. The insured person is entitled to the rights of the policy holder (Section 7d sentence 2 VVG), which includes the right of termination.

Italy provides for a specific exception: the termination of the mortgage insurance with a single premium is possible only in case of early repayment or subrogation of the mortgage, with the exclusion of the termination of the insurance if the mortgage continues with the same lender. On several occasions, the Financial Banking Ombudsman has clarified that, by virtue of the undoubted functional link between the loan contract and the mortgage insurance, the early repayment of the loan determines the termination of the insured risk and its dissolution pursuant to Article 1896 of the Civil Code, with the further corollary of the obligation of repayment to the debtor of the part of the premium referable to the remaining period. Concerning mortgage insurance with annual premiums, the general provisions on the termination of the insurance contracts apply. Article 177 of the Insurance Code provides that the life insurance can be terminated with a notice of 30 days from the date of conclusion of the contract (annual renewal). The only exclusion envisaged by Article 177(4) from termination rights refers to life contract of less than 6 months; therefore, it should be applicable to all the other cases.

In **the Netherlands**, the insurance contract may be terminated with a notice sent one month before the end of the year. For insurance policies of more than five years, the policyholder may terminate at the end of each year within that period (Art. 7.940 of the Dutch Civil Code).

In **Poland** the Civil Code does not regulate termination of the property insurance contract. Thus, it is dependent on the individual arrangements between the insurer and the consumer. As for the personal insurance, under article 830.1 of the Civil Code the insuring party may terminate the contract by notice at all times while observing the time limit specified in the contract or in the General Insurance Conditions and in its absence – with an immediate effect. Under the Civil Code, each party may however renounce the contract. Article 812 of the Civil Code stipulates that if the contract of insurance has been concluded for a period longer than six months, the consumer is entitled to renounce the contract within 30 days, and where the insuring party is an entrepreneur, within 7 days from the contract's conclusion. If, upon the conclusion of the contract of insurance at the latest, the insurer fails to inform the consumer about

¹⁰⁹ Law of 17 March 2014

¹¹⁰ Law of 21 February 2017

his right to renounce the contract, the 30-day term runs from the day, when the consumer learned about such a right. Renouncing the contract of insurance does not release the insuring party from the duty to pay the premium for the period throughout which the insurer provided insurance protection.

In **Spain**, early termination of the mortgage insurance by the borrower (with the partial reimbursement of its unused cost to her) is possible according to art. 23.3 Act 5/2019 following an early termination of the mortgage loan. Alternatively, the borrower may also appoint another beneficiary (a new lender) of the insurance.

In **Sweden**, pursuant to Chapter 3, Section 3 of the Insurance Contracts Act, the policyholder of insurance (personal and consumer insurance alike) may give notice at any time that the insurance policy shall terminate at the conclusion of the policy term. The insurance policy term may not exceed one year, unless special reasons exist for a longer policy term.

5.2.11.3 Transparency obligation

In **Belgium**, specific transparency conditions are imposed by Article 212 of the Insurance Act, specifically aimed at protecting people suffering chronic diseases, in order to help them to have access to the outstanding balance insurance. Transparency regards, in particular, the system to calculate premiums, which for people with health issues may be particularly high. The insurer must explain the premium when sending his offer to a potential client. In addition, the Insurance Act establishes the intervention of the Insurance mediator in case an agreement cannot be found between the insurer and the potential policy holder concerning the proposed premiums.

In **Czech Republic**, the information about the obligation to conclude an agreement on mortgage insurance must be included in the mortgage advertisement according to the section 91 paragraph 1 letter j) of the Act on Consumer Credit. The same information must be included also in the mortgage agreement according to the section 106 paragraph 1 letter n) of the Act on Consumer Credit.

In **Denmark**, no specific legislation on transparency obligation has been found.

In **Finland**, under Chapter 2, Sections 5, 5a and 6-9 of the Insurance Contracts Act, the insurer must provide certain information for the insurance applicant before the conclusion of the insurance contract by paper or other durable medium, amongst others: the form of the insurance; its costs and conditions and other necessary information in order to choose the suitable insurance for the applicant's insurance need. When the insurance contract has been concluded, the insurer must provide without delay the insurance policy containing the essential part of the insurance contract together with the terms and conditions of the insurance for the policyholder.

In **France**, no specific requirements are provided from mortgage insurance except for general rules provided by the Article L 122-1 of the Insurance code, concerning information that the insurer must provide to the customer.

In **Germany**, the insurer is obliged to give diligent advice to the policyholder in accordance with Section 6 VVG. In the event of a breach of the advisory obligations, the insured person may be entitled to claim damages. Section 7 VVG contains extensive provisions on the information of the policyholder. In particular, the policyholder is entitled to demand at any time during the term of the contract that the insurer submits the contractual provisions.

In **Italy**, minimum contents of mortgage insurance is defined by IVASS (ISVAP) regulation no. 40/2012 in order to facilitate the comparison between the different products offered on the market and the identification of the most advantageous one for the customer. In addition, when a bank proposes a life insurance policy together with mortgage, it is obliged to submit to the client at least two estimates of two different insurance groups, both not attributable to banks, credit institutions and financial intermediaries, without this precluding access to finance.

In **the Netherlands**, pre-contractual information on insurance are laid down by Article 7.933 of the Civil Code, which provides that information about the insurance policy must be in written, except if they are provided by electronic means.

In **Poland**, there are no specific transparency obligations when switching insurers. Thus, if the original insurance contract is effectively terminated and the consumer concludes a new one, only standard information obligations apply, which are imposed on the insurer under the Insurance Activity Act. The insurance contract is also accompanied by General Insurance Conditions, in which the insurer is obliged to determine, among other things, the rights and obligations of the parties to the insurance contract, the mode and conditions of amending the insurance contract entered into indefinitely, and the deadline and manner of renouncing the insurance contract. Given that including a termination clause is not mandatory for property insurance concluded for a definite period, the lack of such clauses in terms set by insurers may severely limit the consumer's ability to switch providers. Depending on the circumstances of a specific case, it may sometimes mean that the consumer may have to keep paying premium to the old provider for the old insurance even if he takes out a new insurance with a new provider. In addition, it has been noted that sometimes policyholder pays the single premium for the period of mortgage credit in advance, that makes any cancellation more difficult.

In **Spain**, in the article 17(5)(6) (7) of Law 5/19 are provided specific transparency obligations.

In **Sweden**, pursuant to Chapters 2 (consumer insurance) and 10 (personal insurance) of the Insurance Contracts Act an insurance company must provide certain information to the customer (i) before the conclusion of the insurance contract, (ii) when the contract has been executed and (iii) during the insurance policy term and in conjunction with renewal.

Pursuant to Chapter 5, Section 18 of the **Swedish** Insurance Distribution Act,¹¹¹ an insurance distributor must inform customers, when offering an insurance agreement together with another service or product which is not insurance, if it is possible to buy the different parts separately. If it is possible, the insurance distributor must provide the customer with an adequate description of the different components as well as information of the costs and charges of each component. Furthermore, pursuant to Section 19 of Chapter 5, if the risk or the insurance coverage in an agreement of the kind in Section 18 is different from when the different components are bought separately, the insurance distributor must provide to the customer an adequate description of how the relationship between the components changes the risk or the insurance coverage.

5.2.11.4 Fees

In **Belgium**, termination of a life-insurance for outstanding balance may result in "exit fees". In addition, if the policyholder has taken advantage of a tax deduction on the premium paid, a State tax of 33% will be applied as well as a communal tax.

According to **Czech Republic** law, the fees are up to the agreement between the customer and the bank. The fees in general must not be against *good manners*. In addition, under the section 1813 of the Civil Code, the stipulations which establish, contrary to the requirement of proportionality, a significant imbalance in the rights or duties of the parties to the detriment of the consumer are presumed to be prohibited. This does not apply to stipulations on a subject of performance or price if they are provided to the consumer clearly and understandably. It is impossible to say which amount is too high, because every case (and every agreement) is different. The final decision is always up to the court and the practice of courts is not unanimous. As

¹¹¹ Swedish Insurance Distribution Act (SFS 2018:1219) (the "Insurance Distribution Act").

mentioned under the payment accounts, the courts have established the contractual freedom of business.

In **Denmark**, the insurance company is entitled to charge a fee (or raise the insurance rate) that corresponds to short period of notice. Premature termination of insurances may be subject to a fee, and such fee will normally vary depending on whether the contract is terminated within the first year.

In **Finland**, there are no fees for terminating the mortgage insurance in general. However, the termination may have effect on pricing of other insurances with the same insurance provider in practice.

In **France**, penalties for early termination of the mortgage insurance may not exceed 5 per cent of the redemption amount.

In **Germany**, there are no specific legal provisions on fees related to the switching of mortgage insurance.

In **Italy**, as mentioned above, where mortgage insurance is usually paid in advance in a single premium at the beginning of the mortgage, litigation mainly concerns the refusal of the banks to return the paid premiums. No specific provisions are included in the legislation, because the termination of the policy insurance seems not possible without the termination of the mortgage. Article 49 of Regulation no. 35/2010 as well as Article 22, paragraph 15 quarter of Decree Law 179/2012, establishes that in case of termination of the insurance for early repayment or subrogation of the mortgage, the insurance companies can withhold from the amount to be reimbursed, the administrative expenses actually incurred for the issuance of the contract and for the reimbursement of the premium, on condition that the same are indicated in the proposal, in the policy or in the application form for insurance coverage. It is clarified that these expenses must not be such as to constitute a limit to the portability of mortgages loans or an unjustified burden in the event of repayment.

In **the Netherlands** there are no specific requirements regarding fees for terminating insurance contracts.

There are no specific requirements regarding fees in case of terminating the insurance contract in **Poland**, unless such were included in the General Insurance Conditions or the contract itself. However, general consumer law requirements apply, which may limit the possibility of charging fees depending on their nature.

In **Spain**, costs are included in the pre-contractual information under Article 17 Law 5/19 which requires the indication of "part of the total cost that corresponds to each of the products or services".

Similarly, there are no relevant provisions under **Swedish** law. Where the customer has a right to terminate the insurance under the Insurance Contracts Act, the insurance company may not presuppose a fee in order to terminate the insurance contract to the extent that would limit the policyholders' right to terminate the insurance, when entitled to do so under the law.

5.2.12 Home insurance

In general, no specific legal barriers have been identified across the examined Member States as far as home insurance is concerned.

General rules on non-life insurance apply, including the automatic renewal and termination. It is not legally mandatory to take out fire or home insurance. However, most banks will require the client who applies for a mortgage to take out insurance.

Table 17. Overview of legal provisions for home insurance – 11 Member States

	BE	CZ	DK	FI	FR	DE	IT	NL	PL	ES	SE
Does the law contain specific provisions for switching of home insurance?	No	No	No	No	Yes, Loi Hamon	No	Yes, Bersani Law	No	No	No	No
Existence of specific provisions in law regarding early termination of contract?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Existence of legal provisions relating to information transparency for home insurance?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Existence of legal provisions relating to fees and charges applicable to early termination or switching?	No	No	No	No	Yes, Loi Hamon	No	Yes, Bersani Decree	No	No	No	No
<i>Does early termination have a cost?</i>	N/A	N/A	Usually yes, if there is a short period of notice	N/A	No	N/A	No	N/A	Usually not	N/A	Usually not

Source: ICF and Grimaldi

5.2.12.1 Legal requirements and regulatory conditions for switching

No specific provision on the switching of home insurance has been identified in the analysed Member States, with the exception of France and Italy.

In **France**, the Loi Hamon¹¹² provides that home insurance can be substituted at any time after one year of contract and consumers are free to choose the date of termination of their previous insurance contract after 12 months of subscription. A new application shall be sent to the new insurer. The latter will terminate the old contract for the policyholder in order to guarantee continuity in the coverage while avoiding overlapping contracts and will take care of all the procedures, with the exception of the owner-occupiers. Consumers are insured during the entire termination procedure. In **Italy**, with the entry in force of the Bersani Decree,¹¹³ in 2007, the holder of a home insurance policy has been granted the right to terminate the insurance contract without charges, albeit with different methods or limitations depending on the type of insurance (with or without tacit renewal, annual or multi-year).

Nonetheless, all the examined Member States provide for the right to give termination notice of the insurance contract, albeit with different timelines, to the insurer, in order to change home insurance.

Where there are no special provisions for transferring a home insurance, the switching is usually only possible if all the three parties (old provider, new provider and consumer) agree with it pursuant to the principle of contractual freedom. If they do not agree, it is necessary to first terminate the old insurance and then conclude a new one.

5.2.12.2 Termination

Insurance contracts can usually be terminated before the expiring date, by giving a termination notice. An exception is, again, **Italy**, where, albeit it is possible to terminate a standard home insurance contract, termination is not possible when the home policy is linked to a lending not granted by pledge or mortgage (commonly known as "prestito personale"), therefore the termination cannot be requested in advance of the natural expiration of the lending. Additionally, due to the specific structure of certain home policy, which are included in a multi-risk mortgage insurance, there are doubts that the home policy in Italy can be terminated without terminating mortgage and the mortgage insurance, due to functional link of a unilateral type, under which the insurance contract finds its justification in the loan contract, but not vice versa. In this case, termination seems possible only when the policy will naturally expire or, as an alternative, when the mortgage will be completely fulfilled or terminated.

A more detailed description of the relevant provisions in each Member State is provided in the box below.

In **Belgium**, no specific provision applied to home insurance but the general provisions of the Insurance Act. The Insurance Act 2014 provides for several cases in which it is offered to the parties or at least one of them to terminate the contract. In addition, as with any contract, the insurance contract may be terminated on agreement by the policyholder and the insurer. As per Article 85, either party may, at least three months before the expiry of the contract, terminate it by registered letter,

¹¹² Law of 17 march 2014

¹¹³ Decree-Law no. 7 of the 31st of January 2007 on urgent measures to protect consumers, promote competition, develop economic activities and set up new businesses; converted into Law no. 40 on the 2nd of April 2007, published in the Official Journal no. 77 on the 2nd of April 2007 (<http://www.camera.it/parlam/leggi/070401.htm>).

bailiff's writ or delivery of the letter of termination against receipt. Such termination is necessary to avoid the tacit renewal of a one-year insurance contract as per Article 85, § 1er. As per Article 84, § 2, termination takes place only at least one month from the day after the date of service of the receipt or, in the case of a registered letter, from the day after its deposit in the post office.

According to **Czech Republic**, section 2803 of the Civil Code provides that where insurance has been stipulated for a definite period, the insured person may terminate it with a six-week notice before the expiry of the period of insurance. Otherwise, the insurance is not extinguished and if no conditions and period of extension have been stipulated, the insurance is extended under the same conditions for the same period for which it was stipulated.

In **Denmark**, termination of the insurance contract is subject to the contractual relationship between the insurance company and the insurance holder. In pursuance of Section 57(1) of the Danish Financial Business Act, the insurance company is obliged to offer consumers an insurance policy with a 30 days' notice period, however, the insurance company may of course offer policies with longer notice periods (and cheaper insurance rates), entailing that the consumer can choose between different termination periods and corresponding rates. For the avoidance of doubt, please note that said rules do of course not prevent that the insurance company can offer a notice period shorter than 30 days.

In **France**, the Loi Châtel lays down that although home insurance contracts are generally "tacitly renewed", it is possible to terminate the home policy each year on the expiry date, without cause. The termination of the contract is only effective one month after the insurer has received the request by registered letter. Loi Hamon provides instead that the termination notice is to be written in French and sent in the form of a letter or an email to the insurance company. Alternatively, the new insurance company can proceed on behalf of the insured sending notice via registered post. The termination will take effect one month after receipt of the request for cancellation.

In **Finland**, the Finnish Insurance Contracts Act lays down that the policyholder is entitled to terminate an insurance contract at any time during an insurance period with a written notice. Termination by any other means shall be null and void. If the policyholder has not specified the date of termination, the insurance shall be considered as terminated, when the notice of termination has been given or dispatched to the insurer. However, insurances with a term less than 30 days may not be terminated by the policyholder.

In **Italy**, termination is allowed only if the policyholder is in order with the insurance's premium payments at the time of termination. Termination can be made by filling in a form to be sent to the insurance company within sixty days before the expiry of the insurance. In case of multiannual policies, if the contract exceeds a duration of five years, the insured, after the five-year period, has the right to terminate the contract with a sixty days' notice and with effect from the end of the annuity during which the faculty of withdrawal has been exercised. For contracts signed after August 2009, termination can be exercised and its effectiveness is deferred to the next annual period subsequent to the term of effectiveness of the termination notice: if the multi-annual "over-five-years" policy term has been stipulated to be on the 31st of December, the notice has to be sent not later than October of the fifth year in order not to continue the contract for another annuity).

In **Germany**, there are no special provisions for the case of termination in view of a transfer but a termination with notice ("ordentliche Kündigung") according to general provisions may be possible. Termination is only possible within one month since the conclusion of the negotiations on compensation (Section 92 VVG). A special case regulated by law is the termination upon sale: if a building is sold, the purchaser is entitled, if a building related insurance exists, to terminate the insurance contract with

immediate effect or for the end of the current insurance period. The right of termination expires if it is not exercised within one month of acquisition or, if the purchaser is not aware of the existence of the insurance, within one month of acquisition of such knowledge (Section 96 VVG).

In the Netherlands, home insurance is regulated by the general provisions of the Civil Code which provide that the insurance contract may be terminated at the end of each year with one month notice.

Home and house insurance in **Poland** is part of voluntary property insurance regulated under the Civil Code. According to art. 821 of the Civil Code, the object of property insurance may be any property-related interest which is not contrary to law and may be assessed in monetary terms. Hence, this applies also to real estates. Nevertheless, as in the case of Mortgage Insurance, the applicable law does not regulate switching the insurers. Thus, the consumer considering terminating the insurance contract should refer to the arrangements made with the insurer under the contract or the General Insurance Conditions.

In **Spain**, since January 2016¹¹⁴, home insurance can be canceled at any time, but it must be notified at least one month before the policy expires. If not, it will be renewed automatically.

In **Sweden** home insurances are considered to be consumer insurances (when entered into between an insurance provider and a consumer) within the meaning of the Insurance Contracts Act. The policyholder of consumer insurance may give notice at any time that the insurance policy shall terminate at the conclusion of the policy term.

5.2.12.3 Transparency obligation

In all the examined Member States there are no specific transparency obligations when switching insurers. Thus, if the original insurance contract is effectively terminated and the consumer concludes a new one, only standard information obligations apply.

A more detailed description of the relevant provisions in each Member State is provided in the box below.

In **Belgium**, the Insurance Act provides for rules on transparency concerning any insurance contracts where the risk or commitment is located in Belgium. Articles 32, 33, and 34 set obligations of transparency relating to non-life insurance (the insurer must, before the conclusion of the contract, in the case where the policyholder is a natural person, at least provide the latter with information on the law applicable to the contract).

In **Czech Republic**, general transparency obligations according to the Act on Consumer Protection are applicable.

In **Denmark**, under the section 34 (e) of the Danish Insurance Contracts Act regarding consumer insurance, the insurance company has a duty of notification regarding the insurance product, including inter alia information on coverage, fees, additional costs etc. However, there is no specific duty of notification related to the process of insurance switching.

In **France**, the Loi Châtel modified the Insurance Code, requiring insurers to inform by mail the policy holder of the possibility of interrupting his contract at least 15 days before the deadline, in order to avoid automatic renewal. The insurer must inform the

¹¹⁴ Law 20/2015 on the Regulation, Supervision and Solvency of the Insurance and Reinsurance Entities.

policy holders, of their termination rights and the deadlines by which they may request termination (the termination deadline is usually the annual expiry date with 2 months' notice). If these obligations are not met, the policy holder has the option of terminating within a few days.

In **Finland**, under the Insurance Contracts Act, the insurer must provide certain information for the insurance applicant before the conclusion of the insurance contract by paper or other durable medium, amongst others, the form of the insurance, its costs and conditions and other necessary information in order to choose the suitable insurance for the applicant's insurance need.

In **Germany**, the VVG contains extensive provisions on the information of the policy holder. In particular, the policy holder is entitled to demand at any time during the term of the contract that the insurer submits the contractual provisions, including the General Terms and Conditions of Insurance whereby the costs for the first submission are to be borne by the insurer.

In **Italy**, under Article 1341, paragraph 1, of the Italian Civil Code, general conditions of contract prepared by the insurance company are effective only if the company has made sure that the policyholder is able to understand them using ordinary diligence. In addition, paragraph 2 of the same Article provides that, unless specifically approved in writing, the general conditions that establish, in favour of the insurance undertaking, tacit extension or renewal of the contract, are void.

In **Poland**, if the original insurance contract is effectively terminated and the consumer concludes a new one, only standard information obligations apply. Those information obligations are imposed on the insurer under the Insurance Activity Act¹¹⁵. The insurance contract is also accompanied by General Insurance Conditions and is supplemented by the Civil Code, which provides that if in response to an offer which has been already made, the insurer delivers to the insuring party an insurance document containing provisions which differ to the latter's disadvantage from the content of the initial offer, the insurer shall be obliged to draw the insuring party's attention to it in writing at the delivery of that document, setting a period of at least seven days to raise an objection. In the case of failure to comply with this duty, the changes made to the insuring party's disadvantage are not effective and the contract is concluded according to the initial offer's conditions.

In **Spain**, general rules on transparency are provided by the L 50-1980 on Insurance Contract, describing information that the insurer must provide to the customer.

In **Sweden** the Insurance Contracts Act requires the insurance company to provide certain information to the customer (i) before the conclusion of the insurance contract, (ii) when the contract has been executed and (iii) during the insurance policy term and in conjunction with renewal. In addition, the Insurance Distribution Act specifies that an insurance distributor must inform customers, when offering an insurance agreement together with another service or product which is not an insurance, if it is possible to buy the different parts separately. If it is possible, the insurance distributor must provide the customer an adequate description of the different components as well as information of the costs and charges of each component. Furthermore, if the risk or the insurance coverage in an agreement of the kind in Section 18 is different from when the different components are bought separately, the insurance distributor must provide to the customer an adequate description of how the relationship between the components changes the risk or the insurance coverage.

¹¹⁵ Act of 11 September 2015 on Insurance and Reinsurance Activity ("Insurance Activity Act"), consolidated text: Journal of Laws 2019 item 381.

5.2.12.4 Fees

In the relevant Member States' legislation, no specific references to the fees applicable to home insurance have been identified, with the exception of France and Italy. Fees are usually up to the agreement between the customer and the bank.

In **France**, the Loi Hamon expressly provides that no fees or penalties are charged to the policy holder in the event of a termination request. The policy holder only has to pay for the period during which he was covered by the insurance. In **Italy**, as a general rule, there are no additional charges applicable for home insurance termination. The Bersani Decree guaranteed the cancellation at no extra cost.

Under some legislation, e.g. under **Swedish** law, although there is no specific ban to charge fees, as a general principle, where the customer has a right to terminate the insurance under the Insurance Contracts Act, the insurance company may not charge a fee in order to terminate the insurance contract to the extent that would limit the policyholders' right to terminate the insurance, when entitled to do so under law. Similarly, in **Poland**, although there are no specific requirements regarding fees in case of terminating the insurance contract, unless such were included in the General Insurance Conditions or the contract itself, general consumer law requirements apply, which may limit the possibility of charging fees depending on their nature.

By contrast, in **Denmark**, the insurance company is entitled to charge a fee (or raise the insurance rate) that corresponds to short period of notice. Premature termination of insurances may be subject to a fee, and such fee will normally vary depending on whether the contract is terminated within the first year.

5.3 Commercial barriers to switching

Commercial barriers are the barriers that arise from contractual elements introduced by the service provider, with the purpose to retain customers. These elements mainly refer to commercial options or behaviours of the banks, such as fees, contractual provisions (e.g., minimum length linked to interest rates, commercial practices to retain customer's loyalty).

Examples of such provisions are those that allow banks to charge consumers high exit fees when they desire to move to another bank and those that set complex or burdensome processes to switch. Other such provisions include commercial behaviours which stem from commercial freedom or from lack of regulation.

Consumers' behaviour

It should be noted that in some instances switching rates are low even in the absence of major commercial barriers. This is due, in the view of many of the interviewed stakeholders including national regulators, to the consumer's *inertia* and/or lack of awareness.

Behavioural aspects are seen as being the key reasons for suboptimal switching rates in most of the Member States analysed (e.g. for mortgages: CZ, IT, NL, PL, SE, PT, SK, and UK; for payment accounts: CZ, IE, IT, LV, NL, PL, PT, RO, SE, SI, SK, UK).

For example, according to the French Ministry of Finance,¹¹⁶ customers often don't bother switching mortgages because they do not realise the potential savings involved or they feel the process is too cumbersome. Likewise, representatives of the Bank of Portugal interviewed as part of this study noted that, in some cases, low rates of switching in Portugal can depend on the consumers' lack of awareness. According to the Bank of Spain, consumers in Spain tend not to change providers very often (both in the case of mortgages and payment accounts) simply because they have a tendency to stay with the same provider. The supervisor believes "*that they must*

¹¹⁶ Interview of 17th April 2019.

perceive that the gains from switching are low or non-existent or think that the costs of switching are high (which might simply be the cost of shopping around and trying to find a new deal). The current low interest rate environment might have an impact on the low level of mobility in the case of mortgage providers.” Financial education, including awareness rising campaigns, may be needed in such cases. The Bank of Spain has recently alerted of risk of oligopoly as the five major banks in Spain control 72 per cent of the market¹¹⁷. The Dutch National Bank carried out various studies on switching and found that the propensity to switch indeed depends on the product in question, being higher for saving accounts and among younger people, while older people had fewer propensities to switch due to a strong bank-customer relationship¹¹⁸.

The importance of financial education of consumers was stressed during the roundtable session as vital to make an informed decision about the mortgage product. The complexity of existing mortgage products has been on the rise and some stakeholders¹¹⁹ reckon that this may also contribute to consumer detriment.

Also, as it comes to payment accounts, explanation for why consumers do not switch banks is usually found in the lack of customer involvement, rather than in actual commercial barriers. The interviewed stakeholders deem such inertia as the major factor that (negatively) affects the inclination to add another bank or to switch banks. The consumers’ willingness to engage in switching is often missing, and so is the consumers’ awareness and perception of the advantages connected to making a switch.

For instance, in Italy according to a consumer’s association, the lack of awareness of the consumers’ rights is a significant barrier for switching of payment accounts. This is because consumers often incorrectly believe that, having paid the instalment on the account opened in the bank that granted the loan, they cannot close the account¹²⁰. In reality, it is possible to close the account by charging the instalment on the new account opened elsewhere, even though very few consumers know about this possibility. Although the law provides that banks must establish interbank IT procedures in order to respect the tight schedule imposed by law and these procedures work smoothly, these are often unknown by Italian consumers.

A survey from the Irish Central Bank in 2016 analysed the behaviours of people who initially wanted to switch (either internally or externally) or refinance the mortgage, but who in the end decide not to. The survey found that the following factors weighted on consumers’ decisions not to switch: (i) switching mortgage requires too much effort; and/or (ii) the current contract offered the best value for money / people are satisfied with the current conditions. It can also be noted that the vast majority of mortgages in Ireland are provided by *tracker mortgage*, a variable rate product that is very convenient for the borrower. Because of the convenience, consumers usually do not want to move from the provider. Indeed, borrowers are unlikely to find a more convenient rate in the market and additionally, in line with the law,¹²¹ if they switch to an alternative interest rate they will not be contractually entitled to go back onto a tracker interest rate in the future.

As far as payment account are concerned, as reported by the Irish Consumers’ Association,¹²² consumers’ lack of awareness plays a considerable role (according to a survey run by the Bank of Ireland: 70 per cent of the interviewed were not aware of

¹¹⁷ P. Cruz-García et al., *Concentración y competencia bancarias en España: el impacto de la crisis y la reestructuración*, “Revista de estabilidad financiera”, Banco de España, no. 34, May 2018.

¹¹⁸ DNB Working Paper Banking products: you can take them with you, so why don't you? Carin van der Crujisen and Maaïke Diepstraten No. 490 / December 2015.

¹¹⁹ For instance, official position of BEUC.

¹²⁰ Interview with one of the Italian Consumer Association Altroconsumo.

¹²¹ Irish Consumer Protection Code, Article 6.9.

¹²² Interview of 23rd May 2019.

the existing comparison websites; 65 per cent were not aware of the existence of the switching procedure and often consumers reacting to cash back offers are not capable of calculating the best option for them.¹²³ Additionally, in the view of the Consumers' Association of Ireland,¹²⁴ consumers tend not to switch because to do so, they must apply for a new mortgage, and they are not sure whether the new bank will grant them a mortgage if they terminate the one with the current bank.

Another similar factor that stands out across some Member States (Sweden, Ireland, United Kingdom) is consumers' "loyalty" to the first bank where they opened an account.¹²⁵

A further reason for low switching rates reported by many stakeholders across the analysed countries is linked to the specific market situation, with low interest rate (for mortgages) or low/no cost associated with maintaining bank accounts (e.g., *inter alia*, Sweden, United Kingdom, Poland¹²⁶), that can reduce incentive to switch. This is because consumers may not see the meaningful benefits of switching account providers. Consumers' choice of re-mortgaging strategy is, indeed, heavily dependent on the movement of interest rates. For example, in Portugal, in a survey conducted by the Banking Conduct Supervision Department in 2010, people reported that the main reason they did not switch was independent of the existence of any specific commercial barrier. Instead, respondents claimed it was because they were satisfied with the interest rates and contractual elements of their product. According to the Bank of Portugal,¹²⁷ this could be true even today, a fortiori, since the rates for payment accounts are even lower than in the past. Additionally, according to the Bank, since the management fee of accounts is variable over the years, people cannot be sure they will pay less by moving to a different bank. In the same way, in Sweden it was reported a general lack of involvement of customers due to the fact that most of the banks (at least large ones) are very similar to each other and provide the same basic services (in terms of savings, usage, information, etc.). In fact, a study¹²⁸ conducted in 2018 on behalf of the Swedish Bankers' Association, identified the customers' lack of involvement as the single factor that negatively affects the customers' inclination to switch banks.

Finally, although the information provided is transparent from a behavioural point of view, the multiplicity of choices can make it difficult for customers to switch if there is (Ireland)¹²⁹ a lot of information that make it difficult for them to effectively compare the different options. This is especially true with regard to additional features of payment accounts e.g. links to another loyalty scheme, discounts, refunds, etc. The remaining part of this section discusses commercial barriers for mortgages (Section

¹²³ As shown in this academic paper: <https://www.tcd.ie/Economics/TEP/2018/tep1118.pdf>

¹²⁴ Interview of 23rd May 2019.

¹²⁵ Interview with the Swedish Consumer Agency of 15th May 2019. The Swedish Consumer Agency noted that switching is more common with young generations since the average consumer in Sweden is often very loyal to the bank and would not change. Interview with the Irish Consumers' Association of 23rd May 2019, according to which usually, the vast majority of Irish consumers tend to keep their account and stay with the bank where the payment account was opened for the first time. This is less true for younger consumers. Interview with UK Finance of 24th of July 2019.

¹²⁶ An additional explanation for the low switching rate in Polish the mortgage market, in the view of the stakeholders is the fact that substantial shares of mortgage holders are locked in mortgages denominated in foreign currencies (in particular Swiss franc). In this case, switching would imply additional costs related to forex.

¹²⁷ Interview of 18th April 2019.

¹²⁸ Copenhagen Economics, Competition in Swedish banking sector, 2018, page 3, <https://www.swedishbankers.se/fakta-och-rapporter/rapport-om-bankkonkurrensen/konkurrensen-i-den-svenska-banksektorn-2018/> [accessed 2019-05-20]. Do note that the study concerns the Swedish banking sector in general.

¹²⁹ Interview of 23rd May 2019 with the Irish Ministry of Finance.

5.3.1), payment accounts (Section 5.3.2), saving accounts (Section 5.3.3), mortgage insurance (Section 5.3.4) and home insurance (Section 5.3.5) respectively.

5.3.1 Mortgages

In general, it could be expected that Member States with a borrower friendly legal framework and clear fee levels capped by law experience a high level of switching with little or no commercial barriers. A sound legal framework usually helps reduce the commercial barriers and boost the switching rates. However, this is not the rule as in some Member States with no specific switching framework such as the Netherlands and United Kingdom, the switching rate is quite high (e.g. 32 per cent in the Netherlands in 2017 according to the National Central Bank, and 75 per cent in the UK according to FCA and HMRC¹³⁰). Aside from very borrower friendly legal frameworks, switching rates may be determined also by other factors: for instance, low interest rate environment does certainly play some role.

As previously noted, **Italy** is an example of strong legal framework which helps reducing the room for discretionary market practices where, based on data collected by the Bank of Italy in September 2016, the rate of operations carried out for switching mortgages, including refinancing within the same credit institution, was 11 per cent of existing mortgages. Additionally, other surveys from national consumer associations show a 30 per cent of subrogation on loans granted in 2016 and 45 per cent in 2015, while the switching rate¹³¹ revealed by the consumer survey conducted as part of this study is 38 per cent. Although there are number of factors in play and it is difficult to make strong inferences, the rates are among the highest in the EU, exceeding those in other Member States where there is no specific legal framework for switching (with the exception to the UK). In addition, as confirmed during the interviews, after an initial increase in the switching following the introduction of the legislation, the switching rates have stabilized.¹³²

In other cases, such as Spain or Ireland, recent amendments to the legislation were made (2019) to make it more borrower-friendly and to facilitate switching.

In **Spain**, a borrower friendly legislation was in place between 1994 to 2007,¹³³ which brought a period of high dynamism in the mortgage market, creating a true competition among lending institutions to attract new customers that abruptly ended in 2007 through a legislative change¹³⁴. The 2019 legislative framework (Act 5/2019) reinstalled the possibility for the borrower to switch without any possibility for the original lender to stop the switching. It was argued that that the introduction of the new rules on switching resulted in a rapid shift from a largely fixed rate to a variable rate mortgage market, bringing with it financial stability considerations. This is because with borrowers allowed to switch freely, competition among lenders increase

¹³⁰ Note that differences in a way how switching is defined (i.e. inclusion or not of internal switch) makes direct comparison of switching rates challenging in some instances

¹³¹ Respondents were asked whether they switched mortgage to a new lender (external switching) and/or with the same lender (internal switching).

¹³² The ease with which consumers can switch in the Italian market has even prompted criticism by banks, claiming a competitive disadvantage, since the Italian system of switching, where the consumer does not bear any costs, is almost unique in Europe. See <https://www.test-achats.be/action/espace-presse/communiqués-de-presse/2018/herfinanciering-hypotheek> and <https://www.lecho.be/monargent/cr%C3%A9dit/le-belge-paie-trop-cher-pour-refinancer-son-pre/10043925.html>, data gathered by the Belgian Consumer Association Test-Achats.

¹³³ Act 2/1994, 30th March, on subrogation and modification of mortgage loans (BOE no. 80, 4-4-1994). The Act allowed for a simple, cheap and fast mechanism for switching the lender in the hands of the borrower. It is ultimately the latter who used to decide whether to change or not while the former was obliged to be proactive in providing information and facilitating the switching.

¹³⁴ By Act 41/2007, 7th December, BOE no. 294, 8-12-2007. From this Act on, the original lender could stop the switching equalling or improving the mortgage loan offer issued by the second lender to the borrower.

and changes from fixed to variable rates may result as a consequence. However, it is noted that other factors might have entailed or contributed to such a shift.

While the new framework is aiming at increasing competition, it is too early to assess if, as a result of the renovated legal framework, commercial behaviours that hinder switching have decreased in these Member States.

Concerning **Ireland**, in order to increase transparency and competition, lenders will be required to provide existing borrowers with an indicative comparison of alternative or new rates offered by the same lender and also provide the clients a link to the Competition and Consumer Protection Commission's comparison website in order to allow customers to be sure they are availing of the best available interest rate.

On the other hand, it is not excluded that commercial barriers arise even between the lines of a detail regulation. In Italy, a Consumer Association indicated that when accepting the switching, banks do not consider the actual maturity of the loan to be transferred but round up its duration to a multiple of five years. Thus, if the deadline is 184 months, the switching of the remaining instalments is calculated as 15 round years (180 monthly-rates). For the same amount of loan, the procedure slightly increases the monthly rate to be paid to the new lender. However, such behaviour is not prohibited by the law.

Moreover, according to the Italian Consumer Association, various banks attempt to ask the consumers to pay the fees to switch mortgage provider, which are not due under the law. It is also noted that the Italian Banking Ombudsman fined certain commercial behaviours of banks which did not respect the legislative deadline to perform the switching, causing losses of benefits to the customers.

A fortiori, where gaps exist in the legal framework, credit institutions can more easily take advantage of the legal vacuum by imposing unfair contractual terms or charging high fees, to deter consumers from switching to a more convenient product.

Costs

Some commercial barriers which have been identified across multiple States pertaining to the amount of fees charged by banks for terminating the mortgage and applying for the new one (CZ (only in some cases), ES, ES, LV and SI). When there is a lack of legal provisions regulating the maximum level of compensation, banks have broad discretion in setting high fees to consumers that terminate their mortgage, ranging within the generic limits imposed by national MCD implementing laws that, in compliance with the directive, simply require the amount charged to be "reasonable" or "fair".

Also, the overall cost of the operation can be considerable, whereby, lacking specific provisions, on top of the costs foreseen by law (compensation due for the early termination, administrative fees, taxes) additional costs are charged, such as legal fees if the consumer is required by the credit institution to take a legal expert on board to assist in the operation.

This factor, in some cases (e.g. BE, DE, PO, IE), makes it hardly beneficial to switch to a lower interest rate or too burdensome for the average consumer to effectively compare and calculate the overall cost required for the operation.

In **Belgium**, the main commercial barrier which prevents the switching of mortgages is the refinancing cost, which can be extremely high and include: (i) the cost of the early repayment fee, which amounts to a maximum of three months' interest on the remaining capital and is meant to be a compensation for the lender because the borrower will no longer pay interest as (s)he will benefit from a lower financing rate or

change banks; (ii) administrative fees, which vary depending on the bank;¹³⁵ (iii) the cost of the release of the current mortgage loan and the implementation of the new loan in favour of your new bank; (iv) the appraisal fees, asked by the new bank to estimate the value of the estate; as well as (v) other costs which might be due, related to closing and opening of a bank account. For administrative fees associated with refinancing, it has been noted by Test-Achats¹³⁶ that, in some cases, a credit refinancing costs even more than a new mortgage loan (e.g., in a bank it has resulted that, the cost for refinancing is EUR 700 while the cost for a new mortgage loan is EUR 500). However, this is not the case with other banks. There are also banks whose application fees vary according to the amount of the remaining balance of the outstanding credit. According to a study carried out by Test-Achats, the cost is twelve times more expensive than the average refinancing cost reported in all the countries of the European continent. Therefore, Belgium consumers are disadvantaged compared to their European neighbours. This leads to the conclusion that, in many cases, it is not convenient to renegotiate a mortgage. In fact, the benefits of a lower financing rate for the remaining period must cover the costs of credit refinancing in order to be advantageous. In most cases, the interest rate is more attractive for external refinancing, but the associated costs are higher than those for internal refinancing so consumers may prefer internal switching.

Similarly, in **Germany**, early repayment fees may hinder switching, as they may reach several tens of thousands of Euros. The amount of fees is strictly dependant on how deep market interest rates have plunged – referring to the interest rate when settling the fixed interest rate contract – and how much repayment remains. While the law caps the amount for the prepayment penalty, it also allows charging a “reasonable fee” for additional administrative expenses. To calculate the overall amount of early repayment compensation, the general provisions for consumer credit apply. Banks shall compare the initially agreed interest rate and the interest rate at which the creditor can lend out the amount repaid early on the market at the time of early repayment. However, frequently applied case law allows banks to either benchmark with a comparable mortgage credit or alternatively with an investment in securities such as government bonds. In the end early repayment compensation and penalties can be up to 10 per cent (and even 30 per cent) of the outstanding mortgage credit.

In **Poland**, according to UOKIK,¹³⁷ one-off fees and costs associated with the new credit (e.g., fees for handling the credit application and court fees for establishing or transferring mortgage security) may constitute barriers to switching.

A *best practice* that might offset such barrier has been identified in **Ireland**, where mortgage-take-ups have increased significantly in the last years: while the legal fees associated with switching can be a key deterrent (amounting all in, to somewhere between EUR 1,200 and EUR 2,000), many Irish financial institutions, although not required by the law, have recently started offering cash incentives to cover some or all of the costs (at least of the legal fees) to encourage borrowers to switch.¹³⁸ However,

¹³⁵ The application fees for a credit refinancing vary from 250 up to EUR 700 (i.e. Argenta: EUR 250; ING: EUR 350; KBC: EUR 500; BNP Paribas Fortis: EUR 700; Hello Bank: EUR 350; AXA Bank: EUR 350; Belfius: EUR 350 (credit up to EUR 250.000), EUR 370 (EUR 250.000 – EUR 375.000), EUR 430 (EUR 375.000 – EUR 500.000) and EUR 530 (credit over EUR 500.000).

¹³⁶ Test-Achats therefore advocates a reduction, or even a total abolition, of certain costs related to mortgage refinancing, requiring an adjustment of these costs to the level of those applied by neighbouring countries. In order to support this request to reduce or even eliminate these “extravagant costs”, Test Achats also launched a petition at www.testachats.be/actetropcher.

¹³⁷ Interview of 6th May 2019. The UOKik specified that there has been no comprehensive national study that explores the underlying reasons for the low switching rate in Poland, so they expressed their informal opinion.

¹³⁸ As noted during the interview with the Irish Ministry of Finance of 17th April 2019, banks usually offer a percentage of cashback on the mortgage’s total value or a fixed sum. Ministry of Finance has only anecdotal evidence at this stage, but believes that it is fairly common occurrence on the Irish market. Also the Central

concerns remain for the lack of transparency in the calculation methodology used by lenders to calculate the “fair and objective” compensation due for early repayment of fixed rate mortgage. Similarly, in **UK** an interviewed Industry Association¹³⁹ reported that banks in some instances cover the switching legal fees, but, in such cases, they usually apply a higher interest rate in return.

Also, in **the Netherlands**, the stakeholder survey confirmed that, even if not requested by law, banks offer repayment of annual 15-20 per cent of the mortgage value without compensation fees in order to promote switching and refinancing.

Bundling

Another potential issue pertains to **bundling** of products. Differently from tying, which is, as a rule, forbidden by the MCD, bundling is allowed. However, from the stakeholder consultation, it emerged that there is a thin line between the two and in some cases, the lenders’ behaviours, such as refusing another policy insurance or requesting to open a payment account, may amount to tying.

In **Italy**, it occurs often that the new lenders require to the borrower to change its policy insurance and buy that offered by the bank or to open a payment account. This is prohibited by the legislation but it seems still an existing practice, according to a consumer association.

As noted by the Bank of **Ireland**,¹⁴⁰ if a consumer accepts a group mortgage protection policy offered by the lender (often there is a discount on this in order to encourage consumers to take out insurance with a provider of the same group), when the loan is repaid, the coverage terminates. This means that if the borrower wants to switch to another lender at some point during the life of the loan, he/she may not be able to also move the mortgage protection policy. Therefore, they may have to apply for a new one, which could cause difficulties if there are changes, e.g., in health circumstances. In **France**, it was reported by a French consumer association¹⁴¹ that some banks require consumers to keep their own mortgage insurance when they wish to renegotiate their mortgage, complicating the switching process. These bad practices were the object of an alert from the national supervisor.

In **Portugal**, according to the Bank of Portugal,¹⁴² bundling is widely used as a commercial practice and this is the most significant constraint for switching mortgages.

The survey of banks conducted as part of this study revealed that mortgages are most typically bundled with home insurance, mortgage insurance and payment accounts with 60, 25 and 22 per cent of banks bundling within those pairs respectively.

Complexity of the process and the time involved

Another obstacle is the amount of paperwork and time needed to switch mortgages, which is considered a barrier in Czech Republic, Ireland, Poland and Slovenia, where the consumer needs to arrange several meetings with the credit providers, and the process may require up a few months.

This may depend in some instances on the fact that mortgage credit is a complex product in itself involving many legal steps prescribed by law.¹⁴³ Nonetheless, in other

Bank report on “switch and save” in 2015 reported that “The upfront financial costs faced by consumers when switching mortgages are primarily made up of legal fees...[but] the majority of lenders cover at least €1,000 of this and valuation fees of around €130.”

¹³⁹ Interview with UK Finance of 24th July 2019.

¹⁴⁰ Interview of 17th July 2019.

¹⁴¹ Interview with UFC-Que Choisir of 4th April 2019.

¹⁴² Interview of 18th April 2019.

¹⁴³ I.e. in CZ, according to the Czech Ministry of Finance.

cases, banks commercial behaviour can be considered a key factor which affects the length and difficulty of the operation (for example in **Ireland**, where, as claimed by a Consumers' Association,¹⁴⁴ consumers are often required to provide a large amount of documents when ending a credit agreement, even when the banks has already been provided with them at the time of conclusion of the agreement).

Similarly, in **Poland**, according to UOKIK,¹⁴⁵ the complexity of the process and the time involved are major issues for switching mortgages. In fact, the process of switching mortgages is at least as long as the process of opening a new one.

¹⁴⁴ Interview of 23rd of May 2019.

¹⁴⁵ Interview of 6th May 2019. The UOKik specified that there has been no comprehensive national study that explores the underlying reasons for the low switching rate in Poland, so they expressed their informal opinion.

Table 18. Overview of commercial barriers for mortgages – 12 Member States

	BE	CZ	ES	FR	IE	IT	LV	PL	NL	PT	SI	SK	SE	UK
No specific commercial barrier: consumers' behaviour		Ministry of Finance				Altroconsumo (Consumer Organisation) Bank of Italy		Ministry of Finance		Bank of Portugal		MFSR	Swedish Consumer Agency Financial Supervisory Authority Swedish Bankers' Association	HM Treasury Financial Conduct Authority UK Finance
Cost for terminating the mortgage and then apply for a new one with the new bank	Test-Achats Belgian Federation of Financial Sector	Ministry of Finance	Spanish Treasury		Irish Consumer Association		Consumer rights protection centre of Latvia						Zveza potrošnikov Slovenije (Consumer Organisation)	
Lack of transparent information on the process					Irish Consumer Association				Netherlands Authority for the Financial Markets				Zveza potrošnikov Slovenije (Consumer Organisation)	
Bundling with mortgage Insurance				UFC-Que Choisir	Bank of Ireland									
Tying						Altroconsumo (Consumer Organisation)				Bank of Portugal				

Complexity of the process and time involved	Test-Achats Belgian Federation of Financial Sector	Ministry of Finance			Irish Consumers Association Bank of Ireland			UOKIK	Netherlands Authority for the Financial Markets			Zveza potrošnikov Slovenije (Consumer Organisation)		
<i>Time required for switching:</i>	3 months	N/A	Around 3 months	N/A	Min 3 months, sometimes more	N/A	N/A	At least as long as applying for a new mortgage	N/A	N/A	N/A	N/A	1 week (max two weeks)	A few weeks/ From 7 to 10 days

5.3.2 Payment Accounts

As far as payment accounts product are concerned, as noted in the previous Section, commercial barriers seem to be very limited as the detailed legal framework resulting from the implementation, in all Member States, of the PAD's requirements, considerably narrowed payment service providers' leeway on adopting commercial behaviours that could possibly impeding switching. This view is also shared by the interviewed stakeholders.

No significant barriers have therefore been identified in the context of switching accounts in most Member States.

Even when the legal framework in principle consents banks to charge some reasonable fees for switching, it is noted that they often decide not to apply them, allowing the consumer to switch free of charge (e.g. in UK). In addition, some banks offer incentives and cashback for transferring the payment account, in order to attract new customers.

In **Poland**, interviewed stakeholders¹⁴⁶ reported that switching is extremely easy mainly thanks to the creation of the *Ognivo* platform. The platform enables the uninterrupted exchange of information between banks and institutions authorized to access information covered by bank secrecy. However, since its creation, the *Ognivo* system primarily covers banks, leaving the remaining entities from the financial services sector without such access.

Likewise, in **Sweden** and **UK** according to the interviewed stakeholders,^{147 148} there are no relevant barriers to switching: switching is very fast and easy (usually requiring no more than one day) and everything can be done online in few hours.

Nonetheless, there are some exceptions. The stakeholder consultation highlighted that products' bundling may still constitute a barrier. In particular, salary domiciliation seems to be a common practice across Member States, where consumers are often offered bonus or discounts upon opening a payment account with the same institution that granted the mortgage credit. This does not impact the possibility to switch or terminate each product separately but, in some cases, ends up hampering clients in effectively calculating the convenience of switching or keeping them from switching in order not incur in loyalty penalties.

An example of this is in **France** where, in order to cease the practice of obliging clients to domicile the mortgage rate in an account held at the lenders' bank, from 1 January 2018, the law provides that such practice is admissible only when there is

¹⁴⁶ Interview with UOKIK and Ministry of Finance of 24th of May 2019.

¹⁴⁷ Swedish Consumer Agency, Interview of 23rd of May 2019 and Swedish Financial Supervisory Authority, Interview of 26th of May 2019. According to a study conducted in 2018 on behalf of the Swedish Bankers' Association, the credit market appears to be dynamic. The dynamic nature of the market is supported by low lock-in effects for Swedish banking customers. This is because, among others things, switching costs are low, there is a high degree of digitalisation of the banking sector that has eased the administrative burden of switching banks, and online comparison sites have made it easier for customers to find the most competitive banking offers. Furthermore, a study conducted 2018, on behalf of the Swedish Competition Authority (Konkurrensverket), found that the number of customers that switched banks has markedly increased from the past. The results from the study show that customers complain rather infrequently. From a perspective of industry competition, this is an indication of no widespread hindrances (in terms of administrative hassle or monetary costs) associated with the switching of banks. The results further show that a fifth of all respondents have switched all or part of their banking affairs during the past three years, supporting the picture of an industry with relatively low levels of administrative or economic barriers to switch. The study identified customers' lack of involvement as the single factor that negatively affects the customers' inclination to switch banks.

¹⁴⁸ Interview with FCA; HM Treasury; UK Finance of 25th of April; 9th of May 2019; 24th of July 2019. It was reported that switching payment account is a very smooth operation which can be made online, for free, taking from 2 to 24 hours. The single reason identified as impacting on consumers' mobility is their "loyalty" to the first bank or the low incentives stemming from the very reduced costs of payment accounts.

personalised offer (e.g., a better interest rate) and the advantages are clearly explained in the mortgage contract. In addition, the law establishes that the duration of this clause may not exceed 10 years. Despite this framework, according to a consumer association,¹⁴⁹ there is still a problem of information transparency, preventing consumers from assessing the real economic benefit of switching. This stems from the fact that consumers, when they open a payment account, are offered tailor made offers/incentives, in the form of customized interest rates, which makes it difficult to effectively analyse market alternatives. These offers can also hide penalties. In the view of the consulted consumer association, the mechanism of personalised offer is based on an asymmetry of information and it can effectively prevent consumers from assessing the real cost of the products and the economic interest of switching.

In the **UK**, in the view of the FCA,¹⁵⁰ while there are no major barriers for switching payment accounts, loyalty penalties from bundled accounts can constitute a barrier to switching. For personal current accounts, it was also noted that there is a lack of transparency mainly with regard to overdrafts, for which a consultation is on-going at national level, and where there is some room for improvement.

Similarly, according to the Bank of Portugal,¹⁵¹ while the switching framework is very simple and without fees, the bundling of products (such as personal current accounts and savings accounts) represents a commercial barrier, when consumers are obliged to move all other products associated with the account.

In **Italy**, according to the Bank of Italy, the only remarkable obstacle is that the PAD deals with switching of current account, but it does not cover investment accounts, where the current account is linked with a securities portfolio. The securities portfolio is usually placed in a securities account linked to the current account. Therefore, the transfer time depends on the type of securities included in the account concerned.¹⁵² Furthermore, a certified comparative website is not yet in place and consumers have to search for information by themselves or use non-certified comparators.

The same issue has been raised by an Italian consumer association. For payment accounts there is then the problem of the linked securities account (it happens in 15 per cent of cases). This involves, when closing the account, having to necessarily transfer the securities account as well. In addition, according to the same association, there is a certain resistance by the banks to fully and properly transfer the payment accounts.

In **Hungary**, during the 2017 regulatory payment inspections, the MNB found that credit institutions refused the termination of accounts, which is related to the last step of the process of switching accounts, on several occasions even in cases when it is not allowed by law. The most frequent reason for the refusal was when payment card and/or other service(s) (Internet bank, texting service) also belonged to the customer's payment account. A further deficiency was that most of the inspected institutions did not meet the obligation to provide information for easing the cross-border switching of accounts¹⁵³.

Another barrier is related to the documentation required to switch payment account.

In **Germany**, the supervisory authority BaFin reported¹⁵⁴ that an assessment of account switching by PAD-mechanisms has been carried out by a consumer protection

¹⁴⁹ Interview with UFC-Que Choisir of 4th of April 2019.

¹⁵⁰ Interviews with FCA and HM Treasury of 25th of April and 9th of May 2019.

¹⁵¹ Interview of 18th of April 2019.

¹⁵² However, indemnifications from delay are foreseen and there are penalties that are paid by the banks.

¹⁵³ Magyar Nemzeti Bank, Payment system report 2018.

¹⁵⁴ Interview of 10th of July 2019.

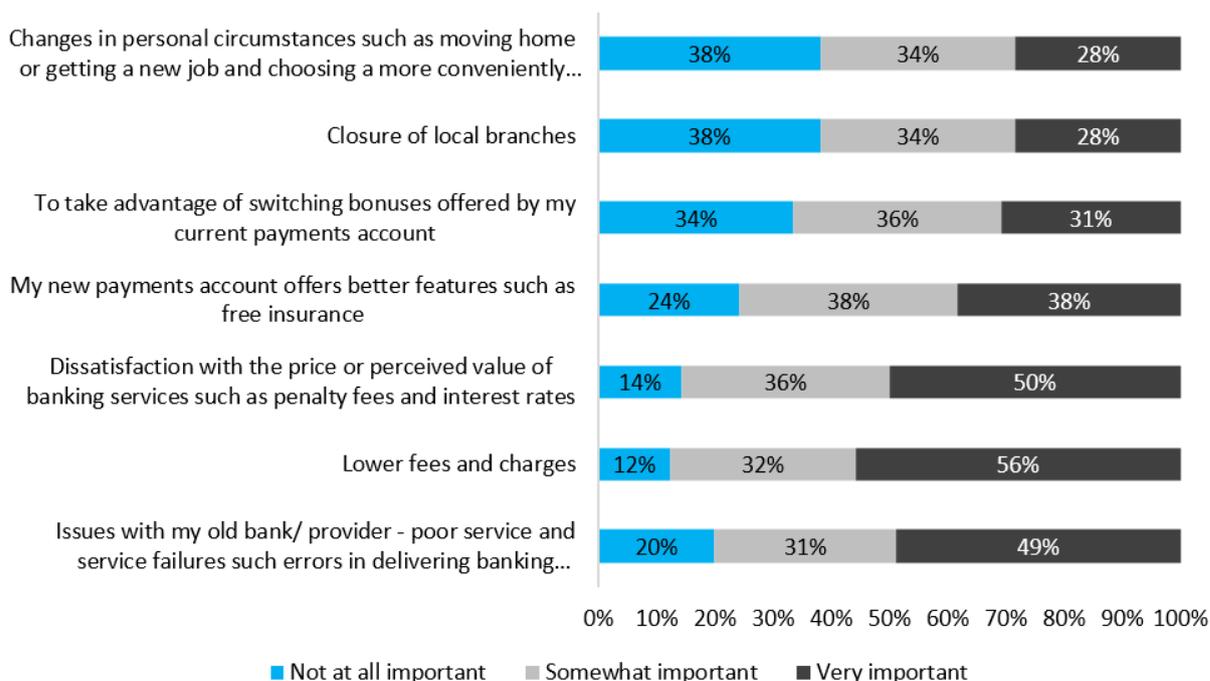
organisation (“Stiftung Warentest”/“Finanztest”). It resulted that the legal documents for account switching by PAD-mechanisms are complex. Therefore, they suggested that consumers do not choose to switch accounts through the PAD-mechanism, but instead, made use of the personalized switching mechanism offered by the institutions.

In **Ireland**, stakeholders¹⁵⁵ claim that consumers are usually requested to provide the bank with a large amount of documentation and proofs of identity (even when the client already provided the bank with the same papers at the time he opened the account), arranging many visits to the institution, which may, ultimately, deter them from switching.

In the **Netherlands**, on the one hand it has been noted the switching process was already in place since 2004 and it works well with no major barriers, however, according to both the Netherlands Authority for the Financial Markets¹⁵⁶ and the Ministry of Finance,¹⁵⁷ the lack of ANP may represent a commercial barrier for some consumers.

The survey of consumers conducted as part of this study examined the key determinants to switch a personal current account (Figure 16), and the main factors that may encourage consumers to switch (Figure 16).

Figure 16. Reasons to switch a payment account



Source: Consumer survey (ICF, 2019)

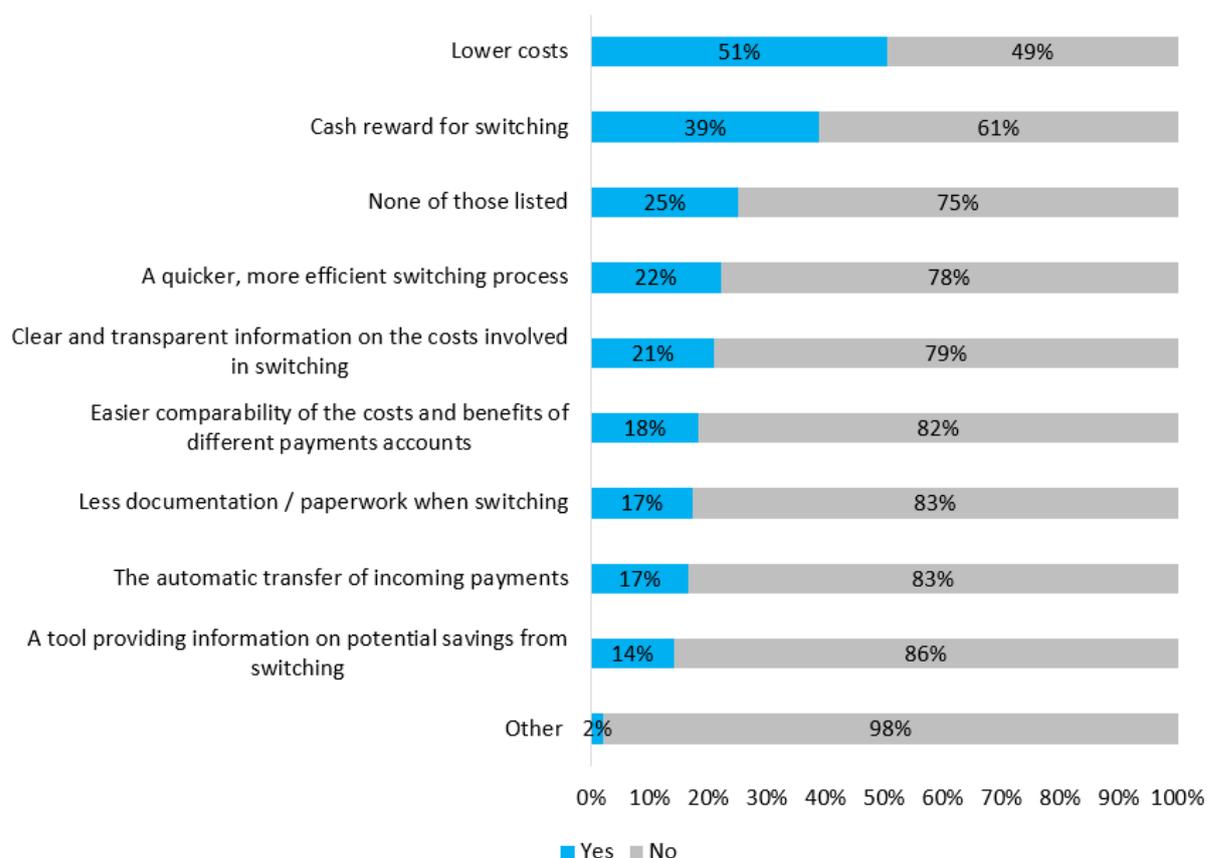
Note: N=876, among those who switched only

¹⁵⁵ See previous footnote.

¹⁵⁶ Interview with the Authority for the Financial Markets of the 2nd of May 2019.

¹⁵⁷ Interview with the Dutch Ministry of Finance of 26 April 2019.

Figure 17. Main incentives to switch



Source: Consumer survey (ICF, 2019)

Note: N=4071, among those who did not switch only

Interviewed national industry associations stated generally that switching of personal current accounts is usually very easy and swift.

It should be also noted that relatively low switching rate may be also an indication of a well-functioning market as in some cases switching rate may not fully capture the underlying changes on the market (e.g. new customers of neobanks typically open additional payment account with a digital bank and do not close the existing one with their existing retail bank – see more under Section 6.2.2.1).

Table 19. Overview of commercial barriers for personal current accounts – 13 Member States

	BE	CZ	DE	FR	IE	IT	LV	PL	NL	PT	SI	SE	SK	UK
No particular barriers (consumers' behaviour)		Ministry of Finance			Consumers' Association; Ministry of Finance	Altroconsumo (Consumer Organisation)	Consumer rights protection centre of Latvia	Ministry of Finance	Dutch Ministry of Finance Netherlands Authority for the Financial Markets	Bank of Portugal	Zveza potrošnikov Slovenije (Consumer Organisation)	Swedish Consumer Agency; Financial Supervisory Authority	MFSR	FCA; HM Treasury; UK Finance
Cost of the operation					Consumers' association									
Lack of transparency				UFC-Que Choisir										FCA
Complexity of the process and time involved			BaFin		Consumers' Association									
Bundling / tying	Ombudsfin (Belgian Ombudsman)							UOKIK (Consumer Protection Authority)		Bank of Portugal				

5.3.3 Saving Accounts

In general, there are no specific provisions for the switching of saving accounts, which are mainly regulated at the commercial level. For savings accounts with investment products, transfer fees can be relevant. The only exception is **Italy**, where closing fees are prohibited for any kind of bank account (both payment and savings), but transfer fees for the transfer of securities and other investment products remains applicable.

A **French** consumer association noted that the transfer prices for these products have experienced unprecedented inflation in conjunction with the bank mobility assistance service on the current account.

Indeed, while the PAD directive requires the current account to be free of charge, banks have made up for the lost fees by increasing those for savings products, which are not capped. While 32 per cent of consumers have an administered savings product (CEL/PEL) and 4.5 million securities accounts are opened, the costs associated with their transfer have increased at a record rate since 2012. On average, they reached EUR 91 (+18 per cent in 5 years) and EUR 87 (+13 per cent) respectively, in 2017.

No specific commercial barriers have been identified in the remaining Member States.

5.3.4 Mortgage insurance

In **Belgium**, as part of a mortgage loan, the bank may grant clients a rate reduction linked with the subscription of insurance with an insurer indicated by the same bank. In this case, the only consequences of choosing another provider, rather than the one indicated by the bank, is the loss of the discount opportunity. This insurance is not compulsory. However, it is true that most credit institutions require, for significant loans (for example a mortgage loan), that such insurance be taken out in order to reap the benefit of an additional guarantee. It should be noted that the lender cannot terminate a loan contract if the remaining balance of insurance is underwritten by another insurer.

In **France**, one consumer association considers that the bank's behaviour is the main obstacle, making substitution of creditor insurance particularly difficult for consumers. It appears that almost one third of requests for the substitution of borrower insurance are not answered by banks within the prescribed time, despite sending a registered letter with acknowledgement of receipt. On the other hand, when banking institutions respond to consumer requests, the answers provided are often insufficient to enable them to switch within the legal deadline of ten days. This difficulty is accentuated by the practices of some banks, which require consumers to keep their own mortgage insurance when consumers ask to renegotiate their mortgage. This practice has been subject to an alert from the national supervisor.

In **Germany**, lenders usually do not require life and permanent inability to work insurances with a mortgage. Yet, if consumers seek this kind of insurance, they are often proposed life insurance combined with unemployment insurance.

In **Italy**, as noted above, switching is not possible if the insurance is paid in a single premium and there is no termination or early repayment. Additionally, in the context of litigation for a subrogation before the Banking and Financial Ombudsman,¹⁵⁸ it emerged that the tying of the products remains a current practice.

In **Luxembourg**, the legislation expressly provides that in event that the lender requires the consumer to subscribe to a policy insurance in connection with the mortgage agreement, the lender shall accept the insurance policy issued by a service provider other than the service provider recommended by the lender if this policy has a level of coverage equivalent to that of the policy offered by the lender.

¹⁵⁸ Palermo Collegium has stated in decision No. 23653 of the 12th of November 2018 <https://www.arbitrobancariofinanziario.it/decisioni/2018/11/Dec-20181112-23653.PDF>

In **Poland**, given that including an early termination clause is not mandatory for property insurance concluded for a definite period, the lack of such clauses in terms set by insurers may severely limit the consumer's ability to switch providers. Depending on the specific circumstances, it may sometimes mean that the consumer has to keep paying a premium to the old provider for the old insurance, even if he takes out a new insurance policy with a new provider. In addition, it has been noted that sometimes policyholders pay the single premium in advance for the mortgage lifetime, which makes any cancellation more difficult.

In **Portugal**, Article 11 of Decree Law No 74-A/2017 prevents lenders from making the renegotiation of mortgage agreements dependent on the performance of mandatory associated sales, with some exceptions. The creditor may require the consumer to open or keep open a current account, or to conclude a more appropriate insurance contract relating to the credit agreement. In the latter case, the creditor must accept the insurance contract from a provider other than one of his own preference, if such a contract safeguards a level of security equivalent to that of the contract proposed by the lender.

In **Spain**, tied products, which are allowed when they are the best option for the consumer, are usually used to reduce the interest rate of the existing mortgage loan. This makes switching more complex and costly, since it has to include one more product to "switch" in addition to the mortgage and it may be difficult to compare with the other offers. A comparison website¹⁵⁹ reports that many of the "best" mortgage offers include tied products in exchange of better interest rates. The lender offers the consumer the opportunity to benefit from a number of ancillary services, such as a current account, fire insurance, safe-deposit, but also an annexed contract in the form of, for example, insurance on the outstanding balance, usually with a reduced rate. While this can be advantageous in term of costs, it may be difficult to switch one of the products included in the package.

In **Sweden** insurance providers may provide a discount if the customer has bought multiple products from the provider. While this is beneficial to the customer, it may complicate customers' ability to perform price comparisons and switching.

5.3.5 Home insurance

At present, with the exception of Sweden, no specific commercial barriers have been identified concerning home insurance. As mentioned above, the package sale of mortgages with other ancillary products, in order to obtain better rates, can create complexity in the switching process. In most cases, it can be said that there are no additional charges in the event of a home insurance termination, and that it can be done with different methods or limitations depending on the type of insurance taken out.

It is frequent that a consumer who wishes to renegotiate his mortgage must subscribe to a home insurance policy from the bank. Competition is relatively weak in terms of mortgage insurance in France. Most of the insurance are sold at the same time as the mortgage credit agreement. As a result, 85% of the market is still dominated by bank insurance contracts, whose margin is estimated at around 35% in 2018.

Nonetheless, in **Sweden**, as noticed by the interviewed stakeholders,¹⁶⁰ since insurances are renewed automatically, often the consumer has given an approval to withdraw the money automatically and has to terminate both this approval and the insurance contract.

¹⁵⁹ HelpMyCash, 2019. Mejores hipotecas. Available at: <https://www.helpmycash.com/mejores-hipotecas/>

¹⁶⁰ Swedish Consumer Agency, Interview of 23rd May 2019 and Swedish Financial Supervisory Authority, Interview of 26th May 2019.

In addition, the insurance is often paid in pieces and the monthly cost is not always noticed. Another barrier which has been reported is the practice of tying an offer to an invoice for existing insurance. If the consumer in this case pays the full amount, he or she has accepted another insurance (the Swedish Consumer Agency actively supervises to ensure that offers are clear so the consumer can distinguish between offers and invoices, but such practice is common among insurance providers).

6 Task 3: Existing and prospective measures facilitating switching

The term 'measure' is considered broadly here, and also includes some market developments, such as expansion of neo-banks or services provided by financial advisors/ brokers that appeared to have the potential to boost switching.

6.1 Task overview

6.1.1 Product scope

Task 3 covers the following products:

- Residential mortgages as defined by the Mortgage Credit Directive (MCD)¹⁶¹;
- Payment accounts covered by the Payment Accounts Directive (PAD)¹⁶²;
- Saving accounts;
- Mortgage insurance;
- Home insurance.

6.1.2 Geographical scope

The Task 3 analysis covers all 28 EU Member States. In addition - and where relevant - it also discusses certain aspects of selected non-EU markets.

6.1.3 Thematic scope

The Table 19 presents the thematic scope of Task 3, which was largely based on the research undertaken for Task 2. For instance, if bundling/tying was identified as a material issue across several markets under Task 2, this then guided the selection of existing and/or prospective measures that could address this issue for inclusion under Task 3.

Existing/prospective measures are categorised into three specific lots:

- *Lot 1 - legislative measures*: these would address some key material issues that were identified from the Task 2 research;
- *Lot 2 - fintech solutions*: these would encapsulate existing/prospective remedies originating from the fintech sector. Those were identified chiefly through the desk research and interview programme;
- *Lot 3 - other measures*: these are any other types of measures that do not fall under lot 1 and 2 but were identified as potentially effective in boosting the switching rate.

Section 6.2 discusses each of these measures in detail.

¹⁶¹ 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, 28.2.2014 (Mortgage Credit Directive).

¹⁶² Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, OJ L 257, 28.8.2014.

Table 20. Task 3 – thematic scope

Product	Lot 1: Legislative measures	Lot 2: Fintech measures	Lot 3: Other measures
Residential mortgage	<p>Measure 1: Selected elements for ‘optimal’ full switching capability mortgage framework, including:</p> <p>Possibility of unilateral early repayment of the mortgage by the borrower, at any time and without any other type of limitations;</p> <p>Possibility of early repayment with no compensation to lender or penalty imposed by the lender, or, alternatively, a cap on compensation to the lender for early repayment of mortgage;</p> <p>Full legal framework providing the possibility for switching, e.g. the subrogation of the second lender into the first, with minimum costs and fees for the borrower, and with the possibility of keeping the mortgage (e.g. no need to create a new one);</p> <p>Financial products linked to or combined with the switched mortgage (e.g. mortgage insurance) should not be tied, as it constitutes a barrier to switching;</p> <p>Costs of arranging the new loan could be borne by the second lender or capped considerably.</p>		<p>Measure 1: Role of financial advisors/brokers in the UK in boosting switching rates.</p> <p>Measure 2: Data on real benefits suggest that national banking markets are not enough to allow the full potential benefits of mortgage switching (especially in a post-2007 crisis with so many banks merging). The idea of a common mortgage instrument - the so-called ‘Eurohypothech’ - could be re-visited¹⁶³, to create a true pan-European mortgage market.</p>

¹⁶³ Nasarre-Aznar, S., 2012. The need for the integration of the mortgage market in Europe, en Sjeff Van Erp et al. (coord.). *The future of European Property Law*. Sellier, pp. 79-122.

Product	Lot 1: Legislative measures	Lot 2: Fintech measures	Lot 3: Other measures
Personal current account		Measure 2: Rapid market capture by new challengers in online accounts market – case of Revolut and N26.	Measure 1: ANP considered by Dutch and French regulators.
Saving account			Measure 1: Goldman Sachs' Marcus Account and recent expansion.
Mortgage insurance	<p>Measure 1: Selected elements for 'optimal' full switching capability mortgage insurance framework, including:</p> <ul style="list-style-type: none"> Prevention of bundling (mirrors the residential mortgage cell); Early termination of mortgage insurance contract; No fees or charges for early termination of mortgage insurance; No insurance or any other financial products should be compulsory in taking out a mortgage loan. 		
Home insurance	Measure 1: Hamon Law (France, 2014).		

Source: ICF and Grimaldi, 2019.

6.2 Analysis of specific measures

This section is structured by product line, where specific measures falling under each of three lots are discussed in the context of particular products.

6.2.1 Residential mortgages

6.2.1.1 Lot 1: legislative measures: *Selected elements for 'optimal' full switching capability mortgage framework*

6.2.1.2 Overview

The research for Task 2 pointed to a heterogeneous legal landscape for mortgages across the Member States and thus for switching capabilities as well.

Only two Member States (Italy and Spain) have a full switching procedure for mortgages. However, in the case of Spain, this system was reinstated only recently (a similar system was in place from 1994 to 2007) and its impact has yet to be evaluated.

While other Member States provide options that could make it easier to switch mortgages, barriers remain with respect to notary deeds, fees for registering mortgages, and the complexities for inscription and removal from the public registry.

According to the national competent authorities, high switching rates are chiefly driven by stiff competition in the national banking sector, an adequate approach from regulators, and financial incentives to switch to other deals. However, the authorities also stress that switching is just one of several market characteristics and warn against viewing high switching rates as a synonym for a well-functioning market. While switching is generally considered to increase competition and benefit consumers, this is not always the case. For instance, banks' associations argued that additional burdens could be imposed on longstanding clients in order to increase the switching rate, with rather uncertain outcomes. However, there is no evidence that this has happened in those Member States with high switching rate or with specific legal framework. The only available empirical data comes from Spain, where it has been noted that, following the changes in the legal framework in 2019, the cost of mortgage products has slightly increased. Yet, this causality can not be necessarily inferred from those changes as other factors may have played a role.

Exogenous factors also impact switching behaviour. For instance, stakeholders (including national regulators) note that current persistently low interest rates are the main driver of the relatively low switching rates across some jurisdictions (e.g. Germany). In addition, irrespective of the extent to which rules to incentivise switching are borrow-friendly, there will always be a subset of consumers who would remain unaffected, such as those in arrears, with poor financial standing.

Four specific elements of a stylised legal framework of residential mortgages are outlined below, together with some potential advantages and disadvantages of modifications in line with those elements.

Element 1: Possibility of unilateral early repayment of the mortgage by the borrower, at any moment and without any type of other limitations

This option concerns the removal of the limitations (other than compensation) on early repayment, in particular the minimum period. This could be relevant in Member States such as Germany, where there is currently a minimum timeline for switching at no cost (10 years for fixed interest mortgages).

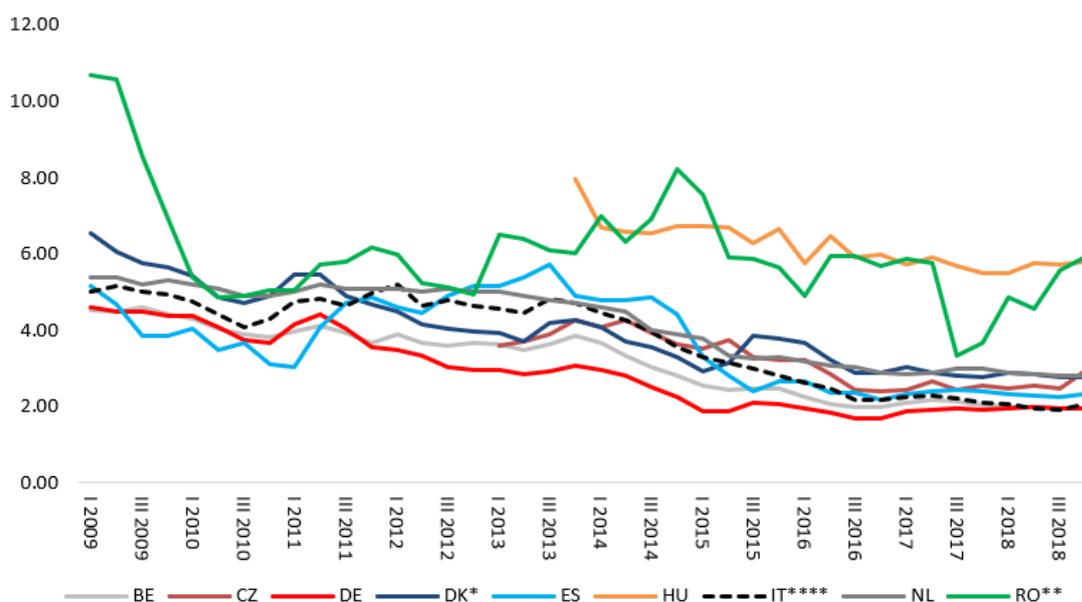
A minimum period before being allowed to switch is justified by the fact that the bank has made a personalised offer to the client, often with low interest rates and a very high loan-to-value (LtV) ratio. It removes the competitive pressure on the bank for a defined period and allows the bank to profit from offering mortgage clients additional services, such as saving accounts, investments and payment services.

Lenders have a fundamental interest in refinancing loans at matching maturities. Ideally, a bank succeeds in matching the maturities on the assets side of its balance sheet with those on the liabilities side, thus minimising its interest rate risk. Any deviation from this scenario creates interest rate exposure, which in turn generates higher costs for the bank and, in the event of extremely adverse interest rate movements in the market, can even jeopardise its existence as a going concern¹⁶⁴.

One stakeholder from the Association of German Banks noted that 'no one wants to reduce the ten years minimum period, also because the fixed mortgages for more than 10 years have an interest rate lower than 1 per cent for a LTV of 80%'.

According to another stakeholder, the minimum notice period should be respected because the process for early repayment can be difficult for banks, especially where they lend at a fixed rate. It should be noted, however, that Italy has no minimum notice period for switching or early repayment, including for fixed interest rate mortgages. The Italian Banking Supervisor noted that there is substantial competition across the banking sector in respect of mortgage switching, with no evident impact on market stability. However, the risk of the costs being passed on consumers cannot be ruled out, a trade off highlighted also by some European regulators¹⁶⁵ consulted about this option. The Bank of Italy has not conducted the research that would attempt to disentangle the impact (if any) of the consumer friendly provisions on early repayment on the prices of mortgages in the country given the plethora of other factors that may have possibly driven the prices of mortgages in Italy over the recent years e.g. prevailing base interest rates set by the ECB, demand for mortgages at any point of time, competition in the sector and/or banks' individual market strategies that may influence the temporary uplift or lowering of the mortgage prices, existing law and actual effectiveness of enforcement of the security on a mortgage, etc. Estimating the impact of such option on the prices of residential mortgages, and therefore inferring causality, would be a complex exercise. Yet, the available and comparable data on the mortgage interest rates across the EU markets shows that price of residential mortgage in Italy has not been higher than in comparable markets. In the contrary, mortgages in Italy have been recently among the cheapest one in Europe

Figure 18. Average annual interest rate on mortgages with 10-year or more maturity, in %



¹⁶⁴ This aspect was raised by the experts in the Association of German Banks and the FCA.

¹⁶⁵ For instance, Dutch Central Bank, Bank of Spain and the FCA

Source: European Mortgage Federation, Hypostat 2019 available at: <https://hyppo.org/ecbc/publications/hypostat/#>

Note: **Due to the review of the official registers in Denmark, there is a slight change in the exact composition of the household sector. As such, there is a data break starting Q3 2013; **recalculation of the interest rate as a weighted average of interest rates in local currency and euro (previously weighted average only of euro denominated mortgages). Data break from Q1 2014. ****IT: Data-series accounts for interest rates for all maturities beyond 1 year of initial fixed period*

Ireland, Greece, Luxembourg, Poland and Portugal are considering streamlining/easing the early repayment condition by, for instance, allowing repayment at any time and/or capping or minimising the early repayment fee, with no minimum notice for fixed-rate mortgages. In addition, under certain specific conditions (e.g. change of work, sale of property), no compensation is due for early repayment. In Luxembourg, early repayment of a mortgage for a primary dwelling sees a specific cap imposed on early repayment indemnity, set at a maximum six months' interest on the early repaid capital. In the Netherlands, the Code of Conduct for mortgages¹⁶⁶ provides that a compensation (penalty) for early repayment is incurred only for the sale of a mortgaged residence. The penalty does not exceed either four months of interest on the amount repaid early, or 3 per cent of the amount repaid early. In addition, the penalty is not charged if the market rate of interest is higher than the rate of interest to be paid by the borrower, and the borrower committed to pay a penalty based on the discounted value of the difference between the market rate of interest and the rate of interest payable by the borrower.

From the consumer's perspective, the possibility of unilateral early repayment is an important form of protection already recognised by the MCD. The industry notes, however, that certain guarantees (such as those related to notice periods for early repayment) are necessary to avoid potential losses that would ultimately increase the cost of credit or reduce access to credit. In particular, the contractual freedom of the bank should be respected, including imposing a minimum notice period for termination, especially when offering very low interest rates for fixed interest loans.

The European Mortgage Federation and the European Banking Federation (EBF) believe that compensation for early repayment for fixed-rate mortgages should be maintained in order to avoid 'mutualisation of costs'. In cases where the borrower wants greater flexibility, a variable-rate mortgage is available, albeit with greater uncertainty. According to the EBF, the breadth of mortgage products already enables consumers to choose between maximum flexibility in repaying fixed-rate loans and the most favourable terms. Each option is priced accordingly. According to the industry, unilateral early repayment of mortgages by borrowers at any moment and without any compensation will have an impact on the financing granted by banks (and availability of fixed-rate mortgage products) and secured by such mortgages.

Element 2: Possibility of early repayment with no compensation to lender or penalty imposed by the lender, or alternatively a cap on compensation to lender for early repayment of mortgage

Compensation is usually applicable to fixed-rate mortgages but not to variable interest rates. Italy is an important exception, where no compensation is imposed for early repayment of fixed-rate mortgages.

Most Member States have already introduced a capped fee for compensation (e.g. three months' interest in Belgium, 1 per cent of the early repaid amount in the first 12 months in Bulgaria, maximum EUR 100 in Cyprus). In the Netherlands, existing

¹⁶⁶ The Code is not entirely binding per se, but it is ratified by all banks, mortgage banks, and insurance companies and has a 'comply or explain' nature, with limited possibility to deviate from its principles. The vast majority of mortgage loans in the country are hence originated in line with the principles of the Code of Conduct.

legislation states that 10 per cent of the loan can be repaid free of charge, but banks usually offer a higher percentage (15-20 per cent). Financial intermediaries are also bound by the guidelines of the Financial Markets Conduct Authority (AFM) that define the calculation of the fees triggered by early repayment.

Banks may charge other costs and penalties for early termination of the contract, based on the principle of contractual freedom. This is particularly likely where compensation is capped by the legislation.

If the compensation for early repayment were removed or capped, it should be considered whether banks might increase other costs associated with the lending process and/or the interest rates¹⁶⁷. The EBF pointed out that: '*...early repayment charges should not be seen as fees, but compensation for damage resulting from unilateral withdrawal from long-term contracts*'.

In Spain, it was argued by the national supervisor that the set of very prescriptive transparency requirements, and restrictions and caps on certain fees imposed by Law 5/2019 could increase the costs. The Dutch Central Bank consulted on that matter expressed similar concern.

Banks could also add additional non-monetary contractual constraints, such as longer notice periods for early repayment.

The general view of the national banking associations and the EBF on these first two options (1: no compensation/ penalty; 2: a cap on compensation) is that early repayment compensation covers the actual economic loss suffered by the bank when a loan is redeemed before the end of a fixed-interest period.

Banks already offer fixed-rate loans that may be repaid at any time without an early redemption penalty. However, borrowers wishing to have this option may simply pay a higher interest rate (option premium) to compensate the bank for the higher risk/ costs involved.

According to banking associations' representatives and the EBF, compensating the lender is essential to develop a secondary mortgage market (bonds and mortgage securitisation), which has proven to be essential for financial institutions to meet the demand for mortgages and to manage the risk related to loans becoming non-performing. If there is no compensation for the lender, investors will be reluctant to take risks in this market, with potential implications for the pricing and availability of fixed-rate mortgages.

The UK FCA noted that a cap on compensation would make breakage costs more transparent to consumers. Consumers would generally benefit, as the early repayment costs would be imposed solely on those choosing to repay. Intermediaries might gain from greater transparency when making comparisons for their customers.

However, regulators/legislators would need to establish a mechanism for determining and reviewing the appropriate level of such a cap. The practical difficulty would be setting the level for a cap so as to provide for a significant product range, e.g. loans with a fixed rate for one year and loans with a fixed rate for 30 years, given that the funding costs and mechanisms for these products are likely to be different.

In summary, early repayment without compensation simplifies customers switching to another lender and possibly benefitting from lower interest rates. However, there is a risk that such flexibility comes at the expense of higher costs of mortgage for consumers and/or reduced range of products offered.

Mortgage lenders may 'price in' this behaviour in advance, making mortgages materially more expensive and reducing the availability of some types of products

¹⁶⁷ Feedback from several EU banking associations consulted.

(especially among fixed-term mortgages). Besides, Italy has confirmed that interest rates are very low and the market is very competitive.

Element 3: Full legal framework providing the possibility for switching, e.g. the subrogation of the second lender into the first, with minimum costs and fees for the borrower and with the possibility of keeping the mortgage (e.g. without creating a new mortgage).

Two models can be envisaged here:

- *Trilateral subrogation (Italian model)*. The original bank, the new lender and the borrower sign and record, in a single notarised act, the new loan agreement, establishing terms and conditions between the debtor and the new credit institution, a declaration given by the first lender certifying the termination of the previous contract, and a commitment not to cancel the original mortgage's registration.
- *Bilateral subrogation (Spanish model)*. The new lender and the debtor sign the loan agreement determining terms and conditions. Subsequently, there will be a separate autonomous unilateral act declaring the termination of the first loan, together with the commitment not to cancel the original mortgage. In order for the agreement to be effectively sealed, the subrogation must pass through both steps.

Most national authorities and industry associations do not consider a full legal framework necessary for switching mortgages. Various national authorities noted that national legal frameworks have improved considerably, making it easier to repay a mortgage in advance, without the need for any further action.

While some consumer associations (Belgium, France) advocate for a switching process similar to the Italian model in order to reduce the burden and fees, others (Sweden, UK) do not believe that such a process would be needed, as they already have high switching rates..

The Italian and Spanish procedures remove one of the main obstacles to switching mortgage providers, e.g. the procedures for releasing the security, the notary deeds, including new registration. Such procedures may be lengthy and costly, depending on the national legislative framework and the nature of the security. According to one stakeholder, switching mortgage provider takes the same time as taking out a new mortgage. In Belgium, it takes approximately three months. The Italian and Spanish frameworks remove this obstacle, making the change of the lender in the notary deed easier. In addition, the new Law 5/2019 determines that any notary and land registry fees, as well as taxes directly applicable to a mortgage deed, must be borne by the new mortgage provider. The Spanish supervisor noted that creditors are starting to offer new credit with higher interest rates in order to cover the costs imposed by Law 5/2019.

In Belgium, where the legal and tax framework is very complex, the industry acknowledged that switching a mortgage to another bank takes at least three months (compared to one month in Italy). The Belgian industry observed that the switching rate of 8 per cent is quite high and there is no need for a specific legal framework, although this rate is low compared to other Member States and switching costs remain particularly high.

A legislative measure to simplify the transfer of the security may also encourage the mobility of borrowers and market competition, such as the option to keep the mortgage vacant where the credit has been repaid earlier and attached to a new loan. Transferable securities for immovable property already exist in Denmark.

Again, the industry association raised the point that the switching framework would allow consumers to look to re-mortgage on a like-for-like basis. It could offer the opportunity for personalised pricing that may deliver savings for consumers

considered particularly desirable. However, some stakeholders noted that most re-mortgaging is not on a like-for-like basis (e.g. the consumer wants to vary the term or change the amount borrowed). They emphasised that mortgages may be complex products and a one-size-fits-all approach to switching would not be ideal. By contrast, various national authorities believe mortgages to be quite simple products¹⁶⁸.

The industry observed that a legislative framework for switching would impact on the development of the secondary market for mortgage securitisation. This view is not shared by all national supervisory authorities¹⁶⁹. In certain Member States, the securitisation market for mortgages is not very developed, mortgages are not considered complex products, and collateralisation and overall transaction procedures are streamlined and standardised.

In Italy, a 2007 convention between the Italian Banking Association and the Notary Council (based on Law 130/1999, on securitisation, as amended) expressly provides that the securitisation of a mortgage shall not be an obstacle to subrogation¹⁷⁰. The legislation also states that the lender that securitised the mortgage cannot oppose its subrogation.

Finally, the survey highlighted that a number of Member States have a high degree of digitalization, greatly facilitating the switching procedure, even for complex products such as mortgages. In **Estonia**, for example, an application for a new mortgage can usually be made online and does not require much time (Swedbank and LHV notify a loan decision within three business days of submitting the required documents). In addition, it is possible to sign the loan agreement digitally and to manage the mortgage contract via internet banking.

Likewise, in **Sweden**, where there is a high degree of banking mobility¹⁷¹, the process of switching a mortgage is very smooth and requires a maximum of two weeks. Overall, digitalisation is seen as the most important factor enhancing switching in Sweden, allowing everything to be completed online. A digital banking ID is provided by the bank and is valid for all banks and for many services. The ID does not need to be changed when customers switch to a different bank.

The same is true in the **UK**, where, according to the institutions interviewed¹⁷², there is a good degree of transparency in every aspect of the mortgage contract. No particular issues were highlighted, with mortgage switching seen as simple and quick overall, taking 7-10 days on average. The existence of financial intermediaries that act on behalf of customers is seen as a crucial factor in facilitating the switching process.

Element 4: Improve transparency, comparability and ESIS model

One of the purposes of the MCD is to reduce the asymmetry of information in the credit market imposing on the bank to provide to consumer information and offers, in

¹⁶⁸ Spain, Sweden, Portugal.

¹⁶⁹ Sweden, Portugal, Spain.

¹⁷⁰ In the event that the loan was subject to a securitisation transaction pursuant to Law 130/1999, the original lender bank normally carries out the 'servicer' function on behalf of Spv, providing for the administration, management and collection activities and recovery of the aforementioned credit: this in execution of a special power of attorney conferred by the Spv. Consequently, the request for the calculation of the amount of the residual debt must be presented to the original bank.

¹⁷¹ According to the stakeholders interviewed (Swedish Consumer Agency, 23 May 2019 and Swedish Financial Supervisory Authority, 26 May 2019), there are no relevant commercial barriers to switching mortgages. This view is supported by recent studies carried out by the Swedish Bankers' Association and the Swedish Competition Authority (Konkurrensverket) (2018). Copenhagen Economics, Competition in the Swedish banking sector, p. 3. Available at: <https://www.swedishbankers.se/fakta-och-rapporter/rapport-om-bankkonkurrensen/konkurrensen-i-den-svenska-banksektorn-2018/> [accessed 2019-05-20]. Do note that the study concerns the Swedish banking sector in general.

¹⁷² Interviews with the FCA (April 2019), HM Treasury (May 2019) and UK Finance (July 2019).

a standardized model, which can be easily compared by the consumer to be able to make an informed (and optimal) choice.

The ESIS shall contain a minimum of standard information the amount of the loan:

- the duration of the loan;
- the type of interest rate;
- the total amount to be reimbursed;
- the annual percentage rate of charge (APRC);
- any costs to be paid, regularly or on a one-off basis;
- the number, frequency and size of your payments;
- information on the conditions for early repayment and charges for early repayment;
- The exchange rate for mortgage in foreign accounts and the potential effects of exchange rate changes on mortgage credit.

The feedback from the interviewed stakeholders has been somehow mixed. In some markets, stakeholders stated that there were no systematic studies focused on this aspect and there is not enough evidence on effectiveness of ESIS as of yet (e.g. Bank of Ireland, Spanish Banking Association). Considerable number of those expressed the view that idea behind is right, but ESIS sometimes 'gets lost' in abundance of information (some mortgage contracts may exceed 50 pages). Some weaknesses stressed by interviewees point to potential borrower receiving it too late (not at the initial stage when they sound out the offers from number of lenders, but only at the end when they negotiate with possibly the final one), ESIS not being compatible with the on-line use, information are repeated often and they can create confusion. Anecdotal evidence suggests also that there seems to be merit in further synthesizing ESIS itself, and that it is also not uncommon that some consumers struggle with grasping the concept of APRC and still look at monthly payment as primary differentiating factor.

In addition, where there have been personalized offers which also include bundled products to reduce the interest rate, they are challenging to compare, increasing difficulties for consumers. For example, the ESIS does not include other elements of the "tailor-made offers" such as the bundling with mortgage insurance and payment accounts. In France, the practice of domiciliation of the salary in a payment account linked to the mortgage to obtain a discount is still very criticized by the consumer association since it reduces the transparency of the information. Also in Italy, the practice to require opening a payment account with a new lender in the context of the switching process is criticised by the consumer association.

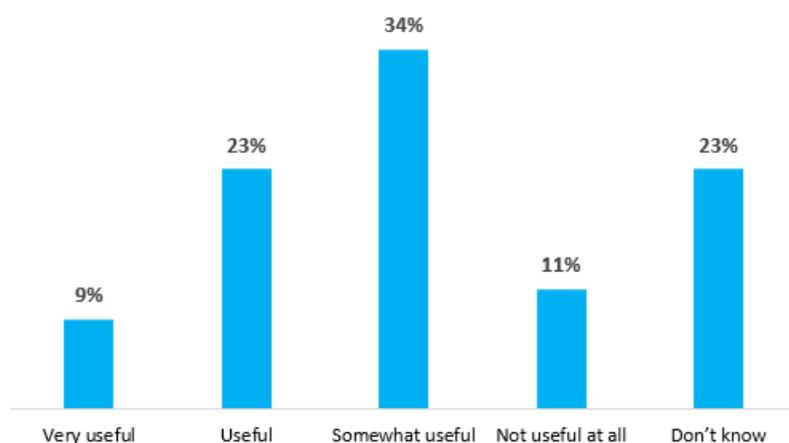
Yet, it must be also acknowledged that it would be very difficult to incorporate more specific information into ESIS in a consistent and robust way.

The Belgian banking Federation found that "*The ESIS contains too much information and does not limit itself to the essence that is relevant to the consumer at that time. It therefore misses its objective, namely to facilitate the comparison of various credit offers. In addition, the conditions imposed as regards the personalisation of the data are not realistic in actual practice in light of the proposed delivery periods. The ESIS must be delivered as early as possible in the process, yet at the same time there are so many details that must be known to which the client cannot yet provide an answer that only assumptions can be used*".

When asked about the reason for not switching mortgage, 24 per cent of respondents to consumer survey stated that lack of certainty whether a switch would result in actual savings was a material factor. Figure 19 in turn shows the aggregate view of 43 banks that responded to the survey of banks given the following question: 'How useful

is the European Standardised Information Sheet (ESIS) in helping consumers compare offers and thus switch to better deals?'.

Figure 19. Perception on usefulness of ESIS (selected banks)



Source: Survey of banks conducted by ICF, N=43

While it is important that the ESIS is as complete as possible to reduce the asymmetry of information, the lay out should be user-friendly and also compatible with the electronic means.

Conclusions

While there is not a full agreement on the need to introduce a common procedure for switching mortgage, some elements have emerged:

- Early repayment is considered by the industry and by the national authorities as sufficient to protect borrowers, but the contractual freedom of the banks to impose certain, albeit limited, conditions should be maintained.
- Similar reasoning emerged with regard to the compensation: industry claims that eliminating compensation for early repayment would reduce the incentives for the banks to lend money at low interest rates/ increase the cost of mortgage loans. In case of the Spanish market, it has been noted that after the introduction of the cap on early repayment, banks have increased the costs of fixed interests' mortgages. Yet, the case of Italy suggests that increase in price of mortgages may not be necessarily a certain outcome of such option. Overall, disentangling the impact of potential elimination of the compensation for an early repayment on the consumer price of the mortgage would be very challenging.
- While the MCD provides a cap (the maximum loss of creditor) we consider that a precise definition, such as a percentage of due interests or of the outstanding balance (as introduced by most Member States) would allow the borrower to calculate the costs in advance.
- An approach on the model of the Irish reform, with an increased transparency, obligation to provide an indicative comparison with alternative or new rates offered by the bank and the link to the official comparison website, would increase consumer information and switching options;
- With regard to the obligation of respecting a minimum notice period (which in some cases may be up to 10 years¹⁷³), the industry considers that it should be

¹⁷³ A notice period is requested in MSs like BE, AT, PT, LV, while others (DE, MT, UK, NL) also allow banks to foresee (and agree with the client) some time limits for early repayment (which is different from the notice period, and, in the case of Germany, can be up to 10 years).

maintained since it reduces costs for borrowers. The interviewed consumer associations have not expressed any specific view on this.

There is a mixed evidence related to the effectiveness of ESIS. Some stakeholders still perceive it as too long, not suitable to on-line use, and the length of mortgage contracts adds to the difficulty. Currently, the MCD provides that the MS can “*provide for the obligatory provision of the ESIS before the provision of an offer binding on the creditor*”¹⁷⁴. However, in most MS is not the case and consumer associations consider that it is provided too late, when the borrower is close to sign the contract. According to various stakeholders it is also still difficult to understand for consumers (e.g. APRC). In our opinion it should be streamlined and made available at least 30 days before the conclusion of the agreement, also in order to ensure the comparability of the different offers. In this way, the ESIS would be provided before the binding offer and the reflection period. Finally, while most Member States have simplified rules for mortgages contracts in order to make switching easier, we consider that certain legislative provisions, especially those relating to the registration, transfer and cancellation of the mortgage security, should be simplified in order to make the switching easier. Fixed notary costs, contractual provisions allowing the change of the creditor in the contract could be envisaged.

6.2.1.3 Lot 3 - Other: Role of financial advisors/brokers in the UK in boosting switching rates

Introduction

In the UK, a substantial majority of mortgages consist of a short-term (2-3 years) introductory deal at a fixed interest rate, after which the rate changes to a so-called ‘reverse rate’, such as the lender’s standard variable rate (SVR) or a rate linked to some benchmark rate as LIBOR. As these latter are substantially less favourable, it has become common practice at the expiry of an introductory deal for consumers to switch to a new mortgage (either internally with the same lender, or externally to a new lender)¹⁷⁵.

According to the Financial Conduct Authorities (FCA) interviewed as part of this study, based on its proprietary data¹⁷⁶ the switching rate of residential mortgages (both switching within the same lender and to a new lender) is approximately 75 per cent¹⁷⁷. The data gathered suggest that this is the highest switching rate among all EU Member States, by some distance. The FCA notes that ‘*...mortgage intermediaries operating on the UK market have been one of the most crucial factors behind such a high switching rate*’. Other stakeholders interviewed (including UK consumer association, Citizens Advice, regulators and some national industry associations¹⁷⁸) also acknowledged the considerable potential of mortgage intermediaries to incentivise switching.

¹⁷⁴ Article 13(4).

¹⁷⁵ FCA, 2018. Mortgages Market Study – Interim Report. Available at: <https://www.fca.org.uk/publication/market-studies/ms16-2-2-interim-report.pdf>

¹⁷⁶ Containing actual mortgage terms for the consumers (rather than self-report by those) who were included in the analysis

¹⁷⁷ Note that this differs from the rates reported by the ICF survey where 39% of respondents stated that they switched their mortgage (Table 5.1), though the discrepancies may be driven by the nature of the question asked as part of the ICF survey. Also, although switching rate revealed by the ICF study is lower, the UK is still the Member State with the highest switching rate across the sample of 14 Member States.

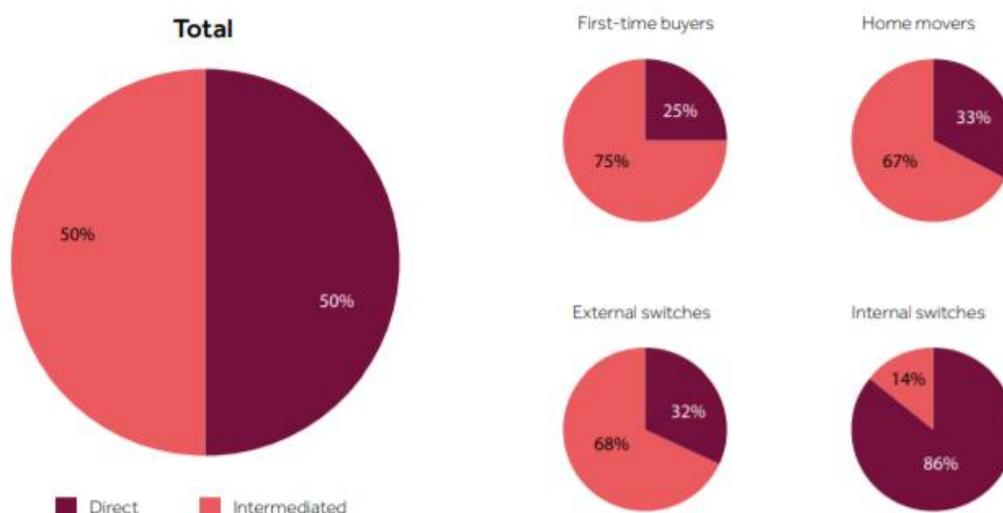
¹⁷⁸ For instance, UK Finance, Dutch Central Bank, Association of German Banks and Belgian Federation of Financial Sector.

Overview

In the UK, nearly 50 per cent of all new mortgages are arranged with the assistance of mortgage intermediaries. By value, mortgage intermediaries' involvement surpassed 70 per cent in 2015¹⁷⁹. In addition, more than 70 per cent of first-time buyers and 60 per cent of home-movers began their mortgage through an intermediary¹⁸⁰. In other European markets such as Spain¹⁸¹ and Poland¹⁸² mortgage intermediaries play a negligible role, though there are also some like Belgium¹⁸³ and Netherlands¹⁸⁴ where the scale of the involvement of mortgage intermediaries is closer to the UK.

In the UK, the share of intermediaries has been traditionally higher for first-time buyers and niche customer segments (e.g. self-employed borrowers). Intermediaries are significantly less involved in internal switches (Figure 20).

Figure 20. Involvement of mortgage intermediaries in the UK market



Source: FCA, 2018. Mortgage Market Study.

According to the FCA, in 2018 there were 5,200 directly authorised mortgage intermediary firms, employing over 34,000 people¹⁸⁵ and with an additional 14,200 appointed representatives¹⁸⁶. Although there are many individual brokers (e.g. one-person firms), the mortgage broker market is dominated by the largest twenty brokerage companies.¹⁸⁷

¹⁷⁹ IMLA, 2015. The changing face of mortgage distribution. Available at: <http://www.imla.org.uk/resources/publications/the-changing-face-of-mortgage-distribution.pdf>

¹⁸⁰ Robles-Garcia, C, 2018. Experts, Commissions, and Market Powers: Evidence from UK mortgage brokers. Available at: https://cepr.org/sites/default/files/JMP_Robles_Garcia.pdf

¹⁸¹ According to the Bank of Spain, in 2018 only 2.8% of mortgage transactions involved mortgage intermediaries

¹⁸² According to the UOKIK, mortgage intermediaries in Poland do not play any material role

¹⁸³ According to Belgian Federation of Financial Sector, there are currently circa 5,000 agents and mortgage brokers in the country

¹⁸⁴ According to the Dutch Ministry of Finance, as of 2018, nearly 2/3 of concluded mortgages involved mortgage intermediaries but there has been no research on their actual impact on switching. This view is also shared by the Dutch Central Bank. Available at: <https://www.afm.nl/nl-nieuws/2018/okt/consumentenmonitor-hypotheek-voorjaar-2018>

¹⁸⁵ Either the firm or its appointed representative can be directly authorised.

¹⁸⁶ Money Marketing, 2018. FCA data sheds light on mortgage broker numbers. Available at: <https://www.moneymarketing.co.uk/fca-reveals-mortgage-broker-figures/>

¹⁸⁷ Robles-Garcia, C, 2018. Experts, Commissions, and Market Powers: Evidence from UK mortgage brokers. Available at: https://cepr.org/sites/default/files/JMP_Robles_Garcia.pdf

There are two main types of mortgage intermediaries in the UK:

- those who look solely at a limited number of lenders;
- those who scan the entire market for a wide range of products.

The market split between the latter and in-house bank advisors is roughly 50/50. The intermediaries that look only at limited deals are rare and typically operate in niche markets (e.g. bridging loans)¹⁸⁸.

The activities of mortgage intermediaries in the UK are regulated by the Financial Services and Markets Act, 2000¹⁸⁹.

Box 6. Some key requirements for mortgage intermediaries

- Their fees are disclosed and form part of the required product disclosure (now ESIS, previously FCA KFI).
- Every mortgage salesperson is required to hold a relevant mortgage qualification¹⁹⁰.
- Firms must act in customers' best interests.
- All interactive sales (e.g. face to face and telephone) must be advised, except where the customer is a mortgage professional, high-net worth individual or business borrower, to whom the execution-only option is available.

It should be noted that the regulatory framework provides specific provisions on fee disclosure but not on fee structures or fees caps.

Source: FCA

The role of mortgage intermediaries in the UK market has risen substantially over the last 30 years. One of the main precipitating factors was the steady increase in the number and complexity of mortgage products available to consumers. Between 2012 and 2016, the number of mortgage products increased from fewer than 5,000 to more than 7,000 driving an increased demand for advice¹⁹¹, while Association of Mortgage Intermediaries (AIM) in the UK estimates that as of October 2019, there were 14,000 distinct products offered by 140 lenders in the UK¹⁹². Other related reasons include changes in the value chain of lenders (see 10.2.3).

To screen such considerable number of mortgages offers in order to identify those that are tailored to specific profile of a consumer, most mortgage intermediaries in the UK that are not restricted to selected lenders rely on either of three 'sourcing systems' namely, MortgageBrain¹⁹³, IRESS Trigold¹⁹⁴, and Twenty7Tec¹⁹⁵. Two former ones are most common while the latter is a relatively new entrant with smaller market share, though the product coverage of all three is broadly similar. Those systems are based

¹⁸⁸ Interview with FCA on 1 August 2019.

¹⁸⁹ UK Public General Acts, 2019. Financial Services and Markets Act, 2000. Available at: <https://www.legislation.gov.uk/ukpga/2000/8/contents>

¹⁹⁰ Minimum level 3 requirement, an equivalent of the first year of a degree. There are a number of competing qualifications that firms may choose from, with the Certificate in Mortgage Advice and Practice being most common.

¹⁹¹ FCA, 2018. Mortgage Markets Study. Available at: <https://www.fca.org.uk/publication/market-studies/ms16-2-2-interim-report.pdf>

¹⁹² Interview with Association of Mortgage Intermediaries in the UK on October 14th.

¹⁹³ MortgageBrain, 2019. Mortgage software solutions. Available at: <https://www.mortgage-brain.co.uk/>

¹⁹⁴ IRESS Trigold, 2019. Trigold prospector support. Available at: <http://mortgagesupport.iress.co.uk/products/trigold-prospector.aspx>

¹⁹⁵ Twenty7tec, 2019. About us. Available at: <https://www.twenty7tec.com/about.php>

on algorithms and offer a range of search criteria such as LTV, type of mortgage, level and type of consumer income, nature of the property, etc. Brokers typically pay a monthly fee¹⁹⁶ to use the system. According to the AIM, those sourcing systems work adequately. In addition, there is currently one fintech firm that is testing the new product based on the artificial intelligence process in the FCA 'regulatory sandbox'. The product is envisaged to offer end-to-end solution where consumer would be able to source the offers on its own followed by the uploading of the mortgage application (effective self-serving of consumers without obtaining the advice). Due to confidentiality agreement between the firm and FCA, the details are currently not publicly available¹⁹⁷.

In terms of the creditworthiness assessment, the assessment of the *suitability* of a mortgage to a consumer is conducted by the mortgage intermediary. However, the *affordability* test (and the overall accountability) stays solely with the lender.

The crucial mechanism in the context of switching rates operates as follows: mortgage intermediaries advise customers to switch their mortgage at the end of the fixed (and favourable) interest rate (provided over the first 2-3 promotional years), when the rate is about to change to the less favourable SVR or so-called 'reverse rate'. In return, when a mortgage intermediary and consumer conclude that the best deal is to switch to another product (even internally, within the same lender), that switch triggers a procurement fee¹⁹⁸ payment. There is therefore a strong incentive for mortgage intermediaries to advise consumers to switch.

In the past, fees were common for external switching. In recent years, mortgage intermediaries are also paid for internal switches.

UK Finance admitted that while the majority of banks may notify consumers shortly before the favourable rate expires, proactive contact by mortgage intermediaries is often the decisive factor. Typically, UK consumers remain loyal to their mortgage broker.

The FCA and Association of Mortgage Intermediaries agree that it is the mortgage product structure¹⁹⁹ in the UK that drives mortgage intermediaries to advise customers to switch mortgage products.

The literature review and interviews point to other, more general types of benefits stemming from the intermediary role of mortgage brokers in the UK (see 10.2.3).

Box 7. Mortgage intermediaries - other type of benefits

- Provide consumer advice on numerous increasingly complex products.
- Mortgage intermediaries can advise on the whole market, while lenders advise only on their own products.
- Using an intermediary saves the customer time and effort in approaching multiple lenders and undergoing a fact-finding exercise with each one²⁰⁰.
- The broker takes on the compliance risk associated with making an advised mortgage sale.

¹⁹⁶ Fees are typically negotiable with larger intermediaries having a greater possibility to receive some discount

¹⁹⁷ Interview with Association of Mortgage Intermediaries in the UK on October 14th

¹⁹⁸ Fees paid by the lender to the mortgage intermediary.

¹⁹⁹ Mortgages with 2-3 year fixed rate, followed by a change to the less favourable SVR.

²⁰⁰ Accenture, 2016. Have mortgage intermediaries had their day? Available at: https://www.accenture.com/t00010101t000000__w_/gb-en/_acnmedia/pdf-35/accenture-have-mortgage-intermediaries.pdf

- The strong presence of mortgage brokers in the UK market allows 'challenger banks' with limited branch networks to promote their products effectively, increasing competition²⁰¹.
- Using intermediaries enables lenders to manage sales volumes up and down²⁰², based on lending volumes, while managing the costs of hiring, training and accommodating mortgage advisers in-house (e.g. via physical branches). Also, having business introduced through intermediaries means that lenders need only assess viable customers rather than dealing with speculative direct applications²⁰³..

Business model

The cost of the advice provided by mortgage intermediaries is typically based on the commission²⁰⁴ paid by the lender²⁰⁵, although some may also charge consumers a fee, or combine the two²⁰⁶. A recent IMLA report stated that the average broker fee (procurator fee) for external switches in the UK in 2015 was around 40 bps (0.4 per cent) of the mortgage value²⁰⁷, while more recent data available from the FCA points to 30-40 bps, typically with very small commission differentials between the main intermediaries²⁰⁸. The broker fee for an internal switch is 20 bps, on average.

Effective incentivising to switch a mortgage that would also maximise the benefits for consumers may require a transparent financial deal between the consumer and mortgage intermediary to avoid favouring certain lenders over considering the widest range of offers.

The recent London School of Economics paper on the UK financial intermediary market points to some ongoing issues with the remuneration model used in some cases: *'...more recently, there have been trends among regulators to restrict commission payments between providers and expert advisors (including the UK) given the risk that some consumers may be steered towards higher-commission, more expensive products (agency problem)'*²⁰⁹.

The FCA market assessment also found that *'...30 per cent of customers could have found equally suitable mortgages that were cheaper than the ones they finally bought, and cautioned that brokers' preference for familiar lenders could lead to some of their consumers missing out on cheaper alternative mortgage products'*²¹⁰.

²⁰¹ Robles-Garcia, C, 2018. Experts, Commissions, and Market Powers: Evidence from UK mortgage brokers. Available at: https://cepr.org/sites/default/files/JMP_Robles_Garcia.pdf

²⁰² Typically the largest mortgage intermediaries have individual contractual arrangements with each lender, while smaller ones tend to have contractual agreements with the 'sourcing system' they rely on. Contractual agreement will always involve a due diligence performed by the lender.

²⁰³ Accenture, 2016. Have mortgage intermediaries had their day? Available at: https://www.accenture.com/t00010101t000000__w_/gb-en/_acnmedia/pdf-35/accenture-have-mortgage-intermediaries.pdf

²⁰⁴ Commission is typically paid as a percentage of loan value.

²⁰⁵ The Money Advice Service, 2019. Mortgage advice. Available at: <https://www.moneyadvice.service.org.uk/en/articles/choosing-a-mortgage-shop-around-or-get-advice>

²⁰⁶ See, for instance, the offer from Which? Mortgage Advisor. Available at: <https://mortgageadvisers.which.co.uk/>

²⁰⁷ <http://www.imla.org.uk/resources/publications/the-changing-face-of-mortgage-distribution.pdf>

²⁰⁸ Interview with the FCA on 1 August 2019.

²⁰⁹ Robles-Garcia, C, 2018. Experts, Commissions, and Market Powers: Evidence from UK mortgage brokers. Available at: https://cepr.org/sites/default/files/JMP_Robles_Garcia.pdf

²¹⁰ <https://www.ft.com/content/8d3b152c-70c2-11e9-bbfb-5c68069fbd15>

Nonetheless, the recent FCA investigation²¹¹ found no systematic commission bias within the market. Where consumers do not end up with the cheapest offer, the FCA notes that this is most often the result of intermediaries' genuine inability to review the whole market to propose the best offer for which the consumer is eligible, due to the incomplete transparency of the market²¹².

In this context, the FCA has recently proposed the rules whereby mortgage intermediaries recommending a new product that is not the cheapest available are required to explain the rationale behind their choice. Following consultation during the summer, the FCA is expected to publish feedback on its proposal, together with final rules, by the end of 2019.

In terms of the cross-border expansion of the UK mortgage intermediaries, the AIM and the FCA stated that this has not been the case and the industry has currently no appetite of doing so, with small exceptions²¹³. This is largely due to very limited cross-border lending and persisting differences in legal regimes across the EU Member States.

Going forward, the AIM sees some prospects in further automation of the process (e.g. partly driven by changes brought by PSD2), for instance in terms further enhancement of the 'searching systems' discussed earlier. In addition, the FCA pointed also to 'edibility tools' - systems which provide a near-real time indication of whether a lender would consider an application from a particular customer. Effectively, this means systems that provide a check as to whether the customer is likely to pass an affordability assessment and the firm's view of credit risk. This is the newest area of technological development. There are three to four providers (e.g. Experian²¹⁴) looking to promote their propositions, and several other firms have announced an intention to develop similar solutions²¹⁵. Finally, and more broadly, another area where fintech has the potential to transform is in respect of back office functions around the setting up of a mortgage. Current arrangements for conveyancing and for the registration of title involve a number of different systems that typically poorly integrate and lead to considerable delay in the taking out of a mortgage on a new property. Adoption of a common platform and processes could deliver considerable efficiency, and by shortening the usual delays could address one barrier to external switching²¹⁶. The recent study of the Bank of England and the FCA²¹⁷ that included the survey of over 100 firms from the financial sector including banks, credit brokers, non-bank lenders and investment managers revealed that the Machine Learning (ML) is increasingly used in the UK financial services. ML is most commonly used in anti-money laundering (AML) and fraud detection as well as in customer-facing applications (e.g. customer services and marketing). While mortgage intermediaries and firms directly related to those have not been a primary deployers of ML, there is a consensus that the sector may also benefit from it going forward.

There are, nonetheless, some objective constraints for the expansion of some fintech originating solutions. Firstly, potential liability stemming from the direct involvement with mortgage borrowers concerns some fintech firms – that is, will users of fintech perceive the service as 'advice' which then implies some potential liability from the

²¹¹ FCA, 2018. Mortgage Market Study. Available at: <https://www.fca.org.uk/publication/market-studies/ms16-2-2-interim-report.pdf>

²¹² Interview with the FCA on 1st August 2019.

²¹³ Catering to existing high net worth clients or to meet the needs of concentrated populations of UK consumers temporarily residing in other Member States (i.e. Spanish holiday homes).

²¹⁴ Experian, 2019. Compare mortgages. Available at: <https://www.experian.co.uk/consumer/mortgages/>

²¹⁵ Interview with the FCA on 14th October 2019

²¹⁶ One example of the model is PEXA, the system that is available at the Austrian market. Available at: <https://www.pexa.com.au>

²¹⁷ Bank of England & FCA, 2019. Machine learning in UK financial services. Available at: <https://www.bankofengland.co.uk/report/2019/machine-learning-in-uk-financial-services>

providers of the mortgage advice (under certain conditions), according to the UK law. Secondly, there is a general and persisting market characteristic – very considerable number of consumers who consider a mortgage, seek the face-face relations with the creditor/ mortgage intermediary and are reluctant to rely solely on the online channel.

From the regulatory and consumer protection perspective, it perceives the MCD provisions as appropriate but stressed also the critical importance of clear delineation of responsibilities between lenders and mortgage intermediaries given any potential negative implications for consumers for diluting it.

Conclusions

The benefits of the vibrant ecosystem of mortgage intermediaries in the UK are recognised by consumer associations, national authorities and financial sector representatives alike. The system is one of the main drivers for the UK's high rate of mortgage switching, which is the highest across the entire EU.

The extent to which this could be easily replicated in other Member States may be limited, however. This is primarily because it is the particular structure of the mortgage product in the UK (2-3 years of favourable interest rates, followed by SVR, with mortgage intermediaries nudging consumers to switch at the appropriate time) that provides the window of opportunity to engage with consumers and simultaneously benefit from financial incentives for both internal and external switches. The evidence gathered from other jurisdictions including views expressed by the national competent authorities from Ireland, Italy, and Poland shows that role played by mortgage intermediaries in incentivising switching is nowhere near the level observed in the UK. Similarly, even in other Member States like the Netherlands and Belgium where mortgage intermediaries have a considerable presence, the role of mortgage intermediaries is not as instrumental for switching as those in the UK (also due to different products' structure).

While concerns have been raised about the compensation model of intermediaries (often paid by the lenders rather than consumers), the FCA found no evidence of the systematic commission bias that would justify regulatory intervention.

The involvement of the new technologies and the fintech industry in the market of mortgage intermediaries have concentrated largely around enhancement of the 'searching systems' and the 'eligibility tools' that may increase the efficiency of the assessment of a consumer's eligibility for the mortgage. There have been also some ongoing tests of technologies conducted as part of the FCA's regulatory sandbox that could streamline the mortgage application and assessment process with consumer being able to complete the whole cycle with no or very limited involvement of human interaction. In addition, given the sophistication and the tech-savvy nature of the UK financial industry, new technologies such as ML may also bring further changes to the way the market operates. Yet, strong preference of consumers to conduct the mortgage transactions face-to-face as well as some potential liabilities of operators stemming from the advisory type role in the transaction, are some constraints that reduce the presence of the fintech so far.

The UK mortgage intermediaries are largely absent from foreign markets and due to number of reasons there is currently no appetite among the industry to change it.

6.2.1.4 Lot 3 Other: Common mortgage instrument – 'Eurohypotheec'

Overview

Residential mortgages are of paramount importance in the EU. Not alone do they represent 47 per cent EU GDP²¹⁸, they are the long-serving legal tools that allow

²¹⁸ European Mortgage Federation (2017). Hypostat 2017, p. 4.

people to access long-term loans to buy, build and refurbish their homes. Article 3(3) of the Treaty on European Union (TEU)²¹⁹ states that 'the Union shall establish an internal market', while Article 26 of the Treaty on the Functioning of the European Union (TFEU)²²⁰ establishes the internal market as an area without internal frontiers in which goods, persons, services and capital can move freely.

These essential principles and goals of the EU are not entirely fulfilled at present, in particular at cross-border level. A common mortgage instrument within the EU ('the Eurohypothec') is one possible solution. The Eurohypothec discussed here is conceived as a common mortgage instrument for Europe (more details about its key elements are outlined below).

Currently, it is not possible for an EU citizen of Member State A to take a residential mortgage from a bank in Member State B to buy a home to live in Member State C. This means that people cannot move completely freely from Member State A to C (e.g. mortgages in Member State C might be much more expensive than in B, or a bank in Member State B might be the only one that has agreed to grant a loan to that citizen)²²¹. That capital cannot go from a bank located in Member State B to the property developer citizen of Member State A located in Member State C, as the former would never accept a mortgage created under Member State C's rules as a security. Similarly, an EU bank outside of Member State C (where the property is located) would not be able to grant a mortgage on a property located in Member State C.

While there is no consensus on this matter, some have argued²²² that the demand for cross-border mortgages could be sizable, as many citizens may currently struggle to compare offers from banks located in different countries in a transparent, reliable and realistic way. Practical difficulties such as language, the lack of cross-border and across-lenders online price comparison platforms are evident, as is the lack of a common mortgage instrument setting out clear rules for the parties involved.

It is similarly challenging for an EU citizen of Member State A to switch to a bank located in Member State B for two broad reasons:

- The laws for switching are different. Directive 2014/17/EU (the Mortgage Credit Directive (MCD)) does not mention switching or cross-border switching and Article 25 of the MCD has been implemented differently in each Member State;
- The mortgage created under Member State A's law - which is often significantly different from the analogous law on mortgages in Member State B - means that a bank in Member State B does not have full knowledge of its strength as a security, risks it entails (hidden charges, who is acting as notaries or taking care of the land registry, preferred credit like workers, special consumer protection), how it is created, transferred or enforced, what happens in case of insolvency, etc. Thus the bank in Member State B is unable to ascertain the underlying risk of a mortgage within a reasonable cost and time. According to the data available, cross-border mortgages currently account for 1 per cent of all outstanding mortgages in the EU.

The international private law rule *lex rei sitae* effectively means that anything related to a property follows the law of the country where that property is located. This principle is recognised and applied internationally, creating one of the most important

²¹⁹ C/326/13, OJ 26.10.2012.

²²⁰ C/316/124, OJ 26.10.2012.

²²¹ See the principles discussed in Trummer and Mayer case (C-222/97) ECR 1999, I-1661).

²²² See for instance, Transformacje Prawa Prywatnego. 2017, *Real estate liens as security for cross-border property finance* A. and Akkermans, B. 2012. *The Eurohypothec, a security instrument with real prospects*

restrictions on EU citizens switching lenders, e.g. they can effectively only switch between the banks located in the jurisdiction of the property in question, despite the advantages that might accrue from the option of cross-border switching.

Mortgage law²²³ is so complex that a bank located in a different Member State has little incentive to risk a residential mortgage in another Member State, even if all other barriers were overcome (e.g. a citizen had the opportunity to access the mortgage loan offers of other Member States' banks, banks in other Member States had access to the client's credit record (Articles 18 and 20 MCD), consumers understood the contract and consequences of defaulting, appropriate means of contracting (e.g. standardised online digital platforms, etc.).

Although these issues might be resolved to some extent where a bank has branches in other Member States, the reality is that 'national' banks hold a dominant position in their respective countries. This, coupled with the banking concentration evident in the aftermath of the global financial crisis, means that the mortgage market in many EU Member State is controlled by a handful of banks. In Spain, for example, despite almost 200 lending institutions listed²²⁴, the Bank of Spain has issued an oligopoly alert due to the concentration of mortgages (~72 per cent) among the five major banks (Santander, BBVA, CaixaBank, Bankia and Sabadell)²²⁵.

In this context, the Eurohypothec is a mortgage tool that could:

- Be used by any bank located within the EU to mortgage any property located in any Member State. This would boost the possibility both for cross-border switching and concurrence in cross-border mortgage origin (thus potentially affecting 47 per cent EU GDP and fulfilling Article 3(3) TEU and Article 26 TFEU), as transaction costs might be considerably reduced.
- Remain fully compliant with the objectives of the European Commission's White Paper of 18 December 2007²²⁶. It may be also a feasible instrument to achieve those objectives²²⁷, including the development of a wide range of mortgage funding instruments, facilitation of customer mobility, e-Justice compliance²²⁸ and creation of opportunities for mortgage lenders to access other markets and engage in cross-border activity. The measures available in the MCD do not cover any of these objectives and have thus had a limited impact in creating a pan-European mortgage market (which partly exists in terms of consumers' rights) and favouring cross-border housing acquisition (as per the 2016 Commission report on *Cross Border Acquisitions of Residential Property in the EU: Problems Encountered by Citizens*²²⁹);
- Overcome the barriers of traditional ways of harmonising EU law, as it does not seek to substitute any of the current types of national mortgages but could,

²²³ Without taking into account other fields of law that also might apply, such as contract law, consumer law or taxation law.

²²⁴ Banco de España, 2019. List of financial institutions. Available at: https://www.bde.es/webbde/es/estadis/ifm/if_es.html (Accessed on 23 August 2019).

²²⁵ Cruz-García, P. et al. (2018). *Concentración y competencia bancarias en España: el impacto de la crisis y la reestructuración*, 'Revista de estabilidad financiera', Banco de España, no. 34.

²²⁶ COM(2007) 807 final.

²²⁷ Nasarre-Aznar, S. (2012). 'The need for the integration of the mortgage market in Europe'. In Sijf Van Erp et al. (coord.). *The future of European Property Law*. Sellier, pp. 79-122.

²²⁸ <https://beta.e-justice.europa.eu/?action=home&plang=en> (Accessed on 23 August 2019).

²²⁹ European Parliament, Directorate-General for Internal Policies (2016). *Citizens' Rights and Constitutional Affairs*. PE 556.936. Luxembourg: Publications Office of the European Union. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU\(2016\)556936_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU(2016)556936_EN.pdf)

rather, complement all of them and work as an alternative property right (28th regime²³⁰);

- Bring certainty, trust and transparency to all cross-border mortgage operations throughout the EU.

The Eurohypothec model

The idea of harmonising mortgage collateral law is far from new. It was recommended by the European Commission as far back as its 1966 report on establishing a European capital market. The *Union Internationale du Notariat Latin* developed the basic concept, using the word 'Eurohypothec'. The idea spurred many papers, including those by Dr Otmar Stöcker²³¹ and an ad hoc study group created in 2004²³². In 2005, the *Basic Guidelines for a Eurohypothec* were released²³³ and a question about developing such a Eurohypothec was included in the Commission's Green Paper in July 2005²³⁴. The responses were largely positive.

The Eurohypothec model presented in the 2005 Basic Guidelines was conceived as a secure, flexible pan-European instrument. The Guidelines set out in detail what a Eurohypothec should look like if it were to be a useful cross-border mortgage instrument. Some of these key aspects are outlined below:

- Legal nature - it is a real charge that confers on its owner a preferential right over a piece of land (common core of all European mortgages and land charges). It is contractually dependent on any obligation that it might secure, thus making it as flexible and useful as possible.
- Constitution and transfer - it is created by the owner of the property and must be registered in order to exist. It can adopt the form of a 'register mortgage' (e.g. transferred through the Land Registry) or as a 'letter mortgage' (e.g. transferred through the delivery of the document to which it is attached). It would be able to charge any piece of land in Europe.
- Extinction - it is extinguished through cancellation in the Land Registry. The fulfilment of the secured obligation does not imply the extinction of the Eurohypothec as it can be reused by the owner of the property to secure additional credit.
- Soft law - other issues that are not core to the idea of creating a common mortgage for Europe could also be adopted by Member States (rank, enforcement procedure, public sale of the property, etc.).

Feasibility considerations

There are, however, some challenges with the feasibility of a Eurohypothec that need to be recognised:

²³⁰ This is a separate legal framework of EU rules that sits alongside Member States' national legal regimes. Parties based in the EU can opt to have such a framework govern their transactions instead of the relevant Member State national law (see [https://uk.practicallaw.thomsonreuters.com/8-502-6736?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/8-502-6736?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1) (Accessed on 30 August 2019)).

²³¹ Stöcker, O. (1992). *Die Eurohypothek*. Berlin: Duncker & Humblot.

²³² For more detail, see <http://housing.urv.cat/en/cover/research/project/eurohypothec/> (Accessed on 23 July 2019).

²³³ Drewicz-Tulodziecka, A. (Ed.) (2005). *Basic Guidelines for a Eurohypothec*. Warsaw: Mortgage Credit Foundation.

²³⁴ COM/2005/0327 final.

- The idea was not eventually adopted in the 2007 White Paper²³⁵. Instead, a consumer law approach was adopted in the MCD that in view of the study expert²³⁶ is insufficient to achieve a true European mortgage market;
- Lack of robust estimates of the financial benefits and costs of implementing the Eurohypotheec. The 2007 White Paper required new measures to demonstrate that they will create new opportunity for mortgage lenders. A proper assessment of the extent to which European customers and lenders may benefit from a common mortgage instrument would therefore be warranted, yet there has not been no comprehensive study on the costs and benefits of harmonisation of mortgage collateral law;
- Mortgage collateral law is often declared to be outside the scope of EU harmonisation competence. However, many legal areas are already fully or partially harmonised within the EU, creating a precedent to consider harmonisation in property law. Some of these are:
 - The Common Core of European Private Law project²³⁷, which seeks to determine the common core of the bulk of European private law (e.g. to identify what – if anything – is already common across the different legal systems of the Member States). This project has published a number of books on property law issues²³⁸, with others forthcoming on boundaries to information property in European law, and the acquisitive prescription of land through its long-term use.
 - The Ius Commune Casebooks for the Common Law of Europe²³⁹ aims to enable scholars and students across Europe to study and discuss the leading cases and materials on property law, contract law and torts. The casebooks combine extracts from national case-law and other sources with excerpts from European level and thus take a 'bottom-up approach' to the study of the law. The group has published one book on property law²⁴⁰, with a second edition forthcoming.
 - The EULIS project (European Land Information Service)²⁴¹ (2001-2017) provides comprehensive information on the content of national land registries, cartography and cadastres in some European countries.
 - EUFides²⁴², a shared platform created by the Notaries of Europe whose aim is to facilitate cross-border real estate transactions in Europe.
 - CROBECO (Cross-Border Electronic Conveyancing) project²⁴³, headed by the European Land Registry Association (ELRA), whose main purpose is to set up a framework that allows cross-border acquisition of real estate. ELRA also

²³⁵ Part of the reason was some divergence in the views of the banks. French and Spanish banks opposed the idea, while the industry in most other Member States was open to it.

²³⁶ Prof. Sergio Nasarre Aznar.

²³⁷ The Common Core of European Private Law, 2019. Available at: <http://www.common-core.org>.

²³⁸ For example, Kieninger, E.-M. (2004). *Security Rights in Movable Property in European Private Law*, Van Der Merwe, C. and Verbeke, A.-L. (Eds.) (2015). *Condominiums in Europe*.

²³⁹ Casebooks.eu, 2019. IUS Commune Casebooks. Available at: <http://www.casebooks.eu/welcome/>

²⁴⁰ For property rights, see Van Erp, S. and Akkermans, B. (Eds.) (2012). *Cases, Materials and Text on Property Law*. Oxford: Hart Publishing.

²⁴¹ EULIS, 2019. Available at: <https://joinup.ec.europa.eu/solution/european-land-information-service-eulis/about>.

²⁴² EUFides, 2019. Facilitating cross-border real estate transactions in Europe. Available at: <http://www.notaries-of-europe.eu/index.php?pageID=8033>.

²⁴³ ELRA, 2019. Available at: <https://www.elra.eu/crobeco/>

leads the IMOLA (I and II) project, which aims to produce a model for standardised land registry output, including explanatory material in different languages, and to provide training to improve understanding of the different legal systems involved.

- Another pan-European initiative is the Cadastre and Land Registry knowledge exchange network (CLRKEN)²⁴⁴.

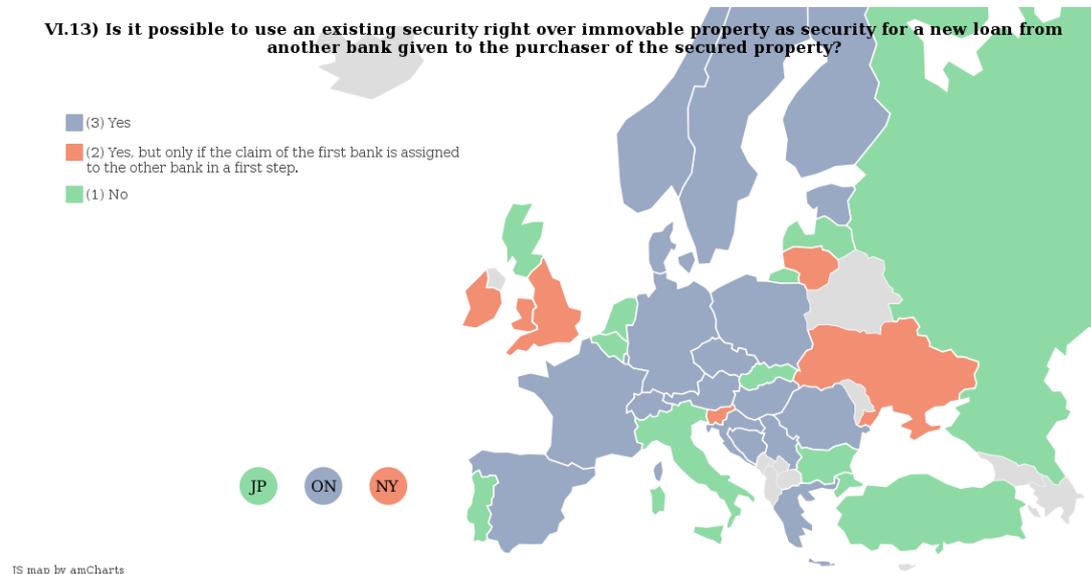
Yet, the Eurohypothec would not imply harmonisation *per se*, but, rather, addition of a new tool for lenders and consumers.

- Mortgage credit law is already substantially harmonised. The aim to support cross-border mortgage lending as part of an internal market may not be feasible without achieving a common mortgage instrument developed through EU legislation. Housing finance without mortgage collateral is, in many cases, not feasible;
- The most commonly used argument against the Eurohypothec is that real estate financing is complex and that a common mortgage instrument is not sufficient. Critics also note that it would imply the harmonisation of land registration, enforcement and insolvency law;
- The study expert believes that EU legal framework for the core of the legal nature of the Eurohypothec (a common flexible security right that grants a preferential enforcement against a piece of land anywhere in Europe) would be required. Nothing would need to be subject to harmonisation (not taxation, insolvency, contracts or procedural laws), as these constitute collateral-related laws that might affect the relative competitiveness of the Eurohypothec granted in a given country. These collateral laws are a matter of efficiency not feasibility. The 2005 *Basic Guidelines* developed this issue in substantial detail:
 - Elements relevant to regulation at EU level: creation by the owners of the property, registration required for publicity purposes according to national law, form (certified or non-certified right), right of the holder of the Eurohypothec to be fully satisfied with it, charge any piece of land within the EU and even be multi-parcel (where the same Eurohypothec charges several pieces of land located in different EU countries), a security agreement to link the legal charge and the obligation to secure (e.g. loans) with minimum content, transfer and how and when the Eurohypothec is redeemed, reused and cancelled (*Basic Guidelines*, 2005, pp.13ff).
 - Anything else falls under the title 'Legal environment of the Eurohypothec', which means that these elements depend on national law, do not need to be harmonised for the Eurohypothec to exist, and their adaptation towards the recommended dispositions may improve the quality and efficiency of a Eurohypothec granted on a given Member State (*Basic Guidelines* 2005, pp. 19ff). These are aspects such as a well-functioning and transparent land registration system, which is its real rank (e.g. with no hidden national charges), a proper national mortgage enforcement mechanism and insolvency proceeding, and the costs and taxes to create the Eurohypothec.
- The mortgage law of several Member States is similar to the Eurohypothec concept but they differ in detail. The laws in the majority of Member States differ significantly, although there is a clear tendency throughout Europe to develop more flexible versions of mortgage collateral in order to fulfil practical

²⁴⁴ Eurogeographics, 2019. Cadastre and Land Registry. Available at: <https://eurogeographics.org/knowledge-exchange/clrken/>.

needs and to reduce costs. As may be seen in the works of the *Runder Tisch*²⁴⁵ (see Figure 21), Member States are moving towards greater mortgage flexibility generally.

Figure 21. Versions of mortgage collateral laws



Conclusions

As of now, the aims of Article 3(3) TEU and Article 26 TFEU are still not comprehensively fulfilled.

Some experts believe that the challenges of designing and implementing Eurohypothech are not insurmountable, particularly in view of the scale of potential advantages of a tool that would facilitate cross-border switching of lenders, boosts cross-border mortgage origination and foster cross-border housing/property acquisition. Yet, so far no study on the costs and benefits of Eurohypothech concept was undertaken. It is, for instance, clear that substantial work including harmonization of some aspects of national law would need to precede the implementation of the Eurohypothech. It is also unclear how would demand for cross-border borrowing change after the implementation of Eurohypothech e.g. some stakeholders, including industry associations, argue that given some obstacles such as language and a wide spread preference of consumers to conduct the mortgage transaction in person (rather than on-line, which could be the most common mean for cross-border transactions), the potential of the Eurohypothech may be somehow reduced.

6.2.2 Personal current accounts

6.2.2.1 Lot 2 Fintech solutions: *Expansion of neobanks*

Introduction

The rapid market capture of neobanks²⁴⁶ (such as N26, Klarna, Revolut and Monzo, the fast-growing tycoons of European fintech) is one of the major developments in retail finance in recent years, increasing competition and subsequently contributing to the switching of personal current accounts in a number of European markets (albeit to

²⁴⁵ The Runder Tisch is a group of academics and other experts that have gathered for more than a decade to gain an in-depth understanding of the different mortgage systems in Europe and other countries. For more information, see: https://www.pfandbrief.de/site/de/vdp/agenda/think_tank/runder-tisch-grundpfandrechte.html

²⁴⁶ Banks that are fully digital and engage with their customers solely through mobile apps and personal computer platforms.

varying degrees). Most (but not all) are currently covered by the deposit guarantee scheme²⁴⁷. Neobanks are fully licensed banks, often in the UK, although some have sought a licence from other Member States. This is important in the context of Brexit and potential issues in retaining 'EU passporting'.

While the customer base of the main neobanks falls considerably short of that of the main retail banks, their growth rates were nevertheless very high in recent years.

German-based N26 was launched in 2013. It has a current market valuation of USD 1.7 bn²⁴⁸ and some 3.5 million customers²⁴⁹. Currently present in 24 countries (21 within the EU), it plans to enter the US market in 2019 in partnership with an unnamed bank²⁵⁰, as well as to (potentially) expand into several markets in South America and Asian countries. Monzo, which originated in the UK, has a current market valuation of USD 2 bn²⁵¹ and 2 million customers (as of June 2019)²⁵². Within Europe, it is present in the UK only, but entered the US market in June 2019. Another major UK-based neobank, Revolut, was established in 2015. With a current market valuation of USD 1.7 bn, it has a presence in 31 countries, 28 of which are within the EU. Revolut has almost 6 million customers²⁵³, an increase of nearly 500% since 2017. Like its peers, it envisages further expansion into non-European markets. Although publicly available figures on the numbers of payment accounts in Member States are scarce, neobanks have flourished, particularly in Britain²⁵⁴. A key reason for their success in the UK market is accommodating approach of the FCA, which welcomes new entrants²⁵⁵. Klarna, a Swedish start-up offering, inter alia, payment services, has been valued at USD 5.5 bn²⁵⁶.

These impressive growth rates should be considered in a broader context, however. In 2018, for example, HSBC (the largest UK-based retail bank, by assets) had 14.5 million personal current accounts in the UK alone, while the largest retail banks in Poland (PKO BP) and Spain (BBVA) had 7.5 million²⁵⁷ and 10.6 million²⁵⁸ personal current accounts in Poland and Spain respectively (end of 2018 figures).

While the customer base of a typical retail bank cuts across most sections of a population, this is not true for neobanks, whose customers are usually tech-savvy young professionals from big cities. For instance, around one-third of Monzo's 2 million customers live in London and less than 5 per cent are aged over 60, a characteristic

²⁴⁷ BrokerChooser, 2019. Digital Bank Comparison. Available at: <https://brokerchooser.com/digital-banks/comparison>

²⁴⁸ Financial Times, 10 January 2019. Germany's N26 becomes Europe's top fintech with USD 2.7 bn valuation. Available at: <https://www.ft.com/content/d945cfa8-1419-11e9-a581-4ff78404524e>

²⁴⁹ N26, 2019. Company's website. Available at: https://n26.com/en-gb/banking-as-easy?utm_source=affiliate&utm_medium=cpo&utm_campaign=ho&utm_term=5305

²⁵⁰ N26, 2019. Official website – market presence. Available at: https://n26.com/en-eu/about-n26?utm_source=affiliate&utm_medium=cpo&utm_campaign=ho&utm_term=5305

²⁵¹ Financial Times, 25 June 2019. Digital bank Monzo doubles valuation to over USD 2 bn. Available at: <https://www.ft.com/content/31527e48-9689-11e9-8cfb-30c211dcd229>

²⁵² Financial Times, 25 June 2019. Digital bank Monzo doubles valuation to over USD 2 bn. Available at: <https://www.ft.com/content/31527e48-9689-11e9-8cfb-30c211dcd229>

²⁵³ Financial Times, 14 July 2019. Martin Gilbert set to assume chair of Revolut. Available at: <https://www.ft.com/content/3d891dd0-a637-11e9-b6ee-3cdf3174eb89>

²⁵⁴ Economist, 2 May 2019. Neobanks are changing Britain's banking landscape. Available at: <https://www.economist.com/special-report/2019/05/02/neobanks-are-changing-britains-banking-landscape>

²⁵⁵ The mandate of the FCA is not just to protect the integrity of the financial system but also to promote competition.

²⁵⁶ The Financial Times, 6 August 2019. Klarna becomes most valuable EU fintech with USD 5.5 bn. Available at: <https://www.ft.com/content/3f16a05c-b828-11e9-8a88-aa6628ac896c>

²⁵⁷ PRnews.pl, 2018. *Raport PRnew.pl: Rynek kont osobistych*. Available at: <https://prnews.pl/raport-prnews-pl-rynek-kont-osobistych-iii-kw-2018-438899>

²⁵⁸ Association Espagnola de Banca, 2019. *Anuario estadístico de la Banca en Espana*.

that may suggest a major barrier for further expansion²⁵⁹. As pointed out by UK consumer organisation, Citizens Advice, local branches may be unprofitable but they remain hugely valuable to certain customer groups, particularly older consumers and those in rural areas.

Currently available data across the Member States do not allow the contribution of neobanks to switching rates across the EU to be gauged. For instance, data collected by Dutch Payment Association (as part of the national switching service it manages on behalf of Dutch banks) does not provide disaggregated information on the banks that are net receivers/losers of payment account customers. Other national industry associations interviewed have a similar lack of data. The only exception is the UK (data from CASS) where some data on net gains in payment account consumers is systematically collected²⁶⁰ - here, while neobanks report indeed some solid net gains, there are some building societies and retail banks which still enjoy several times higher increases²⁶¹. More generally, a number of national banking associations²⁶² stated that the impact on switching rates may be limited, given the common practice of 'multi-banking', e.g. consumers opening an extra account with a neobank while retaining their primary account with their existing provider (retail bank). 10.2.5 provides a stylised example of a consumer who manages to optimise her savings from multi-banking rather than switching. As Citizens Advice notes, '*...there has been huge take-up within particular demographics, but whether neobanks are expanding the market of switching or they do a better job for cleaning the market for those who would switch anyway (e.g. because they have been less content with the current bank and considered to switch anyway), is unclear at this stage*'.

Box 8. Multi-banking – an optimising consumer

Consumer's main payment account is with a leading retail bank in the UK. As part of the offer, after opening the main payment account with this bank, consumer was also offered a promotional saving account with 4.50% interest rate for 12 months conditioned on max amount of £3,000, regular monthly payment of max £250, and no withdrawals over the period of 12 months allowed. Consumer's annual gross gain from this saving account is £135 ($£3,000 * 0.045 = £135$).

At the same time, consumer travels relatively frequently (to the EU and outside) where she makes debit card payments in foreign transactions using bank's debit card. The fees for each transaction is 2.75% of transaction amount and the bank charges also some mark-up on the foreign exchange. The cumulative charges for debit card payment in foreign currency accrued over 12 months amounted to £135.

Option of switching (1) *versus* option of multi-banking (2):

Switching option:

After realising the annual fees for debit card payments in foreign transactions, the consumer **switches** to one of the neo-banks that offer no charges for debit card payments in foreign transactions and no mark-up on forex. The consumer in subject saves £135 on charges related to debit card payments in foreign transactions (she now uses debit card from the neo-bank), but at the same time she also loses the promotional interest rates offered as part of the saving account provided by the main

²⁵⁹ Financial Times, 25 June 2019. Digital bank Monzo doubles valuation to over USD 2 bn. Available at: <https://www.ft.com/content/31527e48-9689-11e9-8cfb-30c211dcd229>

²⁶⁰ CASS, 2019. Data on net gains for Q2 2019. Available at: <https://www.wearepay.uk/wp-content/uploads/2019/07/Q2-CASS-Dashboard-2019.pdf>

²⁶¹ And yet, the data on net gains in payment account consumers still can not be considered as proxy for switching due to multibanking (some consumers will open a new account and maintain the old one, rather than close an old one and switch to a new single new account).

²⁶² Spanish Banking Association, Belgian Federation of Financial Sector, Finance UK and Portuguese Banking Association.

bank from which she switched.

The net effect is: $+\pounds 135 - \pounds 135 = \pounds 0$

Multi-banking option

After realising the annual fees for debit card payments in foreign transactions, consumer opens the account with one of the neo-banks that offer no charges for debit card payments in foreign transactions and no mark-up on forex, but simultaneously **maintains** its main account to which promotional saving account is attached (**multi-banking**). The consumer in subject saves $\pounds 135$ on charges related to debit card payments in foreign transactions (she uses debit card from the neo-bank now), and she also preserves the promotional interest rates as part of the saving account provided by the main bank.

The net effect is: $+\pounds 135 - \pounds 0 = \pounds 135$

Business model/growth prospects

According to the Financial Times, *'...online-only banks such as N26 and Monzo have benefited from a general post-crisis disenchantment with traditional lenders and a growing desire, particularly among younger customers, to manage their finances on their mobile devices rather than in a branch or by talking to someone in a call centre. Other attractions include no fees on foreign currency transactions'*²⁶³. Neobanks have offered new or enhanced services, such as no-fee pre-paid debit cards for use in international travel, foreign currency exchange, mobile-based budgeting tools, or cryptocurrency wallets and exchanges. While they may not offer all of the types of services provided by conventional banks, they have expanded the scope of their offer to close the gap somewhat, e.g. most leading digital banks provide an overdraft facility and separate saving accounts²⁶⁴, while some will soon offer credit across the euro zone as well²⁶⁵. Unlike traditional banks, where branch visits are often a requirement, an account with a neobank can be opened online, in a process that takes minutes.

The cost structure of neobanks differs from that of traditional retail banks. Neobanks do not bear the costs related to maintenance of branches and associated staff, which may represent up to 50 per cent of high street banks' costs. According to some industry members, traditional retail banks need to make in the range of USD 200-400 per customer each year to reach their break-even point, while acquiring and maintaining new accounts adds considerable cost. By contrast, the break-even for a neobank fluctuates around USD 50-60, while the cost of servicing each additional account is close to zero²⁶⁶. By early 2018, N26 employed approximately 1,300 people, while Revolut had 800 staff members. This is far less than leading national retail banks, even after adjusting for the size of the customer base.

Neobanks like N26, Revolut and Monzo typically offer several types of accounts. Standard accounts are usually free-of-charge, while other accounts offering additional features (e.g. free ATM withdrawal and/or dedicated customer support) are fee-based. Income generated from the fee-based accounts, as well as the interchange fees whenever a customer uses their debit card, are key revenue drivers. For instance, roughly one-third of N26 customers in the UK signed up for its premium account,

²⁶³ <https://www.ft.com/content/1d9f39f0-c70d-11e8-ba8f-ee390057b8c9>

²⁶⁴ BrokerChooser, 2019. Digital Bank Comparison. Available at: <https://brokerchooser.com/digital-banks/comparison>

²⁶⁵ Economist, 2 May 2019. Neobanks are changing Britain's banking landscape. Available at: <https://www.economist.com/special-report/2019/05/02/neobanks-are-changing-britains-banking-landscape>

²⁶⁶ Economist, 2 May 2019. Neobanks are changing Britain's banking landscape. Available at: <https://www.economist.com/special-report/2019/05/02/neobanks-are-changing-britains-banking-landscape>

offered for GBP 14.90 per month. Monzo has sought to expand new services such as unsecured lending, but fees charged from the use of its debit cards remain the most critical source of revenue.

There is some scepticism about neobanks' ability to generate sustainable profit. To date, Revolut, N26 and Monzo remain loss-making, with both Revolut and N26 undertaking recent additional rounds of fundraising to cover their operational costs and secure further investment.

Some stakeholders²⁶⁷ pointed out that the accounts offered by neobanks are not sufficiently different to have a substantial impact, given that many fully online accounts existed already provided by traditional retail banks.

Another criticism is that customers will use neobanks merely to ring-fence discretionary spending, with their salaries still going into their high-street bank account. Salary has indeed been a holy grail for digital banks²⁶⁸. This is because unlike traditional banks (which accumulate deposits and generate profit from the net margin between deposit interest rate and lending ones), neobanks aim to leverage information about consumer spending patterns, offering tailored products/services from third providers and thereby generating margin. For example, a customer who regularly pays their mobile phone or electricity bill from their neobank account may be shown offers from alternative providers, with the neobank cashing in an intermediary premium if the customer decides to switch to a new mobile operator/utility provider. There are some signs that, at least for some neobanks, the share of consumers who deposit their salary is rising. The share of customers lodging their salaries rose to 30 per cent by the end of Q1 2019, up from 12 per cent a year earlier. Over the same time, the value of customers' funds deposited increased more than sixfold, to GBP 461.8 million²⁶⁹. Some industry members believe that the customer base is likely to broaden as soon as neobanks shift their marketing from niche and tech-based alternatives to traditional banks to universal digital banks servicing most layers of society.

Consumer protection

There have been numerous instances across the EU where the commercial practices of conventional retail banks were not in line with existing consumer protection rules, to the detriment of consumers. Although neobanks have largely avoided such issues to date, several other questions have come to light since they entered the market.

For example, some UK-based Revolut consumers have complained about slow responses to urgent requests for help in cases of accounts frozen with no prior warning²⁷⁰. Other neobanks experienced similar complaints, although it is broadly agreed that this was the result of rapid growth in customer numbers outpacing headcount increases. In the UK market (where detailed data are available on complaints), Revolut's complaints rate - 171 between January 2015 and December 2018 - is very modest in comparison to leading banks such as Barclays or Lloyds, each of which received over 100,000 complaints in the same period²⁷¹.

Stakeholders also expressed their concerns about the risk of neobanks being used as a platform for money-laundering operations. For instance, the German Federal Financial

²⁶⁷ Including several national industry associations.

²⁶⁸ <https://www.economist.com/finance-and-economics/2018/02/15/the-digital-upstarts-taking-on-britains-dominant-few-banks>

²⁶⁹ Monzo, 2019. Annual Report. Available at: <https://monzo.com/annual-report/2019/>

²⁷⁰ Financial Times, 26 May 2019. Revolut leads fintechs in complaints to ombudsman. Available at: <https://www.ft.com/content/0ca689ee-7c81-11e9-81d2-f785092ab560>

²⁷¹ Financial Times, 26 May 2019. Revolut leads fintechs in complaints to ombudsman. Available at: <https://www.ft.com/content/0ca689ee-7c81-11e9-81d2-f785092ab560>

Supervisory Authorities (BaFin) ordered N26 to strengthen its money-laundering practices, fix backlogs in its transaction monitoring, and strengthen the staffing of its compliance team²⁷².

Some national industry associations²⁷³ downplayed both types of problems, noting that these are largely routine hiccups stemming from the early and rapid growth of neobanks. Ultimately, the issuing of banking licences for neobanks to operate within EU markets will hinge on their compliance with regulatory standards set by national regulators. This provides a sufficiently strong incentive to address any ongoing shortcomings in compliance.

All leading neobanks have recently reported ongoing increases in the size of their compliance teams.

Conclusion

The long-term impact of neobanks on the payment accounts market and on switching rates remains difficult to gauge. Much will depend on the success of these operators in competing with traditional banks.

Despite impressive growth rates, neobanks' numbers of customers with active payment accounts is still very limited compared to traditional banks.

The main neobanks are still loss-making, requiring regular capital injections to continue their expansion. Their financial viability will depend on how successful they are in broadening their consumer base and diversifying their revenue streams (beyond debit card charges and account fees).

Increased competition usually means that some market operators will fail. This is governable in some cases (e.g. energy providers) but is significantly more disruptive with credit institutions. Existing regulatory and banking systems are highly fragile with respect to bank failures, with industry experts suggesting that neobanks may eventually resort to a merge. In addition, hikes in interest rates could test the viability of their business model.

6.2.2.2 Lot 3 Other: Account Number Portability (ANP)

Overview

The concept of ANP would allow customers to change their bank provider while keeping their account number(s). In short, implementation of the ANP would imply that customers can change their bank without interrupting any payment services or advising third parties about the change. There are various alternatives to implement ANP, from discontinuing IBAN numbers to keeping IBANs while creating an 'alias'²⁷⁴ attached to different account numbers.

ANP has been on the policy agenda since the early 2000s. In 2005, the European Commission initiated a first sectoral enquiry into retail banking competition. The final report from the inquiry (published in 2007) concluded that there was an insufficient level of competition in retail banking, as evidenced by low customer mobility within and between Member States, among other indicators (profit margins, prices, selling patterns)²⁷⁵. The report stressed that low customer mobility could be a symptom of

²⁷² Financial Times, 22 May 2019. Regulator orders N26 to improve anti-money laundering controls. Available at: <https://www.ft.com/content/cb06a354-7c97-11e9-81d2-f785092ab560>

²⁷³ For instance, the Dutch Payments Association and Association of German Banks.

²⁷⁴ Aliases would be unique customer identifiers, independent of the bank or account number, so that whenever customers change accounts, they would keep their alias.

²⁷⁵ Schäfer, S., Speyer, B. and Kaiser, S., 2008. Mobility of bank customers in the EU: Much ado about little. Financial Market Special, *EU Monitor*, 60. Available at: <https://pdfs.semanticscholar.org/aa23/287fcede4a2f69b41d03bd2d73e3ca85f790.pdf>

asymmetric information and perceptions of switching costs, as well as high levels of customer satisfaction.

The literature review for the present study suggests that ANP could potentially encourage switching, although the extent is difficult to gauge²⁷⁶. The available evidence provides no clear-cut answer on the question of whether – and the extent to which – the costs of introducing ANP would be offset by the benefits. It is, however, clear that the initial costs incurred by banks would be substantial.

Current state of play

The Netherlands Authority for Consumers and Markets (ACM) (interviewed as part of this study) believes that ANP would have a particular impact on switching behaviour. The Netherlands has had an automatic switching service since 2004 but uptake is low (only 1 per cent of payment account holders)²⁷⁷. From this, the ACM has inferred that the main barrier to switching is changing account number, thus it believes that ANP would be more effective in fostering switching behaviour. Likewise, the Dutch Ministry of Finance mentioned that they believe that ANP can increase switching, including cross-border one. They mentioned the ACM research determining the benefits of ANP.

The stakeholders representing national industry associations expect that ANP would be very expensive to implement (e.g. adjustment of IT infrastructure in banks related to account numbering and idiosyncratic convention in 27 Member States for numbering accounts, changes to IBAN/BIC standards). They also fear that it could become chaotic and is, ultimately, less appropriate than other alternatives (e.g. phone numbers or aliases), which would incur lower cost for banks yet create greater benefits for consumers. For example, the number of digits in an account number differs not only between but within countries²⁷⁸, and account numbers can be made of letters and entities have certain code identifiers. All of this might need to be changed in the context of implementing ANP. More generally, these associations perceive the existing legal framework and switching services to be well-functioning and, when asked, opt for their further refinement rather than the introduction of ANP.

Perceptions of the relative advantages of ANP differ by country. The Association of German Banks expressed the view that most of the discussion around ANP is theoretical, given that the SEPA already facilitates switching, making ANP less relevant. They note that, in Germany, customers like to open a second account while retaining the first (the multibanking concept common to many Member States). The switching service in Germany is also efficient, with an app that greatly facilitates the process, e.g. utility/service providers are notified immediately. These views reflect those of Schaffer et al. (2008), who held that German consumers are generally satisfied with their banks and suggested that the European Commission instead focus on cross-border (rather than internal) switching behaviour²⁷⁹.

²⁷⁶ DECISIO, 2016. Determining the benefits of Account Number Portability (ANP). Research framework and application for the Netherlands. Study commissioned by ACM. Available at: <https://www.acm.nl/en/publications/publication/15946/Research-Decisio-on-the-benefits-of-EU-wide-account-number-portability>

²⁷⁷ ACM, 2016. Account number portability. Switching to another bank without receiving a new account number: a contribution to the new cost-benefit analysis of EU-wide account number portability. Available at : <https://www.acm.nl/en/publications/publication/15948/ACM-study-into-EU-wide-account-number-portability>

²⁷⁸ The same applies to IBAN numbers

²⁷⁹ Schäfer, S., Speyer, B. and Kaiser, S., 2008. Mobility of bank customers in the EU: Much ado about little. Financial Market Special, *EU Monitor*, 60. Available at: <https://pdfs.semanticscholar.org/aa23/287fcede4a2f69b41d03bd2d73e3ca85f790.pdf>

In terms of the overall cost of introducing ANP, the 2013 European Commission Staff Working Paper²⁸⁰ estimated that if every European bank changed to ANP, the cost could amount to between EUR 15-74 billion (covering annual account operation costs, modification of IT systems, internal procedures and staff training). In addition, the SEPA would need to be turned off and a new system built. In the same vein, stakeholders from the Spanish Banking Association believe that the operational change would be chaotic, as it would require procedures to be changed and standards harmonised. With the exception of the Dutch, the national regulators consulted did not view ANP as a particularly promising means of enhancing payment account switching in their respective countries. The Dutch Ministry of Finance is currently carrying out a research on possibilities of the use of 'aliases' including a cost-benefit analysis of 'alias' portability. The report will be published towards the end of 2019. At this stage, from the insights gathered from the roundtable session, it is understood that the option relying on 'aliases' is potentially the least expensive one.

The likely costs of implementing ANP and its potential operational challenges are not the only obstacles. A survey in the Netherlands, for instance, found that willingness to switch current and saving accounts seems to be more closely linked to the bank-customer relationship than the switching process per se. The study found that most respondents felt that switching was a hassle and would bring only minor gains.

The FCA conducted a study on ANP in 2015²⁸¹. It offered five policy options, three of which are different variations of ANPs, and two that relate to switching times. The study report proposes the following options, balancing complexity and flexibility:

- **Retain identifier model:** keep the sort code and account number, regardless of the bank provider. This is considered the least complex option to implement.
- **New identifier model:** create a new number as a proxy of the sort code and account number. This is more complex than the first choice but would ease international payments, as the IBAN would still be linked to the proxies.
- **Central utility model:** a single operational platform and redirection database that could potentially provide ANP.
- **CASS²⁸² perpetual model:** this alternative to ANP is a rerouting service that simply directs payments to the new account after switching. This is the simplest option because it merely extends an existing service.
- **Know your customer (KYC) database model:** this does not include ANP but would speed up account opening and switching.

The balance of risk, costs and complexity will determine the cost and benefits of each policy option. Although all five options are feasible, the FCA concluded that the more functional and richer the option, the higher its complexity, cost and risk. It stressed that any ANP solution should allow for innovation with respect to international standardisation of bank identifiers.

Potential benefits of ANP

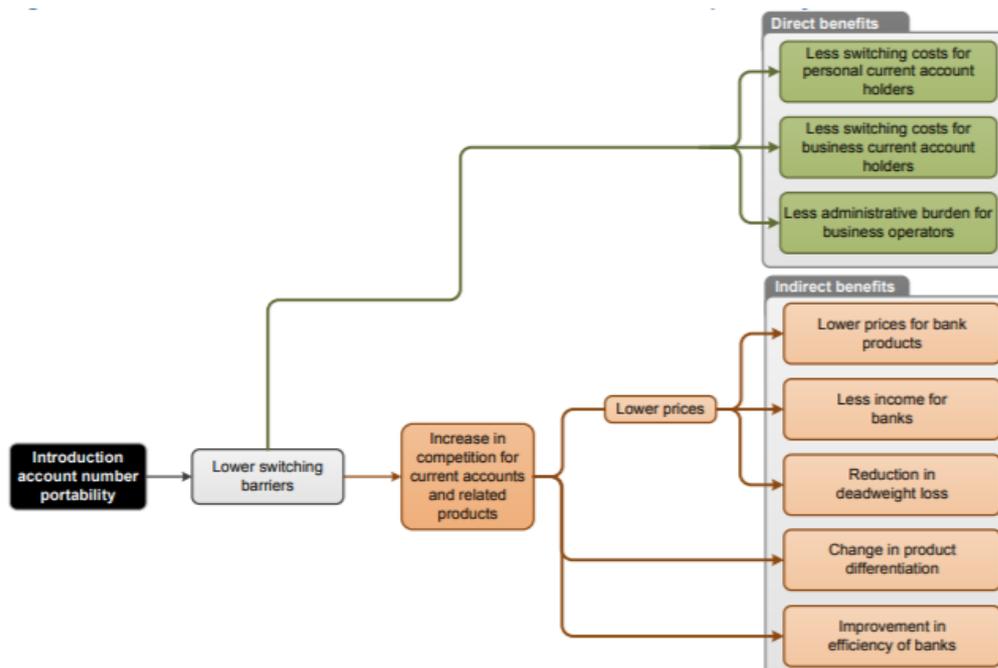
The expected costs and benefits of implementing ANP, according to the ACM, are summarised in the figure below.

²⁸⁰ European Commission, 2013, Impact assessment accompanying the document 'Proposal for Directive of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features'. SWD(2013) 164 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013SC0164&from=EN>

²⁸¹ FCA, 2015. Account Number Portability. Report commissioned by the FCA. March. Available at : <https://www.fca.org.uk/publication/research/anp-research.pdf>

²⁸² Current Account Switch Service, launched in September 2013.

Figure 22. Social benefits of implementing ANP



Source: ACM (2016) based on the DECISIO (2016) study.

ACM prefers ANP to an automatic switching service, for three key reasons:

- Less inconvenient than informing third parties about the change of account number;
- Intention to switch is more sensitive to ANP than knowledge about switching service, as shown by a Dutch Central Bank study²⁸³;
- Businesses do not have to update the account number if a client switches.

However, as noted earlier, the main obstacle to implementing ANP is its cost. These costs will vary depending on the kind of ANP implemented. The ACM describes three policy options:

- Replacing IBANs for consumers and businesses;
- Changing IBANs for the processing of interbank payments;
- Direction of payment to banks.

Of these three options, ACM favours alias-portability²⁸⁴, for three reasons²⁸⁵:

- IBAN portability increases the 'chain risk'²⁸⁶, compared to a routing option.

²⁸³ De Nederlandsche Bank, 2015. DNB working paper no. 490. Banking products: You can take them with you, so why don't you? Available at: http://www.dnb.nl/binaries/Working%20paper%20490_tcm46-335348.pdf

²⁸⁴ This would imply that customers can keep their alias number when changing accounts.

²⁸⁵ ACM, 2016. Account number portability. Switching to another bank without receiving a new account number: a contribution to the new cost-benefit analysis of EU-wide account number portability. Available at : <https://www.acm.nl/en/publications/publication/15948/ACM-study-into-EU-wide-account-number-portability>

²⁸⁶ This risk occurs where several parties are involved in the transaction process. The risk increases with the number of parties, as the probability that something will go wrong is higher.

- Some countries (such as the Netherlands) would keep a reference to the previous IBAN number, while an alias would be more user-friendly for consumers and businesses.
- Similar systems have already been implemented in Europe, such as PayM in the UK and MobilePay in Denmark.

Stakeholders from industry associations in Belgium highlighted that even if ANP were available, customers would still need to complete tasks such as activating debit/credit cards, setting up online account, etc. However, representatives from the Dutch Payment Association noted that consumers overestimate the hassle of switching, coupled with low expected gain from the switch.

Conclusion

ANP has long been debated at EU and Member State level, with particularly strong interest in certain jurisdictions, such as the Netherlands, and among some regulators. At the same time, there is widespread scepticism among the national industry associations interviewed for this study.

Irrespective of the version of ANP, its implementation would imply substantial costs for industry, some of which may be passed on to consumers. The scale of potential benefits remains uncertain, particularly in the context of alternative solutions and the (relatively) high satisfaction levels with existing switching frameworks and services. Therefore, concrete actions at the EU level would at first instance warrant a detail cost-benefit analysis.

6.2.3 Savings accounts

6.2.3.1 Lot 3 Other: Goldman Sachs' Marcus account and recent expansion

Introduction

In September 2018, Goldman Sachs (GS) launched Marcus in the UK²⁸⁷. Named after one of the original founders of the company (Marcus Goldman²⁸⁸), Marcus is a new brand, offering access to online saving accounts at a generous rate. It pays an interest rate of 1.5 per cent Annual Equivalent Rate (AER)²⁸⁹ / 1.49 per cent gross²⁹⁰ variable, that includes a bonus rate of 0.15 per cent for the first 12 months²⁹¹. The bonus rate can be renewed, although it can be also lower in year two. The account offers limitless withdrawal. The account can be opened online with GBP 1 (up to a maximum GBP 250,000) and managed online and by phone.

The offered interest rate is the highest interest rate seen since January 2016²⁹² and is double the Bank of England's base interest rate²⁹³.

²⁸⁷ Having emerged in the US market in late 2016.

²⁸⁸ Marcus by Goldman Sachs website. Available at <https://www.marcus.co.uk/uk/en/public-site/about-us>

²⁸⁹ The Annual Equivalent Rate (AER) represents what the interest rate would be if interest was paid and compounded once a year.

²⁹⁰ Payable before tax is deducted.

²⁹¹ Marcus by Goldman Sachs website. Online Savings Account UK. Available at: <https://www.marcus.co.uk/uk/en/savings>

²⁹² MoneySavingExpert, 27 September 2018. 'New bank Marcus launches market-leading 1.5% savings'. Available at: <https://www.moneysavingexpert.com/news/2018/09/new-online-bank-makes-its-marcus-with-top-savings-rate/>

²⁹³ Yahoo Finance, 2 May 2019. 'Bank of England holds interest rate at 0.75%, upgrades growth forecast'. Available at: <https://uk.finance.yahoo.com/news/bank-of-england-interest-rates-mpc-may-decision-110018771.html>

Prior to Marcus, Yorkshire Building Society offered the most attractive saving account in the UK, at 1.41 per cent AER variable. Nonetheless, the account could only be opened by post or in-branch, with a minimum input of GBP 100 and withdrawals were limited to one per year²⁹⁴. The top rate with no withdrawal limitations was offered by Shawbrook Bank Easy Access Cash ISA 4 at 1.3 per cent²⁹⁵.

The entrance of Marcus into the UK market had an immediate impact, sparking competition and raising interest rates^{296,297}. Going forward, easy access accounts can be expected to expand, driven for instance by rises in base rates across the EU (although this is not expected soon), meaning that GS may soon face more significant competition in the UK market.

The account entered the UK on foot of its success in the US. Plans to roll out the brand in the EU (initially Germany) were delayed for two reasons²⁹⁸:

- The delay to Brexit alleviated the urgency to set up a new entity in Germany that would enable GS to service customers in the EU post-Brexit (its plans to take deposits through its Marcus brand in Germany were intended to part-fund such an entity);
- The delay of investment plans that are not strictly necessary. Like most banks²⁹⁹, GS is postponing spending decisions in view of cost pressures and the political uncertainty.

Switzerland is the next likely target after Germany³⁰⁰.

In its first month in the UK, Marcus gained 100,000 new customers, with an average of GBP 23,000 deposited³⁰¹. Within seven months, more than 250,000 customers had signed up³⁰² (150 per cent increase). The deposit base has increased up to USD 46 billion globally, USD 10 billion of which came from the UK (the remainder from the

²⁹⁴ This account no longer exists at Yorkshire Building Society. The closest available is the '1-Year Limited Access Saver', that pays 1.40% AER variable and can be opened online. Available at: <https://www.ybs.co.uk/savings/product.html?id=YB621025W>

²⁹⁵ Moneywise, 26 September 2018. 'Savings update: could Goldman Sachs spark new competition and push up rates?' Available at: <https://www.moneywise.co.uk/news/2018-09-26per-centE2per-cent80per-cent8Cper-centE2per-cent80per-cent8C/savings-update-could-goldman-sachs-spark-new-competition-push-rates>

²⁹⁶ This is Money, 21 January 2019. 'Battle of the banks! Easy-access savings deals reach three year high as ICICI topples Marcus with new best buy 1.55% rate'. Available at: <https://www.thisismoney.co.uk/money/saving/article-6615093/ICICI-Bank-UK-topples-Marcus-Savings-new-best-buy-1-55-rate-stick.html>

²⁹⁷ For instance, Shawbrook Bank's Issue 15 account now pays 1.48 per cent AER variable. AER does not include a bonus and interest is paid monthly, with a minimum initial deposit of GBP 1,000. Investec employed a similar strategy, i.e. a high interest rate with no bonus (1.40 per cent AER variable) and minimum initial deposit (GBP 10,000). Cynergy Bank also offers an easy access saving account, at 1.50 per cent AER variable, albeit with a bonus of 0.5 per cent AER for the first 12 months. In this context, Marcus, with its bonus of 0.15 per cent, remains more attractive. All of these accounts can be opened and managed online, illustrating a broad move into digital services.

²⁹⁸ Crow, D., 2019. Financial Times podcast from 7 May 2019. 'Goldman's Marcus roll-out'. Available at: <https://www.ft.com/content/8e9a1035-f576-4b5f-bee4-692af69fa2ff>

²⁹⁹ Cruise and Withers, 15 July 2019. For Reuters: 'UK banks say business investment slowing further ahead of Brexit'. Available at: <https://uk.reuters.com/article/uk-britain-eu-banks/uk-banks-say-business-investment-slowing-further-ahead-of-brex-it-idUKKCN1UA0V1>

³⁰⁰ Finews.com, 18 May 2018. 'Goldman Sachs: Marcus Is Coming to Europe'. Available at: <https://www.finews.com/news/english-news/31842-marcus-goldman-sachs-digital-banking-fintech>

³⁰¹ thisismoney.co.uk, 3 November 2018. 'Goldman Sachs signs 100,000 customers to its new British bank Marcus, in just over a month—and now plans a cash ISA'. Available at: <https://www.thisismoney.co.uk/money/news/article-6349317/Goldman-Sachs-signs-100-000-customers-new-retail-bank-Marcus-just-month.html>

³⁰² Business Insider, 10 May 2019. 'UK customers are swarming to Goldman's Marcus'. Available at: <https://www.businessinsider.com/goldman-sachs-marcus-uk-growth-2019-5?r=US&IR=T>

US). GS was publicly announcing the aim to increase it up to USD 250 billion, enough to fund 25 per cent of the bank's total assets³⁰³.

Business model/ growth prospects

The rapid growth in its customer base indicate that Marcus has been a considerable success so far^{304,305}. Pundits pointed to the combination of several factors:

- Proposing highly competitive products. Interest rate offered is the highest among its competitors in the UK (1.5 per cent AER variable). Nonetheless, it drops to 1.35 per cent after 12 months and there are different views whether GS will keep offering these competitive rates long term, or it aims at using it only during initial period to attract the depositor base³⁰⁶;
- Digital integration: ease of access and transparency coming along with full digitalisation are seen as similar to accounts offered by neobanks like Monzo or N26³⁰⁷, and particularly popular in markets like US and the UK;
- Low entry barrier: The fact that the account can be opened with GBP 1 made it accessible to the wider public³⁰⁸;
- Reputation of GS: GS is well recognisable company in the industry, with associated brand equity. Brand reputation is the second driver in the UK, after interest rates, when choosing a savings provider³⁰⁹;
- Strong (and oriented) marketing campaign highlighting their competitive 1.5 per cent savings rate, and directly mocking their competitors' rates³¹⁰. As well as using TV and radio ads, GS has also focused on advertising on social media (e.g. Facebook).

Neobanks had a remarkable customer acquisition (at least in some countries), though with very different customer base. Here, compared to Monzo's figures, Marcus reported an average deposit of USD 40,000 per customer compared to USD 367.81 for Monzo.

Looking ahead, one of the main questions is whether high saving rates (1.5 per cent) are sustainable in the long term for GS, or are simply being used to attract a wide customer base with a view to then offer other products, as some experts argue. For instance, Marcus has recently cut its saving rates from 2.25 per cent to 2.15 per cent in the US while it expansion focused so far on countries with wealthy customers (US, UK and Switzerland). It is expected that GS will expand its product offer under Marcus

³⁰³ Financial Times, 5 May 2019. 'Brexit delays Goldman's Marcus launch in Germany'. Available at: <https://www.ft.com/content/514d9b62-6dec-11e9-a9a5-351eeaef6d84>

³⁰⁴ Crow, D., 7 May 2019. Financial Times podcast: 'Goldman's Marcus roll-out'. Available at: <https://www.ft.com/content/8e9a1035-f576-4b5f-bee4-692af69fa2ff>

³⁰⁵ The Telegraph, 18 October 2018. 'Goldman Sachs bank Marcus attracts 50,000 savers in less than two weeks with best-buy rate'. Available at: <https://www.telegraph.co.uk/personal-banking/savings/goldman-sachs-bank-marcus-attracts50000-savers-less-two-weeks/>

³⁰⁶ BBC Breakfast, 27 September 2018. Interview with Des McDaid, Managing Director, Marcus by GS. Available at: <https://www.youtube.com/watch?v=NDcyZ16CgGI>

³⁰⁷ Marcus by Goldman Sachs website. Available at: <https://www.marcus.co.uk/uk/en/public-site/about-us>

³⁰⁸ Financial Times, 5 May 2019. 'Brexit delays Goldman's Marcus launch in Germany'. Available at: <https://www.ft.com/content/514d9b62-6dec-11e9-a9a5-351eeaef6d84>

³⁰⁹ GlobalData, 10 October 2018. 'Goldman Sachs's Marcus account set to disrupt the UK deposit market as 67% of savers say interest rate drives provider choice'. Retail Banking Insight Survey. Available at: <https://www.globaldata.com/goldman-sachss-marcus-account-set-disrupt-uk-deposit-market-67-savers-say-interest-rate-drives-provider-choice/>

³¹⁰ Mattress Farm Ad. Marcus by GS. Available at: <https://www.youtube.com/watch?v=rFLi9VWByAA>

next year³¹¹, with cash ISAs³¹², joint accounts, add-ons and term accounts likely to be the new services.

Conclusion

The rapid expansion of the Marcus account suggests that fintech may not be the only significant threat to existing market players. The success of Marcus in the UK points to considerable room for disruption of new entrants to the retail banking sector. While low interest rates on saving accounts triggered the entrance of GS into that segment and boosted competition, the sustainability of the offer will depend on interest rates in Europe, as well as GS strategy (Marcus as simple saving account, or more generally capturing strategy to introduce wider range of products).

6.2.4 Mortgage insurance

6.2.4.1 Lot 1 Legislative measures: selected elements for 'optimal' full switching capability mortgage insurance framework

Overview

Mortgage insurance is a life-insurance product which protects the bank from the risk that the outstanding balance is not paid due to an event that affects the life of the borrower. These products are used also to reduce the interest rates and they are often bundled with the mortgage. It is mandatory only in France and Spain but it is usually common practice.

Only in France there are specific rules for switching mortgage insurance (Loi Borquin), which were also due to a specific situation involving low competition in the insurance sector, mainly dominated by banks proposing their grouped insurance (*assurance-groupe*). The cancellation must be accompanied by the conditions of the new contract (membership certificate, profit delegation, standardized information sheet) and acceptance by the bank that there are equivalent guarantees between the old and the new contract.

Costs of mortgage insurances could be relatively high and the switching process aiming at reducing costs, can be made difficult by contractual elements such as notice for termination and timely payments of the insurance.

Some difficulties have been identified in the contractual design of such products, which may render switching difficult.

Below we discuss three specific elements of a stylised legal framework of mortgages insurance

Element 1: Transparency in bundling insurance with mortgage contract.

Bundled products are usually used to reduce the interest rate of the existing mortgage loan, which means that they are usually contracted for by borrowers. Ultimately, this makes it more complex (more products to "switch" in addition to the mortgage, which in their turn might be more difficult to compare with the new offer than the mortgage offer itself) and expensive to switch.

In the context of the interviews, stakeholders did not raise particular concern about the mortgage insurance, with few admitting that switching insurance may be sometimes complicated by the bundling of the products. In general, the legal analysis showed that there is a lack of transparency in terms of information to be provided. In

³¹¹ Crow, D., 7 May 2019. Financial Times podcast: 'Goldman's Marcus roll-out'. Available at: <https://www.ft.com/content/8e9a1035-f576-4b5f-bee4-692af69fa2ff>

³¹² Individual Saving Accounts

general, national legislation does not require minimum information for consumers which could be very useful to compare the options and the costs.

In our opinion, the mortgage insurance contract should clarify the possibility to switch and the costs of switching. In addition, as provided by the French legislation banks should be prohibited from changing the previously negotiated loan terms, including discounts, if the borrower decides to switch insurance provider during the life of the mortgage.

As mentioned above, some argue (though there is no consensus on it) that the ESIS should include information concerning the tailor-made offer for a mortgage taken with insurance products, in order to provide better comparison of the potential advantages and disadvantages.

In addition, insurance documentation should provide clear information concerning the effects, over the insurance contract, of early repayment and termination of the loan.

In addition, a provision mirroring the French Loi Borquin which allows borrower to terminate their mortgage insurance at the end of every year with a two-month notice would provide better consumer protection. The cancellation must be accompanied by the conditions of the new contract (membership certificate, profit delegation, standardized information sheet). However, the acceptance of the lender that the new contract has the same conditions should be avoided; otherwise, it would allow the banks to prevent the switching.

Element 2: No fees or charges for early termination of mortgage insurances.

In general, it is provided that there is an exit fee for the insurance contracts, which may be fixed or a percentage of the redemption period. In Spain, the legislation obliges the provider to indicate the specific costs and the "*part of the total cost that corresponds to each of the products or services*".

One national authority noted that, even if there are no fees for terminating the mortgage insurance, in practice termination may have effect on pricing of other insurances with the same insurance provider.

The issue of the passing on the costs on other insured people has to be taken into account, as well as incentives to provide insurance. A capped fee and transparency on how they are calculated would protect consumers also providing better comparability.

Element 3: No mandatory insurance for mortgages

In general, mortgage insurance is not mandatory. However, in practice banks require it to be better protected in case of default of the borrower. They can refuse to provide the loan if adequate protection is not included.

The bundling of products to obtain lower interest rates makes, de facto, almost mandatory the mortgage insurance.

In any case, that mortgage insurance should not be mandatory and the mortgage lenders should submit two different offers, with a mortgage insurance and without, to clearly identify the impact of the insurance on the total price of the mortgage and the advantages in terms of lower interests on the mortgage life-span.

Conclusions

Stakeholders did not raise specific concerns with regard to mortgage insurance. Problems seem mainly related to the bundling of the insurance with the mortgage and the lack of transparency. In order to improve the switching, and in order for the customer to keep the financial advantages it could be adopted a solution including:

- Annual termination at choice of the borrower, with a prior notice.
- Capped fees for termination of the insurance.

Clear information concerning the non-obligation of the insurance should be provided with different offers presenting the mortgage cost with the insurance and without it.

6.2.5 Home insurance

6.2.5.1 Lot 1: Legislative measures: *Hamon Law Overview*

The French Loi Hamon introduced in 2016 provides that policyholders are free to terminate their insurance contract at any moment after the first year. It adds the freedom of choosing the date of termination of their insurance policy.

Importantly, the legislation allows the new insurer to act on behalf of the policyholder. When the insured person enters into a contract with the new insurance, the new service provider takes charge of all the administrative aspects of terminating the previous contract. The insured who exercises his right of cancellation may not incur any costs or penalty. Once the termination is obtained, the insured is only required to pay the portion of his insurance contribution corresponding to the period during which he benefited from the cover. In case of advanced payment, or yearly payment, the former insurer must refund the balance to the policyholder within 30 days from the date of termination of the contract.

In Sweden, the insurance contracts can be terminated at any time, without having to wait a specific date.

All the examined Member States provide for the right to give termination notice of the insurance contract, albeit with different timelines, to the insurer, in order to change home insurance. In some cases, like Belgium, a three-month notice seems quite long, compared to a general 30-day's notice. In case of Italy, termination is allowed only if the policyholder is in order with the insurance's premium payments at the time of termination. Few comments³¹³ were made concerning the bundling of products, including the difficulties to switch in case the home insurance is bundled with mortgage and mortgage insurance, some required more transparency in offering lower interest rates when the mortgage includes insurance products.

Conclusions

No specific concerns have been raised concerning home insurance from the interviewed stakeholders and the legal analysis did not identify relevant barriers since it is always possible to terminate the insurance yearly. A solution modelled on the Loi Hamon would certainly increase the consumer protection, allowing the consumers to take advantage of new offers without having to wait for the annual date for termination.

³¹³ French UCF que choisir and the Spanish National Authority.

7 Conclusions

This study consisted of three main tasks:

- Task 1: assess the savings forgone by consumers as a result of not switching to more advantageous products;
- Task 2: provide a comprehensive overview of the legal and commercial barriers to switching retail financial products;
- Task 3: provide a comprehensive overview of existing (and prospective) measures to increase switching rates across selected financial products.

This section presents the conclusions for each of these tasks in turn.

7.1 Task 1

Task 1 focused on two distinct products, namely residential mortgages and payment accounts. Results for each are presented separately.

7.1.1 Residential mortgages

According to the survey of mortgage consumers (based on the sample of 14 Member States), the percentage of all consumers who currently hold a mortgage loan who would benefit from switching varies significantly (e.g. 22 per cent in Sweden compared to 78% in Portugal). Of those who would benefit from switching, the percentage who switched ranged from 2 per cent in Latvia to 37 per cent in the UK.

The analysis indicates that the average monthly saving from switching, per consumer, had a broad range, with the largest average monthly savings observed in selected eurozone countries, namely the Netherlands (EUR 110 per month), Germany (EUR 87 per month) and Austria (EUR 65 per month). Across the entire sample of 14 Member States, the aggregate savings could reach up to EUR 1.7 bn per month, or over EUR 20 bn per year.

The key driver of the average monthly savings is the spread in interest rates between current and past mortgages. In essence, the greater the spread in interest rates between the previous and current mortgage, the greater the average monthly savings for the customer.

Not all consumers would benefit from switching and there are some consumers who would have been worse off had they done so. Reasons for this include the inability to evaluate the optimal deal at a given point in time (e.g. lower level of financial literacy), confusing presentation of details of the mortgage offer, or the time at which the switch took place (e.g. prior to a material fall in interest rates on the market or after a substantial change in forex for foreign-denominated loans). Consequently, this group of customers ends up paying more than they used to, typically because of higher interest rates on the new mortgage compared to the previous one. The percentage of such consumers with 'negative savings' (as a share of all those who switched in a given Member State) varied from 3 per cent in the Netherlands to 32 per cent in France.

These estimates refer to switching within an existing lender ('internal switching') and to a new lender ('external switching'). The estimates do not take account of the value of the time that the consumer invests in the switching process, fees related to switching (see Sections 5.2.8.2 and 5.2.8.4), and (if relevant) forgone benefits stemming from 'bundling' of mortgages and other products (e.g. saving accounts or personal loans with promotional interest rates). The estimates of the average monthly savings and aggregate level thus constitute 'upper bound' estimates.

7.1.2 Payment accounts

It is methodologically challenging to quantify the savings forgone as a result of not switching payment accounts. This is because the costs of holding a payments account in any given year are driven by usage patterns. These vary from consumer to

consumer and also vary on an annual basis for the same consumer, depending on personal circumstances (e.g. use of overdraft) and the external environment (e.g. interest rates). It is not possible, therefore, to reliably define an average usage pattern or consumer profile.

This study adopted an alternative approach to determining the potential savings from switching by extrapolating from the self-reported savings of those who switched.

The headline results of the research are as follows:

- Across the sample of 14 countries, 83 per cent of the population aged 18-64 reported having a payment account;
- 10 per cent of payment account holders reported having switched their payment account, either with the same provider (27 per cent) or another provider (73 per cent) in the last three years;
- Almost half of those who switched (47 per cent) reported having benefitted financially from switching. Conversely, 41 per cent claimed that they had not benefitted financially from switching, while 11 per cent did not know whether they had benefitted financially or not;
- The average self-reported savings per year amounted to EUR 79. The survey response patterns suggest that consumers may have difficulties in correctly recalling the costs of their payment accounts and the savings resulting from switching;
- Extrapolating the average annual savings reported by consumers who benefitted financially from switching (EUR 79) to consumers who might benefit from switching (defined as payment account users who have not switched in the last three years), the potential scale of annual savings from switching payment accounts amounts to EUR 884 million across the 14 Member States sampled.

These estimates on savings should be interpreted with caution, as they are based entirely on *self-reported* savings and the payment accounts' usage pattern of survey respondents whose reported savings from switching may not be representative of payment account users.

7.2 Task 2

Task 2 focused on five products: residential mortgages, payment accounts, saving accounts and home insurance products. Results for each product are presented separately and distinguish between legal and commercial barriers.

7.2.1 Residential mortgages

Across the Member States, the legal landscape for mortgages is diverse, which impacts switching capability. While many Member States provide some options that make switching easier, costs related to the notary deed, fees for registering mortgages, and the complexities of registration and removal from the public registry can represent significant obstacles. These, however, could potentially be simplified or removed.

Some jurisdictions have legal frameworks that are very consumer-friendly (e.g. Italy) and may serve as an example for other Member States. Some specific legal measures, such as the Hamon Law in France, have the potential to increase a consumer's likelihood of switching.

Possible legal measures analysed as part of Task 3 could increase the switching rate by shifting the balance between the lender and the borrower to benefit the latter, for example, the possibility of unilateral early repayment of the mortgage at any time and without any other type of limitation (or lender's compensation). Such measures could imply certain trade-offs - such as higher mortgage prices - given the possible

'mutualisation of costs', and/or a reduction in the types of mortgage product available, as banks would be less keen to bear increased risk (in particular for fixed-rate mortgages). A number of stakeholders (including national regulators) agree that the existing provisions provided by the MCD are suitable. Here, again, the example of Italy's consumer-friendly provisions on early repayment, combined with comparatively low prices of residential mortgages, provides an intriguing case study.

In the context of incentivising cross-border mortgage switching, the common mortgage instrument (*Eurohypotheck*) could have the potential to enhance the share of cross-border borrowing and subsequently the switching of mortgages (notwithstanding the strong scepticism expressed by some stakeholders). Any serious consideration of such a *Eurohypotheck* would require further research into its feasibility and potential costs and benefits.

The neo-banks, such as N26, Monzo and Revolut, have certainly had an impact on switching rates of payment accounts, although there are limited data available to gauge how meaningful that impact has been. Their entrance and competitive offers vis-à-vis the main retail banks may allow consumers to maximise their gains in a different way. Rather than switching, they may 'multibank' and adjust their usage pattern to optimise the benefits offered by more than one provider.

The study also found that the introduction of ANP, while potentially adding to consumers' ability to switch, would not bring much added value in those Member States where lower switching of payment accounts may be more a matter of consumer inertia than existing legal and commercial barriers. The cost to industry of its implementation could be substantial and the material benefits for consumers uncertain.

7.2.2 Payment accounts

The PAD and its transposition by Member States provided a sound legal framework, allowing consumers to switch payment service provider easily and swiftly.

However, some limitations to switching may emerge from the interaction between the PAD and other legislative acts, primarily the national rules on mortgages.

In certain cases, the transfer of a payment account linked to a mortgage is complicated by the fact that the national legislation allows bundled products (under both PAD and MCD) or because the mortgage is considered an 'outstanding obligation' that prevents the payment account from being closed and/or making full use of the options provided by the PAD.

One of the most common issues related to switching is the fees for terminating the payment account. Few Member States explicitly prohibit payment service providers from imposing a fee related to the closing or switching of a payment account.³¹⁴ In the remaining Member States, fees may be charged as long as they are reasonable and correspond to the actual costs incurred by the provider.

Even where the legal framework allows banks to charge fees for switching, commercial practice often saw banks not imposing these charges, instead allowing consumers to switch free of charge (e.g. in UK). In addition, some banks offer incentives (e.g. one-off lump sums or cashback) for switching payment accounts, in order to attract new customers.

7.2.3 Saving accounts

Saving accounts are not covered by the PAD's switching rules. In some cases, the provisions of national legislations transposing the PAD are also applicable to the switching of saving accounts as long as they can be assimilated to payment accounts. In others, however, the lack of a specific legal framework for switching saving

³¹⁴ Namely BE, DE, FR, HR, IT, LT, LV, PT.

accounts could represent a regulatory barrier. This is the case for saving accounts with lock-in periods during which the deposited amount may not be withdrawn without forfeiting the deposit rate. Another case in point is where the saving account is used as an investment account, with a linked investment portfolio. For saving accounts with investment products, transfer fees can be a relevant obstacle.

Other than Belgium and France, where specific provisions for switching of saving accounts are provided, the remaining Member States allow moving from one bank to another only by opening a new saving account and closing the previous one.

The legislative framework on information on saving accounts varies considerably between the Member States examined. General banking obligations require customers to be provided with all of the necessary pre-contractual information, but the level of information may differ depending on the type of account.

Fees for closing saving accounts are not regulated in most of the Member States analysed, except for Italy and Belgium. The remaining Member States have no specific provisions on closing fees, instead leaving their amount and imposition to the discretion of the contracting parties. Some stakeholders noted that when banks do not apply fees to the closing of payment accounts, they compensate by increasing the fees for saving products, which are not capped.

7.2.4 Mortgage insurance

In general, mortgages offered by banks, credit institutions or other financial intermediaries are backed by insurance contracts to guarantee repayment of the amounts borrowed.

The stakeholders interviewed did not raise particular concerns about mortgage insurance, although several noted that switching insurance may be complicated by product bundling. The legal analysis showed that there is a general lack of transparency in the information provided to consumers. National legislation does not provide for minimum information for consumers that could be used to compare options and the costs.

All of the Member States examined provide for the possibility to terminate mortgage insurance before its expiry date and to change providers. Typically, automatic renewal of the contract on its annual expiration is the rule. Only France provides for a specific legal framework for switching mortgage insurance, likely because mortgage insurance is mandatory. Under the French legislative provisions, the policy holder may switch insurance provider at any time without affecting the mortgage contract but they must provide the bank with another insurance policy with the same conditions as the terminated policy. In all other Member States, termination is subject to prior notice of the annual expiration (or at any moment, such as in Sweden).

The national legal framework for information and exit fees related to mortgage insurance is heterogeneous: many Member States provide for mandatory information while others apply general information rules for insurance, and still others do not provide for any specific information requirements (e.g. Denmark, France).

7.2.5 Home insurance

No specific legal barriers in respect of switching home insurance have been identified across the examined Member States.

General rules on non-life insurance apply, including automatic renewal and termination. Most banks will require a client who applies for a mortgage to take out home insurance.

No specific provision on the switching of home insurance has been identified in the analysed Member States, with the exception of France and Italy. France provides an insurance subrogation where the new insurance company is responsible for all of the administrative and contractual aspects of the switching process.

All of the examined Member States, in their contract law provisions, ensure the right to give termination notice of the insurance contract, albeit with different timelines. While none specify any transparency obligations when switching insurers, general pre-contractual information rules apply.

No specific references to the fees applicable to home insurance have been identified, with the exception of France and Italy. Fees are usually at the contractual discretion of insurance provider and consumer.

No specific commercial barriers have been identified by consumers in respect of home insurance. The bundling of mortgages with other ancillary products, including home insurance, in order to obtain better rates has been indicated as an element that may increase the complexity of the switching process.

While no specific legal and commercial barriers have been identified, a solution modelled on the French Loi Hamon would likely increase consumer protection, allowing consumers to take advantage of new offers from other insurance providers without having to wait for the annual termination date.

7.3 Task 3

The findings from Task 3 were driven primarily by the results of the analysis of the existing legal and commercial barriers in Task 2. Potential remedies were sought to the key barriers identified under Task 2. In addition, some measures stemming from existing/ prospective market initiatives, such as new services offered by the fintech industry, complemented the set of remedies that could potentially unlock the market and increase switching rates.

The term 'measure' was considered broadly under Task 3. In addition to possible changes in existing laws, it includes some market developments, such as the expansion of neo-banks, the introduction of ANP with respect to payment accounts, or the role of financial advisors/ brokers in the UK that have been very effective in encouraging consumers to switch mortgages.

Overall, the study finds that there is no single measure, whether a well-tailored legal provision or new service/ market structure, that could be implemented seamlessly in isolation (or replicated easily across the Member States) to increase the switching rate. However, there seems to be greater scope for an incremental improvement among some products than others, e.g. potentially more opportunities for residential mortgages – as complex products with legal frameworks varying significantly across Member States – than for the payment accounts market that already exhibits limited barriers and where lower switching rates may be somewhat driven more by consumer inertia than other barriers.

The study finds that there are some specific characteristics of the market that may be (very) conducive for switching, for example the role of mortgage intermediaries in the UK that advise UK consumers to switch. A similar market structure may be challenging to replicate in other Member States, however, as the UK arrangement is very much linked to the particular structure of the mortgage product, which provides a window of opportunity to engage with consumers and bring financial incentives to consumers stemming from both internal and external switching. Given the differences in national legislative regimes, the UK-based mortgage intermediaries do not exhibit an appetite for cross-border expansion.

Some jurisdictions have legal frameworks that are comparatively consumer-friendly (most notably, Italy) and may serve as a relevant example for other Member States. In the same vein, some distinct legal measures, such as Hamon Law in France, have the potential to increase consumers' propensity to switch.

Certain legal measures analysed as part of Task 3 may be likely to shift the balance between the lender and the borrower to the benefit of the latter, such as the possibility of unilateral early repayment of the mortgage by the borrower at any

moment and without any type of other limitation (or compensation) and could potentially increase the switching rate. These may also imply some trade-offs, however, such as increased price of the mortgages given the possible 'mutualisation of costs' by consumers and/or a reduction in the types of mortgage products available, as banks would be less keen to bear an increased risk (e.g. in particular for fixed-rate mortgages). Here, a number of stakeholders (including national regulators) agreed that the existing provisions provided by the MCD are suitable. The example of Italy, with its consumer-friendly provisions on early repayment and simultaneous comparatively low prices of residential mortgages, continues to present an intriguing case.

In the context of incentivising cross-border mortgage switching, the common mortgage instrument (*Eurohypothec*) may have the potential to enhance the share of cross-border borrowing and subsequently the switching of mortgages. Some stakeholders expressed their strong scepticism about such a product, and any serious considerations of *Eurohypothec* would indeed warrant further research to provide robust evidence of its feasibility and potential costs and benefits.

While the neo-banks such as N26, Monzo or Revolut have assuredly had an impact on switching rates of payment accounts, there is very limited data to gauge how meaningful that impact has been. Yet, the entrance and competitive offers they may provide vis-à-vis the main retail banks may allow consumers to maximise their gains in a different way. Rather than switching, they may 'multibank' and adjust their usage pattern to optimise the benefits offered by more than one provider.

The study also found that the introduction of ANP, while potentially adding to the consumer's ability to switch, could not bring much added value in many Member States, where lower switching of payment accounts may be more of a matter of consumer inertia than existing legal and commercial barriers. In addition, the costs to industry of implementing ANP could be substantial and the material benefits for consumers uncertain.

8 Recommendations

In light of the findings from all three tasks, the following recommendations have emerged:

Task 1:

- Given the considerable number of consumers who incur negative savings from switching mortgage (e.g. up to 32 per cent in France), further research may be needed to explore the scale of the phenomenon and the underlying reasons (consumer financial literacy, lack of clarity in presenting mortgage offers resulting in sub-optimal consumer decisions, etc.);
- This research suggests that consumers are systematically overestimating or failing to determine the savings from switching payment accounts. Consumers are similarly unaware of the cost of their payment account, despite the PAD requirement of annual fee statements. The Commission and Member State authorities should consider measures to promote financial literacy in respect of mortgages (which represent a significant share of household income) and payment accounts.

Task 2:

- While the MCD provides for a cap on early repayment (the maximum loss of the creditor), a precise definition (such as a percentage of interest due or outstanding balance, as introduced by most Member States, by law or guidelines/codes of conduct issued from the industry itself) would allow the borrower to calculate the costs in advance. Grounding the amount of early

repayment compensation in standardised parameters would considerably reduce the differences between credit institutions' calculation of the amounts due, improving legal certainty and overall transparency. This would relieve consumers' information burdens and might discourage poor commercial practices by limiting the scope of credit institutions' discretionary decisions;

- Apart from the costs linked to early repayment, switching usually entails other costs (e.g. registration, notary and legal fees, taxes). Reducing these costs may make switching more appealing to consumers. Italy's consumer-friendly legislation could be considered a benchmark model, where the law states that switching mortgages is free of charge, except for a notary tax of EUR 35 EUR. Other (more limited) examples are the Spanish Mortgage Credit Law of 2019, which requires the new lender to pay all expenses except valuation, or the Danish Registration Fee Act as amended in 2019, which provides for the reuse of the registration fees. While such provisions in other Member States are too recent to assess their effects, the Italian experience dates back to 2007 and demonstrates that even the most consumer-friendly framework can sit comfortably alongside the lowest mortgage prices in the EU and generate high switching levels;
- To increase transparency in mortgage switching, an approach similar to that of the January 2019 Irish reform could be considered. This reform requires lenders to inform both borrowers on a fixed-rate mortgage (at least 60 days before the expiry of the fixed rate) and on variable-rate mortgages (annually) about other options that might be available to them (such as cheaper interest rates), or other products that could save them money. Under Irish law, lenders are also obliged to provide a link to the Competition and Consumer Protection Comparison website. The obligation to provide an indicative comparison with alternative or new rates offered by the bank, together with the link to the official comparison website, enhances consumer information on the switching options available. This could also tackle the persistent issue of consumer inertia, exemplified by their reluctance to search and compare market alternatives. This intervention assumes that all of the comparison websites required by the PAD are in place;
- For those markets where mortgage intermediaries are involved in a substantial share of mortgage deals concluded (UK, NL, BE), stakeholders see no need to amend the MCD. Any proposed changes to the MCD that would refer directly to mortgage intermediaries must consider the need for full clarity in the delineation of responsibility between mortgage intermediaries and lenders;
- The ESIS should be provided to the creditor before the binding offer and the reflection period, 30 days before the contract is signed, in order to ensure a careful consideration and the comparability of the different offers;
- While most Member States have simplified rules for mortgage contracts in order to make switching easier, certain legislative provisions – notably those related to the registration, transfer and cancellation of the security – should be simplified in order to make switching easier.

Task 3:

- Cross-border purchases and mortgage switching remain rare. There are a number of potential barriers on both the demand side (e.g. language barriers) and the supply side (e.g. potential costs for lenders to price the risk of differences in national mortgage regimes). The study has not identified a clear-cut solution to this complex problem. While some experts believe that the *Eurohypotheec* has substantial potential in this regard, some key stakeholders disagree. A comprehensive cost-benefit study would be a prerequisite to seriously revisiting this concept;

- Brexit is looming, with the threat of negative consequences for the breadth and depth of cooperation between the EU and the UK in the area of financial services. Given the sophistication and competitiveness of the UK market, its buoyant fintech industry and high quality regulatory work conducive to innovation, DG FISMA should continue to monitor market and policy developments within and outside the EU (including ongoing engagement with local regulators, such as the FCA in the UK) to identify and (possibly) adopt tools and measures that facilitate switching;
- The Commission could consider organising an annual fintech competition to encourage, recognise and award innovation that makes switching easier for consumers.

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