



EBA/DP/2014/03

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## Discussion Paper

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Draft requirements on passport notifications for credit  
intermediaries under the Mortgage Credit Directive

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# Contents

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<b>1. Responding to this Discussion Paper</b>	<b>3</b>
<b>2. Executive Summary</b>	<b>4</b>
<b>3. Background and rationale</b>	<b>5</b>
Background	5
Rationale	5
<b>4. Discussion</b>	<b>6</b>
4.1 Introduction	6
4.2 Draft requirements on passport notifications for credit intermediaries under the MCD	7
Annex 1: Draft notification form for exercising the freedom to provide services	10
Annex 2: Draft notification form for exercising the freedom of establishment	12
Annex 3: Summary of questions	14

# 1. Responding to this Discussion Paper

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions stated in the boxes below (and in Annex 3 of this paper).

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the view expressed;
- describe any alternatives the EBA should consider; and
- provide where possible data for a cost and benefit analysis.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 12.03.2015. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the [Legal notice section](#) of the EBA website.

## Disclaimer

The views expressed in this discussion paper are preliminary and will not bind in any way the EBA in the future development of the draft passporting requirements for mortgage credit intermediaries. They are aimed at eliciting discussion and gathering the stakeholders' opinions at an early stage of the process.

## 2. Executive Summary

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Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (“Mortgage Credit Directive”, or “MCD”) requires coordination, cooperation and information exchanges between competent authorities of different Member States (MS).

Article 32 of the Mortgage Credit Directive provides that an admitted credit intermediary intending to carry out business for the first time in one or more Member States under the freedom to provide services or when establishing a branch shall inform the competent authorities of its home Member State. Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member States concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification.

Additional details are provided in Article 33(2), which requires the competent authority of the home Member State to notify the competent authority of the host Member State where the admission of a credit intermediary is withdrawn.

To ensure that the provisions of the MCD on passport notifications are applied consistently across the European Union, the EBA is hereby proposing to formalise the passport notifications that are to be made by competent authorities from the transposition date of the MCD (of 21 March 2016) onwards. In this discussion paper, the EBA, therefore, presents draft requirements on passport notifications and draft template notification forms for exercising the freedom to provide services and for exercising the freedom of establishment under the MCD. The EBA is publishing the discussion paper in order to give early indications to market participants about future requirements and to receive input for the finalisation of the requirements.

## 3. Background and rationale

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### Background

Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (“Mortgage Credit Directive”, or “MCD”) requires coordination, cooperation and information exchanges between competent authorities of different Member States (MS).

Article 32 provides that an admitted credit intermediary intending to carry out business for the first time in one or more Member States under the freedom to provide services or when establishing a branch shall inform the competent authorities of its home Member State. Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member States concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification.

Additional details are provided in Article 33(2), which requires the competent authority of the home Member State to notify the competent authority of the host Member State where the admission of a credit intermediary is withdrawn.

### Rationale

The EBA is interested in ensuring that the above provisions are applied consistently across the European Union, with a view to fulfil the EBA’s overall objective, as set out in Article 1(5) the EBA regulation, of ensuring the consistent, efficient and effective application of the acts that fall into the EBA’s scope of action and of fostering supervisory convergence across Member States. To that end, the EBA is hereby proposing to formalise the passport notifications that are to be made by competent authorities from the transposition date of the MCD (of 21 March 2016) onwards.

In this discussion paper, the EBA presents draft requirements on passport notifications and draft template notification forms for exercising the freedom to provide services and for exercising the freedom of establishment under the MCD. The EBA is publishing the discussion paper in order to give early indications to market participants about future requirements and to receive input for the finalisation of the requirements.

The final requirements will be published after consultation and once Member States have progressed with the transposition of the MCD in their national jurisdictions.

## 4. Discussion

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### 4.1 Introduction

1. Article 32(1) of Directive 2014/17/EU (Mortgage Credit Directive) (MCD) provides that a credit intermediary as defined in Article 4(5) MCD may provide the services or perform the activities, for which it has been admitted, throughout the European Union, either through the establishment of a branch or the free provision of services.

#### **Scope of the requirements**

2. These requirements deal exclusively with notifications in respect of credit intermediaries under Article 32 of the Mortgage Credit Directive, and do not extend to the method and means of supervision of credit intermediaries operating on a cross-border basis.
3. Whilst these requirements do not deal with the definition or characteristics of the right of establishment and the freedom to provide services, reference can be made to the Commission's Interpretative Communication.<sup>1</sup>

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<sup>1</sup> FREEDOM TO PROVIDE SERVICES AND THE INTEREST OF THE GENERAL GOOD IN THE SECOND BANKING DIRECTIVE  
[http://ec.europa.eu/internal\\_market/bank/docs/sec-1997-1193/sec-1997-1193\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/sec-1997-1193/sec-1997-1193_en.pdf)

## 4.2 Draft requirements on passport notifications for credit intermediaries under the MCD

### Exercise of the freedom to provide services

Contents of the notification made by the competent authority of the home Member State to the competent authority of the host Member State in relation to the provision of services

4. The competent authority of the home Member State should transmit to the competent authority of the host Member State a notification with the following contents:
  - a. the host Member State in which the credit intermediary intends to carry out its activities;
  - b. the name, head office address and registration number of the credit intermediary;
  - c. the web address of the online register of the home competent authority where details about the intermediary may be found;
  - d. the name of the current competent authority in the home Member State;
  - e. to the extent available in the register of the home competent authority, the services which the credit intermediary intends to provide in the host Member State;
  - f. where applicable, the name and registration number of the creditor(s) to which the credit intermediary is tied or on whose behalf he is exclusively acting and, in such cases, confirmation that the creditor(s) take full and unconditional responsibility for the credit intermediary's activities;
  - g. date of birth in case of natural person; and
  - h. the date of notification by the home competent authority to the credit intermediary, in accordance with Article 32(3) (3) MCD.

### Exercise of the freedom of establishment

Contents of the notification made by the competent authority of the home Member State to the competent authority of the host Member State in relation to the establishment of a branch

5. The competent authority of the home Member State should transmit to the competent authority of the host Member State a notification with the following contents:
  - a. the host Member State in which the credit intermediary intends to establish a branch;
  - b. the name, head office address and registration number of the credit intermediary;

- c. the web address of the online register of the home competent authority where details about the intermediary may be found;
- d. the name of the current competent authority in the home Member State;
- e. the address of the proposed branch;
- f. the name(s) of those responsible for the management of the proposed branch;
- g. to the extent available in the register of the home competent authority, the services which the credit intermediary intends to provide in the host Member State;
- h. date of birth in case of natural person;
- i. where applicable, the name and registration number of the creditor(s) to which the credit intermediary is tied or on whose behalf he is exclusively acting and, in such cases, confirmation that the creditor(s) take full and unconditional responsibility for the credit intermediary's activities; and
- j. the date of notification by the home competent authority to the credit intermediary, in accordance with Article 32(3) (3) MCD.

### **Transmission of the notification**

6. The required information should be communicated by the competent authority of the home Member State to the competent authority of the host Member State(s) using the notification templates set out in Annexes 1 and 2 as appropriate. Where there are multiple notifications to communicate, competent authorities may communicate the required information in a spreadsheet using the headings set out in Annexes 1 and 2.
7. Competent authorities should provide the required information in writing in a language accepted by the competent authority in the host Member State.
8. Competent authorities should transmit the required information by electronic means where possible and acceptable to the relevant competent authorities. Where this is not possible or acceptable post should be used. Where post is used, the notification should be sent by the home competent authority, allowing sufficient time for the notification to reach the host competent authority, within the one month time frame specified in Article 32(3) (i.e. one month from the date of notification by the firm to the home competent authority).
9. Competent authorities should make the following information publicly available:
  - a. the languages accepted by competent authorities;
  - b. the address to which passport notifications are to be sent if submitted by post; and
  - c. any electronic means by which passport notifications may be submitted and any relevant contact details.



## Registration

10. The competent authority of the home Member State should update their public register with the necessary information, as set out in more detail in Article 29 MCD, in a timely manner:
  - a. the names of the person(s) within the management who is/are responsible for the credit intermediation business;
  - b. the Members State(s) into which the credit intermediary has passported, and whether under the freedom of establishment or the freedom to provide services; and
  - c. whether the credit intermediary is tied or not.
11. In addition, the competent authority of the host Member State should make available on its public register within one month the information contained in the notification from the home Member State. Such details should consist of at least the following:
  - d. the name, head office address and contact details of the credit intermediary;
  - e. the names of the person(s) within the management who is/are responsible for the credit intermediation business;
  - f. the Members State(s) into which the credit intermediary has passported, and whether under the freedom of establishment or the freedom to provide services; and
  - g. whether the credit intermediary is tied or not.

## Notification of changes to the information in the initial notification

12. The competent authority of the home Member State should notify the cessation or modification of passported activities or of 'static data' (e.g. change of name or address) to the host competent authority as soon as possible and at the latest within one calendar month, by any appropriate means.

### Question 1

1. Do you agree with the draft requirements on passport notifications? If not, outline why you disagree and how the requirements could be improved. Please respond separately for each of the requirements.

## Annex 1: Draft notification form for exercising the freedom to provide services

1	Date of transmission of this notification from the home to the host competent authority	DD/MM/YYYYY
2	Member State	
3	Type of notification	<input type="checkbox"/> First notification <input type="checkbox"/> Change to previous notification
4	Name of credit intermediary	
5	Date of birth in case of natural person	DD/MM/YYYYY
6	Home State registration number	
7	Head office address	
8	E-mail	
9	Telephone number	
10	Fax number	
11	Name of home competent authority	
12	Web address of the online register	
13	To the extent available, services to be provided by the credit intermediary in the host Member State	<input type="checkbox"/> offers/presents credit agreements <input type="checkbox"/> assists in preparatory/pre- contractual administration work <input type="checkbox"/> concludes credit agreements <input type="checkbox"/> provides advisory services
14	Tied credit intermediary	<input type="checkbox"/> Yes <input type="checkbox"/> No

15	<p>In the case of a tied credit intermediary:</p> <p>a) Name and registration number of the creditor(s) or groups to which the intermediary is tied in the host Member State</p> <p>b) Whether the credit intermediary is exclusively tied to only one creditor</p> <p>c) Confirmation that the creditors take full and unconditional responsibility for the credit intermediation activities</p>	<p>a) .....</p> <p>b) .....</p> <p>c) .....</p>
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**Question 2**

2. Do you agree with the content of the draft notification form for exercising the freedom to provide services set out in Annex 1? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.

## Annex 2: Draft notification form for exercising the freedom of establishment

1	Date of transmission of this notification from the home to the host competent authority	DD/MM/YYYY
2	Member State	
3	Type of notification	<input type="checkbox"/> First notification <input type="checkbox"/> Change to previous notification
4	Name of credit intermediary	
5	Date of birth in case of natural person	DD/MM/YYYY
6	Home State registration number	
7	Head office address	
8	E-mail	
9	Telephone number	
10	Fax number	
11	Name of home competent authority	
12	Web address of the online register	
13	Branch details <ul style="list-style-type: none"> <li>• Address</li> <li>• Telephone number</li> <li>• E-mail</li> <li>• Fax number</li> </ul>	
14	Name(s) and date(s) of birth of natural person(s) responsible for the management of the branch	
15	To the extent available, services to be provided by the credit intermediary in the host Member State	<input type="checkbox"/> offers/presents credit agreements <input type="checkbox"/> assists in preparatory/pre-contractual administration work <input type="checkbox"/> concludes credit agreements <input type="checkbox"/> provides advisory services

16	Tied credit intermediary	<input type="checkbox"/> Yes <input type="checkbox"/> No
17	In the case of a tied credit intermediary:  a) Name and registration number of the creditor(s) or groups to which the intermediary is tied in the host Member State  b) Whether the credit intermediary is exclusively tied to only one creditor  c) Confirmation that the creditors take full and unconditional responsibility for the credit intermediation activities	a)  b)  c)

**Question 3**

3. Do you agree with the content of the draft notification form for exercising the freedom of establishment set out in Annex 2? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.

## Annex 3: Summary of questions

1. Do you agree with the draft requirements on passport notifications? If not, outline why you disagree and how the requirements could be improved. Please respond separately for each of the requirements.
2. Do you agree with the draft notification form for exercising the freedom to provide services set out in Annex 1? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.
3. Do you agree with the content of the draft notification form for exercising the freedom of establishment set out in Annex 2? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.