

EBA/GL/2024/10

28 June 2024

Final Report on Guidelines amending Guidelines EBA/GL/2015/12 on arrears and foreclosure

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1. Executive Summary

Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (the Mortgage Credit Directive or 'MCD')¹ was adopted on 4 February 2014, published on 28 February 2014 and is applicable since 21 March 2016.

The MCD aimed at bringing about a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to immovable property. In particular, Article 28 of the MCD introduced provisions in the area of arrears and foreclosure, requiring Member States (MS) to adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated.

In order to ensure that the high-level provisions of Article 28 MCD were implemented and supervised consistently across the EU MS, and to support the transposition of the Directive, in June 2015 the EBA issued Guidelines on arrears and foreclosure (EBA/GL/2015/12)². These Guidelines became applicable, like the MCD, on 21 March 2016 and provide greater detail on how effect should be given to the relevant MCD provisions in Article 28.

In December 2021 the separate Credit Servicers Directive (CSD, also referred to as Non-Performing Loans or Loan Servicers Directive),³ entered into force and, since its application date of 29 December 2023, regulates the sale, purchase, and servicing of non-performing loans (NPLs). However, the CSD also introduced amendments to other EU law including the MCD. More specifically, Article 28(2) CSD amended the aforementioned Article 28 MCD. It did so by inserting into Article 28 *near verbatim* the text of Guideline 4 of the EBA Guidelines on arrears and foreclosure, which cover the resolution process between creditor and borrower.

The EBA assessed the impact of this amendment and concluded that, in order to adhere to the principle that EBA Guidelines must not repeat, amend or contradict requirements set out in Level 1 legislation, said Guidelines need to be amended.

Given that the changes are made because parts of these guidelines are now effectively included in binding Union law under the MCD without changing the requirements in aggregate, the EBA concluded that it would be disproportionate to request and invite the wider public to respond

¹ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, OJ L 60, 28.2.2014, p. 34–85, [Directive - 2014/17 - EN - Mortgage Credit Directive - EUR-Lex \(europa.eu\)](#)

² [Guidelines on arrears and foreclosure | European Banking Authority \(europa.eu\)](#), available here <https://www.eba.europa.eu/legacy/regulation-and-policy/regulatory-activities/consumer-protection-and-financial-innovation-6>

³ Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU, OJ L 438, 8.12.2021, p. 1–37 [Directive - 2021/2167 - EN - EUR-Lex \(europa.eu\)](#)

to a public consultation or to develop a cost benefit analysis. Instead, in line with Article 16(2) of the EBA Founding Regulation (EU 1093/2010),⁴ the EBA requested advice from the members of its Banking Stakeholder Group (BSG) prior to publication of this document, who took note of the approach taken and did not raise concerns.

Next steps

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be [two months after publication of the translations into the EU official languages]. The guidelines will apply from [two months after publication of the translations into the EU official languages].

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12-47, [EUR-Lex - 02010R1093-20210626 - EN - EUR-Lex \(europa.eu\)](#)

2. Background and rationale

1. Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (the Mortgage Credit Directive or 'MCD') was adopted on 4 February 2014, published on 28 February 2014 and is applicable since 21 March 2016. The MCD aimed at bringing about a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to immovable property, while promoting sustainable lending and borrowing and financial inclusion, and hence providing a high level of consumer protection.
2. In order to ensure that the high-level provisions of Article 28 MCD were implemented and supervised consistently across the EU MS, and to support the transposition of the Directive, in June 2015 the EBA issued Guidelines on arrears and foreclosure (EBA/GL/2015/12). These Guidelines became applicable, like the MCD, on 21 March 2016 and provide greater detail on how effect should be given to the relevant MCD provisions in Article 28, by setting out requirements on the (i) establishment of policies and procedures, (ii) engagement with the consumer, (iii) provision of information and assistance to the consumer, (iv) resolution processes, and (v) documentation of dealings with the consumer and retention of records.
3. In December 2021 the separate Credit Servicers Directive (CSD, also referred to as the Non-Performing Loans or Loan Servicers Directive) entered into force and, since its application date of 29 December 2023, regulates the sale, purchase, and servicing of non-performing loans. However, the CSD also amended, in its Article 28, provisions in other Directives, in particular aforementioned Article 28 of the MCD. It did so by inserting into Article 28 near verbatim the text of Guideline 4 of the EBA Guidelines on arrears, which cover the resolution process between creditor and borrower.
4. The EBA assessed the impact of this amendment and concluded that, in order to adhere to the principle that EBA Guidelines must not repeat, amend or contradict requirements set out in Level-1 legislation, said Guidelines need to be amended. Consequently, through the Amending Guidelines on hand, Guideline 4 on the resolution process has been deleted from the EBA Guidelines on arrears and foreclosure. In addition, as a consequential and non-substantive change, Guideline 5 (on documentation of dealings with the consumer and retention of records) has been changed to replace the old reference to Guideline 4 with the reference to the now amended Article 28(1) MCD.
5. Finally, the amending Guidelines contain two other consequential and non-substantive changes. First, the Guidelines contained a special regime in relation to national authorities designated as competent (NCAs) under the MCD that are not also NCAs under the EBA Regulation. This regime is no longer needed as a result of changes made in 2020 to the definition of 'competent authorities' in the EBA Founding Regulation (EU 1093/2010) and has therefore been deleted. Second, these amending Guidelines replace the previous reference to the CEBS Guidelines on outsourcing, which

were repealed in 2019, with a reference in new Guideline 6 to the more recent EBA Guidelines on outsourcing arrangements.⁵

6. Given that the only substantive change that is made is a result of a particular requirement of the Guidelines having been reproduced elsewhere in the regulatory framework without changing the requirements in aggregate, and that the other changes are merely of a non-substantive and administrative nature, the EBA concluded that it would be disproportionate to request and invite the wider public to respond to a public consultation or to develop a cost benefit analysis. Instead, in line with Article 16(2) of Regulation (EU) No 1093/2010, the EBA requested advice from the members of its Banking Stakeholder Group (BSG) prior to publication of this document, who took note of the approach taken and did not raise concerns.

⁵ EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02), [EBA BS 2019 xxx \(EBA Draft Guidelines on outsourcing arrangements\).docx \(europa.eu\)](#)

3. Guidelines

EBA/GL/2024/10

28 June 2024

Guidelines amending Guidelines EBA/GL/2015/12 on arrears and foreclosure

Section 1 - Compliance and reporting obligations

Status of these guidelines

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

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/2024/10'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

Section 2 - Addressees

Addressees

5. These guidelines are addressed to:

⁶ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12–47

- (a) competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 (EBA authority) which are also competent authorities as defined in point (22) of Article 4 of Directive 2014/17/EU; and
- (b) are also addressed to financial institutions as defined in Article 4(1) of Regulation (EU) No 1093/2010 which are creditors as defined in point (2) of Article 4 of Directive 2014/17/EU.

Section 3 - Implementation

Date of application

- 6. These guidelines apply from dd.mm.yyyy [*Instruction to editors – Please insert date [2] months after the date of publication on the EBA’s website of the guidelines in all EU official languages (date of issuance of the guidelines)*”]

Section 4 - Amendments

- 7. EBA/GL/2015/12 is amended as follows:

- (a) Paragraph 7 and its title “Addressees of information requirements” are deleted.
- (b) Paragraph 9 and its title “Outsourcing” are deleted.
- (c) Guideline 4 is deleted.
- (d) Guideline 5 is amended as follows:

‘The creditor should document the reasons why the possibility(ies) of forbearance measures offered to the consumer in accordance with Article 28(1) MCD are appropriate for his/her individual circumstances and should make and retain adequate records of its dealing with the consumer in payment difficulties for a reasonable period of time.’

- (e) The following Guideline 6 is inserted:

‘Outsourcing

In cases where the activity of the creditor is in whole or in parts outsourced to third parties, creditors, which are not any of the financial institutions referred to in paragraphs 9 to 11 in EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02), should ensure, that they comply with

the requirements established in those Guidelines, including the final responsibility of institutions when outsourcing.⁷ ‘

⁷ EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02) [EBA BS 2019 xxx \(EBA Draft Guidelines on outsourcing arrangements\).docx \(europa.eu\)](#) which repealed the CEBS guidelines on outsourcing of 14 December 2004 with effect from 30 September 2019.
