



**PEER REVIEW REPORT  
SUPERVISION OF TREATMENT OF  
MORTGAGE BORROWERS IN  
ARREARS**

EBA/REP/2023/37

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**EBA**

EUROPEAN  
BANKING  
AUTHORITY

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# List of abbreviations

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CA	Competent Authority
DTI	Debt to Income
EBA	European Banking Authority
EEA	European Economic Area
MCD	Mortgage Credit Directive
MS	Member State
NPLs	Non-Performing Loans
PRC	Peer Review Committee
SAQ	Self-Assessment Questionnaire



## Executive summary

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The current interest rate environment gives rise to risks of consumer detriment for borrowers who have difficulty making increased repayments on their mortgages. The EBA therefore decided to carry out a peer review on the effectiveness of competent authorities' conduct supervision on the Mortgage Credit Directive's requirements for creditors to exercise reasonable forbearance before foreclosure proceedings are initiated.

This report sets out the findings of the peer review of seven CAs' conduct supervision of creditors' treatment of mortgage borrowers in arrears, taking into account the EBA Guidelines on arrears and foreclosure. As a review of CAs' conduct supervision, this peer review does not assess compliance by MCD creditors. Rather, it focuses on strengthening the consistency and effectiveness of supervisory outcomes across the EU. The peer review does not assess existing national supervision of credit servicers as the Credit Servicers Directive will only apply from 30 December 2023.

The review found that overall conduct supervision is effective and competent authorities have adapted their supervision to reflect the changed economic environment and risks to mortgage borrowers although they have done so to varying degrees, which may partly reflect differences in domestic mortgage markets. All competent authorities under review have also implemented the EBA's guidelines in their entirety.

Notably, those competent authorities which allocated significant and dedicated resources to conduct supervision, whether within a conduct-focussed competent authority or a competent authority which combines conduct and prudential supervision, were particularly effective and prepared for challenges mortgage borrowers may face in the current interest rate climate.

The CAs that focus primarily on prudential supervision, had a more limited focus on the Mortgage Credit Directive's consumer protection objectives and lacked adequate resources and supervisory approaches to engage with the particular issues that arise for borrowers, although some had made recent changes aimed at strengthening conduct supervision. The EBA has therefore adopted follow-up measures for some of the competent authorities in these areas. It also requires all EEA supervisors of the Mortgage Credit Directive which also have prudential supervisory responsibilities, to ensure that they have appropriate supervisory resources focused on conduct objectives. While maintaining effective prudential supervision such as in the area of management of non-performing exposures, such improvements in conduct supervision can and should be implemented.

The PRC found differences in the level of scrutiny which competent authorities apply to MCD creditors, including how the authorities identify and perceive the risks borrowers are facing. The report identifies some best practices in this area that might be of benefit for other CAs to adopt, in particular promoting the taking of supervisory measures to mitigate consumer detriment before it materialises.

The EBA will conduct a follow-up peer review of the implementation of the measures included in the report in two years. However, CAs are encouraged to rapidly assess the steps needed in their jurisdiction in order to address current and potential risks to consumers from the ongoing changes to interest rates.

# 1. Introduction

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## Role of peer reviews

1. One of the European Banking Authority (EBA)'s tasks is to conduct peer reviews of the activities of competent authorities (CAs), to further strengthen consistency and effectiveness in supervisory outcomes.
2. Peer review reports set out the main findings of the peer reviews. They also identify follow-up measures for CAs that are considered appropriate, proportionate, and necessary as a result of the peer review. Follow-up measures are of a general nature and are applicable to all CAs, including those that were not subject to this peer review, unless specified otherwise. A follow-up report undertaken two years after this report will assess the adequacy and effectiveness of the actions undertaken by CAs in response to these follow-up measures. The follow-up report could also cover those CAs that were not subject of this peer review, accordingly all CAs are invited to consider the findings of this peer report and any suggested follow-up measures.
3. This chapter gives an overview of how this particular peer review was conducted, and of the supervisory activities reviewed.

## Topic of this peer review

4. The overall objective of this peer review is to examine the effectiveness of, and degree of convergence reached in, the supervision of the requirements set out in Article 28 of Directive (EU) No 2014/17 (Mortgage Credit Directive or MCD) on arrears and foreclosure<sup>1</sup>, and in particular whether steps taken by CAs effectively ensure that consumers in payment difficulties benefit from reasonable forbearance by creditors.
5. The review examined the supervisory approaches and outcomes of the CAs regarding the treatment of arrears and foreclosure by their supervised creditors. In particular, the review covers the EBA Guidelines on arrears and foreclosures (EBA/GL/2015/12)<sup>2</sup> and the Opinion of the European Banking Authority on good practices for mortgage creditworthiness assessments and arrears and foreclosure, including expected mortgage payment difficulties (EBA/Op/2015/09)<sup>3</sup>. This review assessed the effectiveness of the Guidelines and the Opinion in CAs' supervision and achievement of the consumer protection objectives.
6. In examining CAs' approaches in supervising creditors' treatment of mortgages borrowers in arrears, the peer review focuses on assessing, *inter alia*, the following key areas:
  - whether CAs have adequate powers, resources and governance arrangements for efficient and effective supervision;

- the effectiveness of CAs' engagement with supervised creditors to ensure that creditors exercise reasonable forbearance;
- the effectiveness of supervisory measures taken in relation to supervised creditors that do not exercise reasonable forbearance and/or do not effectively implement all elements of the Guidelines and/or the Opinions;
- the effectiveness of procedures, policies and/or criteria to ensure preparedness for dealing with an increase in arrears or foreclosures as a result of changing economic conditions and/or market developments, which in turn impact on borrowers, such as by reducing the affordability of repayments in the light of potential increases in interest rates for variable rate mortgages; and,
- the effectiveness of supervisory response to anticipated changes in economic conditions, e.g. in terms of engagement with supervised creditors or changes to supervisory expectations with regard to those entities.

## Methodology

7. This is a targeted peer review focusing on seven CAs (CY, EL, HU, LT, NL, PT, SK). Six CAs were selected on the basis objective criteria that indicate the relevance of the requirements in Article 28 MCD and the EBA Guidelines in a given Member State. These criteria were supplemented by considerations aimed at ensuring a fair representation of different types of real estate markets, geographies, jurisdiction sizes, cultures, and socio-economic policies, all of which shape and have shaped each national mortgage market. Two of the CAs under review volunteered to participate in the peer review, with one being already under scope for application of the objective criteria.
8. In terms of methodology, the peer review was performed by a Peer Review Committee (PRC) of EBA staff and CA staff (see Annex 1 for the composition) and covered the CAs from the seven Member States mentioned above (detailed in Annex 2).
9. The analysis has been conducted based on responses from CAs to a self-assessment questionnaire (SAQ), which covered a six-year period from the application date of the MCD (from 21 March 2016 to 31 December 2022). Where necessary, the PRC followed up with the CAs in writing seeking further clarifications and explanations. The PRC also conducted

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<sup>1</sup> 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.

<sup>2</sup> [EBA Guidelines on arrears and foreclosure \(EBA/GL/2015/12\)](https://www.eba.europa.eu/sites/default/documents/files/documents/10180/1092172/a16dfe3a-932c-4ff3-b4ff-8cf9f54799ca/EBA-GL-2015-12%20Guidelines%20on%20arrears%20and%20foreclosure.pdf?retry=1), available at <https://www.eba.europa.eu/sites/default/documents/files/documents/10180/1092172/a16dfe3a-932c-4ff3-b4ff-8cf9f54799ca/EBA-GL-2015-12%20Guidelines%20on%20arrears%20and%20foreclosure.pdf?retry=1>

<sup>3</sup> [Opinion of the European Banking Authority on good practices for mortgage creditworthiness assessments and arrears and foreclosure, including expected mortgage payment difficulties \(EBA/Op/2015/09\)](https://www.eba.europa.eu/sites/default/documents/files/documents/10180/983359/863acf45-6ad1-4b22-829e-3077e8496119/EBA-Op-2015-09%20Opinion%20on%20good%20practices%20for%20mortgages.pdf?retry=1), available at <https://www.eba.europa.eu/sites/default/documents/files/documents/10180/983359/863acf45-6ad1-4b22-829e-3077e8496119/EBA-Op-2015-09%20Opinion%20on%20good%20practices%20for%20mortgages.pdf?retry=1>



interviews with all CAs and eventually also carried out on-site missions with 2 CAs (CY, EL) to gain a better understanding of EL's prudential-led approach and, in the case of CY, to better understand their procedures and the interactions between the departments in the CA that are engaged with forbearance issues.

10. This report sets out the conclusions of the peer review together with follow-up measures that CAs need to take, all of which are aimed at further strengthening consistency and effectiveness in supervisory outcomes across the EU. It also identifies a number of best practices, the adoption of which might be of benefit for other CAs. As noted above, the actions taken by CAs in response to follow-up measures will be assessed in a follow-up report after two years.
11. The report consists of 6 chapters. Chapter 2 presents the characteristics of the national mortgage markets across the reviewed CAs. The report continues in chapter 3 with the transposition of Article 28 of MCD across Member States of CAs reviewed and the implementation of the EBA Guidelines by the CAs, followed by chapter 4, which presents the different organisational set-ups in CAs, including resources and cooperation among departments and units within the same CA. Chapter 5 then summarises the different approaches CAs have adopted to implement each of the five Guidelines, including tools used and assessment of the respective benchmarks. Finally, chapter 6 sets out the resulting follow-up measures addressed to, and best practices of, CAs.

## Benchmarking

12. For the purposes of this peer review, six benchmarks were developed in accordance with different criteria, as Annex 3 to this Report shows, starting from (i) CAs' level of implementation of the EBA Guidelines on arrears and foreclosure, (ii) effectiveness of CAs' supervisory engagement with creditors, (iii) effectiveness of supervisory measures to ensure that creditors comply with the relevant requirements of forbearance, (iv) effectiveness of CAs' supervision of creditors' creditworthiness assessment and information provision to borrowers, (v) supervision of creditors' forbearance measures effectiveness, and (vi) effectiveness of supervision in reflecting risks to borrowers. The six benchmarks and their criteria were assessed over a reference period of six years, starting from March 2016 until 31 December 2022.
13. Based on the analysis elaborated further in the following chapters, the figure below provides an overview of the overall results of the benchmarking assessment.

Figure 1. Benchmarking assessment

Country	CY	EL	HU	LT	NL	PT	SK
1. EBA Guidelines are fully implemented	Green	Green	Green	Green	Green	Green	Green
2. Supervisory engagement with creditors is effective	Yellow	Light Green	Light Green	Light Green	Green	Green	Yellow
3. Supervisory measures are effective	Yellow	Light Green	Green	Light Green	Green	Green	Light Green
4. Supervision of creditors' obligation to assess the creditworthiness of borrowers and treatment of borrowers in payment difficulties is appropriate	Red	Green	Yellow	Light Green	Green	Green	Green
5. Forbearance measures are effective	Yellow	Green	Light Green	Green	Green	Green	Light Green
6. Supervision reflects risks to borrowers	Yellow	Light Green	Green	Green	Green	Green	Green

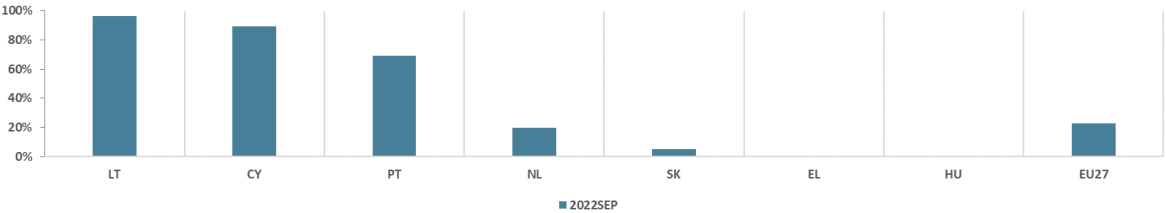
**Legend:**

Fully applied	All assessment criteria are met without significant deficiencies.
Largely applied	Some of the assessment criteria are met with some deficiencies, which do not raise any concerns about the overall effectiveness of the competent authority, and no material risks are left unaddressed.
Partially applied	Some of the assessment criteria are met with deficiencies affecting the overall effectiveness of the competent authority, resulting in a situation where some material risks are left unaddressed.
Not applied	The assessment criteria are not met at all or to an important degree, resulting in a significant deficiency in the application of the provision.

## 2. Characteristics of the national mortgage markets

- 14. This chapter provides an overview of the different market characteristics in each jurisdiction of the CAs under review in order to better understand the specific supervisory approaches adopted by CAs and assess their appropriateness.
- 15. Figure 2 below displays specific aspects of the national mortgage markets of the CAs under review as of September 2022. As shown, some countries have predominantly variable interest rates which are more exposed to the impacts of increasing interest rates while others are characterised by fixed interest rates. The scale of these differences has been further detailed by the CAs under review as follows: LT has 96.35% of mortgages with variable interest rates), while CY has 89.32%, PT has 68.93%, NL 19.92% and SK 5.12%. Although no data is showing in Figure 2, EL reported to have mainly mortgages with variable interest rates, while HU has mostly fixed interest rates mortgages. In some cases (CY and EL), mortgage markets were characterised by high levels of non-performing loans (NPLs, data not shown) having previously been under international bailout programmes monitored by the European Commission, European Central Bank, and International Monetary Fund. The high level of NPLs in these markets relates mainly to NPLs which emerged in 2013 due to the financial crisis.

Figure 2: Share of new loans with variable rate by country of the CAs under review, as of September 2022



Source: ECB, Risk Assessment Indicators<sup>4</sup>

16. It is not only the overall share of variable rates that differs significantly between EU Member States in general, and across the sample of peer review countries in particular. As data from the EBA’s EUCLID reporting system (not shown) indicates, the term lengths of the mortgages that have fixed rates also differ greatly across the sample. For example, in Hungary, based on data for new volumes in 2022, 51% of fixed rate mortgages have their rate fixed for the entire length of the term, while 31% are fixed for 10 years, and 18% for five years. In the Netherlands, by contrast, nearly all fixed rate mortgages are fixed for 15 years, and in Slovakia, the majority are fixed for 5 years or less.
17. These differences are important for this peer review. Firstly, consumers that reside in countries with a low share of fixed rate mortgages (or conversely: a high share of variable rate mortgages), and/or with fixed term lengths that are short, are more frequently exposed to the risk of falling into arrears. This follows in particular in an economic environment in which interest rates increase, because borrowers may find it more difficult to keep their mortgage repayments at an affordable level. Second, and linked to the first, since mortgage markets with high fixed-rate shares are less likely to expose consumers to default risks in such an increasing interest rate environment, the approach with which a CA supervises such a market can potentially be less hands-on and intrusive.
18. Another difference across the peer review sample is the number of mortgage creditors. Table 1 below shows that the number varies greatly across Member States, which in turn can arguably influence the supervisory approach chosen by a given CA.

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<sup>4</sup> Full data set available at [ECB Statistical Data Warehouse \(europa.eu\) \[https://sdw.ecb.europa.eu/browseTable.do?org.apache.struts.taglib.html.TOKEN=a211b65d064cf661268e78e13aa50df1&df=true&ec=&dc=&oc=&pb=&rc=&DATASET=3&removeItem=&removedItemList=&mergeFilter=&activeTab=MIR&showHide=&MAX\\\_DOWNLOAD\\\_SERIES=500&SERIES\\\_MAX\\\_NUM=50&node=9689358&SERIES\\\_KEY\\\_checkall=on&SERIES\\\_KEY=304.RAI.M.AT.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.BE.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.BG.SVLPHPH.U1.MIR.Z&SERIES\\\_KEY=304.RAI.M.CY.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.CZ.SVLPHPH.U1.MIR.Z&SERIES\\\_KEY=304.RAI.M.DE.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.DK.SVLPHPH.U1.MIR.Z&SERIES\\\_KEY=304.RAI.M.EE.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.ES.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.FI.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.FR.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.GR.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.HR.SVLPHPH.U1.MIR.Z&SERIES\\\_KEY=304.RAI.M.HU.SVLPHPH.U1.MIR.Z&SERIES\\\_KEY=304.RAI.M.IE.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.IT.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.LT.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.LU.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.LV.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.MT.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.NL.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.PL.SVLPHPH.U1.MIR.Z&SERIES\\\_KEY=304.RAI.M.PT.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.RO.SVLPHPH.U1.MIR.Z&SERIES\\\_KEY=304.RAI.M.SI.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.SK.SVLPHPH.EUR.MIR.Z&SERIES\\\_KEY=304.RAI.M.U2.SVLPHPH.EUR.MIR.Z\]\(https://sdw.ecb.europa.eu/browseTable.do?org.apache.struts.taglib.html.TOKEN=a211b65d064cf661268e78e13aa50df1&df=true&ec=&dc=&oc=&pb=&rc=&DATASET=3&removeItem=&removedItemList=&mergeFilter=&activeTab=MIR&showHide=&MAX\_DOWNLOAD\_SERIES=500&SERIES\_MAX\_NUM=50&node=9689358&SERIES\_KEY\_checkall=on&SERIES\_KEY=304.RAI.M.AT.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.BE.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.BG.SVLPHPH.U1.MIR.Z&SERIES\_KEY=304.RAI.M.CY.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.CZ.SVLPHPH.U1.MIR.Z&SERIES\_KEY=304.RAI.M.DE.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.DK.SVLPHPH.U1.MIR.Z&SERIES\_KEY=304.RAI.M.EE.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.ES.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.FI.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.FR.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.GR.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.HR.SVLPHPH.U1.MIR.Z&SERIES\_KEY=304.RAI.M.HU.SVLPHPH.U1.MIR.Z&SERIES\_KEY=304.RAI.M.IE.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.IT.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.LT.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.LU.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.LV.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.MT.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.NL.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.PL.SVLPHPH.U1.MIR.Z&SERIES\_KEY=304.RAI.M.PT.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.RO.SVLPHPH.U1.MIR.Z&SERIES\_KEY=304.RAI.M.SI.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.SK.SVLPHPH.EUR.MIR.Z&SERIES\_KEY=304.RAI.M.U2.SVLPHPH.EUR.MIR.Z\)](https://sdw.ecb.europa.eu/browseTable.do?org.apache.struts.taglib.html.TOKEN=a211b65d064cf661268e78e13aa50df1&df=true&ec=&dc=&oc=&pb=&rc=&DATASET=3&removeItem=&removedItemList=&mergeFilter=&activeTab=MIR&showHide=&MAX_DOWNLOAD_SERIES=500&SERIES_MAX_NUM=50&node=9689358&SERIES_KEY_checkall=on&SERIES_KEY=304.RAI.M.AT.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.BE.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.BG.SVLPHPH.U1.MIR.Z&SERIES_KEY=304.RAI.M.CY.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.CZ.SVLPHPH.U1.MIR.Z&SERIES_KEY=304.RAI.M.DE.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.DK.SVLPHPH.U1.MIR.Z&SERIES_KEY=304.RAI.M.EE.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.ES.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.FI.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.FR.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.GR.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.HR.SVLPHPH.U1.MIR.Z&SERIES_KEY=304.RAI.M.HU.SVLPHPH.U1.MIR.Z&SERIES_KEY=304.RAI.M.IE.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.IT.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.LT.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.LU.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.LV.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.MT.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.NL.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.PL.SVLPHPH.U1.MIR.Z&SERIES_KEY=304.RAI.M.PT.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.RO.SVLPHPH.U1.MIR.Z&SERIES_KEY=304.RAI.M.SI.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.SK.SVLPHPH.EUR.MIR.Z&SERIES_KEY=304.RAI.M.U2.SVLPHPH.EUR.MIR.Z)

Table 1: Number of creditors, per Member State in the peer review sample

<b>Member State</b>	<b>Number of creditors</b>
PT	<b>106</b>
LT	<b>90</b>
NL	<b>58</b>
HU	<b>52</b>
EL	<b>27</b>
CY	<b>25</b>
SK	<b>20</b>

19. Of similar relevance, but not shown in the table, is the composition of the creditors subject to the MCD in each Member State: while the population of creditors in Portugal consists exclusively of credit institutions, additional types of firms operate in the Netherlands, Lithuania, Slovakia, Hungary, Greece and Cyprus, such as financial enterprises, non-bank lenders, credit unions, credit purchasers, credit servicers and peer-to-peer lending platforms. These differences, too, can arguably influence the supervisory approach chosen.
20. The PRC also identified that with regard to debt recovery initiatives with respect to debt write-off procedures covering mortgages CAs are not involved as these procedures are regulated either through out of court mechanisms, involving the Ministry of Finance and leading to restructuring solutions (EL), or executed at municipality level in spirit of a debt free future and citizens' financial health (NL). In PT, in the context of insolvency process, court orders may foresee that debts older than 20 years and never brought to court may be written off upon the request of the consumer in arrears, this procedure is conducted exclusively by the judicial system with no involvement from the CA. HU only monitors institutions from a credit risk and prudential perspective and is not involved in the initiation of debt recovery and write-off processes, given that write-offs are regulated by law.
21. Supervisory approaches are also shaped by other factors, including the way an EU Directive is transposed into national law and how an EBA legal instrument is implemented by the CA. These are discussed in chapters 3 and 4 below.



## 3. Transposition of Article 28 MCD and implementation of EBA Guidelines on arrears and foreclosure

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### 3.1 Introduction

22. Given that an objective of this peer review is to examine the effectiveness of, and degree of convergence reached in, supervision of Article 28 MCD, as it sets out level one provisions on the treatment of borrowers in arrears, the first section of this chapter aims to give an overview as to how the Member States of the CAs under review have transposed the provisions on foreclosures into their national regulatory frameworks.
23. The second section of this chapter delves into the way and extent CAs under review have implemented the EBA Guidelines and foreclosure, while the third section provides an assessment of CAs' compliance against the criteria of the first benchmark set out for this peer review.

### 3.2 Transposition of Article 28 MCD

24. The PRC found that Member States of the CAs under review have transposed Article 28 of the MCD. However, there are some divergences, in particular with regards to the optional provision, as detailed in the following sections.
25. Article 28(2) and (3) MCD were optional for MSs to transpose, of the target MSs, SK did not transpose either provision, while PT and HU did not transpose Article 28(2). These two provisions cover the following instances: (a) Member State may permit or not permit creditors to ask for charges in case of foreclosure; (b) where charges are permitted, then the Member State is allowed to have a law stating that creditors can only ask for compensation of the actual costs incurred; (c) where the Member State wishes to allow creditors to ask for additional charges (on top of the ones covering the actual costs borne for foreclosure), then they are required to impose a cap on the additional charges.
26. In CY, EL, LT, NL, and SK, creditors are allowed to impose charges on borrowers arising from the default. Such charges must be no greater than necessary to compensate the creditor for costs incurred from the default.
27. In CY, the national framework allows creditors to impose charges on the consumers in case of default but only under specific conditions. In the particular instance of CY, the PRC found that, while charges are required to be no greater than necessary to compensate the creditors' costs, the national framework allows for creditors to impose charges on the consumers in case of default provided that: (i) the creditor specifies, in Annex II to the MCD

- (ESIS), the conditions and method of calculating default charges, and (ii) subject to the provisions of the Cypriot ‘Liberalisation of the Interest Rate and Related Matters Law’ of 2009, (L.160(I)/1999) as subsequently amended that the default charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default.
28. EL has expanded the MCD definition of creditors to also include credit servicers. In EL, in case of borrowers’ default, no charge is allowed beyond the amount required to cover the necessary expenses of the creditor that initiates foreclosure proceedings for the interest of all creditors and the default interest rate set by the CA (contractual interest rate + 2.5%).
  29. In HU, creditors are not entitled to impose charges on the borrowers as a result of default, however the national regulation establishes that in the case of late payments by the consumer, the creditor may, for the duration of the delay, charge interest on late payment not exceeding one-and-a-half times the interest rate specified in the credit agreement plus at least three percentage points and it may not be higher than the maximum rate of the annual percentage rate of charge.
  30. In LT, the law clearly sets out that, in cases of late repayments, borrowers shall not be subject to a charge exceeding 0.05 % of the overdue sum for a maximum period of 180 days. Furthermore, creditors are not entitled to impose additional charges on the consumer in the event of default.
  31. In NL, national rules in place prior to the transposition of the MCD in that jurisdiction already covered the specific provisions contained in Article 28 of the EU Directive and they were amended in 2014 to incorporate specific aspects of Article 28 of the MCD previously not included. In NL, the law allows creditors to impose charges in line with Article 28(2) of the MCD whereby they can claim only the costs actually incurred in for foreclosure which should be clearly stated in the contract.
  32. Similarly, in PT the principles of the MCD already existed in the national framework, which was later updated to include specific aspects of the EU Directive. A national Decree-Law of 2017 set out additional requirements whereby creditors can terminate the contracts in arrears only in specific circumstances. In PT the legislator opted not to transpose Article 28(2) and creditors are prohibited from charging fees based on the default of bank customers but may still charge a single fee for the recovery of amounts owed and expenses incurred after going into arrears, provided such costs are duly documented. PT instead transposed Article 28(3) MCD through a law stating that, in case a bank customer enters into arrears, creditors may require the borrower to pay default interest, that results from the application of a maximum annual surcharge of 3%, which is added to the annual nominal interest rate of the loan. In addition, creditors are prohibited from charging fees based on the default of bank customers. However, credit institutions may charge a fee for the recovery of amounts owed, which may be charged only once for each instalment due, and it may not exceed 4% of the instalment amount, with a minimum value of €12 and a maximum value of €150. If the past due instalment exceeds €50,000, the fee may not be

above 0.5% of its amount.

33. In SK, Article 28(2) and (3) MCD have not been transposed. Creditors are entitled to impose charges arising from the default on the borrowers, and no requirement has been established that these charges shall not be greater than is necessary to compensate the creditor for costs incurred as a result of the default, as per the MCD. The cap on additional charges that creditors may impose to borrowers is regulated by civil law.

## Conclusions

34. The different treatment towards charges between the jurisdictions can result in different burdens of charges for borrowers in arrears or going into arrears. Such differences in levels of consumer protection are, however, built into the MCD.

### 3.3 Implementation of EBA Guidelines on arrears and foreclosure

35. This section presents an overview of how the CAs reviewed have implemented the EBA Guidelines on arrears and foreclosure.
36. The PRC found that the EBA Guidelines on arrears and foreclosure were implemented by all CAs, although through different instruments. Some have used binding regulatory instruments (CY, EL and PT), while others (HU, NL and SK) used different non-binding instruments. LT has used a mix of binding and non-binding instruments.

#### Additional national legislation to support the implementation of EBA Guidelines on arrears and foreclosures

37. In addition to the EBA Guidelines and the provisions set out in Article 28 MCD, some CAs (CY, EL, LT, NL and PT) have also other rules and policies to supervise creditors' compliance with arrears handling and forbearance, which include:
- EL has issued; the Executive Committee Act (ECA) 175/2/29.7.2020 which implements the EBA Guidelines on the management of NPLs (EBA/GL/2018/06). The ECA is complementary to the Greek Code of Conduct on arrears handling and Article 28 of the MCD.<sup>5</sup> Furthermore, the authorisation and supervisory framework for the credit servicing firms is further specified by the Bank of Greece Executive Committee Act 118/19.05.2017.
  - In HU two non-binding HU guidelines issued by the CA and based on the EBA Guidelines on arrears and foreclosures and EBA Guidelines on loan origination and monitoring (EBA/GL/2020/06) provide for additional recommendations concerning requirements emanating from Article 28 of the MCD.

<sup>5</sup> Prior granting any forbearance measures, institutions should take into account ECA's provisions concerning the design and evaluation of sustainable types of forbearance solutions for borrowers' best repayment conditions.

- In LT the CA applies other rules in addition to the ones set out in Article 28 of the MCD and the EBA Guidelines, addressing in particular (i) restructuring, and (ii) credit holidays.<sup>6</sup>
- In PT, the applicable framework requires institutions to follow a set of procedures to prevent arrears in credit agreements, and this should be defined in a pre-arrears action plan of each institution. Institutions are required to permanently monitor borrowers' credit agreements and carry out the necessary actions to identify signs of payment difficulties. In case of the deterioration in the borrower's creditworthiness, they shall reassess his/her financial capacity and verify whether there is a risk of default on the credit agreement. Once it is established that the borrower is in a pre-arrears situation, but has the financial capacity to avoid default, the institution proposes solutions suitable to his/her financial situation, objectives and needs. This legal framework also envisages the out-of-court arrears procedure, for when consumers fail to pay their instalments, foreseeing a set of rights and guarantees aimed at facilitating an agreement to settle the arrears situation, without going to court.
- Furthermore, the applicable rules to the arrears and foreclosure measures have been amended to ensure adequate protection of borrowers in specific macroeconomic contexts, such as in anticipation of the end of credit moratoria implemented during the COVID-19 pandemic. Finally, under the pre-arrears procedures each institution is required to monitor and identify early signs of repayment difficulties at least monthly. If it identifies signs that the borrower may be going through payment difficulties, the credit institution must assess the borrower's financial capacity and, if viable, present suitable proposals. Under the out-of-court arrears procedure, credit institutions must contact borrowers to negotiate payment solutions. During this procedure, borrowers benefit from a set of rights and guarantees aimed at facilitating an agreement with credit institutions to settle arrears situations.

### Challenges faced by creditors in the implementation of the EBA Guidelines

38. The CAs reviewed did not identify any challenge directly connected with the implementation of the EBA Guidelines. Challenges instead arose from market conditions.
39. In CY, borrowers appear to face difficulties in providing banks with documentation, possibly due to the low level of financial literacy. Additionally, the impact of Covid-19 and the high level of NPLs in the country brought about a horizontal foreclosure freeze for mortgages on properties up to a certain economic value, which was in effect until 31/1/2023 and has limited the tools available to creditors to resolve and negotiate with borrowers in arrears.

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<sup>6</sup> In the first instance, the applicable law provides, inter alia, for the possibility to restructure credit agreements where the borrowers are unable to perform their obligations under favourable conditions as indicated by the legislation, implying a less thorough creditworthiness assessment and a more favourable interest rate treatment. With regards to credit holidays, during the period of the credit agreement, upon the borrowers' request, the creditor must defer payment of credit premiums, except for interests, for the period specified by the borrowers in their application, but not exceeding a 3-months period, under specific criteria established by law.

- 40. In EL, creditors struggle to provide proper and sustainable solutions to borrowers, and, to gather updated and good quality information from the borrowers for the creditworthiness assessment.
- 41. NL identifies some areas where providers may improve, and therefore, can be considered as challenging, such as pre-arrears management, effective solutions addressing borrowers' specific needs, dealing with harrowing situations, residual debt management, and customer communication.
- 42. PT has identified several challenges faced by creditors, including implementing and reinforcing monitoring systems to identify clients in payment difficulties, changes to internal organisation to develop units to assist borrowers in distress, and ensuring effective training for staff who deal with consumers facing payment difficulties. However, the main challenge going forward will be adapting internal systems and procedures to respond to unexpected and sudden external shocks, which will put significant pressure on borrowers' financial resilience.

**Assessment of benchmark 1- Level of Implementation of EBA Guidelines**

- 43. For the purpose of the assessment of this benchmark, the following assessment criteria were set: (i) extent to which CAs notify compliance with Guidelines; (ii) Guidelines are communicated to creditors; (iii) all elements of the guidelines are incorporated into CA's practices (e.g., by amending their legal framework or their supervisory practices).
- 44. Taking into account all of the criteria, the PRC found that all seven CAs fully applied them. Only two CAs have clarified that they are not competent for implementing Guidelines 2.2 as it concerns privacy data.

Table 2: Benchmark 1

	CY	EL	HU	LT	NL	PT	SK
<b>Criterion 1</b>							
<b>Criterion 2</b>							
<b>Criterion 3</b>							
<b>Overall score for Benchmark 1</b>							



## 4. Organisational set-up and resources

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### 4.1 Introduction

45. This chapter examines the CAs' internal organisation and their cooperation with other authorities. It also provides an overview of CAs' resources involved in supervising creditors' compliance with foreclosure and arrears requirements, as well as CAs' assessment of the adequacy of these resources.

### 4.2 Organisational set-up

46. The organisational set up of the CAs under review differs significantly, as summarised in the following paragraphs.
47. In CY, the Financial Conduct Unit became operational and responsible for the supervision of arrears handling and forbearance measures with respect to the residential loans in scope of the MCD in September 2022. Previously the Prudential Supervision Unit was the only unit monitoring both prudential and conduct matters. These two units are supported by the Legal Services Unit for legal and enforcement functions.
48. In EL, supervision of creditors' treatment of mortgage borrowers in arrears is allocated to the supervision unit, with one supervisor per institution being in charge of monitoring both prudential and conduct requirements. The PRC is of the view that such a set up may give rise to a conflict of interest regarding the supervision of distinctive objectives, such as the maintenance of financial stability with regard to the high stock of NPLs while ensuring a high standard of consumer protection.
49. HU has a dedicated department for consumer protection of credit institutions which engages with the prudential and legal enforcement departments for the supervision of creditors' treatment of mortgage borrowers in arrears. The supervisory set up differs in accordance with the type of creditor. In the case of credit institutions, a dedicated department deals with consumer protection while for financial enterprises, prudential and consumer protection supervision is dealt with by a single unit.
50. In LT, the Credit and Insurance Services Supervision Division (CISSD) of the Financial Services and Markets Supervision Department is a stand-alone function that supervises creditors from the conduct perspective, while the Department's Credit Risk Division (CRD) is in charge of supervising creditors from a prudential perspective. The CRD interacts with the CISSD by, inter alia, exchanging relevant aggregated data on the quality of mortgage credit portfolios (e.g. arrears). An internal committee brings together the three supervisory teams, i.e., consumer protection, prudential, and legal and licensing. The enforcement division is also involved where necessary.

51. In NL, the Mortgage Supervision Unit and the Account Supervision units are involved in the supervision of creditors' treatment of mortgage borrowers in arrears. The Mortgage Supervision Unit conducts investigations on arrears management practices, contributing to policy development and acting upon signals received and complaints from consumers. The Account Supervision Unit carries out ongoing supervision based on an annual supervisory plan. The Legal and Enforcement unit are also involved where necessary. Other units are also involved in supervision of arrears handling and forbearance, such as risk analysis, strategy, policy and international affairs, consumer behaviour, communications, data driven supervision, and market entry, signals, and orientation.
52. In PT, the Banking Conduct Supervision Department (BCSD) supervises and enforces creditors' treatment of mortgage borrowers in pre-arrears and arrears as a stand-alone unit. This department includes different divisions that interact with one another on an ongoing basis, i.e, (i) Regulation, Legal Affairs and Complaints Division, (ii) Market Monitoring and Financial Literacy Division, (iii) Inspection Division, and (iv) Information, Planning and Control Division. For the monitoring of arrears on credit agreements, BCSD also interacts with other departments such as the Statistics Department, Legal Enforcement Department and Legal Services Department, as well as with the Financial Stability Department and the Prudential Supervision Department. Additionally, the Banking Conduct Supervision Department shares the result of its supervisory activities with other departments (for instance, the Prudential Supervision Department and the Financial Stability Department), whenever deemed relevant.
53. In SK, both the Financial Consumer Protection Supervision Section (FCPSS) and the Banking Supervision Department cooperate and are involved in the supervision and enforcement of creditors' treatment of mortgage borrowers in arrears. SK has an informal committee that serves as a weekly forum for effective information exchange between directors of the Financial Stability Department, Consumer Protection Department and three supervisory departments, including the Banking Supervision Department and the Financial Innovation Department. Furthermore, the Legal Department where necessary.

### **Cooperation with other authorities**

54. CY, EL, HU, NL, PT and SK cooperate with other national authorities and/or stakeholders either on an ad-hoc basis, such as HU with the domestic banking association when providing guidance to the industry, EL with the Ministry of Finance to set up a digital platform for arrears handling, or on a continuous basis. PT interacts, for instance, with the 'General Directorate for Consumers' for certification of entities comprising the Bank Customer Support Network (an out-of-court support network for bank customers who face difficulties in complying with their credit agreements' obligations regarding the Bank Customer Support Network). This out-of-court support network is made up of ADR mechanisms, as well as of private or public legal persons accredited by the Directorate-General for Consumers. NL interacts with several stakeholders such as organisations protecting vulnerable citizens interest and focusing on budgetary health. SK collaborates with the Ministry of Finance and

the Slovak Banking Association in the area of preparing and updating regulation on the financial market and CY interacts with their Ministry of Finance for the development of policy and /or legislation relating to forbearance measures as well as other national authorities such as the Consumer Protection Services and relevant stakeholders.

### Staff and resources

55. As regards the human resources dedicated to the supervision of creditors’ treatment of mortgage borrowers in arrears, the PRC observed that this varies significantly across the CAs under review. This is detailed in the following table, with a breakdown by the relevant areas within the CAs (or other authorities if applicable):

Table 3: Number of full-time employees dedicated to the supervision of creditors’ treatment of mortgage borrowers in arrears in the CAs under review.

	Number of FTEs <sup>6</sup>						
	CY	EL	HU	LT	NL	PT	SK
<b>Supervision of arrears and foreclosures under the MCD staff</b>	1.5	11.5	0.11	0.1	3	3	0.25
<b>Legal support staff</b>	0.5	0.5	0.095	0.4	1	1	-
<b>Staff from other areas</b>	4	-	-	0.3	2	1	0.25
<b>Staff from other authorities</b>	-	-	-	-	-	-	-
<b>Total</b>	6	12	0.205	0.8	6	5	0.5

56. CY, EL and SK stated that they require a moderate increase in existing resources and respectively for the different reasons, such as a general need to have FTEs dedicated to this area of supervision (CY), the forward-looking approach for the CA to be ready to handle the impact on households’ debt repayment capacity of the rise of central bank interest rates (EL), and considering the complex and time-consuming nature of on-site supervision (SK).
57. As regards training provided to staff involved in the assessment of creditors’ treatment of mortgage borrowers in arrears, the CAs reviewed have different approaches. These range from training at the induction phase to ongoing training to keep staff abreast of the regulatory and economic developments impacting this area, as well as participation in a supervisory academy (NL, with a detailed eight-day training programme for newcomers).

## Conclusions

58. The paragraphs above show different organisational set-ups adopted by the seven CAs in respect of departments/units involved in the supervision of creditors' treatment of mortgage borrowers in arrears, with differing levels of exchange of information and cooperation among staff. Only a few CAs have dedicated conduct/consumer protection units or teams. Some CAs (CY, EL, SK) have indicated that they deem a moderate increase of resources may be necessary, in the case of EL in particular, the PRC is of the view that there is also a scope to apply existing resources in a more efficient manner to meet the present challenges in the market. The PRC also notes that given the high levels of variable rate mortgages in the market of LT, the number of FTEs could be increased to address any impacts which may stem from the current environment. Finally, programs to train staff allocated to the supervision of MCD vary quite significantly within CAs.

## Follow-up measures for CAs

59. Considering the current economic environment of higher inflation and higher central bank interest rates compared with recent years, and the likelihood of a higher number of borrowers falling in arrears, the PRC considers as follow-up measures that:
- All CAs should have policies which indicate internal unit responsibilities and facilitate cooperation and information-sharing with other supervisory teams for the supervision of creditors' treatment of mortgage borrowers in arrears;
  - CY, EL, LT and SK should review the level of resources dedicated to supervision of creditors' treatment of mortgage borrowers in arrears;
  - EL should set up a separate supervisory unit with a focus on conduct supervision including the treatment of mortgage borrowers in arrears. This will facilitate supervision which is focused on consumer protection objectives independently of prudential objectives.

## Best practices of CAs

60. As mentioned above, the degree and level of cooperation and extensive interaction among departments involved in the supervision on creditors' treatment of borrowers in arrears in PT and NL are considered best practice by the PRC, enabling the exchange of relevant information for the development of effective supervision. The engagement with other departments is also considered best practice, particularly in contexts that can significantly affect borrower risks, such as the COVID-19 pandemic or the current interest rate environment.
61. Finally, NL has developed a broad range of actions to ensure the staff has adequate technical skills and knowledge to conduct efficient supervision. In particular, the PRC considers training tools such as the Supervision Academy, to be best practices.

## 5. Supervisory approaches to creditors' treatment of borrowers in arrears

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### 5.1 Introduction

62. This chapter examines the supervisory approaches employed by the CAs under review with regard to their supervision of creditors' treatment of borrowers in arrears. It examines how CAs under review supervise:

- compliance with Article 28 MCD and the EBA Guidelines
- engagement with borrowers
- establishment of policies and procedures
- provision of information to borrowers
- forbearance measures
- risks to borrowers
- documentation of dealings with borrowers and retention of records.

### 5.2 Compliance with Article 28 MCD and EBA Guidelines

63. The PRC established a third benchmark to check the effectiveness of CAs' supervisory measures to ensure that creditors comply with the forbearance requirements in Article 28 MCD and the EBA Guidelines. This was assessed against the following criteria:

Criterion 1: relevant requirements to be complied with by creditors on forbearance are effectively enforced;

Criterion 2: CA has an effective methodology for escalating issues internally to take supervisory measures/impose sanctions;

Criterion 3: CA is able to apply effective, proportionate and dissuasive sanctions;

Criterion 4: CA has adequate resources and governance.

#### **Assessment of benchmark 3 – Effectiveness of supervisory measures**

64. The PRC found that the criteria were fully applied by three CAs (HU, NL, PT), largely applied by three CAs (EL, LT, SK) and partially applied by one (CY). The rationale for these scores is discussed in the sections below.



Table 4: Benchmark 3

	CY	EL	HU	LT	NL	PT	SK
<b>Criterion 1</b>	Orange	Light Green	Dark Green	Dark Green	Dark Green	Dark Green	Light Green
<b>Criterion 2</b>	Light Green	Light Green	Light Green	Light Green	Light Green	Dark Green	Light Green
<b>Criterion 3</b>	Dark Green	Dark Green	Dark Green	Dark Green	Dark Green	Dark Green	Dark Green
<b>Criterion 4</b>	Orange	Orange	Dark Green	Orange	Dark Green	Dark Green	Orange
<b>Overall score for Benchmark 3</b>	Orange	Light Green	Dark Green	Light Green	Dark Green	Dark Green	Light Green

**Criterion 1 – effective enforcement**

- 65. The CAs under review adopted different approaches to supervision and have implemented different tools with a varying level of intrusiveness and expectations.
- 66. Most of the CAs under review have adopted a risk-based approach to supervision. Four CAs (EL, HU, NL, PT) conduct regular supervision and monitoring of creditors’ compliance with Article 28 and the EBA Guidelines. Three (CY, LT, SK) do not.
- 67. CY has only recently (Q3 2022) employed a conduct-led approach in contrast to its previous prudential-approach led approach which the PRC found had minimal focus on conduct issues and in particular mortgage arrears-handling. On site inspections have taken place from a prudential perspective, such as on credit risk, where the assessment of the bank’s procedures and compliance with the regulatory framework regarding the credit granting process / assessment of repayment ability. The new conduct-led approach is not yet well established. The supervisory tool employed is an off-site self-assessment questionnaire sent to the compliance and audit units of selected creditors to fill in. CY informed the PRC that it plans to complete a first full assessment of creditors’ compliance during 2024.
- 68. EL adopts a prudential-led supervision and uses various tools, such as off-site and on-site inspections, meetings with supervised entities, and evaluations of applications for the licensing of credit servicers. The supervisory action is driven by analysis of the reporting templates (which include prudential data and information related to the code of conduct on arrears, collected on a quarterly basis) or by the analysis of consumer complaints. Based on the findings from the assessment of a creditor’s risk profile, the Supervision Department proposes certain on-site inspections for specific less significant institutions and may request specific remediation measures. In relation to significant institutions, most non-performing loans have been transferred to credit servicers so supervision of compliance with the code of conduct on arrears is focused on them rather than the original creditor.
- 69. HU adopts a risk-based approach whereby it carries out investigations based on a yearly

- investigation program or performs ad-hoc investigations in response to market circumstances or consumer claims. Typically, investigations are off-site but on-site investigations may be conducted in certain cases. Supervisory information is collected from various sources, such as consumer complaints, aggregated data on loan arrears and granular data in the credit register. If unusual trends are observed during the analysis of this information, targeted or thematic inspections can be conducted. If undesirable market practices are found but no law is breached, the CA may issue 'Dear CEO letters', consumer protection warnings, or circulars.
70. LT adopts a risk-based approach focused on services and products and which builds on quantitative and qualitative criteria which informs their identification of risks to consumers and the prioritisation of supervisory actions. The CA conducts inspections, in accordance with the annual inspection plan, or non-routine inspections if the CA discovers of possible infringements of legal acts. Inspections can be an in-depth assessment of the entity, or a targeted dive involving individual risks or specific areas of the entity's activities. In case of identification – or mere suspicion – of law infringement or threat to the public or borrower interests, the CA may issue mandatory instructions to the mortgage credit provider, intermediary or peer-to-peer lending platform operator. Lastly, if legal acts are breached, sanctions may be imposed.
  71. NL adopts an outcome-oriented supervision approach. The CA monitors market indicators and consumers complaints, data collection and market developments. These identify specific issues and drive corresponding research, investigation, and supervisory action. The CA has a specific team which supervises the product approval and review process, and conducts different types of investigations, including on costs borne by consumers through the verification of files.
  72. PT follows a risk-based approach employing different oversight tools. This approach considers several factors: (i) the enactment of new legislation or the implementation of new consumer rights; (ii) the economic and financial environment; (iii) possible circumstances that may lead to consumer detriment, arising from the information collected, especially thought the permanent (non-risk based) oversight tools, namely complaints handling and systematic monitoring. The oversight tools used, including inspections (on-site, off-site, and mystery shopping), depend on the subject, the requirements to be checked, etc. The CA also holds regular meetings with credit institutions, aimed at monitoring implementation of the legal and regulatory framework. The CA has annual and quarterly supervisory plans, which are flexible in adapting to specific circumstances.
  73. SK follows a risk-oriented approach and has not implemented any specific methodology nor formal procedure for assessing creditors' compliance with Article 28 of MCD nor the EBA Guidelines. The CA stated that it regularly monitors market indicators, consumer complaints, economic changes, social changes, data collection, market developments, and findings provided by their Suptech tool (eCIM), however, the CA considers mortgage borrowers in arrears not to be a significant issue in the national context.

## Criteria 2 and 3: enforcement of breaches

74. The PRC examined the specific powers available to impose sanctions on creditors who have not complied with Article 28 of the MCD. It was found that sanctions can vary in severity depending on the nature and seriousness of the breach, and may include financial penalties, restrictions on the activities of the supervised entity, or other corrective measures.
75. Regarding the criterion 2 the PRC found that CAs define methodologies according to their supervisory approaches and most of the CAs consider the frequency and severity of breaches when imposing sanctions. While the degree of detail in the methodologies differs among the CAs, only PT fully applied the criteria as they have as comprehensive methodology was specifically devised with a view to supervising creditors treatment of borrowers in arrears. All other CAs under review were considered to have largely applied the criteria (CY, EL, HU, LT, NL, SK), with diverse informal methodologies consistent with supervisory approaches that allow identification of infringements and support a range of possible actions by the CAs to address consumer protection issues where necessary.
76. In relation to the criterion 3, all seven CAs have specific powers under national law to impose sanctions on creditors which have breached Article 28 of the MCD. These sanctions can vary in severity depending on the nature and seriousness of the breach, and may include financial penalties, restrictions on the activities of the supervised entity, or other corrective measures. Furthermore, no deficiencies were identified in the escalation processes from supervisory / conduct unit up to decision making body for issuing a sanction.
77. EL can take several measures, such as an operational act or a formal decision imposing specific requirements on the supervised entity, while LT adopts mandatory instructions, including temporary restrictions, demanding entities to take actions to eliminate breaches. CY, HU, LT, NL, and SK indicate that they can issue recommendations to entities in different forms (e.g., public announcements, supervisory guidance, letters, warnings), which, in some cases, may include a requirement for the entity to develop an implementation plan. NL issues sector letters to all creditors with findings from investigations, and annual policy papers to identify relevant trends and associated risks. CY has the power to require the entities to take remedial / rectifying actions and to submit implementation plans for this purpose. Lastly, SK requires creditors which might have been found non-compliant to adopt measures to rectify any shortcomings identified.
78. EL, LT, NL and PT identified instances of supervised creditors infringing provisions of Article 28 MCD during the reference period. EL and NL did so as a result of off-site actions, as in the case of an EL prudential thematic review in 2022 and NL which assessed several creditors to which it also issued “instructive letters on compliance” (a formal enforcement tool which guides creditors in interpretation). While EL did not take any enforcement action, NL issued two letters in 2019 for administrative breaches.
79. LT identified infringements via their on-site tool, which found that a creditor wrongfully

applied penalties to borrowers who were late in repayment. LT required the creditors to compensate borrowers for damages as well as sanctioning another creditor for breaching termination of contract procedures.

80. PT identified infringements in 2016, 2018 and 2022 via on-site inspections. When infringements to the legal and regulatory framework are detected, specific orders may be issued and, in the case of serious breaches, sanctions may be imposed, including fines and additional penalties. In particular, the purpose of specific orders is to require institutions to adopt a certain behaviour, cease a practice, refrain from repeating a conduct or correct an irregularity, while administrative proceedings are usually applicable in case of serious or repeated breaches, or situations that cannot be corrected by the institutions. For example, in 2018, following an inspection action with the objective of monitoring the existence of irregular practices regarding the calculation of interest rates and the charging of fees and charges to borrowers in arrears, PT issued specific orders to two credit institutions, requiring them to immediately stop with the infringements and to reimburse borrowers of the over charged amounts. Also, in 2022, in the context of complaints handling, the CA initiated administrative offence proceedings related to non-integration in OASP and issued specific orders as it detected that credit institutions increased the credit agreement's spread on the grounds of the bank customer's default.

#### **Criterion 4: adequacy of resources**

81. With regards to criterion 4, as described in Chapter 5, the PRC considers that further improvements are required in this area from a number of CAs. In particular, CY, LT and SK should consider augmenting their number of FTEs dedicated to supervision of creditors' treatment of mortgage borrowers in arrears. While CY only established its conduct unit in September 2022, LT seems to have a well-functioning set-up and process, although as referred to before, an increase of number of FTE dedicated specifically to supervision of creditors' treatment of mortgage borrowers in arrears is recommended. EL is considered to have partially applied the criterion, due to the lack of a stand-alone conduct unit, an issue that has been described in Chapter 4. As regards SK, the PRC considers that this CA partially applies the criterion due to the risk-based approach implemented by this CA leading the Authority not to directly supervise mortgage borrowers in arrears. The PRC considers this approach not appropriate to ensure an early detection of signals that might indicate a deterioration of the significance of the issue and time consumed for on-site inspection. HU, NL and PT are considered to fully apply the criterion taking into account the organisational set-up which allows staff to address conduct matters independently from other objectives and with a systematic approach.

#### **Conclusions**

82. The PRC found that, with regards to effectiveness of CAs' supervisory measures to ensure that creditors comply with the forbearance requirements in Article 28 MCD and the EBA Guidelines, CAs have adopted different organisational set-ups (as explained in the previous chapter). Furthermore, CAs under review adopted different approaches to supervision and

implemented different supervisory tools. Overall, the PRC considers all CAs under review to have either fully or largely met the criteria with the exception of CY whose supervisory toolset to look into conduct matter appear to be limited and processes in place are still being shaped as a result of the financial conduct unit only recently becoming operational the PRC understand that CY are planning on-site supervision for 2024. In particular, NL has a specific team which supervises the product approval and review process that strengthens the whole supervisory set up and also has a practice consisting of issuing “instructive letters” on compliance which sets out supervisory expectations towards creditors. In terms of escalation of issues to impose supervisory measures / sanctions, the PRC is of the view that all CAs under review have stated to have an adequate methodology and provided concrete examples of their ability to apply effective, proportionate and dissuasive sanctions, when necessary.

### Follow-up measures for CAs

83. The PRC considers as follow-up measures that:

- Formal written procedures as regards the supervision of creditors’ treatment of mortgage borrowers in arrears should be established in all CAs, including in relation to CAs’ engagement with creditors, that foresee a margin of flexibility to adapt to changing circumstances;
- Those CAs who have not yet implemented in their supervisory annual plan monitoring of requirements emanating from Article 28 MCD and EBA Guidelines on arrears and foreclosure should start including these.

### Best practices of CAs

84. The PRC considers as best practices of CAs the following:

- NL has a specific team which supervises the product approval and review process, conducting different projects and investigations on this, that could provide valuable input when supervising creditors’ treatment of borrowers in arrears.
- NL issued “instructive letters on compliance” (a formal enforcement tool which guides creditors in interpretation).



## 5.3 Supervision of creditors' engagement with borrowers

85. This section sets out the PRCs findings in relation to the supervision of creditors' compliance with all the elements of:
- Guideline 1 which expects creditors to establish and keep up to date procedures to detect as early as possible consumers going into payment difficulties, and to handle and engage with them in an effective manner.
  - Guideline 2, which sets out expectations for creditors to engage with consumers when going into payment difficulties.
86. The section also sets out findings of non-compliant creditors, and presents any recurrent trends observed by CAs that might have led borrowers towards difficulty in repayment.

### Assessment of benchmark 2 – Effectiveness of the supervisory engagement with creditors

87. To assess the effectiveness of the supervision of creditors' engagement with borrowers the PRC sets a benchmark with the following criteria:

Criterion 1: CA has in place formal policies for regular engagement with creditors, including, where appropriate, discussions regarding creditors' obligation to exercise reasonable forbearance before foreclosure proceedings are initiated.

Criterion 2: Regular meetings and/or regular bilateral communications are held with creditors as part of the CAs normal supervisory activity.

Criterion 3: CA engagement with creditors takes into account industry and market developments and envisage ad-hoc engagement where needed.

Criterion 4: CA engagement with creditors is documented and informs CAs supervisory activities.

Criterion 5: CA takes other actions to ensure that creditors are aware of supervisory oversight.

88. The PRC found that two CAs fully apply the criteria (NL, PT), three largely apply the criteria (EL, HU, LT), and two partially apply the criteria (CY, SK).
89. As regards criterion 1, no CA fully applies the criterion as they all lack written policies covering supervision of Guidelines 1 and 2. Five CAs (EL, HU, NL, LT, PT) largely apply the criterion as they have an informal methodology in place. Two CAs (CY and SK) partially applied the criterion.
90. Several CAs (LT, NL, PT) were found to have fully applied criterion 2. HU is considered to largely apply while three CAs (CY, EL and SK) partially applied the criterion.

91. Most CAs fully applied criterion 3 (HU, LT, NL, PT, SK), with CY and EL largely applying the criterion.
92. With regards to criterion 4, four CAs (HU, LT, NL and PT) were considered to fully apply the criterion as they provided information on procedures to record exchanges with creditors in an efficient way and effectively informing their supervisory activity. EL was found to largely apply the criterion as the PRC understands that the CA does not systematically keep record of the engagement with the creditors which is then reflected in the authorities' measures, while CY and SK were considered to partially apply the criterion SK referred only to a document compiled at the end of inspection, while CY indicated that the only recorded communication is exchange of emails with creditors when sending the questionnaires for self-assessment.
93. When examining criterion 5, the PRC took into account all of the actions of the CAs when addressing the four other criteria in relation to benchmark two and took into consideration additional actions the CAs had taken in relation to those criteria. To that end it found that four CAs fully apply this criterion (HU, LT, NL, PT). EL is considered to largely apply and CY and SK to partially apply the criterion.
94. The PRC's scoring of this benchmark is based on the assessment of the supervisory practices of each CA under review as detailed below.

Table 5: Benchmark 2

	CY	EL	HU	LT	NL	PT	SK
<b>Criterion 1</b>	Yellow	Light Green	Light Green	Light Green	Light Green	Light Green	Yellow
<b>Criterion 2</b>	Yellow	Yellow	Light Green	Green	Green	Green	Yellow
<b>Criterion 3</b>	Light Green	Light Green	Green	Green	Green	Green	Green
<b>Criterion 4</b>	Yellow	Light Green	Green	Green	Green	Green	Yellow
<b>Criterion 5</b>	Yellow	Light Green	Green	Green	Green	Green	Yellow
<b>Overall Score for Benchmark 2</b>	Yellow	Light Green	Light Green	Light Green	Green	Green	Yellow

### Supervision of creditor's engagement with borrowers

95. The different supervisory approaches and tools of the CAs under review for the supervision of creditors' treatment of mortgage borrowers in arrears are set out in the section above. Those findings are applicable for monitoring creditors' compliance with Guideline 1 and 2.
96. CY has no specific procedure for engagement but engages with creditors when handling

reports of alleged infringements. The CA uses one supervisory tool, which is the questionnaire sent to the compliance function and internal auditors mentioned several times in this report. The Supervision Division takes into account industry and market developments during their engagement with creditors through the financial stability report, which is prepared on a quarterly basis, they also receive quarterly reporting regarding the various steps of the arrears resolution procedure. Information is also exchanged on an ad hoc basis through reports, memos or emails among the departments. In addition, the CA engages with creditors and their associations in the form of meetings. Where they see issues that may lead a rise of NPLs, onsite inspections may be performed jointly by supervision and financial stability. Dear CEO letters were issued by the CA with regard to NPLs and forbearance measures. CY indicated that the only recorded communication is an exchange of emails with creditors when sending the questionnaires for self-assessment.

97. In case of breaches, following consultation with its legal services, the Financial Conduct Unit refers to the Governor who adopts remedial actions, i.e., by letter. Prior to this, when the Banking Supervision Unit was supervising both prudential and conduct issues, CY was monitoring creditors' compliance with Guideline 2 through complaints received.
98. EL has no specific written procedure for engagement with creditors. However, it holds meetings with supervised entities to assess compliance with EBA Guidelines and the MCD. It also refers to on-site inspections as a mode for regular engagement with creditors, whereby they avail of creditors' reports with data on loan quality and information gathered through the handling by the supervised entities of complaints and enquiries submitted by consumers.
99. In addition to the supervisory tools referred to above, the CA uses: (i) quarterly reporting data on arrears handling; (ii) the complaints it receives from consumers; (iii) the applications of the credit servicing companies it receives along the authorisation process; and, (iv) information provided by creditors upon its request. Regarding the latter supervisory tool, EL provided a specific example and referred to a thematic review carried out in 2022, during which the CA requested creditors to provide, inter alia, details on: (i) the policies and procedures in place and the level of creditors' communication with borrowers in arrears; (ii) ways of communication with borrowers in arrears; (iii) ways the standardised financial information template is received, (iv) use of other sources for the collection of the borrower's financial information, and (v) deadlines set to borrowers for the provision of any supporting documents; (vi) parameters of assessment of the borrower's financial data; and, (vi) ways to provide borrowers with adequate forbearance measures. During this thematic review the CA found some creditors to be non-compliant with Guideline 1.2 because they had not updated their internal policies and procedures.
100. In HU, the supervisory process, tasks, and responsibilities are laid down in an internal procedure which must be followed during the assessment. Even though the formal engagement policies have not been detailed, the general approach when engaging with creditors consists of "Dear CEO letters", consumer protection warnings and circular.

Moreover, HU allocates a consumer protection supervisor as counterpart to each credit institution's consumer protection contact person, thus facilitating a direct communication channel.

101. HU assesses compliance with all the elements of Guideline 1 through continuous supervision, including quarterly portfolio data collection, monitoring of credit institutions' websites, and reviewing procedures and IT systems set up to identify consumers in repayment difficulties. The CA has issued recommendations to financial institutions on the treatment of retail credit- and leasing contracts in arrears. In response to the end of COVID-19 moratorium, HU issued circular letters to credit institutions on the requirement of the preparation for handling of potential arrears in the period of post moratorium and required credit institutions to set out forbearance measures for consumers and publish the relevant information on their website explicitly preparing for arrears after the moratorium. In this context, the CA issued a 'Dear CEO letter' to a creditor which failed to set out forbearance measures and failed to make this information publicly available. Occasionally, the supervisory area surveys the creditors to see their expectations and preparedness to handle upcoming challenges. However, the CA has not assessed creditors' compliance with all the elements of Guideline 2 on the grounds of its risk-based approach.
102. LT carries out the assessment of creditors' compliance with the Guideline 1 through inspections (routine or ad-hoc on-site inspections), thematic reviews to check market practices, and reviews complaints handling to assess creditors' compliance with Guideline 2. During inspections, the CA assesses creditors' communication with borrowers and internal documents and procedures dealing with the management of the non-performance or improper performance of credit agreements. The CA found a case of non-compliance with Guideline 2 during an on-site inspection, and this led the CA to issue a penalty.
103. LT has no formal policies for engaging with creditors as regards their treatment of mortgage borrowers in arrears, however the CA implements a daily supervision approach, including through both planned and ad hoc inspections, handling of complaints regarding the potential breaches by supervised creditors, and interaction with creditors and borrowers. LT's Methodology of Inspections stipulates inspection procedures, requiring that all deficiencies be appropriately substantiated by copies of documents, calculations, analysis, materials, and written explanations by the creditors' personnel, among other evidence. In addition, it also requires that inspection results are documented in a report. LT informs the creditor about inspections in advance and requests the provision of specific information and documents relevant for each specific area to be inspected. In response to the changing economic environment, the CA recently sent letters to creditors reminding them to apply reasonable forbearance measures to borrowers in light of the increasing interest rate environment.
104. NL has a detailed procedure (albeit non-written) for engaging with creditors in respect of their compliance with Guidelines 1 and 2. In respect of Guideline 1 the CA carries out inspections to assess the level of compliance, during which it performs interviews and

- reviews borrowers' files. It involves its department on consumer behaviour to determine the most effective solutions for creditors to help consumers in payment difficulties and to guide the institutions in improving the way these situations are handled. At the end of the process, it develops plans for creditors' improvement and publishes reports with the main findings. NL implements various off-site measures to check creditors' compliance with Guidelines 1 and 2, such as: i) requesting information containing both question for creditors (about policies, procedures, working instructions) and borrowers' files; ii) carrying out interviews with management and employees; iii) assessing the information and comparison of creditors' answers; iv) sharing findings with the creditors (other interviews or writing request); v) discussing the plan of improvement with the provider; vi) monitoring the execution of the plan of improvement; vii) publishing a public report so creditors who were not part of the investigation can also learn from the findings.
105. When investigating arrears management, NL uses work programmes to assess the information provided by the creditor. These work programmes include questions to be asked to the creditors and a methodology for checking the answers provided.
  106. NL also engages with creditors to provide guidance on how to self-assess, analyse root causes, and handle the engagement with consumers in payment difficulties. Based on market developments, signals and client complaints, the CA carries out research, investigations, and supervisory actions. It has also engaged in a pilot with institutions on behavioural science, seeking to obtain more insights into consumer attitudes, intentions, and behaviour.
  107. In relation to Guideline 1 PT assesses creditors' internal policies to manage arrears and procedures for contacting bank customers. Furthermore, the CA carries out inspections and assesses complaints related to institutions' compliance with the rules that reflect Guideline 1. With regard to Guideline 2 PT uses a comprehensive set of tools, including inspections, systematic monitoring of information reported by institutions, complaints handling and mystery shopping, website analysis (to assess the clarity of the documentation) and the monitoring of pre arrears action plans. PT has an informal methodology outlining a number of steps for the engagement with creditors during inspections to assess compliance with rules governing the prevention and management of arrears on mortgages including: collection of information reported to the CA; qualitative data request in the form of a questionnaire and access to the creditor's computer systems to monitor creditors' handling of consumers in repayment difficulties and information provision; contact to obtain the necessary clarifications; and inspection report, with proposed supervisory measures. The CA found a case of non-compliance with Guideline 2 during complaints-handling, and this led the CA to issue orders against the creditors to amend their internal procedures.
  108. PT has regular meetings with creditors to monitor the implementation of the legal and regulatory framework, in accordance with a threefold strategy: (i) permanent market monitoring, and reception, processing and analysis of information submitted by institutions every month; (ii) conduct supervision through inspections and complaints' handling, and

- corresponding enforcement; and (iii) open and permanent communication channel.
109. In PT, the rules on prevention and management of arrears are subject to permanent oversight, and particular attention is given to specific macroeconomic circumstances putting pressure on the financial resilience of borrowers. In these specific circumstances, besides the usual monitoring activities, PT holds regular meetings with relevant market players, including associations from the industry, in order to understand how they are implementing the legal and regulatory requirements to ensure that their procedures are adequate and effective, and to promote a level playing field.
  110. During inspections to assess compliance with rules governing the prevention and management of arrears on mortgages the engagement with creditors is documented through different tools, such as the data request or the proposed supervisory measures in each institution's inspection report.
  111. PT details the procedure for the inspection of rules governing the prevention and management of arrears on mortgages, some of the steps of which imply creditors being aware of supervisory oversight: data request in the form of a questionnaire; access to the institution's computer systems; presentation of the inspection report and proposed supervisory measures.
  112. SK has explicitly stated that it has not implemented any specific methodology, nor internal procedure, for the assessment of creditors' treatment of mortgage borrowers in arrears, which is considered not significant in the jurisdiction, consequently treating it as a marginal task within on-site inspections. By way of an informal approach the CA conducts inspections according to the existing financial market situation. Ad hoc off-site inspections are also conducted when problematic issues for consumers are identified from their complaints, or as a result of economic and social changes deemed to have a significant impact on financial consumers, based on data provided by Financial Stability Department or market findings gathered from eCIM (a SupTech tool). The CA has held ad hoc meetings with creditors on the topic of possible solutions for borrowers suffering from the rise of interest rates and instalments on housing loans.
  113. During 2021 and 2022, in the context of prudential off-site supervision on four banks, SK found out that these institutions were compliant with requirements emanating from Guideline 1. SK did not directly monitor creditors' compliance with Guideline 2, moreover through prudential supervision (analysis of data and absence of consumers' complaints) the CA did not come across any findings that could give rise to concerns. Findings, if any, are documented at the end of inspections.

## Conclusions

114. With regards to CAs' engagement with creditors, the PRC found that the majority of CAs do not have explicit formal procedures or policies, despite the wide variety of approaches CAs follow to communicate with supervised institutions. Some of the reviewed CAs (EL, PT)

indicated that they regularly engage with creditors either through meetings or bilateral communication and take into account these exchanges to inform the supervisory plan and priorities.

115. There is also indication that all CAs engage with creditors ad hoc when needed, as in the recent cases of COVID-19 and sudden increase in central bank interest rates. Furthermore, the PRC found that almost all CAs have implemented different approaches to supervise creditors' compliance with Guideline 1. It also found that not all CAs actively supervise creditors' compliance with the requirements emanating from Guideline 2. The risk-based approach adopted by many CAs may not capture instances of non-compliance as for instances where borrowers in arrears is not considered a significant national issue and consequently not directly supervised. The PRC is of the view that compliance should be monitored on a continuous basis and with direct supervision in order to have regular reporting and data covering conduct issues. This is particularly relevant in light of the current economic scenario with envisaged increase in central bank interest rates, where it is of utmost importance that creditors and borrowers work together to establish why the difficulties have arisen and for the creditors to take appropriate steps, the approach of NL in this respect is considered as a best practice. The PRC are of the view that a systematic approach should be taken to the supervision of compliance with Guidelines 1 and 2, this is particularly relevant in national mortgage markets predominantly characterised by variable interest rates.

### Follow-up measures for CAs

116. As follow-up measures, the PRC considers that:
- CAs should have in place formal and written methodologies for the engagement with creditors in relation to the supervision of creditors' treatment of borrowers in arrears.
  - CY should expand its supervisory tools and processes to monitor creditors' compliance with Guidelines 1 and 2. It should expand its supervisory tool set and not rely solely on self-assessment by creditors which may somehow not truly reflect the real level of compliance as the result would be based on creditors' assessment and these may have a different understanding of what supervisory expectations and requirements are. CY should adopt measures that are more intrusive, frequent and systematic, such as on-site inspections, and to include conduct activities in their annual supervisory plans.
  - LT should enhance the level of supervision of creditors' compliance with Guideline 1, by adopting further tools to carry out monitoring on a continuous basis.
  - SK should enhance the level of supervision and supervisory approaches to monitor compliance with Guidelines 1 and 2. In addition, as regards documentation of the



engagement with creditors, SK should develop appropriate procedures to record these exchanges.

### Best practices of CAs

117. The PRC also observed some best practices developed by some CAs that might be of benefit for other CAs to adopt:
- The use of consumer behaviour assessments to enhance support to consumers and provide guidance to creditors about how to best handle the engagement with the consumers in payment difficulties.
  - NL implements various off-site measures to check creditors' compliance with Guidelines 1 and 2, that include the publication of a report so creditors that were not part of the investigation can also learn from the findings.
  - The flexible approach adopted by PT which allows the CA to react quickly to changing economic conditions, also considering the high level of engagement and exchanges with creditors which helps to handle in a timely manner unforeseen changes.
  - The practice of EL which uses supervisory tools (e.g., regularly reporting data on arrears handling, thematic reviews, interviews, on-site inspections and assessment of information creditors provide to borrowers) as it includes both off-site and on-site tools, on an ad-hoc and continuous basis, and captures risks that stem from non-compliance.

## 5.4 Supervision of creditors' provision of information to borrowers

118. This section examines firstly how CAs assess creditors' compliance with all the elements of Guideline 3, which requires creditors to communicate clearly and in a plain language to consumers, as well as providing support to those in payment difficulties. It also describes how CAs assess creditors' compliance with requirements contained in Article 18 of the MCD, which requires creditors to carry out a thorough assessment of the prospective borrowers' creditworthiness taking into account all relevant factors that could impact their repayment capability, prior concluding any contract, and their preparedness for dealing with any increase in arrears or foreclosures which may stem from a changing economic outlook and/or market developments leading to stressed conditions.
119. To assess this the PRC applied a fourth benchmark which analyses supervision of creditors' assessment of creditworthiness of borrowers and supervision of information provided by creditors to borrowers going into payment difficulties is appropriate.

#### **Assessment of benchmark 4 – Supervision of creditors’ assessment of borrowers’ creditworthiness and of creditors’ provision of information when payment difficulties arise**

120. To assess this, the following assessment criteria were set:

Criterion 1: CA has effective measures to assess the obligations of creditors under Article 18 of the MCD.

Criterion 2: CA has formal policies in place for the assessment of the effectiveness on the provision of information to the borrowers.

Criterion 3: CA engages in early formal communications with creditors on borrowers going into arrears.

121. With regards to criterion 1, four CAs (EL, NL, PT, SK) were considered to have fully applied the criterion as they monitor creditors’ compliance with Article 18 MCD. CY was considered not to have applied the criterion, as it does not assess compliance, while HU partially applies it, given the sampling methodology it uses is not all encompassing, and LT largely applies the criterion as the PRC found that while compliance with Article 18 is not assessed on a continuous basis the CA has identified best practices in its inspections.

122. With regards to criterion 2, none of the CAs reviewed fully apply the criterion. However, five (EL, LT, NL, PT and SK) are considered to largely apply the criterion as through their specific actions mentioned above, they do assess whether information provided by creditors to the borrowers is effective. HU is considered to partially apply the criterion as the PRC understands that this CA assesses compliance only on a case-by-case basis due to its risk-based approach. CY is considered not to have applied the criterion as the PRC understands that this CA has no measure in place to assess creditors’ compliance with Article 18 MCD requirements.

123. With regards to criterion 3, five CAs (EL, LT, NL, PT and SK) were found to have fully applied the criterion by implementing different tools in order to engage proactively with creditors, as the examples provided for the recent rise in inflation and interest rates show (reminders to creditors to exercise reasonable forbearance and to take into consideration borrowers difficulties). HU largely applies the criterion as the PRC understands the CA assesses information but has not yet taken any action on the grounds of its risk-based supervision, while CY was found partially apply the criterion.

Table 6: Benchmark 4

	CY	EL	HU	LT	NL	PT	SK
<b>Criterion 1</b>	Red	Green	Yellow	Light Green	Green	Green	Green
<b>Criterion 2</b>	Red	Light Green	Yellow	Light Green	Light Green	Light Green	Light Green
<b>Criterion 3</b>	Yellow	Green	Light Green	Green	Green	Green	Green
<b>Overall score for Benchmark 4</b>	Red	Green	Yellow	Light Green	Green	Green	Green

**Supervision of creditors’ provision of information to borrowers and supervision of creditors’ assessment of borrowers’ creditworthiness**

124. In addition to the supervisory approaches and tools already described for each CA under review in section 5.1, further information has been provided for the supervision of creditors’ compliance with Guideline 3, which is summarised in the following paragraphs.
125. CY reviews the letters that creditors provide to borrowers, but it has not assessed whether these letters would be regarded “as clear and in plain language” from the perspective of the borrower, nor does the CA assess effectiveness of creditors’ information. In addition, the PRC found no evidence of any action taken to assess creditors’ compliance with Article 18 MCD, however, the CA has issued Dear CEO letters in relations to NPLs and forbearance issues.
126. EL has developed standardised documents (including a specific financial information template) to ensure provision of information is adequate, it monitors the creditors’ websites and implements on-site inspections. It assesses the provision of information provided by creditors and checks if it is clear and plain. It found cases of non-compliance with Guideline 3 and sent written recommendations to institutions. In order to assess creditors’ preparedness for dealing with any increase in arrears or foreclosures (consequent to changing economic outlook) and likely to result in an increase of borrowers in arrears, EL requests ad hoc reporting when necessary, issued “Dear CEO letters” driven from the identification and measurement of credit risk and conducts ongoing communication with the institutions, which set out measures, for a specific period of time to protect households from the effects of prevailing turbulence.
127. HU carries out assessments of creditors’ compliance with Article 18 MCD using comprehensive or targeted supervisory activity, whereby samples are chosen, and the correctness of the borrowers’ income and financial information are checked sample by

sample. In terms of changing economic conditions, HU relies on data and indicators of changed economic conditions to counter the effects of inflation and rising wages, the DSTI debt service ratio was adjusted in 2023. The CA examines creditors' compliance with Article 18 MCD only from a prudential perspective.

128. LT does not carry out any Article 18 MCD driven action on a continuous basis, however, through its standard supervisory practices it conducts routine inspections and thematic reviews, should they be triggered. However, no triggers have arisen as to the language used by the creditors in relationships with borrowers. Nonetheless, during a recent inspection, LT identified best practices from banks towards consumers in arrears, such as providing the borrowers with a complete set of information on repayment obligations and terms. In order to assess creditors' preparedness for dealing with any increase in arrears or foreclosures (consequent to changing economic outlook) and likely to result in an increase of borrowers in arrears, the CA uses focused routine inspections to assess compliance with an "interest rate sensitivity test" and also uses stress testing and thematic reviews.
129. NL supervises creditors' provision of information to borrowers through: (i) guidelines for effective communication from a consumer behaviour perspective; (ii) providing examples of good and poor communication; (iii) assessing standard letters and client files from creditors. Points of improvement are shared with the creditors and general recommendations are disseminated in publications. The CA also encourages creditors to use more innovative and accessible channels for communication.
130. NL also performs horizontal investigations based on market developments, with all supervised creditors, whereby, challenges and possibilities of scaling up the resources are discussed. The CA expects creditors to determine which clients are more at risk of payment difficulties and to reach out to these clients and help them to prevent such issues. The CA also investigates whether creditors adhere to the applicable rules, and expects creditors to fully update the income and other financial information of clients of borrowers who severely default in order to determine an appropriate solution.
131. PT oversees compliance with those rules mainly through complaints' handling and inspections. The quality of the information provided to borrowers is mainly supervised in the context of complaints' handling and through on-site (including mystery shopping) and off-site inspections, in which the information available in the institutions' websites is assessed. The CA also requests information materials that institutions use to communicate with borrowers in arrears. Regarding Article 18 of the MCD, the CA, in the context of inspection activities, requests credit institutions to provide information about the specific documents provided by consumers and the records kept by the institution for a sample of consumers.
132. SK verifies, among other things, that creditors assess borrowers' ability to repay, verifying electronically information on the consumer's income through the Social Insurance Agency and the credit register. This CA also inspects onsite to assess the creditors' internal

regulations and internal process of creditworthiness assessment and the level of automation. It also conducts mystery shopping to assess information provided at pre-contractual and contractual stage. In relation to changing economic conditions SK expects creditors to follow a credit assessment methodology that builds a calculation of a stressed interest rate into the creditworthiness assessment and does so from a prudential perspective.

## Conclusions

133. The majority of targeted CAs have satisfactory tools and measures in place to assess creditors' compliance with the requirements emanating from Article 18 MCD, ranging from a systematic review to a sampling approach. With regards to preparedness for changes in the economic scenario, almost all CAs have taken this into account within their actions, however, some CAs could bolster their supervision in this area to take this into account.

## Follow-up measures for CAs

134. The PRC considers as follow-up measures that:
- All CAs should consider enhancing their supervision of creditors' preparedness for dealing with potential arrears related to market conditions by further engage with them and provide guidance in what supervisory expectations are from Article 28 MCD;
  - CY should establish monitoring of creditors' compliance with Article 18 MCD;
  - CY and HU should enhance their supervision of creditors' preparedness for dealing with any increase in arrears or foreclosures related to changing market and economic conditions from a conduct / consumer protection point of view and in particular monitor information provided to borrowers from creditors.

## Best practices of CAs

135. The PRC also observed some best practices that might be of benefit for other CAs to adopt:
- Develop and provide guidelines to creditors for effective communication from a consumer behaviour perspective and examples of "good communication" with borrowers, as currently being done by NL;
  - Employ the use of mystery shopping, where possible, in order to assess the clarity of the information, as SK and PT are currently doing.

## 5.5 Supervision of creditors' forbearance measures

136. This chapter presents an overview of how CAs under review supervise creditors' compliance with Guideline 4, which sets out requirements for creditors to *'[...] take into account the individual circumstances of the consumer, the consumer's interests and rights and his/her ability to repay when deciding on which steps or forbearance measures to take. [...].'*

137. To assess the supervision of creditors' forbearance measures a fifth benchmark was set with the following criteria: (i) CA makes use of national measures / takes national measures to encourage creditors to exercise reasonable forbearance, including all relevant requirements under Article 28 of the MCD and EBA GLs; (ii) CA increases the engagement with creditors who have borrowers going into or already in payment difficulties; (iii) CA assesses that creditors anticipate, prepare and provide information in a timely manner to borrowers regarding economic changes.

#### **Assessment of benchmark 5 – Supervision of creditors' forbearance measures' effectiveness**

138. The PRC identified significant divergences among how the seven targeted CAs' approach this area.
139. With regards to the first criterion, which assesses whether CAs make use of national measures to encourage creditors to exercise reasonable forbearance, almost all CAs (CY, EL, HU, LT, NL, PT) fully apply this, with SK not applying the criterion.
140. With regards to the second criterion, whereby CAs increase engagement with creditors having borrowers going into arrears, most of the information provided for criterion 3 under Benchmark 4 can be replicated here, five CAs (EL, LT, NL, PT, SK) fully apply it, HU largely applies the criterion and CY partially applies it.
141. Finally, and with regards to the third criterion, whether CAs assess if creditors anticipate, prepare and provide information to borrowers in a timely manner regarding economic changes, four CAs (EL, LT, NL and PT) fully apply the criterion two CAs (HU, SK) largely apply it complaint and CY partially applies it.
142. The PRCs scoring of these criteria is based on the assessment of the supervisory practices of each CA under review as detailed below.

Table 7: Benchmark 5

	CY	EL	HU	LT	NL	PT	SK
<b>Criterion 1</b>	Green	Green	Green	Green	Green	Green	Red
<b>Criterion 2</b>	Yellow	Green	Light Green	Green	Green	Green	Green
<b>Criterion 3</b>	Yellow	Green	Light Green	Green	Green	Green	Light Green
<b>Overall Score for Benchmark 5</b>	Yellow	Green	Light Green	Green	Green	Green	Light Green

### Supervisory approaches and forbearance measures

143. CY monitors creditors’ compliance with Guideline 4 through the prudential monthly monitoring of arrears from banks. This tool is also used by the CA to assess how creditors anticipate, prepare, and provide information in a timely manner to borrowers regarding economic changes. This monitoring stemmed from the NPLs issue, in 2021 and 2022, the main forbearance measures related to: (i) extension of maturity and instalment amount reduction, (ii) interest rate reduction, (iii) capitalisation/waive of arrears and split and freeze. The CA issued circulars letters in 2013, 2015 and 2019 from the Governor to address certain issues related to borrowers in repayment difficulties. However, the PRC remains concerned, as already mentioned in this report that the only conduct tool is us by the CA is the questionnaire. In addition, the CA has many meetings with associations for the protection of borrowers since November 2022 as well as meetings with associations of CAs and banks where the CA encouraged these creditors to engage with borrowers and offer them restructuring solutions.
144. CY has no specific manual or policies in place to respond to anticipated changes in the economic outlook beyond the Cypriot State’s expectation that financial institutions reduce the interest rates of mortgage loans based on Euribor rates in the current economic scenario.
145. EL has a broad toolset of supervisory instruments to assess creditors’ compliance with Guideline 4, which has been implemented in the Greek Code of Conduct on arrears handling. It ensures that creditors implement the latest legislation, including credit servicers. The CA uses a two-fold strategy adopted to engage with creditors when economic situation changes and/or borrowers are in repayment difficulties; with an enhanced engagement with creditors, i.e., a close monitoring of the lenders which may entail targeted reporting and



- ongoing communication with them, especially in periods of economic turbulence (for example, during COVID-19, EL issues Dear CEO letters), and to assess the creditors' approach to addressing macro-economic turbulence (for example, during COVID-19, when a nine-month moratoria was applied).
146. In a recent thematic review exercise, EL requested creditors to describe (i) policies and procedures applied for designing solutions provided to borrowers facing serious financial distress, (ii) parameters adopted to carry out creditworthiness assessment, (iii) policies and procedures to facilitate the repayment of any outstanding debt remaining after the foreclosure proceedings. As a standard procedure, through quarterly reporting, the CA receives information on the course of actions taken by institutions in the reporting period to apply the Arrears Resolution Procedure, which also includes data on the types of solutions provided to borrowers after assessing their overall financial situation, including borrowers facing serious financial distress.
  147. With regards to forbearance measures adopted, EL has a more granular national reporting system than FINREP (covering flows, performance of modifications and closure actions, arrears resolution procedure, etc). Overall, long term amendments of the credit agreements are the most common solution offered as they are effective in NPL management, such as split balance and loan term extension, followed by partial debt forgiveness. EL follows SSM approach vis-à-vis SIs to communicate with creditors on changes in the economic conditions (dear CEO letters). Furthermore, EL conducts regular meetings and has bilateral communications with credit servicers.
  148. HU did not examine creditors' compliance with Guideline 4 during the whole peer review reference period. Monitoring started only in August 2020 under continuous supervision, albeit prudential led in its approach. In 2020 HU issued circular letters to credit institutions requiring them to set out forbearance measures for consumers and publish the relevant information on their website in preparation for handling of potential arrears in the period of post moratorium. The CA monitored credit institutions' fulfilment of these requirements with continuous supervision, through several steps, the last of which was the end of the credit moratorium in Q1 2023 with a 'Dear CEO letter' sent to a creditor that had failed to set out forbearance measures and to publish information. Furthermore, in Q1 2023 HU issued a survey on consumer protection for six banks, with the aim of assessing their compliance with the main requirements on Recommendation 5/2022 on the treatment of retail credit and leasing contract in arrears.
  149. The CA has in place a stress testing framework to respond to anticipated changes in economic conditions (simulated downturn which considers observable trends in the market and in the banking sector). The system developed by HU reflect macroeconomic shocks which are likely to impact / arise from the Hungarian market.
  150. LT assesses creditors' compliance through inspections, analysing specific credit agreements and the communication between creditors and borrowers. With regard to use of national

measures from LT to encourage creditors to exercise reasonable forbearance, at the end of 2022 the CA, in response to the increase in interest rates and financial burden on consumers, issued written recommendations for creditors encouraging them, inter alia, to take into account individual circumstances of the consumers and at an early stage to cooperate with borrowers who are facing financial difficulties. The most frequent forbearance measures implemented are (i) credit holidays, (ii) partial or total refinancing of a credit, (iii) extending the term of the credit agreement by reducing the amount of the monthly instalment, (iv) changing the credit repayment methods, (v) deferring credit repayment, and (vi) reducing interest rate.

151. NL assesses creditors' compliance with Guideline 4 through investigations on arrears management. It checks creditors' compliance whereby the CA investigates the matter both in the policy and working instructions the creditor uses as well as in client files and provides recommendations and good practices in the CA's external communications. One of the factors taken into account when selecting the creditors to investigate is on the basis of borrowers (with that creditor) in repayment difficulties, which is assessed on a regular basis every few years. NL adopts a risk-based approach towards change in the economic conditions. As the national mortgage market is predominantly made of long fixed interest rates credit, borrowers are informed at least 3 months in advance of any change in the cost of borrowed money to enable them to choose an alternative product. The CA places importance on the POG Guidelines [EBA/GL/2015/18]<sup>7</sup> according to which creditors must perform scenario analyses and verify what the impact of several economic developments on the product and borrowers would be. NL assesses performance analysis carried out by creditors as well as the implementation of the POG Guidelines when market conditions change.
152. PT supervises credit institutions' compliance with Guideline 4 through complaints' handling and inspections. Under the OASP, credit institutions shall assess the customer's arrears situation and creditworthiness. In the 30 days after this procedure has been initiated, credit institutions must present customers with one or more settlement proposals if they verify that customers have the financial capacity to meet the conditions set forth in their proposals. The most common forbearance measure adopted between 2019 and 2021 was the renegotiation of credit agreement, most frequently the grace period for principal and the maturity.
153. The CA's close monitoring is enhanced whenever the economic circumstances change. For instance, in the context of the COVID-19 pandemic, and anticipating the end of the credit moratoria, it carried out several meetings with credit institutions to discuss and understand how they would act in that context. Recently, in the context of rising interest rates and the approval of new legislation, the CA enhanced engagement with creditors to ensure that this was properly enforced.

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<sup>7</sup> [EBA-GL-2015-18 Final report on Guidelines on product oversight and governance.pdf \(europa.eu\)](#)

154. SK assesses creditors' compliance with Guideline 4 through a prudential led, risk-based approach from external sources (complaints and market indicators), and also applies a similar approach in relation to anticipating changes in economic conditions. There are several soft forbearance measures borrowers used, such as extension of the housing loan maturity period, deferral of principal payments to housing loan, change of repayment date for monthly instalments, partial writing off of a consumer's debt, provided by creditor in individual cases when it is the only solution for the consumers regarding his/her financial and life circumstance.

## Conclusions

155. Overall, the majority of CAs are assessing creditors' compliance with Guideline 4, utilising different approaches with regard to forbearance measures. However, the PRC notes that with respect to the features of Guideline 4 in particular to take into account the individual circumstances of the consumer, CA's produced little evidence to demonstrate how this particular aspect is assessed and supervised. Moreover, many CAs do not have robust measures or approaches in place to engage with creditors in response to changing economic and market conditions.

## Follow-up measures for CAs

156. The PRC considers as follow-up measures that:
- CY and SK are encouraged to incorporate in their ongoing and regular supervisory actions, supervision of creditors' compliance with Guideline 4.

## Best practices of CAs

157. The PRC notes the practices of LT and PT which undertook quick actions in response to the changing economic environment of rising inflation and increasing interest rates during Q42022. Both CAs closely engaged with creditors, reminding them of their supervisory expectations that exercise creditors reasonable forbearance measures and to implement all measures available to support consumers during the repayment difficulties. The PRC encourages all CAs to closely engage with creditors on these matters in response to the changing economic environment.

## 5.6 Supervision reflecting risks to borrowers

158. This section analyses the extent to which the supervision by CAs reflects risks borne by borrowers, and the supervisory approaches adopted by CAs based upon macroeconomic or borrowers' circumstances, monitoring of evolution of arrears and policies and procedures in place to respond to anticipated economic changes.
159. To assess this, the PRC set a sixth benchmark and applied the following assessment criteria: (i) CA carries out effective risk assessment of potential borrower detriment; (ii) CA gathers appropriate data to identify risks to the economic environment; (iii) CA gathers appropriate

data to identify risks arising from particular creditors and thematic risks.

### Assessment of benchmark 6 – Supervision reflects risks to borrowers

- 160. The PRC observed differences in the interplay of the supervisory governance, frequency, purposes, and the use of the data gathered across the seven targeted CAs, and these different methodologies used by the CAs reflect the different supervisory approaches towards creditors’ treatment of mortgage borrowers in arrears, as described above in Section 5.1.
- 161. In relation to the first criterion, regarding effective risk assessment by CAs of potential borrower detriment, most of CAs are considered to have fully applied it (EL, HU, LT, NL, PT, SK), even though each has a different methodology to determine such risks, and takes into account various indicators, including loans exposures and arrears as well as complaints received, depending on market specificities. All CAs rely on supervisory data reported by creditors when assessing their risks, and in particular the risk of borrowers in arrears.
- 162. As regards the second criterion and third criterion related to the appropriateness of data compiled by CAs to identify risks from the economic environment and particular creditors, as well as thematic risks, most of the CAs fully apply it (HU, LT, NL, PT, SK), with EL largely applying and CY partially applying the criterion.
- 163. The PRCs scoring of these criteria is based on the assessment of the practices of each CA under review as detailed below.

Table 8: Benchmark 6

	CY	EL	HU	LT	NL	PT	SK
<b>Criterion 1</b>							
<b>Criterion 2</b>							
<b>Criterion 3</b>							
<b>Overall score for Benchmark 6</b>							

### Supervisory practices of CAs under review

164. All CAs distinguish between procedures, provide different tools, or assign different importance for situations relating to macroeconomic circumstances applicable to the market and specific circumstances of the borrowers.
165. CY monitors the returns on compliance of arrears management from a prudential perspective and exchanges information on risks emerging from the market that could cause detriment to consumers by sending the Financial Conduct Unit a copy of a financial stability report prepared on a quarterly basis. With regard to Covid 19, the CA issued Dear CEO letters and moratoria. In addition, when needed, information is also exchanged through reports and internal communications among the departments. The CA may perform onsite inspections (Supervision Division and Financial Stability) as a result, with no involvement of the conduct unit. However, the PRC considers that the approach taken by the CA does not provide sufficient information to effectively assess the risk of borrower detriment.
166. In EL, supervision is prudential focused, the evolution of arrears is monitored on a continuous basis and takes into account developments of the broader economic and social environment. The CA differentiates its supervisory approach with regards to potential risks, such as change in the economic conditions. The CA conducted a thematic review in 2022 focused on creditors' implementation of the Code of Conduct on arrears handling. Following the last revision of the Code, supervised institutions were invited to submit qualitative data through a questionnaire regarding the application of the revised Code.
167. The CA received data from creditors, including quality of loans with a breakdown by business segment (including residential loans), through a National Reporting Template and via FINREP. The data provides information on key asset quality indicators, including, inter alia, new defaults, foreclosures, and types of loan restructuring. Other sources of information are used, such as the examination of complaints against supervised entities, ad-hoc requests of data, meetings with supervised entities, evaluation of applications for the licensing of credit servicers.
168. The CA observed an increase in arrears from January 2022, which it attributes to the combined effect of rising interest rates and rising inflation / energy prices. However, the net NPL inflow was rather small, and the end-year balance were significantly lower compared to December of 2021 due to collections, liquidations, sales, and write-offs.
169. EL may adopt ad-hoc initiatives in case of macro or other turbulences like the Covid-19 pandemic or increased in interest rates, which includes close monitoring of institutions (including targeted reporting where necessary); Dear CEO letters; ongoing communication with creditors; and, measures that can be applied by creditors for a specific period of time to protect households from the effects of prevailing turbulences. These types of measures may include loan payment suspensions as well as subsidies for part of the monthly installment of floating rate mortgages of vulnerable borrowers, based on income, wealth

and residential criteria. There are also creditors' reward programs for performing mortgages maintaining a lower interest rates.

170. HU implements a risk-based approach the CA takes a forward-looking approach and plans actions considering current economic circumstances, which are adopted when consumer risk arises. Aggregated data on loan arrears is collected from supervised financial institutions (credit institutions submit monthly data, while financial institutions submit quarterly data on housing loans and home equity loans to households), and granular, loan by loan data is provided through the Credit Register. Based on this data, the CA conducts different risk assessments, including evaluation of trends in the different mortgage segments, both at entity and sector level. The results of such risk assessments feed into the SREP (Supervisory Review and Evaluation Process) and thus have an impact on the scoring of supervised institutions' viability. Complaints and enquiries from consumers are considered. There are several channels used to communicate risks to creditors, such as dear CEO letters, consumer protection warnings, circular letters, and the proactive ongoing monitoring of creditors' websites.
171. Supervisory information is assessed on a daily basis and then proposed for further evaluation. If unusual trends are observed during the analysis of supervisory data, targeted or thematic on- or off-site inspections can be conducted by a specialised inspection department.
172. Although no specific data reporting of creditors under Article 28 MCD and the EBA GLs is available, HU has an internal manual containing guidelines and explanations on the tools and procedures to follow and an annual investigation calendar which includes detailed actions, completed by ad-hoc actions triggered by the actual market situation should risks be signalled for consumers. HU utilises stress testing models developed on bank sector data to quantify the negative impacts of a simulated economic downturn in line with EBA SREP Guidelines (EBA/GL/2022/03) to include the Pillar 2 Guidance (P2G) as direct capital guidance stemming from stress testing.
173. In addition to the measures adopted during COVID-19, in 2022 HU reviewed its consumer protection recommendation to financial institutions on the treatment of retail credit- and leasing contracts in arrears'. Occasionally, the supervisory area prepares questionnaires on future expectation on arrears for creditors in order to see how creditors are ready to handle the upcoming market challenges.
174. LT uses a risk-based supervisory approach. When planning supervisory actions for the next year, indicators that take into account industry and market developments are evaluated. With respect to mortgage loans, indicators of the significance and/or extent of the financial service (number of loans and outstanding credit balance), the main risks specific to the services (loans overdue for more than 90 days; share of delinquent loans to total portfolio; variation in the number of complaints received by credit institutions regarding this service compared to the average of the corresponding period; and, changes in the number and

amount of loans during the period), and the extent of resources allocated to handling complaints and disputes. The CA also administers a credit register where information about credit agreements under the MCD, including loans in arrears, which must be submitted by the supervised entities.

175. In LT, the Supervision Division cooperates with the Macroprudential Policy Division under the Financial Stability Department in policy-making and other initiatives. The MPD contributes to the supervision of mortgage loans, by keeping track of market developments and trends and providing more detailed information about mortgage loans, including on interest rates, maturity, arrears, or total outstanding amount. In addition, the CA conducts thematic reviews on existing market practice, and regularly monitors data about arrears, adopting action if needed. Ad-hoc initiatives were adopted in response to COVID-19 and the recent increase in living costs and central bank's interest rates.
176. Based on market developments, signals and complaints from clients, NL conducts research and executes supervisory actions. Data collection is part of all supervisory work, and client files and specific circumstances are assessed during investigations. The CA also monitors the evolution of mortgage arrears through information reported by the credit registers. As data publication lags behind the time of the occurrence of problems, the CA does not just rely on the data reported (for example, investigations were initiated at the beginning of the Covid pandemic and in anticipation of the effects of increasing interest rates).
177. NL focuses on stability risks which may be present in the mortgage sector. To this end, NL has regular meetings with the large creditor, participates in annual roundtable discussions about macroeconomic risks to the financial system and prepares an annual report on financial stability risks, which, in 2022, included a chapter on the potential risks in the housing market due to high inflation and rising interest rates.
178. In PT, the CA follows a risk-based approach to the supervision of institutions' compliance with the legal and regulatory framework in place. The rules on prevention and management of arrears are subject to permanent oversight, with special attention from a supervisory perspective where specific macroeconomic circumstances put pressure on the financial resilience of borrowers. In specific circumstances, such as each time new rules are implemented and in case of adverse macroeconomic conditions, oversight actions, for instance, are reinforced. There is frequent cooperation between the Conduct Supervision Department and the Financial Stability Department on the treatment of mortgage borrowers in arrears. Credit institutions are required to report on a monthly basis granular data about the credit agreements included in the PRAP or in the OASP. This data refers to each credit agreement and contains details about the outcome of these procedures and allows to detect irregular or inadequate practices or procedures.
179. In order to identify relevant issues and to design oversight activities, new legislation and regulation is monitored, alongside information collected through complaints' handling, lessons from previous inspection activities, or information in the media. The CA may also



carry out thematic reviews on specific matters to verify compliance with rules approved to mitigate the impact of negative economic and financial circumstances.

180. PT holds regular meetings with credit institutions and industry associations in order to discuss the macroeconomic outlook as well as supervisory expectations and assesses information collected through the several supervisory tools to check whether creditors comply with the applicable legislation. In response to situations such as the Covid-19 pandemic and the sudden increase in interest rates, in addition to usual the monitoring activities, PT holds regular meetings with market players to discuss and understand how they would act in changing economic conditions and ensure compliance and promote a level playing field.
181. SK's internal methodology takes account of industry and market developments. The CA applies a risk-based approach relying on different types of information when conducting on-site supervision, such as assessing complaints submitted by consumers, data regarding the volume of loans, data regarding defaulted housing loans provided by the Financial Stability Department (indicator of defaulted housing loans and Indicator of net defaulted housing loans). SK regularly monitors the evolution in arrears of housing loans.
182. The macroprudential section cooperates on a weekly basis with the consumer protection supervision section through an informal committee, which enables the identification of significant findings with potential impact on mortgage borrowers. Additionally, findings are also identified through eCIM (a SupTech tool). Twice a year, the CA publishes its Financial Stability Report, where data from consumer complaints are gathered. When problematic issues for consumers are identified, either from complaints or based on economic and social conditions, the CA conducts specific inspections or promotes work on specific legislation (as an example, the Lex COVID 19, which defines rules for deferral of payments in the context of the pandemic).
183. The CA contributed to the legislative response to the COVID-19. In addition, it publishes annual reports and analysis on financial stability, organises meetings / workshops with financial institutions.

## Conclusions

184. In line with the different supervisory approaches adopted by the targeted CAs in monitoring creditors' compliance with mortgage borrowers in arrears, authorities have similar approaches when it comes to detecting risks from the market and reflecting these risks to borrowers. Overall, six CAs (EL, HU, LT, NL, PT, SK) reported to have systematic and comprehensive approaches and methodologies to monitor the evolution of and reflect risks borne by borrowers, mostly made of a mixed prudential – conduct toolset (prudential reporting, on-site inspections, assessment of complaints).
185. Most CAs rely on regular data collection on arrears and exposures towards loans likely to become non-performing based on prudential supervision. CAs have in place different

approaches and tools to assess potential borrower detriment and the evolution of arrears and consider both qualitative and quantitative criteria resulting from the singularities of each market and jurisdiction. All CAs rely on supervisory data collected on a regular basis from supervised institutions when evaluating their supervisory risks that also facilitates the monitoring of the borrowers in arrears risk and the trends of loans in arrears both at an entity and sectoral level. Additionally, other sources of useful information are considered for monitoring the evolution of arrears of loans under the scope of the MCD such as the received complaints and enquiries. In particular, HU, LT, NL and PT also monitor the evolution of loans in arrears through the information collected of supervised entities by the Credit Register. EL has observed an increase in arrears since January 2022.

### Follow-up measures for CAs

186. The PRC recommends the following measures:

- All CAs should develop and implement indicators that reflect risks borne by borrowers rather than focusing only on prudential aspects, to include also conduct matters, in order to detect risks and reflect them to borrowers (for instance, complaints risk indicator or supervisory authority conducts interventions indicator).
- CY should broaden the supervisory conduct toolset that it uses for detecting risks to borrowers. CY currently relies mainly on prudential tools for monitoring the evolution of arrears, and should consider other supervisory tools, such as conduct inspections or at the very least should assess conduct matters in a meaningful manner during prudential inspections, as well as off-site tools, such as thematic reviews.

## 5.7 Supervision of creditors' documentation of dealings with borrowers and retention of records

187. This chapter presents the PRC's assessment of how the CAs' under review supervise creditors' implementation of Guideline 5 of the EBA Guidelines on arrears and foreclosure which covers the *'Documentation of dealings with the consumer and retention of records', according to which creditors* '[...]'. According to this Guideline, creditors should document the reasons why the option(s) offered to the consumers are appropriate for their individual circumstances and should make and retain adequate records of its dealings with the consumer in payment difficulties for a reasonable period of time.

### Supervisory approaches

188. CY has no formal manual for its supervisory approach to assess creditors' compliance with Guideline 5, however it makes use of the questionnaire tool also in this instance. This questionnaire includes questions on the financial information creditors requested from the borrower; assessment of the repayment ability carried out by the creditors and the restructuring options developed and proposed to the borrower as well as on the restructuring solutions approved in the end. All supporting documentation is submitted to

the Financial Conduct Section. CY referred that during on-site visits and deep dives no misalignment of creditors vis-à-vis Guideline 5 were recorded, however, from the assessment of complaints received it transpired that in some instances, creditors did not retain detailed minutes of the physical meetings and/or telephone conversation. No follow-up action was taken to address this shortcoming identified.

189. EL stated that it uses various tools to assess supervised creditors' compliance with this Guideline, however, there is no formal assessment manual in place. In a 2022 thematic review it requested creditors to describe their record-keeping procedures, in particular the forms of their records (either electronic or paper), processes adopted to register information and data in their records, and the time retention of their records. The CA also referred to the upcoming centralised digital platform (expected to be operative in Q3 2023), through which all the interactions of creditors towards their borrowers in arrears will be recorded and stored digitally, providing, inter alia, information to the CA on arrears not resolved through the Arrears Resolution Process and respective reasoning (either borrower did not cooperate or refused to consent to any of the creditors' proposed solution).
190. HU does not assess creditors' compliance with Guideline 5, as the CA deemed it to be not relevant, based on the findings of ongoing supervision.
191. LT carries out inspections to assess creditors' compliance with Guideline 5, as well as thematic reviews to check the market practice, albeit there is no manual in place. No creditors have been found so far to be non-compliant with Guideline 5.
192. NL carries out investigations to assess creditors' compliance with Guideline 5. Although no creditors were found to be non-compliant with this guideline, however, based on the last investigation carried out, creditors could improve how they measure the effectiveness of the solutions proposed.
193. PT issues notices and instructions to assess creditors' compliance with Guideline 5 and monitors it through assessment of information reported by the banks, complaints received, and inspections carried out, however, no formal manual is in place. Through an inspection carried out in 2016, the CA identified failures in credit institutions' procedure to record information and therefore issued specific orders for banks to immediately adopt mechanisms to remediate the shortcomings.
194. SK stated that all exchange of communications between banks and borrowers are chronologically recorded in internal technological system/programme of the credit institutions, as ascertained by the CA during on-site inspections. No creditors have ever been found to be non-compliant with Guideline 5 when conducting on-site supervision (of the 4 banks with the highest market share). No formal manual has been adopted.

## Conclusions

195. All CAs with the exception of HU adopted supervisory actions to assess creditors' compliance

with Guideline 5. The extent of intrusiveness and degree of assessment of such actions vary from jurisdiction to jurisdiction including circulars addressed to creditors, assessment of complaints received, and inspections.

### Follow-up measures for CAs

196. The PRC considers as follow-up measures that:

- HU should expand its supervision to also encompass Guideline 5.

### Best practices of CAs

197. PT's approach can be considered a best practice that could benefit other CAs, as this authority carries out specific actions to assess creditors' compliance with Guideline 5, such investigations into creditors' files and systems, notices and circulars as well as complaints handling.

## 6. Conclusions and recommendations

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198. Based on its analysis of CAs' supervisory approaches adopted to monitor creditors' treatment of mortgage borrowers in arrears, the PRC concludes that CAs have implemented the EBA Guidelines on arrears and foreclosures and ensured that creditors are also adhering to this set of guidelines when dealing with mortgage borrowers, as EBA recommended in its Opinion on good practices for mortgages.
199. However, through its analysis, the PRC identified significant divergences in the supervisory approaches adopted by the seven CAs under review. This might be partially explained by different characteristics of the CAs' national markets, whereby some jurisdictions have mortgage markets characterised predominantly by variable interest rates and therefore exposed to higher volatility which translates into higher costs for borrowers when the interest rates increased.
200. CY and EL stand out due to former high stocks of NPLs which resulted in these jurisdictions having financial stability as a main priority. This came at the cost of its treatment of borrowers in the last decade, where the sale of the non-performing mortgages to companies outside the scope of any national regulatory perimeter gave rise to instances of very low levels of consumer protection, and borrowers rights not enforced. This is reflected in these two authorities' focus on addressing such concerns when credit acquiring and servicing institutions take over credit agreement.
201. Overall, the PRC found two main approaches in the supervision of Article 28 MCD and the EBA Guidelines, i.e. CAs with responsibilities focussed on conduct supervision and CAs with combined conduct and prudential supervision, with some CAs adopting prudential-led monitoring, using a risk based approach to check if there are issues; and, others having a fully conduct focus. This is also reflected in the organisational set-up of the CAs under review, where few have stand-alone conduct / consumer protection units.
202. As a result of the different organisational set-ups and supervisory approaches, CAs use different tools to carry out their monitoring and assessment on creditors' compliance which is in most cases all included in the yearly plan. Almost all CAs reviewed implement both off-site and on-site tools to supervise creditors' compliance with requirements applicable to ensure the rights of borrowers in arrears are upheld, and some of them do so on an ongoing basis. Almost all CAs use inspections to identify breaches in terms of consumer protection, however in some instances the on-site visits are led from a prudential point of view, and the conduct aspect is captured incidentally.
203. Overall, six CAs (EL, HU, LT, NL, PT, SK) reported to have systematic and comprehensive approaches and methodologies to monitor the evolution of and reflect risks borne by borrowers, mostly made of a mixed prudential – conduct toolset (prudential reporting, on-

site inspections, assessment of complaints).

204. Only one CA (CY) uses primarily one off-site supervisory tool to carry out its supervision and does so since September 2022, when its conduct unit became operational.
205. Throughout the report, the PRC has identified a number of follow-up measures for CAs aimed at strengthening the consistency of supervisory practices and outcomes in order to ensure an equally high standard of consumer protection across the EU 27 Member States. An overview of these is presented in the following section.

## 6.1 Follow-up measures for CAs

206. The appropriate, proportionate, and necessary follow-up measures that PRC considers are necessary for relevant CAs to take in order to address the issues identified in the report are set out below and listed throughout the structure of the report.

### Organisational set-up and resources

207. All CAs should have policies which indicate internal unit responsibilities and facilitate cooperation and information-sharing with other supervisory teams for the supervision of creditors' treatment of mortgage borrowers in arrears (paragraph 59).
208. CY, EL, LT and SK should review the level of resources dedicated to supervision of creditors' treatment of mortgage borrowers in arrears (paragraph 59).
209. EL should set up a separate supervisory unit with a focus on conduct supervision including the treatment of mortgage borrowers in arrears. This will facilitate supervision which is focused on consumer protection objectives independently of prudential objectives (paragraph 59).

### Compliance with Article 28 MCD and EBA Guidelines

210. Formal written procedures as regards the supervision of creditors' treatment of mortgage borrowers in arrears should be established in all CAs, including in relation to CAs' engagement with creditors, that foresee a margin of flexibility to adapt to changing circumstances (paragraph 83).
211. Those CAs who have not yet implemented in their supervisory annual plan monitoring of requirements emanating from Article 28 MCD and EBA Guidelines on arrears and foreclosure should start including these (paragraph 83).

### Supervision of creditors' engagement with borrowers

212. CAs should have in place formal and written methodologies for the engagement with creditors in relation to the supervision of creditors' treatment of borrowers in arrears (paragraph 116).
213. CY should expand its supervisory tools and processes to monitor creditors' compliance with Guidelines 1 and 2. It should expand its supervisory tool set and not rely solely on self-assessment by creditors which may somehow not truly reflect the real level of compliance as the result would be based on creditors' assessment and these may have a different understanding of what supervisory expectations and requirements are. CY should adopt measures that are more intrusive, frequent and systematic, such as on-site inspections, and to include conduct activities in their annual supervisory plans (paragraph 116).
214. LT should enhance the level of supervision of creditors' compliance with Guideline 1, by adopting further tools to carry out monitoring on a continuous basis (paragraph 116).
215. SK should enhance the level of supervision and supervisory approaches to monitor compliance with Guidelines 1 and 2. In addition, as regards documentation of the engagement with creditors, SK should develop appropriate procedures to record these exchanges (paragraph 116).

#### **Supervision of creditors' provision of information to borrowers**

216. All CAs should consider enhancing their supervision of creditors' preparedness for dealing with potential arrears related to market conditions by further engaging with them and providing guidance in what supervisory expectations are from Article 28 MCD (paragraph 134).
217. CY should establish monitoring of creditors' compliance with Article 18 MCD (paragraph 134).
218. CY and HU should enhance their supervision of creditors' preparedness for dealing with any increase in arrears or foreclosures related to changing market and economic conditions from a conduct / consumer protection point of view and in particular monitor information provided to borrowers from creditors (paragraph 134).

#### **Supervision of creditors' forbearance measures**

219. CY and SK are encouraged to incorporate in their ongoing and regular supervisory actions, supervision of creditors' compliance with Guideline 4 (paragraph 156).

#### **Supervision reflecting risks to borrowers**

220. All CAs should develop and implement indicators that reflect risks borne by borrowers rather than focusing only on prudential aspects, to include also conduct matters, in order to detect risks and reflect them to borrowers (for instance, complaints risk indicator or



supervisory authority conducts interventions indicator) (paragraph 186).

221. CY should broaden the supervisory conduct toolset that it uses for detecting risks to borrowers. CY currently relies mainly on prudential tools for monitoring the evolution of arrears, and should consider other supervisory tools, such as conduct inspections or at the very least should assess conduct matters in a meaningful manner during prudential inspections, as well as off-site tools, such as thematic reviews (paragraph 186).

### **Supervision of creditors' documentation of dealings with borrowers and retention of records**

222. HU should expand its supervision to also encompass Guideline 5 (paragraph 196).

## **6.2 Best practices developed by competent authorities**

223. The PRC also identified best practices developed by some CAs that might be of benefit for all CAs to adopt. These include best practices in relation to:

### **Organisational set-up and resources**

224. The degree and level of cooperation and extensive interaction among departments involved in the supervision on creditors' treatment of borrowers in arrears in PT and NL are considered best practice by the PRC, enabling the exchange of relevant information for the development of effective supervision. The engagement with other departments is also considered best practice, particularly in contexts that can significantly affect borrower risks, such as the COVID-19 pandemic or the current interest rate environment (paragraph 60).
225. NL has developed a broad range of actions to ensure the staff has adequate technical skills and knowledge to conduct efficient supervision. In particular, the PRC considers training tools such as the Supervision Academy, to be best practices (paragraph 61).

### **Effectiveness of supervisory measures**

226. NL has a specific team which supervises the product approval and review process, conducting different projects and investigations on this that could provide valuable input when supervising creditors' treatment of borrowers in arrears (paragraph 84).
227. NL issued "instructive letters on compliance" (a formal enforcement tool which guides creditors in interpretation) (paragraph 84).

### **Supervision of creditor's engagement with borrowers**

228. The use of consumer behaviour assessments to enhance support to consumers and provide guidance to creditors about how to best handle the engagement with the consumers in payment difficulties (paragraph 117).

- 229. NL implements various off-site measures to check creditors' compliance with Guidelines 1 and 2, that include the publication of a report so creditors that were not part of the investigation can also learn from the findings (paragraph 117).
- 230. The flexible approach adopted by PT which allows the CA to react quickly to changing economic conditions, also considering the high level of engagement and exchanges with creditors which helps to handle in a timely manner unforeseen changes (paragraph 117).
- 231. The practice of EL which uses supervisory tools (e.g. regularly reporting data on arrears handling, thematic reviews, interviews, on-site inspections and assessment of information creditors provide to borrowers) as it includes both off-site and on-site tools, on an ad-hoc and continuous basis, and captures risks that stem from non-compliance (paragraph 117).

#### **Supervision of creditors' provision of information to borrowers**

- 232. Develop and provide guidelines to creditors for effective communication from a consumer behaviour perspective and examples of "good communication" with borrowers, as currently being done by NL (paragraph 135).
- 233. Use of mystery shopping, where possible, in order to assess the clarity of the information, as SK and PT are currently doing (paragraph 135).

#### **Supervision of creditors' forbearance measures**

- 234. The PRC notes the practices of LT and PT which undertook quick actions in response to the changing economic environment of rising inflation and increasing interest rates during Q4 2022. Both CAs closely engaged with creditors, reminding them of their supervisory expectations that exercise creditors reasonable forbearance measures and to implement all measures available to support consumers during the repayment difficulties. The PRC encourages all CAs to closely engage with creditors on these matters in response to the changing economic environment (paragraph 157).

#### **Supervision of creditors' documentation of dealings with borrowers and retention of records**

- 235. PT's approach can be considered a best practice that could benefit other CAs, as this authority carries out specific actions to assess creditors' compliance with Guideline 5, such investigations into creditors' files and systems, notices, and circulars as well as complaints handling (paragraph 197).

# Annex 1. Peer review committee

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Peer reviews are carried out by ad hoc peer review committees composed of staff from the EBA and members of competent authorities and chaired by the EBA staff.

This peer review was carried out by:

## Co-chairs

Jonathan Overett Somnier  
Head of Legal and Compliance Unit, EBA

Margaux Morganti  
Policy Expert, Consumer, Payments and Conduct Unit, EBA

## Members

Adrienne Coleton  
Legal Expert, Legal and Compliance Unit, EBA

Nuria Riva de la Negro  
Expert in banking transparency and market conduct, Banco de España

Salvatore Ricca  
Advisor – Directorate General Consumer Protection and Financial Education, Banca d'Italia

## Annex 2. List of Competent Authorities subject to the peer review

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<b>Country</b>	<b>Competent Authority</b>
CY	Central Bank of Cyprus
EL	Bank of Greece
HU	Central Bank of Hungary
LT	Bank of Lithuania
NL	Authority of Financial Markets (AFM)
PT	Bank of Portugal
SK	National Bank of Slovakia

# Annex 3. Benchmarks and assessment criteria

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Benchmark	Assessment criteria
1. EBA Guidelines are fully implemented	<ul style="list-style-type: none"> <li>• Extent to which CAs notify compliance with the GLS.</li> <li>• Guidelines are communicated to creditors.</li> <li>• All elements of the guidelines are incorporated into CA's practices (e.g. by amending their legal framework or their supervisory practices)</li> </ul>
2. Supervisory engagement with creditors is effective	<ul style="list-style-type: none"> <li>• CA has in place formal policies for regular engagement with creditors, including, where appropriate, discussions regarding creditors' obligation to exercise reasonable forbearance before foreclosure proceedings are initiated</li> <li>• Regular meetings and / or regular bilateral communications are held with creditors as part of the CAs normal supervisory activity.</li> <li>• CA engagement with creditors take into account industry and market developments, and envisage ad-hoc engagement where needed.</li> <li>• CA engagement with creditors is documented and informs CAs supervisory activities.</li> <li>• Other actions to ensure that creditors are aware of supervisory oversight</li> </ul>
3. Supervisory measures are effective	<ul style="list-style-type: none"> <li>• Relevant requirements to be complied with by creditors on forbearance are effectively enforced.</li> <li>• CA has an effective methodology for escalating issues internally to take supervisory measures / impose sanctions.</li> <li>• CA is able to apply effective, proportionate and dissuasive sanctions.</li> <li>• CA has adequate resources and governance</li> </ul>
4. Supervision of creditors' obligation to assess the creditworthiness of borrowers and the treatment of borrowers going into payment difficulties is appropriate	<ul style="list-style-type: none"> <li>• CA has effective measures to assess the obligations of creditors under Article 18 of the MCD</li> </ul> <p>Next criteria refer to Guideline 3 of the EBA GLs</p> <ul style="list-style-type: none"> <li>• CA has formal policies in place for the assessment of the effectiveness on the provision of information to the borrowers.</li> <li>• CA engages in early formal communications with creditors on borrowers going into arrears</li> </ul>
5. Forbearance measures are effective	<ul style="list-style-type: none"> <li>• CA makes use of national measures/takes measures to encourage creditors to exercise reasonable forbearance, including all relevant requirements under Article 28 of the MCD and the EBA GLs</li> <li>• CA increases the engagement with creditors who have borrowers going into or in payment difficulties</li> <li>• CA assesses that creditors anticipate, prepare and provide information in a timely manner to borrowers regarding economic changes</li> </ul>
6. Supervision reflects risks to borrowers	<ul style="list-style-type: none"> <li>• CA carries out effective risk assessment of potential borrower detriment.</li> <li>• CA gathers appropriate data to identify risks to the economic environment.</li> <li>• CA gathers appropriate data to identify risks arising from particular creditors and thematic risks</li> </ul>





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