

EBA/CP/2015/11

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04 June 2015

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## Consultation Paper

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

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 04.07.2015. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

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

## Data protection

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

## 2. Executive Summary

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

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

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

To ensure that the provisions of the MCD on passport notifications are applied consistently across the European Union, the EBA is hereby proposing to formalise the passport notifications that are to be made by competent authorities from the transposition date of the MCD (of 21 March 2016) onwards. In this consultation paper, the EBA, therefore, presents draft Guidelines on passport notifications and draft template notification forms for exercising the freedom to provide services and for exercising the freedom of establishment under the MCD.

The EBA published, in December 2014, a Discussion Paper setting out draft requirements on passport notifications and draft template notification forms. The purpose of the Discussion Paper was to give market participants early indications about future requirements in this area and to promote discussion and gather stakeholders' preliminary views at an early stage in the development of requirements. Four responses were received in the three month period to March 2015. Respondents to the Discussion Paper were broadly supportive of the draft requirements and accompanying template forms. Following analysis of the responses the EBA has made some amendments to the draft Guidelines to reflect some of the practical considerations raised by respondents.

### Next steps

The consultation period will run from 4 June 2015 to 4 July 2015. The final Guidelines will be published after consultation.

## 3. Background and rationale

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### 3.1 Background

1. Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 ('Mortgage Credit Directive' or 'MCD') requires coordination, cooperation and information exchanges between competent authorities of different Member States (MS).
2. Article 32 provides that an admitted credit intermediary intending to carry out business for the first time in one or more Member States under the freedom to provide services or when establishing a branch shall inform the competent authorities of its home Member State. Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member States concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification.
3. Additional details are provided in Article 33(2), which requires the competent authority of the Home Member State to notify the competent authority of the host Member State where the admission of a credit intermediary is withdrawn. Article 34 provides that supervision of credit intermediaries is to be carried out by the home MS in principle but allocates tasks between home and host MS for the case of credit intermediary branches. And Article 36 requires MS to cooperate whenever necessary for carrying out their duties under the Directive.
4. The EBA published, in December 2014, a Discussion Paper setting out draft requirements on passport notifications and draft template notification forms. The purpose of the Discussion Paper was to give market participants early indications about future requirements in this area and to promote discussion and gather stakeholders' preliminary views at an early stage in the development of requirements. The Discussion Paper was issued for three months ending in March 2015 and four responses were received.
5. Respondents to the Discussion Paper were broadly supportive of the draft requirements and accompanying template forms. Following analysis of the responses the EBA has made some amendments to the requirements to reflect some of the practical considerations raised by respondents.

## 3.2 Rationale

6. The EBA is interested in ensuring that the above provisions are applied consistently across the European Union, with a view to fulfil the EBA's overall objective, as set out in Article 1(5) the EBA regulation, of ensuring the consistent, efficient and effective application of the acts that fall into the EBA's scope of action and of fostering supervisory convergence across Member States. To that end, the EBA is hereby proposing to formalise the passport notifications that are to be made by competent authorities from the transposition date of the MCD (of 21 March 2016) onwards.
7. In this Consultation Paper, the EBA presents draft Guidelines on passport notifications and draft template notification forms for exercising the freedom to provide services and for exercising the freedom of establishment under the MCD.

## 4. Draft Guidelines

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EBA/GL-REC/20XX/XX

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DD Month YYYY

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## Draft Guidelines

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on passport notifications for credit intermediaries under the Mortgage Credit Directive

# 1. Compliance and reporting obligations

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## Status of these guidelines

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

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>1</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

## 2. Subject matter, scope and definitions

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### Subject matter

5. In accordance with the principle of ‘single authorisation’, the decision to admit a credit intermediary to carry out credit intermediation activities valid for the whole of the EU is the sole responsibility of the competent authorities of the home Member State. Article 32(1) of Directive 2014/17/EU (Mortgage Credit Directive) (‘MCD’) provides that a credit intermediary as defined in Article 4(5) MCD may provide the services or perform the activities, for which it has been admitted, throughout the European Union, either through the establishment of a branch or the free provision of services.

### Scope of application

6. These guidelines apply to notifications in respect of credit intermediaries under Article 32 of Directive 2014/17/EU<sup>2</sup>, and do not extend to the method and means of supervision of credit intermediaries operating on a cross-border basis.
7. Whilst these guidelines do not deal with the definition or characteristics of the right of establishment and the freedom to provide services, reference can be made to the Commission’s Interpretative Communication.

### Addressees

#### Addressees of these Guidelines

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

#### Addressees of information requirements

9. Irrespective of whether or not an EBA authority is addressed under paragraph 8, where a Member State has designated more than one authority in accordance with Article 5 of Directive 2014/17/EU and one of them is not an EBA authority, the EBA authority designated

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<sup>2</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, 28.02.2014, p.34).

under that Article should, without prejudice to national arrangements adopted under Article 5 (3) MCD:

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

## Definitions

10. Unless otherwise specified, terms used and defined in Directive 2014/17/EU have the same meaning in the guidelines.

# 3. Implementation

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## Date of application

11. These guidelines apply from 21 March 2016, except that the information requirements referred to in paragraph 9 apply from [publication date in the official languages + 1 day].

## 4. Draft Guidelines on passport notifications

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### 1. Exercise of the freedom to provide services

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

1.1 The competent authority of the home Member State should transmit to the competent authority of the host Member State a notification with the following contents:

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

### 2. Exercise of the freedom of establishment

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

2.1 The competent authority of the home Member State should transmit to the competent authority of the host Member State a notification with the following contents:

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

### 3. Transmission of the notification

3.1 The required information should be communicated by the competent authority of the home Member State to the competent authority of the host Member State(s) using the notification templates set out in Annexes 1 and 2 as appropriate. Where there are multiple notifications to communicate, competent authorities may communicate the required information in a spread sheet using the headings set out in Annexes 1 and 2.

3.2 Competent authorities should provide the required information in writing in a language accepted by the competent authority in the host Member State.

3.3 Competent authorities should transmit the required information by electronic means where possible and acceptable to the relevant competent authorities. Where this is not possible or acceptable post should be used. Where post is used, the notification should be sent by the home competent authority, allowing sufficient time for the notification to reach the host competent authority, within the one month time frame specified in Article 32(3) (i.e. one month from the date of notification by the firm to the home competent authority).

3.4 Competent authorities should make the following information publicly available:

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- a. the languages accepted by competent authorities;
- b. the address to which passport notifications are to be sent if submitted by post; and
- c. any electronic means by which passport notifications may be submitted and any relevant contact details.

## 4. Registration

4.1 The competent authority of the home Member State should update their public register with the necessary information, as set out in more detail in Article 29 MCD, in a timely manner:

- a. the names of the person(s) within the management who is/are responsible for the credit intermediation business;
- b. the Members State(s) into which the credit intermediary has passported, and whether under the freedom of establishment or the freedom to provide services; and
- c. whether the credit intermediary is tied or not.

4.2 In addition, the competent authority of the host Member State should make available on its public register within one month the information contained in the notification from the home Member State. Such details should consist of at least the following:

- a. the name, head office address and contact details of the credit intermediary;
- b. the names of the person(s) within the management who is/are responsible for the credit intermediation business;
- c. the Members State(s) into which the credit intermediary has passported, and whether under the freedom of establishment or the freedom to provide services; and
- d. whether the credit intermediary is tied or not.

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

5.1 The competent authority of the home Member State should notify the cessation or modification of passported activities or of 'static data' (e.g. change of name or address) or information which was unavailable at the time of the initial notification (Guideline 2.1 (e) and (f)) to the host competent authority as soon as possible and at the latest within one calendar month, by any appropriate means.

**Question 1**

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

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

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|    |  |   |
|----|--|---|
| 1  | Date of transmission of this notification from the home to the host competent authority              | DD/MM/YYYYY   |
| 2  | Member State   |   |
| 3  | Type of notification   | <input type="checkbox"/> First notification<br><input type="checkbox"/> Change to previous notification   |
| 4  | Name of credit intermediary  |   |
| 5  | Date of birth in case of natural person  | DD/MM/YYYYY   |
| 6  | Home State registration number   |   |
| 7  | Head office address  |   |
| 8  | E-mail   |   |
| 9  | Telephone number   |   |
| 10 | Fax number   |   |
| 11 | Name of home competent authority   |   |
| 12 | Home Member State  |   |
| 13 | Web address of the online register   |   |
| 14 | To the extent available, services to be provided by the credit intermediary in the host Member State | <input type="checkbox"/> offers/presents credit agreements<br><input type="checkbox"/> assists in preparatory/pre- contractual administration work<br><input type="checkbox"/> concludes credit agreements<br><input type="checkbox"/> provides advisory services |
| 15 | Tied credit intermediary   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No   |

|    |   |   |
|----|---|---|
| 16 | <p>In the case of a tied credit intermediary:</p> <p>a) Name and registration number of the creditor(s) or groups to which the intermediary is tied in the host Member State</p> <p>b) Whether the credit intermediary is exclusively tied to only one creditor</p> <p>c) Confirmation that the creditors take full and unconditional responsibility for the credit intermediation activities</p> | <p>a) .....</p> <p>b) .....</p> <p>c) .....</p> |
|----|---|---|

**Question 2**

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

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

|    |  |   |
|----|--|---|
| 1  | Date of transmission of this notification from the home to the host competent authority  | DD/MM/YYYY  |
| 2  | Member State   |   |
| 3  | Type of notification   | <input type="checkbox"/> First notification<br><input type="checkbox"/> Change to previous notification |
| 4  | Name of credit intermediary  |   |
| 5  | Date of birth in case of natural person  | DD/MM/YYYY  |
| 6  | Home State registration number   |   |
| 7  | Head office address  |   |
| 8  | E-mail   |   |
| 9  | Telephone number   |   |
| 10 | Fax number   |   |
| 11 | Name of home competent authority   |   |
| 12 | Home Member State  |   |
| 13 | Web address of the online register   |   |
| 14 | Branch details (to the extent available at the time of notification) <ul style="list-style-type: none"> <li>• Address</li> <li>• Telephone number</li> <li>• E-mail</li> <li>• Fax number</li> </ul> |   |
| 15 | Name(s) and date(s) of birth of natural person(s) responsible for the management of the branch (to the extent available at the time of notification)   |   |

|    |  |   |
|----|--|---|
| 16 | To the extent available, services to be provided by the credit intermediary in the host Member State   | <input type="checkbox"/> offers/presents credit agreements<br><input type="checkbox"/> assists in preparatory/pre- contractual administration work<br><input type="checkbox"/> concludes credit agreements<br><input type="checkbox"/> provides advisory services |
| 17 | Tied credit intermediary   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No   |
| 18 | In the case of a tied credit intermediary:<br><br>a) Name and registration number of the creditor(s) or groups to which the intermediary is tied in the host Member State<br><br>b) Whether the credit intermediary is exclusively tied to only one creditor<br><br>c) Confirmation that the creditors take full and unconditional responsibility for the credit intermediation activities | a)<br><br>b)<br><br>c)  |

**Question 3**

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

## 5. Accompanying documents

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### 5.1 Draft cost-benefit analysis / impact assessment

12. Article 16(2) of the EBA Regulation provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

#### A. Problem identification

13. The main problem addressed by the EBA, in the context of Articles 32, 33, 34 and 36 MCD, is the specification of clear and consistent information to be notified from credit intermediaries to the competent authorities of the home Member State, and from the competent authorities of the home Member State to the competent authorities of the host Member State (in case of initial notification).

14. Mortgage markets in the EU are still relatively fragmented, hampering the efficient functioning of the Internal Market for financial services. This incomplete market is due to a lack of consumer confidence<sup>3</sup> on the demand side as well as existing barriers to the provision of services cross border or establishment of branches in other Member States<sup>4</sup>. The EU passporting regime stipulated by the MCD is intended to overcome those supply-side imperfections for credit intermediaries<sup>5</sup>. However, lacking EU-wide guidance on the specific information to be notified by credit intermediaries wishing to passport and between home and host competent authorities, it falls short of being sufficiently clear and consistent. Amongst others, this impedes the efficient processing and granting of passports to credit intermediaries which intend to supply mortgage credit to consumers in several Member States across the EU.

15. The EBA recognises the need to cooperate and exchange information to ensure clarity and consistency in the content of the information to be notified regarding credit intermediaries wanting to operate cross border in the European Economic Area through the establishment of branches or through the exercise of the freedom to provide services.

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<sup>3</sup> EC: Special Eurobarometer 373 on Retail Financial Services (2012)

<sup>4</sup> EC: Final report of the conference on emerging challenges in retail finance and consumer policy (2014)

<sup>5</sup> EC: Impact assessment accompanying the proposal for a Directive on credit agreements relating to residential property (2011)

## B. Policy objectives

16. To accomplish this, the EBA took into account that the general objective of the Guidelines is to achieve supervisory convergence, by creating a level playing field, preventing regulatory arbitrage opportunities, and providing legal clarity. In particular, provisions included in the Guidelines shall clearly specify the information that needs to be notified and, by doing so, reduce the burden of compliance for the credit institutions and contribute to the efficient and effective cooperation between the competent authorities in the home and host Member States.

## C. Baseline scenario and options considered

17. The baseline scenario is that there would be no further regulatory intervention at European level and passport notifications would be transmitted between competent authorities across Member States per the provisions of Articles 32 and 33 MCD.

18. The alternative option is that the EBA would set clear standards on passport notifications for credit intermediaries through the development of Guidelines and standardised notification templates. The draft Guidelines would represent common standards agreed on by Member States and be based on notification requirements developed by the EBA for other EU Directives. They would also take account of the practical experience gained by national supervisory authorities in implementing those other Directives.

## D. Cost-Benefit Analysis

19. The notification requirements are generally expected to generate incremental benefits rather than incremental costs. The envisaged incremental benefits are expected to accrue to competent authorities due to greater administrative efficiencies. Credit intermediaries, in turn, will benefit as competent authorities will be able to assess passporting applications more quickly, with credit intermediaries thus being able to provide services more quickly to the benefit of their customers. On the other hand, the incremental costs are expected to affect equally the competent authorities and the credit intermediaries, while no incremental costs are expected to arise for any other stakeholders.

20. The greatest source of benefits to the competent authorities are that the provisions enable them to have access to a harmonised and complete set of information for the purposes of passport notifications. In particular, the notification on the activities that a credit intermediary intends to perform in the host Member State will prevent practices seen in other markets of financial institutions stating all the activities for which the credit institution is authorised in the home Member State, while only a few of these activities are actually performed in the host country within a reasonable time after the approval of the notification. This practice makes it particularly burdensome for competent authorities of home and host Member States to handle notifications and have an up-to-date overview of the services

provided abroad due to the lack of clarity on the actual activities performed by the credit intermediary.

21. Such benefits are partially set off by costs arising from competent authorities needing more time or resources to consider and analyse the information provided while handling passport notifications. There will also be some initial costs for competent authorities to integrate the notification templates into their existing systems and processes.
22. With regards to credit intermediaries, incremental costs are expected to arise mainly due to the fact that they will need to provide more information. The only discernible benefit for them is the level playing field and common regulatory standards in the EU that the notifications will facilitate.

#### F. Preferred option

23. The preferred option is that the EBA would issue Guidelines and standardised notification templates which would ensure the consistent transmission of information in the notification process between competent authorities across all Member States.

## 5.2 Overview of questions for consultation

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

### 5.3 Feedback on the Discussion Paper

24. The EBA issued a Discussion Paper on the draft proposal contained in this paper, for three months ending on 12 March 2015. Four responses were received, of which three were published on the EBA website.
25. This paper presents a summary of the key points and other comments arising from the Discussion Paper, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.
26. Changes to the draft Guidelines have been incorporated as a result of the responses to the Discussion Paper.

#### Summary of key issues and the EBA's response

27. The EBA posed three questions in the Discussion Paper:
  - Do you agree with the draft requirements on passport notifications? If not, outline why you disagree and how the requirements could be improved. Please respond separately for each of the requirements.
  - Do you agree with the draft notification form for exercising the freedom to provide services set out in Annex 1? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.
  - Do you agree with the content of the draft notification form for exercising the freedom of establishment set out in Annex 2? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.
28. All of the respondents to the Discussion Paper supported and agreed with the draft requirements. One respondent, while agreeing with the draft requirements, proposed that additional information should be shared between the home and host Competent Authorities. While the EBA recognises the benefit of Competent Authorities sharing the proposed information, the suggested addition to the requirements would go beyond the requirements set out in the MCD. Therefore the EBA has not amended its draft Guidelines to include this suggestion.
29. A respondent also suggested that there could be some practical difficulties with some aspects of the draft requirements because the information to be notified by the home Competent Authority may not be available at the time of notification. The EBA accepts the point raised and has amended the draft Guidelines accordingly.
30. Respondents also raised some questions about the draft requirements consistency with the MCD text. The EBA has considered the questions raised and retains the view that the draft Guidelines are consistent with the MCD.

31. In addition to the responses received to the Discussion Paper, and following input regarding the potential supervisory structures that Member States might adopt in line with Article 5 of Directive 2014/17/EU, the EBA decided to clarify how the Guidelines apply where there is a competent authority as defined in Article 4(2) of Regulation (EU) No 1093/2010 ('EBA authority') which has responsibility under Article 5(3) for cooperating with other authorities designated as competent for applying the Directive.
32. To that end and as stated in the Addressee Section of the Guidelines, the Guidelines will apply to EBA authorities alone, and only to the extent that the EBA authority has been designated as competent for ensuring the application and enforcement of those provisions of Directive 2014/17/EU to which the Guidelines relate.
33. If, for example, an EBA authority is not designated as competent for ensuring the application and enforcement of the main provisions of Directive 2014/17/EU to which the Guidelines relate, and only has the cooperation responsibility referred to above, then only the Information Requirements set out in Paragraph 2 of the Addressee Section of the Guidelines ('Information Requirements') are addressed to that EBA authority.
34. In that case, the EBA authority can consider itself compliant with the Guidelines if it complies with the Information Requirements. The Information Requirements have been added to the Guidelines in order to encourage all competent authorities to apply consistent supervisory practices and ensure common application of Directive 2014/17/EU, while recognising that the structure of the Directive is such that the Guidelines can only be addressed directly to EBA authorities. Other competent authorities cannot be made subject to the same 'comply or explain' obligations that apply to EBA authorities.

## Summary of responses to the Discussion Paper and the EBA’s analysis

| No.   | Summary of responses received  | EBA analysis   | Amendments to the proposals  |
|---|--|--|--|
| <b>Responses to questions in Discussion Paper EBA/DP/2014/03</b>  |  |  |  |
| <b>Do you agree with the draft requirements on passport notifications? If not, outline why you disagree and how the requirements could be improved.</b> |  |  |  |
| 1.  | <p>One respondent stated agreement with the draft requirements and templates subject to the inclusion in the notification of information about the credit intermediary’s past disciplinary record, where appropriate and relevant. The respondent suggested that the following information in particular should be notified: complaints recorded and held on the credit intermediary; former trading name(s) where appropriate; past and current enforcement actions; and details of any pending action or matters reported to the Member State competent authority. The respondent also suggested that information should be provided regarding any proposed joint ventures in the Member State relating to the credit intermediary’s activities.</p> | <p>While the suggested information could potentially be useful to host Member States in some circumstances, the requirements are limited to the collection of information for the purposes of notification (rather than, for example, information for the purposes of supervision). The notification is a requirement for commencing activities in another Member State; its content is set out in the MCD and further specified in these Guidelines. Given that the additions as suggested by the respondent would go beyond the MCD requirements they cannot be made part of the notification. In addition, there could be difficulties with providing information about past and current enforcement actions, particularly where a case is under investigation or pending. Therefore, the EBA has decided not to adopt this suggestion.</p> | None   |
| 2.  | <p>One respondent commented that regarding freedom of establishment, the address of the branch and the name(s) of those responsible for its management may not be known at the time of notification. The respondent suggested adding the words ‘to the extent already available’ to requirements 5 (e) and 5 (f).</p>  | <p>The EBA accepts the comments made and has amended the Guideline to reflect that the information requested may not always be available. Guideline 5.1 has been modified to specifically include information that is not available at the time of the initial notification and this Guideline sets out the timeline within this information should be</p>   | <p>The following wording is added to draft Guideline 2.1 (e) and (f):<br/>                     ‘[...] to the extent available at the time of</p> |

| No. | Summary of responses received  | EBA analysis  | Amendments to the proposals  |
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|     |  | notified by the home competent authority to the host competent authority.   | notification.’<br>The following wording is added to Guideline 5.1:<br>‘... information which was unavailable at the time of the initial notification (Guideline 2.1 (e) and (f))...’ |
| 3.  | One respondent requested the provision of a description of what triggers the freedom of service activities of a credit intermediary. The respondent commented that the MCD is not sufficiently clear on what triggers freedom of service or freedom of establishment. The respondent queried whether the trigger is when a credit intermediary carries out activities in respect of a customer residing in another Member State or where the object of the mortgage credit is located in another Member State. | As noted on page 6 of the Discussion Paper, while the Guidelines do not deal with the definition or characteristics of the right of establishment and the freedom to provide services, reference can be made to the Commission’s Interpretative Communication on the freedom to provide services and the interest of the General Good in the Second Banking Directive (OJ C 209, 10.8.1997, p. 6).  | None   |
| 4.  | One respondent questioned whether the notification should ask whether the creditor takes full and unconditional responsibility for the credit intermediary’s activities to allow for the situation where the creditor does not take full and unconditional responsibility. The respondent understood that Article 32 of the MCD allows for this situation.   | Point 7 of Article 4 and paragraph 2 of Article 30(1) of the MCD both state that the creditor shall be fully and unconditionally responsible for the tied credit intermediary. The EBA, therefore, does not consider that the Guidelines should be amended as suggested by the respondent as it does not envisage the possibility that the creditor could not take full and unconditional responsibility of the tied credit intermediary. | None   |
| 5.  | One respondent questioned if Paragraph 4 (h), under the Exercise of the freedom to provide services, is necessary. The respondent  | ‘At the same time’ could be interpreted as the same day or not. For complete clarity, therefore,  | None   |

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|   | pointed out that the second paragraph of Article 32(3) of the MCD requires that the home competent authority shall inform the credit intermediary about the notification to the host competent authority 'at the same time' as the home competent authority notifies the host competent authority.  | the EBA will continue to require that the date of notification by the home CA to the credit intermediary is captured as part of this notification process.  |   |
| 6.  | One respondent questioned if the host Member State should include on its register the home Member State as well as the Member States into which the credit intermediary is passporting.   | The EBA has added a new point to both notification templates to capture the credit intermediary's home Member State.  | A new Point 12 has been added to both notification templates to capture the home Member State.  |
| <b>Do you agree with the content of the draft notification form for exercising the freedom to provide services set out in Annex 1? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.</b> |   |   |   |
| 7.  | The respondents to the Discussion Paper did not make any comments specifically addressing this question.  | None  | None  |
| <b>Do you agree with the content of the draft notification form for exercising the freedom of establishment set out in Annex 2? If not, outline which content you disagree with, why you disagree and how the notification form could be improved.</b>    |   |   |   |
| 8.  | One respondent commented that the information requested in Point 13 (branch details) and Point 14 (Name(s) and date(s) of birth of natural person(s) responsible for the management of the branch) may not be available at the time of notification. The respondent suggested the insertion of the words 'to the extent already available' into the notification template under Points 13 and 14. | The EBA accepts the comments made and has amended the Guideline to reflect that the information requested may not always be available. Guideline 5.1 has been modified to specifically include information that is not available at the time of the initial notification and this Guideline sets out the timeline within this information should be notified by the home competent authority to the host competent authority. | Wording added to Points 14 and 15:<br>'[...] to the extent available at the time of notification.'<br><br>The following wording is added to Guideline 5.1:<br><br>'.... information |

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|     |                               |              | which was unavailable at the time of the initial notification (Guideline 2.1 (e) and (f))...' |