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Final Report on response to the non-bank lending request from the CfA on digital finance

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Executive Summary

In February 2021, the European Commission published its Call for Advice on digital finance and related issues[1], requesting the European Supervisory Authorities (ESAs) to carry out an analysis of the fragmentation of the financial services value chain, the growth of digital platforms and mixed activities groups and to prepare recommendations so that the EU regulatory framework remains fit for purpose. The Joint ESA Response to the Call for Advice was submitted to the Commission in January 2022.[2] As part of the Call for Advice, the EBA was specifically asked to carry out an analysis of the non-bank lending sector, i.e. lending provided by financial intermediaries outside the EU financial services regulatory perimeter, with the aim of identifying the relevant risks and the extent to which these activities are not covered by EU legislation. In particular, the EBA was requested to advise on the potential need to adjust the EU regulatory perimeter, developing and proposing appropriate policy options. This report sets out the findings and advice of the EBA in response to the Commission's request.

Credit intermediation by companies that are not banks is not new, and some business models are indeed well established. However, the use of new technologies and the digitalisation of financial services are leading new players to enter local EU markets. To this extent, the provision of innovative financial services may bring benefits for consumers and increase competition in the market, but when credit provision happens outside the EU regulatory perimeter, this may create challenges for all the stakeholders and regulators as well. While data[3] show that the magnitude of non-bank lending remains very small compared to credit provided by banks, FinTech[4] has been increasing quite steadily over the last years and the trends observed outside the EU show that BigTechs and other non-traditional operators have already developed and successfully rolled out business models for lending. The same applies to lending in the form of crypto-assets, an area which has seen a rapid increase since 2020 (albeit in relative terms still de minimis) and that has contributed to the extension and reach of non-bank lending activities in alternative means other than conventional fiat funds. Overall, some existing data suggest that crypto-asset lending activities in the EU are growing but are still limited in terms of observed volumes and values. However, this report analyses the different formats in which crypto-asset lending and borrowing activities can happen, including in decentralised form, and gives consideration to activities such as 'staking' and 'crowdlending'.[5]

The analysis of the regulatory regimes currently in place – based on a survey conducted among competent authorities (CAs), as well as other EBA and Joint Committee reports – shows that non-

[1] European Commission (2021), Request to EBA, EIOPA and ESMA for technical advice on digital finance and related issues, Ref. Ares(2021)898555, 02 February.

[2] ESAs (2022), The ESAs recommend actions to ensure the EU's regulatory and supervisory framework remains fit-for-purpose in the digital age, response to the Call for Advice on digital finance, EBA website.

[3] See Section 3.3, based on the data by the Cambridge Centre of Alternative Finance (CCAF).

[4] 'FinTech' and 'Bigtech' as defined in Section 2 of the Report.

[5] See Section 3.5 for the definition of crowdlending.

bank lending remains largely unharmonised across the EU: in some cases, a specific authorisation or registration is needed to carry out lending activities, and entity-based requirements are applied; in other cases, there are no entity-based requirements but only activity-based ones, while in some other cases the activities may be unregulated and there may not be prudential or business conduct requirements applicable. The report also provides an overview of the presence of certain business models (P2P crowdfunding, Buy-Now-Pay-Later, pawnshops, leasing, factoring, balance sheet lending) across different Member States (MS) and examples of the relevant applicable regulatory framework. This also shows quite a wide variety of approaches among the regulatory regimes for non-bank lending across the EU as previously identified in the EBA's report on other financial intermediaries and regulatory perimeter issues.[6] In addition, the report identifies those areas where specific risks have been detected and puts forward some proposals to address them.

The first area relates to the prudential perimeter and supervision of non-bank lenders. Firstly, where non-bank lenders are not subject to any entity-specific requirements, the only applicable provisions are the ones foreseen at activity level and included in the Consumer Credit Directive (CCD) and in the Mortgage Credit Directive (MCD). As these may be the only requirements that will enable authorities to conduct supervision on these firms, it is proposed to strengthen the provisions in terms of authorisation and admission to activities, so to allow effective oversight. Secondly, the increased use of digital means (including digital platforms) to distribute financial products and services is fuelling provision of services on a cross-border basis. However, allocation of responsibilities between home and host supervisors remains often unclear and it may be difficult to identify which competent authority is responsible for supervising how the service is provided. Therefore, it is proposed that more clarity should be provided in the identification of the responsibilities of the home and host supervisory authorities regarding the provision of cross-border non-bank lending, and the respective competences.

Thirdly, in line with the findings of the response to the CfA on digital finance, the report observes that the lack of clarity in the Capital Requirements Regulation (CRR) definition of 'ancillary services undertaking' (ASU) and the limitations in the definition of 'financial holding company' may leave room to the risk of regulatory arbitrage and reduce the effectiveness of the current consolidation framework in capturing emerging risks in groups that include non-bank lending entities. It is therefore proposed that the definition of 'financial holding company', 'ancillary services undertaking' and 'financial institution' can be modified to close existing loopholes with regard to prudential consolidation. In this regard, the EBA welcomes the Commission's recent proposal to revise the CRR definitions that are relevant for the purposes of the application of the bank consolidation framework under the CRD/CRR. Moreover, in accordance with the recommendations of the response to the Call for Advice on digital finance, it is proposed that a cross-sectoral 'gap analysis' is carried out as regards the scope of application of existing prudential consolidation rules with respect to different types of group structures across the financial sector.

A second area where risks have been identified and proposals put forward relates to the need of ensuring that the consumer protection framework remains fit for purpose also with respect to

[6] EBA (2017), Report on other financial intermediaries and regulatory perimeter issues.

entrance in the market of new players. Firstly, the current scope of the CCD provides for some exemptions that expressly exclude (or do not include) some of the business models that have become progressively more relevant for non-bank lending (e.g. Buy-Now-Pay-Later). It is then proposed to retain the current Commission proposal amending the CCD so as to cover those entities currently outside its scope. This will allow better oversight for those fast-growing and innovative firms that recently entered the market and provide adequate tools for consumer protection.

Secondly, in order for consumers to make informed decisions about financial products and services, they must have access to high-quality, clear and easily accessible information explaining the features and costs across the lifetime of the products and services. While the CCD and MCD currently already include provisions on advertising requirements and pre-contractual information, the growing use of distance marketing might negatively affect the customer's understanding of credit products, limiting their awareness of the key elements and costs of the credit product they are buying, because the information requirements are not adapted to digital tools. Thus, it is proposed to enhance the disclosure requirements and ensure that they are fair, effective and well-suited to new forms of lending and more innovative business models. Finally, it is recognised that a robust assessment of creditworthiness is instrumental in protecting consumers from the risk of entering into financial agreements they cannot afford to repay, thus increasing the risk of over-indebtedness. Therefore, it is proposed to strengthen the requirements for creditworthiness assessment and ensure that it is conducted also in the interest of consumers, in particular when innovatory artificial intelligence (AI) tools are used. As these proposals are largely addressed in the current version of the CCD review put forward by the Commission, it is proposed to retain these amendments and possibly strengthen them.

A third area where some concerns have been highlighted relates to AML/CFT risks. Not all providers of the activities explored in this Report are in the scope of concept of 'obliged entities' in Directive (EU) 2015/849 (AMLD), which refers to the list in Annex I of the CRD. Therefore, these providers do not need to be authorised or licensed under the CRD or other sectoral laws unless they are authorised or licensed as a result of their wider financial activities, or are covered by national rules. As a consequence, when no authorisation or licensing regime is in place for certain non-bank lending activities, these may not be subject to AML/CTF requirements. It is therefore proposed to cover all non-bank lenders in a more comprehensive way in the EU-wide AML/CTF framework, to ensure greater harmonisation and that such entities are captured as 'obliged entities'.

Finally, in consideration of the potential for a quick build-up of these risks competent authorities have expressed the need of having more visibility on the risks that activities of non-bank lenders may entail for financial stability, in particular when the provision of services is carried out on a cross-border basis. It was recognised that these risks need to be monitored closely to avoid that any sudden increase will remain unaddressed, in the context of several non-bank lenders moving fast and at the same time. Therefore, it is proposed to consider the set-up of a standardised reporting infrastructure at EU level (possibly leveraging on, and avoiding overlaps with, existing monitoring tools), to enable an appropriate mapping and obtain one integrated overview of macroprudential risks and vulnerabilities. In addition, it is also proposed to consider the possibility of an introduction of activity-based macroprudential measures to cover all credit providers, based on a minimum harmonisation of the tools that are already widely applied across the EU. Similarly, with regard to microprudential risks, it is also proposed to consider the benefits and costs of minimum common requirements for non-bank lenders to enhance the resilience of the non-banking sector, ensure the continuity of the financing of the EU economy and provide more protection to consumers.

1. Introduction

1. The digital finance strategy[7] adopted in September 2020 set out the European Commission's intention to review the existing financial services legislative frameworks with the aim of protecting consumers, safeguarding financial stability and the integrity of the EU financial sector and ensuring a level playing field.

2. To prepare these actions, in February 2021 the Commission published its Call for Advice on digital finance and related issues,[8] requesting advice from the European Supervisory Authorities (ESAs) on how to address 'same activity, same risk, same rules' issues, more fragmented value chains and the scope of supervisory perimeters.[9] In addition, the Commission issued to the EBA a specific Call for Advice on how to address the prudential risks related to non-bank lending.

3. The regular monitoring of credit intermediation activities outside the traditional banking system has been recognised by policymakers at both international and EU levels as essential to ensure that risks to financial stability emerging outside the perimeter of banking regulation are identified and addressed appropriately.

4. According to Article 16a(1) of Regulation (EU) 2010/1093 (EBA Founding Regulation), the EBA may, upon a request from the European Parliament, from the Council or from the Commission, or on its own initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence. Based on this provision, the EBA is therefore competent to analyse the current regulatory landscape in place in the EU for non-bank lending and analyse the related risks, and propose recommendations,

5. As part of the Commission's Call for Advice on digital finance, the EBA is carrying out an analysis of non-bank lending. In particular, the EBA is requested to:

    a. examine to what extent non-bank lending, provided by financial intermediaries outside of the pan-European financial services regulatory perimeter including as applicable by technology companies and digital platforms**,** exists in the EU and may evolve/scale up, recognising the deployment of innovative technologies, as well as report on the business models and legal structures employed;

    b. analyse national rules in place to regulate these activities across the EU;

    c. assess to what extent these activities are covered by other EU legislation (e.g. Consumer Credit Directive and Mortgage Credit Directive);

[7] European Commission (2020), Digital Finance Strategy for the EU, COM/2020/591, 24 September.

[8] See footnote 1.

[9] See Joint Committee of the ESAs (2022), Joint ESA response to the European Commission's February 2021 Call for Advice on digital finance and related issues, ESA 2022 01, January.

d. identify any regulatory and supervisory issues that may impede micro/macro risk management and scaling up of services on a cross-border basis;

e. advise on any potential need to adjust the EU regulatory perimeter to address identified issues.

6. To inform this work, the EBA launched a survey among competent authorities to gather relevant information about entities carrying out non-bank lending in their jurisdictions. In particular, the survey collected information on the presence of certain business models whereby lending activities were carried out by non-bank entities, and any regulatory requirements that are applicable at local level. Furthermore, the survey collected the views of supervisors on the risks currently posed by non-bank lending activities in the EU.

7. Accordingly, after the definition of the scope of the analysis in Section 2, the structure of the report provides in Section 3 a brief overview of the most recent trends and market developments both in the EU and outside the EU on lending provided by non-bank entities with a particular focus on BigTechs and FinTechs. Section 4 outlines the EU legislative framework, while Sections 5 and 6 summarise the results of the survey conducted at competent authorities in terms of business models and applicable regulatory frameworks, respectively. Finally, Section 7 illustrates the main issues identified in the area of supervision and scope of prudential regulation, consumer protection, AML/CFT, macroprudential and microprudential risks, while Section 8 concludes by putting forward some proposals for the risks identified in these areas.

2. Scope of the analysis

8. For the purpose of this Report, the analysis on non-bank lending in the EU covers entities which:

   a. are established in the EU;

   b. carry out, as a creditor or peer-to-peer (P2P) lending platform, one or more credit intermediation activities, which are:

      i. maturity transformation (borrowing over the short term and lending/investing on longer timescales);

      ii. liquidity transformation (using cash-like liabilities to buy less liquid assets);

      iii. leverage;

      iv. credit risk transfer (transferring the risk of credit default to another person for a fee);

      v. similar activities;

   c. are not subject to entity-specific (i.e. solo) prudential requirements under the following pieces of the EU sectoral legislation[10]:

      i. CRR/CRD[11];

      ii. ECSPR (Regulation (EU) 2020/1503 on European crowdfunding service providers for business);

      iii. AIFMD (Directive 2011/61/EU on alternative investment fund managers);

      iv. UCITS (Directive 2009/65/EC on undertakings for collective investment in transferable securities);

      v. MMF Regulation (Regulation (EU) 2017/1131 on money market funds);

      vi. Regulation (EU) 2015/760 (European long-term investment funds);

      vii. Regulation (EU) 346/2013 (qualifying social entrepreneurship funds);

      viii. Regulation (EU) 345/2013 (qualifying venture capital funds);

      ix. Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories;

      x. IFR (Regulation (EU) 2019/2033 on prudential requirements of investment firms);

      xi. IFD (Directive (EU) 2019/2034 on prudential requirements and prudential supervision of investment firms);

[10] To note that the scope of the present Report differs from the scope that is relevant for the identification of shadow banking entities as defined in EBA (2021), Draft RTS on criteria for the identification of shadow banking entities under Article 394(4) of Regulation (EU) No 575/2013, EBA/CP/2021/30, July.

[11] Entities that are exempted from the CRD/CRR on the basis of Article 2(5) CRD are also outside the scope of this survey.

xii. MIFIR (Regulation (EU) No 600/2014 on markets in financial instruments);

xiii. MIFID II (Directive 2014/65/EU on markets in financial instruments); Solvency II (Directive 2009/138/EC on insurance and reinsurance);

xiv. Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs);

xv. STS (Regulation (EU) 2017/2402 on simple, transparent and standardised securitisation);

xvi. PSD2[12] (Second Directive (EU) 2015/2366 on payment services);

xvii. EMD2 (E-money Directive, Directive 2009/110/EC on electronic money institutions).

9. Non-bank lending providers that do not fall under any EU sectoral regulations listed above but offer financial products that are subject to the EU activity-based regulations (e.g. CCD and MCD) were also included in the scope of the analysis.

10. For the purpose of this Report, the analysis of non-bank lending providers covers the following types of entities:

- '*BigTech*' – large technology companies with extensive customer networks; they include firms with core businesses in social media, internet search, software, online retail and telecoms[13];
- '*FinTech*' – technology-enabled innovative firms operating in the areas of financial services that could result in new business models, applications, processes or products[14];
- 'Other non-bank lenders' – entities providing non-bank lending that are not BigTech or FinTech firms.

11. Finally, the scope of the current analysis is narrower than the one included in the ESRB work[15] on monitoring of the EU non-bank financial intermediation (NBFI), as it covers mainly entities classified by the ESRB as financial corporations engaged in lending, which constitute a subsection of other financial intermediaries (OFIs).[16]

[12] Observation of the market has however revealed that non-bank lending is often provided by innovative tech entities which, at times, operate under the licence of a payment institution or an electronic money institution. The Report then sought to take into account in its analysis this specific configuration of the market, where relevant (see Annex II).

[13] This definition builds on the list of companies included in Crisanto, J. C., Ehrentraud, J. and Fabian, M. (2021), Big techs in finance: regulatory approaches and policy options, FSI Briefs No 12, March.

[14] This is a general definition of FinTech which covers financial innovations emerging in many aspects of finance – retail and wholesale, payments, financial market infrastructures, investment management, insurance, credit provision and equity capital markets. To this extent, the EBA analysis of non-bank lending focuses only on FinTech-enabled credit provision. Also, 'FinTech credit refers to credit activity facilitated by electronic platforms. This usually involves borrowers being matched directly with investors, although some platforms use their own balance sheet to lend. FinTech platforms facilitate various forms of credit, including consumer, business and property lending, as well as debt funding such as invoice financing.' (FSB & BIS (2017), FinTech credit: Market structure, business models and financial stability implications).

[15] ESRB (2021), NBFI Monitor No 6, EU Non-bank Financial Intermediation Risk Monitor 2021, August.

[16] However, it is worth underlining that the National Financial Accounts, which form the basis for the NBFI data monitoring, do largely capture FinTech credit activities (FSB (2019), Global Monitoring Report on Non-Bank Financial Intermediation 2018, Section 5.1, Case Study on Fintech credit: Data, classification and policies, pp. 68-72, 4 February).

3. Market developments and trends

12. Banks and traditional non-bank lenders remain the main providers of credit in Europe. However, over the last decade the credit market has been characterised by a significant transformation, led by the increasing digitalisation of services, so that new credit intermediaries have emerged. In particular, new lending models facilitated by online platforms have become more widespread, both through provision of services by FinTech firms (e.g. via P2P/marketplace lending platforms), and by other digital platforms enabling balance sheet lending and invoice trading. Moreover, over the past few years large technology companies (BigTechs) have also started entering credit markets in partnership with banks, leveraging on their extensive user base, which facilitates the process of onboarding borrowers. Moreover, BigTechs can use large-scale micro-level data on users, often obtained from non-financial activities, to measure borrowers' creditworthiness and to market targeted financial products to consumers.

13. As much of the growth experienced by BigTech and FinTech in the credit market has occurred over recent years, consistent and standardised data on non-bank lending enabling comparisons across various EU jurisdictions[17] are not yet available and formal reporting obligations may exist only when one of these entities is part of a regulated financial group; supervisors and regulators must often rely on non-official sources[18].

14. The following sections provide an overview of recent market developments and trends in non-bank lending both at global level and within the EU. The analysis of the latter is based on responses to the EBA survey on non-bank lending conducted for this Report and on the EBA Report on digital platforms[19]. This analysis is also supplemented by information from external sources, including inter alia: the BIS analysis on FinTech and BigTech credit[20], the Cambridge Centre for Alternative Finance (CCAF) global alternative finance database on FinTech credit and the ESRB report on EU Non-bank Financial Intermediation Risk Monitoring[21].

3.1 Global trends in FinTech and BigTech lending

15. Data recently published in a BIS Working Paper[22] show a significant increase in lending volumes provided by FinTech and BigTech players at global level between 2013 and 2019, sometimes thanks to partnerships established with traditional financial institutions; the data also show that, since 2018, BigTech credit has overtaken FinTech credit in total size (see Figure 1).

[17] Annex 1 to this Report provides some data on non-bank lending, collected from EU competent authorities.

[18] The scarcity of reliable data on FinTech and BigTech credit has also been acknowledged by Cornelli, G., Frost, J., Gambacorta, L., Rau, R., Wardrop, R. and Ziegler, T. (2020), Fintech and big tech credit: a new database, BIS Working Papers No 887, 22 September.

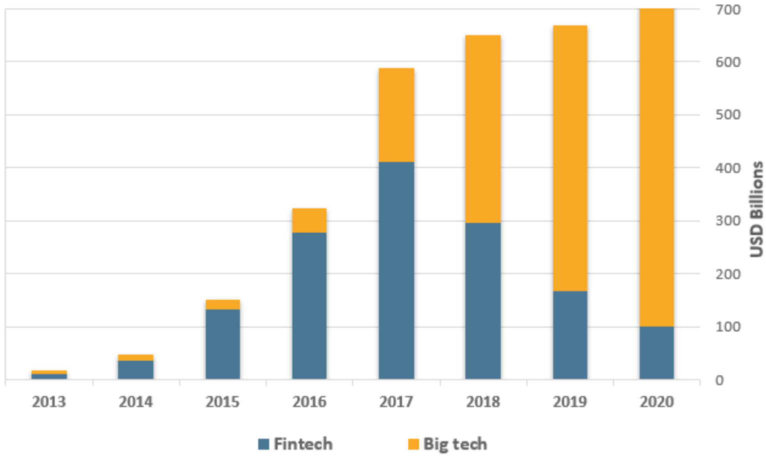
[19] EBA (2021), Report on the use of digital platforms in the EU banking and payments sector, EBA/REP/2021/26.

[20] See reference in footnote 18.

[21] ESRB (2021), NBFI Monitor No 6, EU Non-bank Financial Intermediation Risk Monitor 2021, August.

[22] Cornelli, G., Frost, J., Gambacorta, L., Rau, R., Wardrop, R. and Ziegler, T. (2020), Fintech and big tech credit: a new database, BIS Working Papers No 887, 22 September.

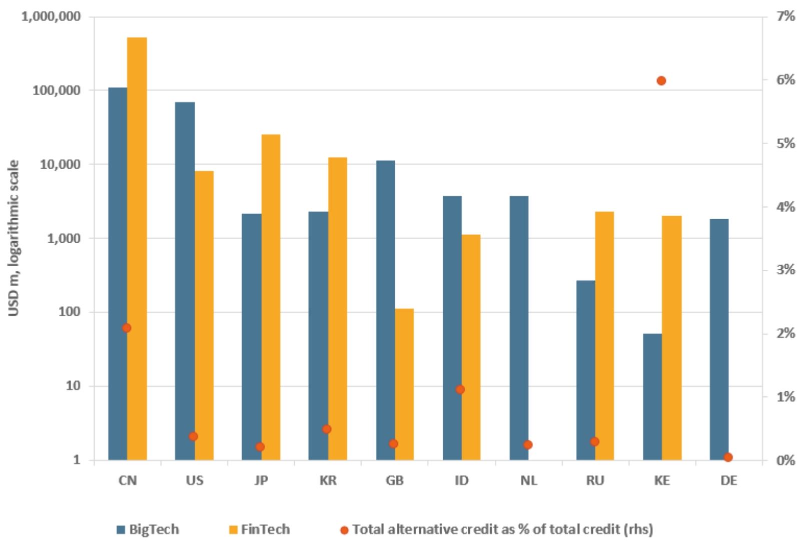
Figure 1. FinTech and BigTech credit, at global level



Source: Cornelli, G., Frost, J., Gambacorta, L., Rau, R., Wardrop, R. and Ziegler, T., Fintech and big tech credit: a new database*, BIS Working Papers, No 887, September 2020, p. 6.*
Note: 2020 figures are provisional.

16. BIS data show that over recent years BigTech lending growth was particularly strong in Asia (China, Japan, Korea and Southeast Asia), and some countries in Africa and Latin America. Global FinTech credit volumes declined in 2018–19 mainly due to some market and regulatory developments in China, while FinTech credit is still growing outside China. Figure 2 below shows that, overall, FinTech and BigTech lending still remains relatively small compared to the total stock of lending in various economies, with the possible exception of China and Kenya, where the share is limited but non-negligible.

Figure 2. FinTech and BigTech, lending volume and share of total lending



Source: Cornelli, G., Frost, J., Gambacorta, L., Rau, R., Wardrop, R. and Ziegler, T., Fintech and big tech credit: a new database*, BIS Working Papers, No 887, September 2020, p.6.*

17. As recently observed by the Financial Stability Institute (FSI)[23], BigTechs players' involvement in the provision of financial services had often begun with their entrance into the business of payment services and then expanded into other types of services. As of now, BigTech companies are also active in the provision of credit (e.g. consumer financing and short-term small-amount loans), but also in crowdfunding, asset management and insurance. In another recent work[24], BIS researchers observe that, when lending to small and medium-sized enterprises in emerging and developing economies, if these borrowers cannot provide the required information to complete a loan application BigTech firms are able to close this gap, leveraging on information they can acquire through provision of services in their core business, such as e-commerce or advertising.

18. According to the BIS analysis for the years up to 2019–20[25], the following trends have been observed in the major economies outside the EU:

   a. China: FinTech and BigTech lending experienced significant growth until 2019; lending provided by FinTech credit platforms declined in 2018 and 2019, following a series of defaults and platform failures, as well as the introduction of regulatory changes in 2018. The BIS report observes that *'from a peak of 3,600 FinTech credit platforms active in November 2015, only 343 were still in operation in December 2019"*[26]. On the other hand, BigTechs have expanded their remit of action in the provision of credit to a wide range of borrowers (e.g. small business loans, smartphone-based consumer loans, rural student loans).

   b. US: FinTech credit was linked primarily to P2P/marketplace consumer lending. Digital platforms signed partnerships with financial institutions, originating loans sold to banks and other institutional investors. Examples of BigTech involvement in lending are Amazon Lending, Apple launching its Apple Card in cooperation with Goldman Sachs[27], Amazon cooperating with Goldman Sachs's Marcus brand to provide revolving credit lines for small merchants selling on its platform[28] and Uber Money offering payment and wallet products to its drivers.

   c. Japan: Data up to 2019 show that FinTech firms providing credit were mostly active through P2P/marketplace business and property lending, and Japan remains the second-largest market for BigTech credit. The most prominent examples were Rakuten

[23] Crisanto, J. C., Ehrentraud, J. and Fabian, M. (2021), Big techs in finance: regulatory approaches and policy options, FSI Briefs No 12, March.

[24] Frost, J., Gambacorta, L., Huang, Y., Shin, H. S. and Zbinden, P. (2019), BigTech and the changing structure of financial intermediation, BIS Working Papers No 779, April.

[25] Cornelli, G., Frost, J., Gambacorta, L., Rau, R., Wardrop, R. and Ziegler, T. (2020), Fintech and big tech credit: a new database (bis.org), BIS Working Papers No 887, September.

[26] Cornelli, G., Frost, J., Gambacorta, L., Rau, R., Wardrop, R. and Ziegler, T. (2020), Fintech and big tech credit: a new database (bis.org), BIS Working Papers No 887, p. 7.

[27] iPhone users can sign up for the Apple Card through the Wallet app and use it immediately for digital purchases.

[28] Small business owners who sell on Amazon's platform will receive targeted invitations from Goldman's Marcus brand for revolving credit lines up to USD 1 million (note: this partnership was launched in June 2020, so it is not explicitly mentioned in the BIS working paper).

offering a set of financial products (e.g. payments, transaction lending, credit card issuing, mortgages and insurance), NTT DoCoMo providing customer credit-scoring services and Amazon lending through its seller lending programme.

3.2 BigTech lending in the EU

19. BigTech provision of credit in EU lending so far has occurred mainly through cooperation with banks and financial institutions. Since the Covid-19 outbreak, the influence of BigTech has increased along with the general acceleration of digitalisation.

20. The EBA Report on the use of digital platforms[29] shows that BigTech companies are not directly involved in providing lending in the EU (none of them holds a special lending licence), but some of them acquired other licences for financial services, notably:

   - Amazon Payments, Alibaba/Alipay, Facebook Payments and Uber Payments hold e-money institution licences;
   - Google Payments and WeChat Pay have payment institution licences; and
   - Rakuten Europe Bank has a credit institution licence.

21. However, there are cases where BigTechs are indirectly involved in lending activities in partnership with EU banks and financial institutions. For instance[30]:

- In Germany, Samsung offers Samsung Pay in partnership with Solarisbank, which provides a virtual debit credit card as a payment method and a free account for settlement as well as a buy-now-pay-later option 'Splitpay'[31]; Amazon in partnership with ING provides credit to SMEs selling on its platform[32]; and Amazon in partnership with Barclaycard Germany offers financing for purchases made through its e-commerce platform.
- In Spain, Amazon partnered with financial intermediaries (i.e. Fintonic and Cofidis) to provide consumer credit to facilitate purchases on its e-commerce platform. In addition, several mobile operators have signed agreements with consumer lending companies to provide fast access to small-amount loans or, alternatively, have moved ahead and created their own mobile banks to become active in this sphere (e.g. MasMovil signed in 2017 an agreement with Cetelem to offer personal consumer loans, while Orange broke into the Spanish banking market in 2019 with the creation of the mobile bank Orange Bank España).
- In Italy, in May 2020 Amazon established a partnership with Cofidis (non-bank lender supervised by the CA).

[29] See footnote 19.

[30] The examples in this subsection are based on publicly available information.

[31] For purchases over EUR 100, the customer can choose to pay the amount in instalments, instead of paying the full purchase price immediately.

[32] ING cooperates with Amazon in offering loans to eligible sellers – mainly SMEs – through Amazon's seller portal. Amazon acts as a broker and presents loan proposals on the lending page of its selling portal. The sellers are directed to ING's website where they can submit a credit application to ING.

3.3 FinTech lending in the EU

22. The most comparable and comprehensive data on FinTech credit volumes come from the Cambridge Centre for Alternative Finance (CCAF)[33], which are based on the annual data collection on digital platforms around the world involved in alternative finance[34] covering both digital lending (i.e. debt-based models, FinTech credit[35]) and digital capital raising (i.e. equity-based models) activities. The CCAF data also include annual flows of new digital lending, which are collected from an industry questionnaire and web-scraping by the CCAF and academic partners.

23. Based on the CCAF database on digital alternative lending, it was possible to extract information on the volume of digital lending in the EU for 2020, broken down by business models and by Member States.

24. Table 1 below shows that – since 2017 – the volume of lending provided by FinTech firms has been steadily increasing, in particular in relation to P2P lending platforms. This rising trend halted somehow in 2020, after the 2020 Covid-19 outbreak, as opposed to an increase in FinTech payment since the onset of the Covid-19 pandemic, possibly following the introduction of Covid-related contact restrictions which fuelled contactless payments and online purchases. However, the total value of FinTech credit in the EU (EUR 6.22 billion) accounts only for a small fraction of the total EU bank lending (0.20%).

Table 1. Volume of digital lending (EUR m) in the EU, breakdown by business models

Business model	2017	2018	2019	2020	As % of total bank lending in the EU
P2P/marketplace consumer lending	1,169.34	1,818.64	2,384.66	1,892.85	0.06%
P2P/marketplace business lending	424.49	750.96	1,282.20	1,577.06	0.05%
P2P/marketplace property lending	62.06	114.71	320.92	405.53	0.01%
Invoice trading	531.58	641.96	1,615.13	1,765.41	0.06%
Balance sheet consumer lending	3.00	79.77	337.51	349.43	0.01%
Balance sheet business lending	94.79	62.68	27.09	90.33	0.00%
Balance sheet property lending	-	1,102.02	2,008.81	8.46	0.00%
Debentures (debt-based securities)	75.17	134.76	100.04	113.69	0.00%
Mini-bonds	29.08	34.19	5.45	12.19	0.00%
Total digital lending	**2,389.51**	**4,739.71**	**8,081.81**	**6,214.96**	**0.20%**

Source: Cambridge Centre for Alternative Finance.

Note: Total lending volume in the EU is estimated to be EUR 3,176,272.41 million based on the ECB/MIR (MFI Interest Rate Statistics).

[33] Cornelli, G., Frost, J., Gambacorta, L., Rau, R., Wardrop, R. and Ziegler, T. (2020), Fintech and big tech credit: a new database, BIS Working Papers No 887, p. 2.

[34] According to the CCAF, 'alternative finance' includes digital finance activities that have emerged outside of the incumbent banking systems and traditional capital markets and occur online. In particular, this online alternative finance ecosystem comprises various lending, investment and non-investment models that enable individuals, businesses and other entities to raise funds via an online digital marketplace. As such, it includes also some non-lending activities, like donations and equity crowdfunding.

[35] All loan-based business models distinguished by the CCAF are counted as FinTech credit. This includes P2P or marketplace lending to consumers, businesses or for property; balance sheet lending to consumers, businesses or for property; invoice trading, debt-based securities (debentures and bonds) and mini-bonds.

25. The breakdown of data at national level in Table 2 below shows some interesting insights. For most Member States where data are available, FinTech lending as a share of total lending remains very small, between 0 and 1%; however, there are four Member States (LT, LV and to a lesser extent EE and SI) where FinTech lending, while still accounting for a minor share of total lending, is possibly non-negligible and thus deserves more attention.

Table 2. Volume of FinTech lending (EUR m) in the EU, breakdown by Member States

Member State	Total digital lending (2020)	As % of total bank lending in each MS
AT	0.02	0.00%
BE	52.70	0.09%
BG	43.84	0.08%
CY	1.23	0.11%
CZ	114.55	0.09%
DE	876.71	0.18%
DK	55.23	0.01%
EE	121.44	6.30%
EL	-	0.00%
ES	502.20	0.49%
FI	327.33	0.64%
FR	991.77	0.27%
HR	0.72	0.00%
HU	-	0.00%
IE	15.40	0.13%
IT	1,526.22	0.89%
LT	210.97	9.16%
LU	5.00	0.03%
LV	198.77	13.61%
MT	-	0.00%
NL	457.74	0.33%
PL	266.85	0.08%
PT	15.26	0.08%
RO	26.49	0.03%
SE	311.38	0.06%
SI	88.51	2.90%
SK	4.63	0.03%
Total EU	**6,214.96**	**0.20%**

Source: CCAF.

3.4 Other non-bank lenders in the EU

26. Non-bank lending in the EU had been steadily increasing since 2015, until March 2020, although its magnitude remained very small compared to traditional bank lending. Based on the non-bank lending survey[36] , since the outbreak of Covid-19 some competent authorities have observed a decrease in non-bank lending in their jurisdiction, possibly due to:

   - lower demand for consumer lending (possibly due to purchasing plans put on hold or postponed);
   - a slowdown in economic activity for business borrowers;
   - the introduction of Covid-19 moratoria measures, limiting the need to look for alternative forms of financing (i.e. other than banks).

27. In some Member States, it was observed that this decline in non-bank lending was matched by a similar decrease in the volume of banks' credit, but a rebound was noted during the most recent months. Moreover, some competent authorities noted that, although the volume growth in non-bank lending had slowed down somewhat during the first months of the pandemic, the sector was still characterised by a continuing trend of innovation, with new players entering the market and new services being offered by incumbents.

28. It was also noted that fast and secure consumer credit services by licensed non-bank lenders increased competition between bank and non-bank lenders and encouraged banks to improve their products and the accessibility to their platforms. Moreover, FinTech/RegTech tools positively affected licensed consumer credit providers, reducing costs of creditworthiness assessment, helping to raise the funds (if using a B2B platform), monitoring possible frauds and fulfilling other obligations related to AML/CTF.

29. The recent growth and evolution of new market players makes it quite difficult to have access to comparable data at EU level. However, some indication of the size and evolution of EU non-bank lending (other than FinTech and BigTech) could be found in the ESRB data on financial corporations engaged in lending (FCLs). The category of FCLs covers non-bank credit grantors that mainly specialise in asset financing for households and non-financial corporations (NFCs). It includes entities that engage in non-bank credit intermediation such as financial leasing, factoring, mortgage lending and consumer lending companies[37].

30. The last EU Non-bank Financial Intermediation Risk Monitor published by ESRB[38] provides data on the FCLs' assets and liabilities for the euro area and an indication of the volume of loans granted by FCLs (stock), as well as the evolution of their assets and liabilities (see Figure 3):

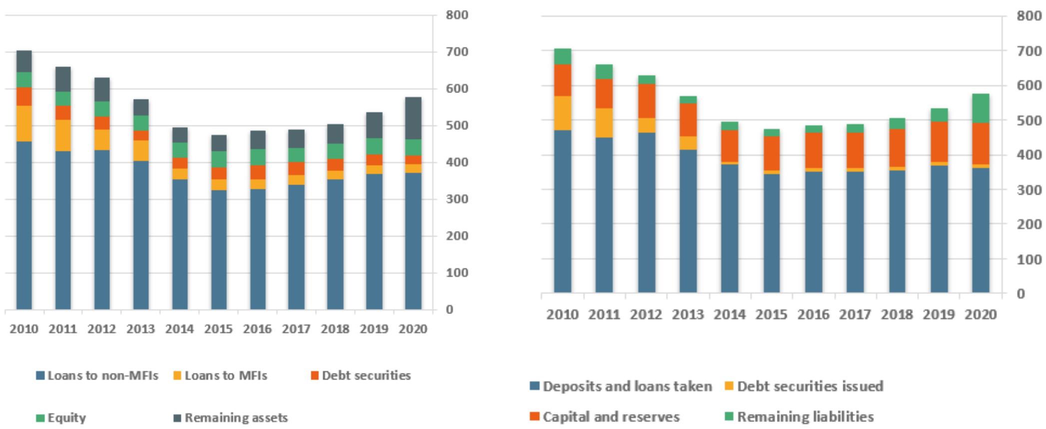
[36] EBA (2021), Survey on non-bank lending to national competent authorities (see paragraph 6).

[37] FCLs are a subsector of OFIs (S-125) used within the European System of Accounts which is the basis for the ESRB data collection (Eurostat (2013), European System of Accounts – ESA 2010, doi:10.2785/16644, 26 June).

[38] ESRB (2021), NBFI Monitor No 6, EU Non-bank Financial Intermediation Risk Monitor 2021 (europa.eu)

- Assets of FCLs increased by 8% in 2020, which was significantly higher than the average increase (3.3%) recorded over the previous three years. Notably, after having declined steadily between 2010 and 2014, the sector's balance sheets had started growing slightly every year since 2015.
- The balance sheet composition did not change significantly over recent years: loans to non-Monetary Financial Institutions (MFIs) remained the vast majority (94%) of total loans provided by FCLs. In 2020, the total value of loans of FCLs in the euro area was around EUR 400 billion, which constitutes only a small fraction (approx. 3.3%) of corresponding bank credit of around EUR 12 trillion.
- The liability side of the balance sheet shows a reduction in deposits and issuance of debt securities, while capital and reserves increased only marginally.

Figure 3. Euro area FCLs' assets (LHS) and liabilities (RHS), EUR bn



Source: ECB.

3.5 Lending in crypto-assets

31. The appearance and rapid rise of crypto-asset lending[39] since 2020[40] has contributed to the extension and reach of non-bank lending activities. Lending crypto-assets in exchange for interest has been an opportunity for crypto-asset holders to earn passive income, instead of so-called 'hodling'[41], while crypto-asset borrowers agree to pay interest (at maturity or on a regular basis) in exchange for obtaining a certain crypto-asset for a specified period.

[39] Crypto-asset lending can be understood as crypto-secured lending, as not all loans are denominated in crypto-assets. The common feature is that loans are collateralised by one or more crypto-assets.

[40] Crypto-asset lending activity was not observed before 2019 (EBA (2019), Report with advice for the European Commission on crypto-assets, 09 January). However, since the publication of that report, and especially following the growth of decentralised finance (DeFi), in particular during the summer of 2020, the EBA has observed an increase in crypto-asset lending activities in the EU.

[41] 'HODL' is a term commonly used in the crypto ecosystem (and derived from a typo of 'hold') that refers to buy-and-hold strategies in which crypto-assets are held and not traded based on short-term moves. 'Hodlers' usually avoid tendencies such as FOMO (fear of missing out) or FUD (fear, uncertainty and doubt), also commonly used in the crypto ecosystem.

32. Those crypto-asset lending and borrowing activities can happen in different formats, for example bilaterally through peer-to-peer matching platforms, or based on so-called ‘liquidity pools’ representing pools of lenders acting as liquidity providers of certain crypto-assets, usually in exchange for rewards or fees, with no need for each borrower to be matched with specific lenders.

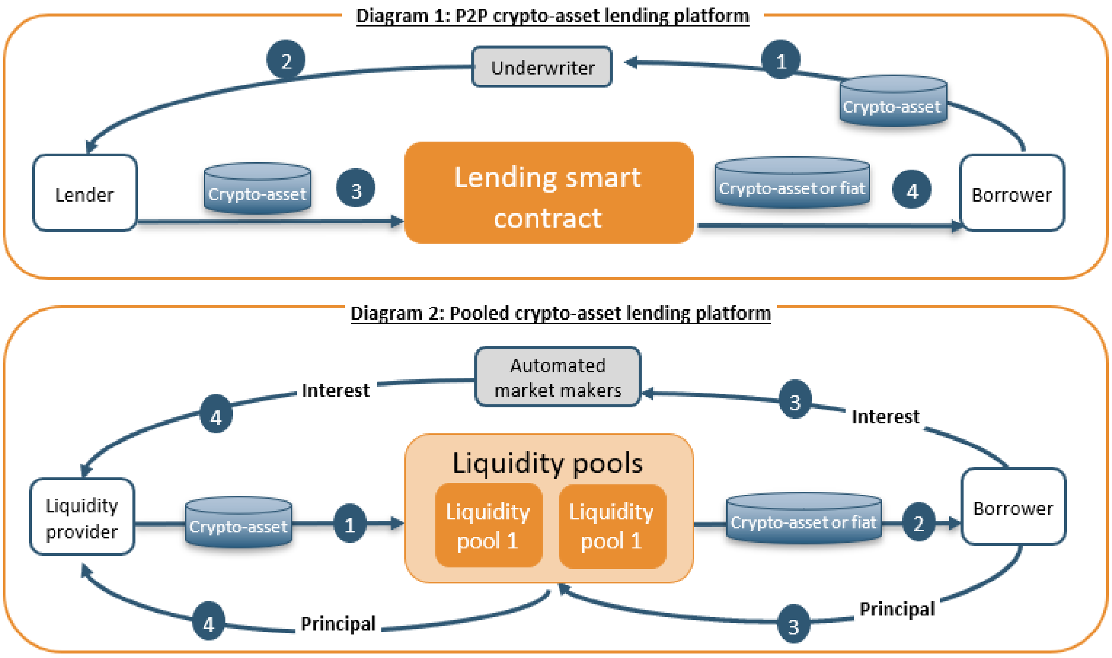
33. Diagrams 1 and 2 on the next page represent examples of the typical business models of decentralised crypto-asset lending platforms observed in the market, to show the main differences between the two formats mentioned. In addition to that distinction, lending can also be undertaken through either centralised or decentralised platforms, the latter replacing the role of lending intermediaries with automated, decentralised, non-custodial blockchain protocols. These so-called ‘DeFi’ lending services connect lenders with borrowers, who store collateral in the blockchain as a cover for counterparty credit risk, through the creation of liquidity pools built on programmable smart contracts, leading to innovative lending activities such as ‘yield farming’ (a process that allows crypto-asset holders to lock-up their assets for a certain period and optimise interest or ‘lock-up yields’ by automatically moving funds among lending platforms). Diagram 2 below is an example of a DeFi lending service.

34. Particularly in decentralised crypto-asset lending platforms, crypto-asset borrowers mainly benefit from the fact that, compared to traditional bank lending, they are not subject to credit scoring assessments in order to borrow. This is a consequence of the typical feature of DeFi crypto-asset lending: in general, platforms require the borrower to supply collateral greater than the value of the loan (at a minimum overcollateralisation ratios can go from 115% to 150%, depending on the expected volatility and trustworthiness of the crypto-asset used as collateral) – to retrieve the collateral, the borrower must repay the loan along with interest. Moreover, rudimentary forms of unsecured lending, known as ‘credit delegation’, are available on some crypto-asset lending platforms. This often involves entities with established off-blockchain relationships, making collateral unnecessary[42]. Furthermore, some platforms also allow for crypto-asset loans that can be obtained even without either collateral or credit scoring assessment (so-called ‘flash loans’), which provide short-term liquidity in smaller amounts in a practically instant manner[43]. In addition, borrowing a crypto-asset allows the borrower to either short it or, in the case of governance tokens, obtain governance rights on the blockchain. Therefore, both lenders and borrowers may seek to participate in crypto-asset lending activities to exploit arbitrage opportunities across platforms.

[42] As reflected in Aramonte, S., Huang, W. and Schrimpf, A. (2021), DeFi risks and the decentralisation illusion, BIS Quarterly Review, December, p. 27.

[43] The key feature of so-called ‘flash loans’ is that they allow a borrower to borrow crypto-assets without putting up any collateral, as long as the liquidity is returned to the protocol within one block transaction. That is, once the borrower opens a smart contract requesting a flash loan, the execution of the contract and the return of the loan, including interest and fees, need to happen all within the same transaction. If the borrower does not repay the capital, or the trade does not make a profit, the conditions set out in the flash loan smart contract are not met, and the transaction is reversed. As a consequence of this, flash loans do not incur credit or counterparty risks, even though they can bring other types of risks (e.g. market abuse or operational risk).

Figure 4. Illustrative business models of decentralised crypto-asset lending platforms



35. Other areas for consideration in relation to crypto-asset lending are the so-called 'staking' and 'crowdloans'. On one side, staking refers to the process of actively participating in crypto-asset transaction validation on a proof-of-stake (PoS) blockchain. On those blockchains, anyone with a minimum required balance of a specific crypto-asset can validate transactions by creating a block[44]. Randomly selected validators earn 'staking rewards'[45], depending on their staked balance (the higher the balance, the higher their chances for being randomly selected as validators) in a similar way to how a 'miner' obtains rewards in proof-of-work (PoW) blockchains. As those rewards could be understood as a source of passive income for crypto-asset holders, policymakers and supervisors may need to assess whether staking could be considered another source of non-bank lending, with the crypto-asset holder acting as a lender and the blockchain protocol as the borrower.

36. On another side, crowdloans refer to the process of accepting contributions to a blockchain network-sponsored account for a designated period of time ('lock period'), to support new projects to connect to blockchain networks as a parachain[46], in exchange for a reward, typically in the form of a native token from the project. In order to connect to blockchain

[44] A crypto-asset holder aiming to stake may not need to operate any technical operations on any blockchain, as staking can be undertaken via a crypto-asset service provider, who may execute the staking directly, or may even delegate the execution to another intermediary.

[45] Those rewards can range from 0.50% to 8% APY, (although in exceptional cases they can reach 50% or more) depending on the crypto-asset staked (DeFi tokens and stablecoins currently offer the highest staking rewards). For updated data on staking rewards, refer to the Stacking Rewards website.

[46] Parachains refer to custom, project-specific blockchains that run in parallel with each other, usually integrated within the Polkadot and Kusama networks. Parachains are connected to Polkadot or Kusama in a 'hub and spoke' style architecture, so, unlike in the case of Ethereum, the largest blockchain network, they allow developers to create new and independently functioning blockchain networks that can be customised for any number of use cases.

networks as a parachain, a project must bid in an auction, locking tokens for the duration of the parachain lease[47]. A project can organise a crowdloan campaign for gathering enough tokens to win the auction. If the project is unable to win an auction during the lock period, the funds are returned to 'crowdlenders' and unlocked. But, if the project wins an auction, any collected contribution is locked for the entire duration of the lease. Users cannot remove their contributions during the lease, but will get their contributions and a reward (previously specified) at the conclusion of the lease. Those rewards, in a similar way to the case of staking as explained above, could be understood as a source of passive income for crypto-asset holders. As a consequence, as the market and activity around crowdloan campaigns grow, policymakers and supervisors will need to assess whether those crowdloans are to be considered a source of non-bank lending.

37. Overall, some existing data suggest that the take-up of crypto-asset lending activities in the EU is growing but is still limited in terms of observed volumes and values[48], while the most dominant crypto-lending platforms and service providers are observed to be established outside the EU. However, crypto-asset lending and borrowing can become an important source of non-bank lending, as intermediation is either carried out by crypto-asset service providers or through automated and decentralised platforms. Moreover, the crypto-lending and staking activities are increasingly being undertaken and/or offered to customers by crypto-asset exchange services providers, who are broadening their activities by adding these new services to their exchange platforms. Additionally, the multi-faceted nature of the products and services available on exchange platforms may, depending on the structure of the provision of those products and services, give rise to potential conflicts of interest (e.g. where a crypto-asset exchange platform is not a neutral party to a transaction or trade, and does not provide sufficient consumer protection safeguards).[49] Therefore, the EBA will continue to monitor the crypto-asset lending and borrowing activity in the EU, understanding the different formats and conditions under which the activities take place. In particular, attention will be paid to the wider regulatory and policy implications of crypto-asset lending, namely regarding the interplay with the proposed EU Regulation on Markets in Crypto-assets (MiCA). Currently, national competent authorities in EU Member States report having no specific regulatory regimes developed covering crypto-asset lending, and the MiCA proposal is intentionally not expected to cover these specific activities.

[47] Parachain slots in the blockchain networks are limited in order to encourage competition between projects. Moreover, the slots are leased for a limited period of time, in order to make sure that only actively running projects keep their slots.

[48] Chainalysis (2021), Geography of Cryptocurrency Report, p. 52.

[49] The National Bureau of Economic Research found that, unlike regulated exchanges, cryptocurrency platforms lacked provisions to ensure that investors receive the best possible price. Such conflicts of interest challenge effective consumer protection which has the potential to grow without appropriate regulation in place (Makarov, I. and Schoar, A. (2021), Blockchain Analysis of the Bitcoin Market, NBER Working Paper No 29396, October).

4. Legislative framework

4.1 Bank lending and exceptions included in the CRD

38. In the EU, the vast majority of lending is provided by credit institutions, which are defined in Article 4(1)(1) CRR as undertakings the business of which consists in any of the following:

    a. to take deposits or other repayable funds from the public and grant credits for its own account ('banks');

    b. to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU (i.e. dealing on own account or underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis); and they meet a EUR 30 billion threshold for their consolidated assets, either individually or, under certain conditions, together with other undertakings within the same group ('large investment firms').

39. The prudential framework applicable to credit institutions is largely harmonised in the EU as they need to comply with common regulatory and supervisory requirements set up in the CRD and CRR. According to Article 8 CRD, credit institutions must receive an authorisation from the competent authorities before commencing their activities.

40. However, there the CRD expressly foresees specific carve-outs for certain institutions providing credit but excluded from the scope of application of the CRR/CRD. Article 2(5) CRD excludes from the scope of that Directive those entities pursuing public policy objectives, such as central banks and post office giro institutions as, due to the nature of their activities, it is not considered necessary to subject them to the EU legislation intended to promote a level playing field for the provision of banking services (the CRD/CRR). Article 2(5) CRD also excludes from the scope of the CRD specific entities in relevant Member States, like credit unions and state development banks.

41. Furthermore, Article 9 CRD prohibits persons or undertakings other than credit institutions from carrying out the business of accepting deposits or other repayable funds from the public[50]. To this extent, it should be noted that certain EU directives in the area of financial services, such as the PSD2 or the EMD2, expressly provide that the funds received (in those cases by payment institutions (PIs) from payment service users with a view to providing payment services or by electronic money institutions (EMIs) and immediately exchanged with electronic money) shall not constitute a deposit or other repayable funds within the meaning of Article 9 CRD. To this extent, Annex II provides an overview of lending provided by PIs/EMIs based on the results of the survey on non-bank lending.

[50] With the exception of 'taking of deposits or other funds repayable by a Member State, or by a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, or […] cases expressly covered by national or Union law, provided that those activities are subject to regulations and controls intended to protect depositors and investors'.

4.2 EU legislation applicable to non-bank lending providers

42. According to the BIS terminology, 'entity-based' regulation refers to a set of rules imposed on an institution based on its legal designation in any particular jurisdiction, or more simply, determined by the charters or licences granted to it by governments/authorities. By contrast, 'activity-based' regulation consists of a set of requirements to be met by all institutions offering a given service[51].

43. Using this categorisation, the following EU rules currently apply to specific categories of firms that are not banks and that provide lending:

Entity-based/sectoral legislation

- Regulation (EU) 2020/1503 on European crowdfunding service providers for business (ECSPR) – laying down uniform rules across the EU for the provision of investment-based and lending-based crowdfunding services related to business financing, and allowing platforms to apply for an EU passport based on a single set of rules; this Regulation does not apply to crowdfunding services that are provided to project owners that are consumers[52], such as peer-to-peer lending platforms.
- Directive 2011/61/EU on alternative investment fund managers (AIFMD) – laying down the rules for the authorisation, ongoing operation and transparency of the managers of alternative investment funds (AIFMs) which manage and/or market alternative investment funds (AIFs) in the Union. Some AIFs are entitled to grant loans, thus acting as a substitute for bank lending.

Activity-based legislation[53]

- Consumer Credit Directive (CCD) – which harmonises certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers.
- Mortgage Credit Directive (MCD) – laying down a common framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property. This also includes the obligation to carry out a creditworthiness assessment before granting a credit, as a basis for the development of effective underwriting standards in relation to residential immovable property in the Member States, and for certain prudential and supervisory requirements, including for the establishment and supervision of credit intermediaries, appointed representatives and non-credit institutions[54].

[51] See Restoy, F. (2021), Fintech regulation: how to achieve a level playing field, FSI Occasional Paper No 17.

[52] Consumers as defined in point (a) of Article 3 of Directive 2008/48/EC.

[53] Activity-based legislation is applicable both to credit institutions and to certain categories of non-bank lenders if they provide activities under the scope of this legislation.

[54] Pursuant to Article 1 MCD.

5. Non-bank lending at national level

5.1 A mapping of business models for non-bank lending

44. The first step to capture the extent of non-bank lending in the EU is to have an adequate taxonomy in place that could eventually help map the business models for non-bank lending activities to the applicable prudential framework and regulatory requirements (if any). Therefore, the respondents to the EBA survey on non-bank lending were asked to report on the presence of specific business models in their jurisdictions.

45. Table 3 on the next page provides a taxonomy of various business models for non-bank lending activities across the EU, based on responses to the survey on non-bank lending[55]. The mapping identifies three main categories of non-bank lending (consumer, business and property lending) and differentiates between 'peer-to-peer (P2P)/marketplace lending', and 'balance sheet lending'. P2P lending platforms directly connect potential borrowers with lenders/investors, while balance sheet lenders originate and fund loans from financial resources on their balance sheet, thus they conduct lending activity at their own risk.

46. The mapping reflects the main business models for non-bank lending, including both:

    a. traditional business models, which are often explicitly covered by national lending regulations (e.g. financial leasing, factoring, microcredit, pawnshops); and

    b. more innovative business models that often remain unregulated at a domestic level and involve FinTech/BigTech lenders operating in a fully digital way (e.g. P2P/marketplace lending platforms, buy-now-pay-later (BNPL)).

47. It is to be noted that some respondents indicated the presence of a particular business model in their jurisdiction, but were not in a position to provide more detailed information when this model was not officially recognised by their national authorisation/registration regime. Admittedly, many respondents stated that the visibility over non-bank lending activities provided by entities that were unregulated at a national level was rather limited (often this was the case for FinTech lenders).

48. Due to the different scope of enquiry, there may be differences between the business models reported in Table 3 and information on authorisation/registration reported in Tables 4 and 6. The former provides an overview of the *activities* that are present in a certain jurisdiction, while the latter reports the denomination for registration/authorisation of activities (see also para. 52). Therefore, the case may occur that specific business models are authorised according to broader regime/denomination (e.g. consumer credit), which may include one

[55] The table also indicates those cases (marked by *) where respondents identified BigTechs offering non-bank lending in cooperation with credit institutions (e.g. under the BNPL business model in DE, ES, NL, and the merchant cash advance solutions business model in DE).

or more business models as reported in Table 3. In addition, some business models may operate in certain jurisdictions only if they receive an authorisation as banking institutions, so they may appear in Table 3 but not in Tables 4 and 6. Therefore, the responses summarised in Table 3 provide a high-level overview of the business models that are present in specific jurisdictions, rather than a complete picture of non-bank lending activities operating, authorised and registered across the EU.

Table 3. Mapping of business models for non-bank lending in the EU

	Types of non-bank lending / business models	**MS indicating a presence of particular non-bank lending activities in their jurisdictions (* BigTechs)**
1	**Consumer lending**	AT, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LV, MT, NL, PT, RO ,SE, SK
1.1	**Peer-to-peer platforms / marketplace consumer lending**	DE, EE, ES, FI, FR, IT, LT, NL, NO, SE, SK
1.2	**Buy-now-pay-later / consumer purchase financing**	CZ, DE*, DK, EE, ES*, FI, FR, HU, IE, IT, LT, MT, NL*, PT, RO, SE, SK
1.3	Balance sheet consumer lending (other than 1.2)	EE, EL, ES, FI, HU, IE, IT, RO, SK
	1.3.1 Microcredit	EE, EL, ES*, FI, FR, HU, IT, LV, MT, NL, RO, SK
	1.3.2 Zero-interest credit	DK, EE, ES, FI, HU, RO,
	1.3.3 Pawnshops	AT, DE, DK, EE, FI, ES, HU, IT, LV, NO, PT, RO, SE, SK
2	**Business lending**	AT, BE, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IE, IT, LU, LV, NL, PT, RO, SK
2.1	*Crowdfunding for business*[56]	*Outside of the scope of the CfA on digital finance*
2.2	**Financial leasing**	AT, BE, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, NO, PT, RO, SE, SI, SK
2.3	Accounts receivable financing / invoice trading	BE, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IT, LT, LU, NL, RO, SE, SK
	2.3.1 Factoring	BE, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IT, LT, LU, NL, NO, RO, PT, SE, SK
	2.3.2 Supply chain finance	DE, DK, ES, FR, HU, NL, RO, SE, SK
2.4	Merchant cash advance solutions	DE*, DK, ES, FI, HU
2.5	Balance sheet business lending (other than 2.2-2.4) including SMEs lending	ES, FI, FR, HU, IE, IT, NL, NO, RO, SK, PT
2.6	Debt-based securities (excluding securitisation)	DK, ES, SK
3	**Mortgage/property lending**	DE, DK, ES, HU, IE, LT, NL, RO, SE, SK
3.1	Marketplace property lending platforms	DE, DK, ES, LT, NL, SE
3.2	Balance sheet property lending	DK, ES, HU, IE, NL, RO, SK
ADDITIONAL TYPES OF NON-BANK LENDING / BUSINESS MODELS		
4	Credit unions and mutuals[57]	CZ, DK, ES, IT[58], LT, NL, PT, RO
5	Guarantee providers	ES, FI, HU, IT, MT, SK, PT, RO

Note: lines 1, 2, 3 indicate the presence of at least one of the business models included in the respective subcategories.

[56] Crowdfunding for business – this business model is included in this mapping table for completeness purposes only. According to the CfA on digital finance, it falls outside of the scope of this analysis on non-bank lending.

[57] In some jurisdictions credit unions are treated as credit institutions, and therefore may not be captured in this table.

[58] Reference is made to loan guarantee consortia.

Other business models or types of non-bank lending identified in some Member States

49. Respondents to the survey also mentioned other business models or types of non-bank lending that have become established in their respective jurisdictions:

- reorganisation of consumer loans – this refers to a business model through which one company offers to pay off the loans that have been granted to a consumer by different companies, and 'combine' them into a single new consumer loan in which the creditor is solely the company which paid off the previous loans;
- third-party financing providers – companies that may grant credit for private individuals to finance housing energy renovation but cannot receive repayable funds from the public in any kind of form;
- crowdfunding service providers granting interest-free and fee-free loans which fall outside of the ECSP scope;
- special purpose entities (SPEs) – the most common types include: (i) external financing: funding obtained by the SPE from external sources and provided as a loan to the parent; (ii) loan origination: funding obtained from the parent and provided to external sources by way of a loan; (iii) intra-group financing: loan funding from, and to, intra-group companies;
- salary-backed loans – a form of financing repaid by a fifth of the salary or pension of the debtor;
- intra-group lenders – financing entities within a group of companies;
- personal contract purchase – often referred to as a personal contract plan, is a form of hire purchase vehicle finance for individual purchasers, as both personal contract hire and traditional hire purchase;
- debt collection companies – collecting debts from receivables acquired from banks and non-bank lenders.

5.2 Authorisation and registration at national level

50. Responses to the survey show that there is a wide range of national prudential regimes across the EU, with various licensing/registration and prudential requirements applicable to non-bank lending entities. Moreover, in some Member States lending could also be provided by entities that do not fall under domestic licensing/registration requirements (i.e. non-bank lending unregulated at a domestic level), when these lending activities are not explicitly prohibited by national legislation. In such cases, these non-bank lenders remain unregulated at the entity level but might be subject to activity-based requirements if they offer lending products within the scope of the CCD or MCD.

51. The survey responses indicate that – within the variety of domestic regimes for non-bank lending providers across the EU – each Member State has developed its own specific approach:

- some Member States have only one general type of non-bank lending licence with a broader scope that covers multiple types of lending activities;
- other Member States have multiple types of authorisation/registration regimes tailored to various types of non-bank lenders.

52. Table 4 presents an overview of non-bank lending providers currently authorised/registered in EEA countries that provided the feedback to the survey. This is especially relevant in some jurisdictions, where provision of non-bank lending activities is allowed only for entities that are subject to authorisation/registration by an appropriate authority. To this extent, some authorities introduced within their jurisdictions a distinction between entities/activities that require authorisation/licensing and those that are subject to registration. In such countries, non-bank lenders that require a registration often are subject to less strict regulatory requirements compared to licensed entities.

Table 4. Overview of authorisation and registration regimes for non-bank lenders across the EU

MS	Type and total number of non-bank lending entities subject to authorisation/licensing (data as of 31/12/20)	Type and total number of non-bank lending entities subject to registration
AT		Leasing Pawnshops
BE	Mortgage credit (69) Consumer credit (50)	
BG[59]		Lending (135) Financial leasing (44) Factoring and invoice trading (16) Guarantee providers (7)
CZ	Consumer credit (84) Mortgage credit	
DE	Financial leasing (241) Factoring (185)	Pawn shops (ca. 200)
DK	Consumer credit (6)[60] Mortgage credit (7)	
EE	Creditors (43) Mortgage creditors (28) Credit intermediaries (10) [including 5 P2P platforms] Mortgage credit intermediaries (1) [including 1 P2P platform] Advisory services (2)	Licensed creditors operating with an exemption (12) Credit agents (8)
EL	Financial leasing (8) Factoring (6) Consumer credit (1) Debt refinancing (0) Microcredit (0)	
ES	Specialised lending institutions (32)[61] Mutual guarantee companies (18)	Real estate non-bank lenders (119)

[59] In BG, non-banking lending activities are: (i) extending loans with funds which are not raised through public attraction of deposits or other repayable funds; (ii) financial leasing; (iii) acquisition of receivables originating from loans or other forms of funding (factoring, forfeiting, etc.); (iv) guarantee transactions.

[60] DK – consumer credit: 6 entities and 35 applications from companies as a transitional arrangement.

[61] ES – specialised lending institutions are subject to prudential rules similar to those in the CRR/CRD for credit institutions, even if they are not allowed to take deposits or other repayable funds from the public.

		Real estate credit intermediaries and real estate non-bank lenders (11)
FI[62]	Pawnshops (11)	Consumer credit (58) Factoring and invoice trading (19) Leasing (8) Business (B2B) loans (18) Export finance, EME finance with full/partial state ownership (3)
FR[63]	Finance companies (149, of which 36 do not belong to a group that includes at least a credit institution, payment institution or investment firm, and of which 15 entities are also authorised as payment institutions and 3 as investment firms) Third-party financing companies (5) Microcredit companies (2)	
HR	Leasing (15) Factoring (4)	
HU[64]	Credit and loan operation (220)	
IE[65]	Retail credit firms (18) Licensed moneylenders (35) Pawnbrokers (3)	Credit information providers (63) Financial institutions[66] (486)
IT[67]	Financial institutions (198)	Microcredit operators (12)
LT	Consumer credit providers (60) P2P lending platforms (8) Financial leasing (15) Credit unions (60) Mortgage lenders (16)	

[62] FI – registration is provided for AML/CFT supervision purposes. Consumer credit: mostly unsecured loans (including financing for car purchases and loan transfer/combination services), P2P lending platform, BNPL. Factoring and invoice trading: factoring and other financing based on invoicing and transfer of credit risk (some of these companies also provide business loans and/or consumer loans) (some companies are specialised in rental guarantees). Business/B2B loans: some of these companies also provide factoring and/or consumer loans, others are focused on intra-group financing only.

[63] FR – finance companies (sociétés de financement) – a company may provide any type of credit (e.g. leasing, consumer finance, merchant cash advance, factoring, surety, etc.) but cannot receive repayable funds from the public in any kind of form. Many companies are specialised institutions providing credit (e.g. financing the acquisition of specialised goods such as helicopters) and can belong to banking groups. Some of them are joint ventures between banks and commercial companies to provide dedicated credit lines to customers of those companies. All FR pawnshops are credit institutions.

Third-party financing companies (sociétés de tiers financement) – a company may grant credit for private individuals in order to finance housing energy renovation but cannot receive repayable funds from the public in any kind of form.

[64] HU – credit and loan operations – a licence is required if the entity intends to provide the following financial service activities (one or more) as a business activity: (i) credit and loan operations; (ii) financial leasing; (iii) issuance of paper-based cash-substitute payment instruments (for example traveller's cheques and bills printed on paper) and the provision of the services related thereto, which are not recognised as money transmission services; (iv) providing surety facilities and guarantees, as well as other forms of banker's obligations; (v) commercial activities in foreign currency, foreign exchange (other than currency exchange services), bills and cheques on own account or as commission agents; (vi) financial intermediation services; (vii) safe custody services, safety deposit box services; (viii) credit reference services; and (ix) purchasing receivables.

[65] IE – the legislation is currently being enacted that will bring personal contract plans, hire purchase and buy-now-pay-later agreements into the regulatory space in Ireland.

[66] IE – financial institutions registered for the purposes of AML/CFT supervision.

[67] IT – in Italy, financial institutions are entities that can provide at least one of the following businesses: (i) the granting of financing in any form (including the issue of guarantees); (ii) the collection of transferred loans as well as cash and payment services in securitisation, pursuant to Law 130/1999. Following these categories, business models such as leasing, factoring, consumer credit, salary-backed loans, loan guarantee consortia, guarantee providers, pawnshops, bad finance entities and securitisation servicers may fall under one of the above-mentioned categories and can be performed by authorised financial institutions.

LU	Professionals performing lending operations (POPs) (5)	
LV[68]	Consumer lending (46)	
MT[69]	Lending (7) Guarantees and commitments (1) Credit intermediaries (0)	
NL	Financial service providers (104) Credit unions (0)	Cryptocurrency platforms (39)
NO	Finance companies (26)	Loan intermediaries (11)
PT	Financial credit companies (4) Mutual guarantee companies (4)	Financial credit companies (4) Mutual guarantee companies (4)
RO		NBFIs (general register) (174) Credit unions (2789) Pawnshops (3406)
SE	Consumer credit companies (73) Mortgage credit companies (19)	Other financial entities (369)
SI	Consumer lending (47) Consumer real estate leasing services or advisory services in connection with these loans (0)	
SK[70]	Business-to-consumer (B2C) lending in unlimited scope (32) B2C lending in limited scope (1) B2C lending by otherwise defined creditors (0) B2C mortgages (0)	Business-to-business (B2B) lending Factoring B2B lending Financial leasing B2B lending

53. To complete the picture on the types of non-bank lending which are allowed in each Member State, it is also useful to consider whether firms are allowed to provide lending services without being explicitly subject to authorisation or registration requirements in a given jurisdiction. This may be particularly relevant when there is no general prohibition to conduct such activities, as non-bank lending entities may operate in a specific country without any authorisation/registration and possibly outside of the oversight of relevant authorities.

54. Table *5* below shows that – according to the results of the survey on non-bank lending, there is a variety of approaches in the EU for what concerns the prohibition of lending services by non-bank institutions, with some MS explicitly forbidding such activities, while others allow them even in cases where they are not regulated. To this extent, the possibility to operate as unregulated lenders at a national level would further increase the complexity of the largely unharmonised non-bank lending sector in the EU.

[68] LV – consumer lending – every person willing to lend money for consumers has to establish a company and obtain a licence. Individuals are not allowed to lend, and this restriction also applies to credit through the so-called crowdfunding platforms. The Consumer Rights Protection Law prohibits individuals to provide consumer credit; if they do, they may be prosecuted under operation without a licence, but the person administrating the web platform may be prosecuted under violation of the Unfair Commercial Practices Prohibition Law.

[69] MT – authorisation under the Financial Institutions Act for conducting activities n. 1 (lending), n. 2 (financial leasing) and […] n. 6 (guarantees and commitments if off-balance-sheet lending). The activity of credit intermediaries in connection with credit agreements for consumers relating to residential immovable property regulations shall apply for an admission with the MFSA.

[70] SK – B2B entities include entrepreneurs (natural and legal persons) possessing a non-regulated trade licence (B2B lending). However, this does not necessarily mean those holders of such a non-regulated trade licence are in fact providing loans and credits. Therefore, a precise figure for those entities that provide lending is not available.

Table 5. Provision of non-bank lending services not explicitly subject to authorisation/registration

MS	Prohibited/not prohibited
AT	Prohibited
BE	Prohibited
BG	Not prohibited
CZ	Prohibited for consumer lending Not prohibited for business lending
DE	Prohibited, with some exceptions
DK	Prohibited for consumer lending Not prohibited for business lending
EE	Prohibited for consumer lending Not prohibited for business lending
EL	Prohibited[71]
ES	Not prohibited
FI	Not prohibited
FR	Prohibited with some exceptions[72]
HR	Not prohibited
HU	Prohibited, except for lending as a non-business activity
IE	Not prohibited[73]
IT	Prohibited with some exceptions
LT	Prohibited for consumer lending Not prohibited for business lending (if provided to legal persons borrowing for business purposes and not covered by specialised legal acts)
LU	Prohibited
LV	Prohibited with some exceptions[74]
MT	Prohibited with some exceptions[75]
NL	Prohibited for consumer lending Not prohibited for business lending and mediation
NO	Prohibited
PT	Prohibited[76]
RO	Prohibited
SE	Prohibited (some exceptions for non-significant activities)
SI	Prohibited for consumer lending, with some exceptions[77]

[71] EL – the business of 'granting loans or other credits' is prohibited without a specific authorisation from Bank of Greece.
[72] FR – exceptions to prohibition on offering non-bank lending - e.g. microcredit organisations, corporates carrying out intra-group lending for treasury purposes or to provide credit to their customers and providers under restrictive conditions.
[73] IE - non-bank lending activity, depending on the nature of the activity, may fall within the scope of companies legislation in Ireland.
[74] LV – exceptions to a general prohibition on providing non-bank consumer lending without a licence: '[…] 2) a manufacturer, trader, or service provider who offers to pay for the acquisition of goods or services by means of a deferred payment, loan, or other similar financial agreement, not involving financing of the third person; 3) a merchant which according to the contract concluded between a manufacturer, trader, or service provider, offers to conclude only such consumer credit agreements for the acquisition of goods or services, according to which the interest or other additional payments are not paid; 4) a savings and loan company.'
[75] MT – exceptions are specified in Article 3(2) of the Financial Institutions Act 1994.
[76] PT – under national law, the following activities are not deemed as lending/credit granting for the purposes of the applicability of the authorisation and registration legal framework – (i) long-term loans and other forms of loans and advances between a company and its shareholders; (ii) credit granted by a company to its employees for social reasons; (iii) delayed or early payment agreed between the parties to contracts for the acquisition of goods or services; (iv) cash facilities, when legally permitted, between companies in a control or group relationship; (v) the issue of tickets or cards for payment of goods and services supplied by the issuing company.
[77] SI – Exceptions to the general prohibition on providing non-bank consumer lending without authorisation: According to article 30 of Consumer Credit Act, it is allowed to offer non-bank lending services without a permit for: […] (3) employers granting interest-free credits to their employees in accordance with credit agreements or credits with lower average annual percentage rates of change as normally used for consumer credits by credit institutions; (4) non-profit organisations that provide loans only for social and educational purposes […]; (5) legal persons governed by public law

SK	Prohibited, except for lending as a non-business activity

5.3 Regulatory approach to non-bank lending at national level

55. The previous section showed that the fabric of non-bank lending activities across EU jurisdictions is very diverse and encompasses several types of activities and supervisory practices in terms of authorisation and registration of these activities in the domestic market. The next step of the analysis is then to provide an overview of the regulatory approaches that competent authorities have chosen to implement for non-bank lending activities in terms of prudential requirements, supervision and reporting obligations.

56. Therefore, the survey on non-bank lending asked competent authorities to indicate whether non-bank lending activities are subject to activity-based or entity-based regulatory requirements in their jurisdiction, as well as whether authorised/licensed non-bank lenders are subject to supervision and reporting requirements. To this extent, some authorities found that the line between entity-based and activity-based requirements is sometimes blurred, as regulatory requirements are applied at entity level, even though they relate to activities. Moreover, in some cases it was indicated that separate authorities are responsible for supervising prudential, consumer protection and AML/CTF issues, in line with the national division of supervisory roles.

57. Based on the overview of national regimes for non-bank lending it is then possible to identify three approaches to the regulation of the provision of lending activities:

   a. <u>authorisation as a dedicated activity</u>: the entities have to be specifically licensed to provide specific types of lending services (other services would require additional licenses);

   b. <u>authorisation as a multi-activity entity</u>: the entities have a licence which allows them to provide specific types of lending among other types of financial or non-financial activity;

   c. <u>unregulated activity</u>: in the absence of express activity restrictions entities can carry it out without obtaining prior authorisation.

58. The overview of the national regulatory frameworks applicable for non-bank lenders across the EU is presented in Table 6 on the next page, where it is shown that the vast majority of authorised/registered lenders are indeed subject to supervision and to reporting requirements, while the type of prudential requirements may vary between entity-based and activity-based requirements.

59. To complement this information, Annex I integrates the information provided in Table 6 with data on volume of lending for each business model (both stocks and flows), while Annex III

[…]. Article 3 of the Consumer Credit Act also provides a number of exceptions (e.g. specific financial leasing contracts, credit agreements in the form of an overdraft facility in the consumer's current account, a credit agreement where the credit is granted by an employer to his employees as a secondary activity free of interest).

provides an overview of the applicable regimes at national level based on the responses provided by competent authorities to the survey on non-bank lending, where it can be observed that a variety of approaches to the applicable regulatory framework is adopted for each business model.

Table 6. Overview of national regulatory regimes for non-bank lending in the EU

MS	Type of non-bank lender, authorised (A) or registered (R)	Subject to regulatory requirements[78]	Subject to supervision[79]	Subject to reporting requirements
AT	Leasing (R) Pawnbroking (R)	No No	No No	No No
BE	Mortgage credit (A) Consumer credit (A)	Yes (activity-based) Yes (activity-based)	Yes Yes	No No
BG	Lending (R) Financial leasing (R) Factoring and other invoice trading (R) Guarantees (R)	Yes (entity-based) Yes (entity-based) Yes (entity-based) Yes (entity-based)	Yes Yes Yes Yes	Yes Yes Yes Yes
CZ	Consumer credit (A) Mortgage credit (A)	Yes (activity-based) Yes (activity-based)	Yes Yes	Yes Yes
DE	Financial leasing (A) Factoring (A) Pawn shops (R)	Yes (entity-based) Yes (entity-based) No	Yes Yes No	Yes Yes No
DK	Consumer credit (A) Mortgage credit (A)	Yes (activity-based) Yes (activity-based)	Yes Yes	Yes Yes
EE	Creditors (A) Mortgage creditors (A) Credit intermediaries [including P2P platforms] (A) Mortgage credit intermediaries [including P2P platforms] (A) Advisory services (A) Licensed creditors operating with an exemption (R) Credit agents (R)	Yes (activity-based) Yes (activity-based) Yes (activity-based) Yes (activity-based) Yes (activity-based) Yes (activity-based) Yes (activity-based)	Yes Yes Yes Yes Yes Yes Yes	Yes Yes Yes Yes No Yes No
EL	Financial leasing (A) Factoring (A) Consumer credit (A) Debt refinancing (A) Microcredit (A)	Yes (entity/activity-based)* Yes (entity/activity-based)* Yes (entity/activity-based)* Yes (entity/activity-based)* Yes (entity/activity-based)*	Yes Yes Yes Yes Yes	Yes Yes Yes Yes Yes
ES	Specialised lending institutions (A) Real estate non-bank lenders (R) Real estate credit intermediaries and real estate non-bank lenders (R) Mutual guarantee companies (A)	Yes (entity-based) Yes (entity-based) Yes (entity-based) Yes (entity-based)	Yes Yes Yes Yes	Yes Yes Yes Yes
FI[80]	Pawnshops (A) Consumer credit (R) Factoring and invoice trading (R)	Yes (entity-based) Yes (entity-based) Yes (entity-based)	Yes Yes Yes	Yes Yes Yes

[78] Other than restrictions in activities, prohibition of taking deposits and other funds from the public.

[79] Supervision by relevant competent authorities other than chambers of commerce.

[80] Activity-based requirements are foreseen for AML/CFT purposes.

	Leasing (R)	Yes (entity-based)	Yes	Yes
	Business (B2B) loans (R)	Yes (entity-based)	Yes	Yes
	Export finance, EME finance with full/partial state ownership (R)	Yes (entity-based)	Yes	Yes
FR	Finance companies (A)	Yes (entity-based)	Yes	Yes
	Third-party financing companies (A)	Yes (activity-based)	Yes	Yes
HR	Leasing (A)	Yes (entity-based)	Yes	Yes
	Factoring (A)	Yes (entity-based)	Yes	Yes
HU	Credit and loan operation (A)	Yes (entity-based)	Yes	Yes
	Some financial intermediaries (R)	Yes (entity-based)	Yes	Yes
IE	Retail credit firms (A)	Yes (entity-based)	Yes	Yes
	Licensed moneylenders (A)	Yes (entity-based)	Yes	Yes
	Credit information providers (R)	No	No	Yes
	Financial institutions (R)	No	Yes[81]	Yes
IT	Financial institutions (A)	Yes (entity-based)	Yes	Yes
	Microcredit operators (R)	Yes (entity-based)	Yes	Yes
LT	Consumer credit providers (A)	Yes (activity-based)	Yes	Yes
	P2P platforms(A)	Yes (activity-based)	Yes	Yes
	Financial leasing (A)	Yes (activity-based)	Yes	Yes
	Credit unions (A)	Yes (entity/activity-based)		
LU	Professionals performing lending operations (A)	Yes (entity-based)	Yes	Yes
LV	Consumer lending (A)	Yes (entity/activity-based)	Yes	Yes
MT	Lending (A)	Yes (activity-based)	Yes	Yes
	Guarantees and commitments (A)	Yes (activity-based)	Yes	Yes
	Credit intermediaries	Yes (activity-based)	No	N/a
NL	Financial service providers (A)	Yes (entity-based)	Yes	No
	Credit unions (A)	Yes (entity-based)	Yes	No
	Cryptocurrency platforms (R)	Yes (entity-based)	Yes	No
PT	Financial credit companies (4)	Yes (entity-based)	Yes	Yes
	Mutual guarantee companies (4)			
RO	NBFIs in general register (R)	Yes (entity/activity-based)	Yes	Yes
	Credit unions (R)	Yes (entity/activity-based)	No	No
	Pawnshops (R)	Yes (entity/activity-based	No	No
SE	Consumer credit	Yes (entity/activity-based)	Yes	Yes
	Mortgage credit	Yes (entity/activity-based)	Yes	Yes
SI	Consumer lending (A)	Yes (activity-based)	Yes	Yes
	Consumer real estate leasing services or advisory services in connection with these loans (A)	Yes (activity-based)	Yes	Yes
SK	Business-to-consumer (B2C) lending (A)	Yes (entity/activity-based)	Yes	Yes
	Business-to-business (B2B) lending (R)	Yes (entity/activity-based)	No	No
	Factoring B2B lending (R)	Yes (entity/activity-based)	No	No
	Financial leasing B2B lending (R)	Yes (entity/activity-based)	No	No

** Even if regulatory requirements relate to activities, they are applied at entity level.*

81 In IE, 'financial institutions' are registered and supervised for AML purposes only.

6. Business models and regulatory regimes for non-bank lending

60. Digital innovation continues to generate new financial products and business models. The provision of credit, both by banks and non-bank lenders, has experienced a significant increase in the range of services that can be purchased online. Many of the innovations seen in this sector have leveraged on the ability of new technologies to improve the consumer experience or automate services. Entire consumer journeys can now take place with little space for human intervention, and with predefined algorithms indicating the possible outcome in terms of credit granting. This trend has possibly been strengthened by the Covid-19 outbreak, which has led to an acceleration in online interactions, including lending provided by firms operating mainly in the digital space.

61. Some of the business models relying on digital provision of services may fall outside of the national regimes for non-bank lending and not be captured by the EU activity-based CCD and MCD. In particular, as elaborated in Section 7, there is uncertainty about P2P/marketplace lending and BNPL activities which do not fit into the definitions used in the existing CCD/MCD.

62. Therefore, the survey on non-bank lending asked competent authorities to indicate which of the business models identified in the previous section were present in their jurisdictions and:

    a. whether they were subject to requirements derived from the CCD/MCD;

    b. whether they were subject to some bespoke regime including specific prudential requirements for own funds, liquidity, large exposures, operational resilience, controlling persons and qualifying shareholders;

    c. whether some specific concerns were identified with certain business models.

63. The following subsections provide a brief overview of the main features of specific business models of non-bank lending, as well as the respective applicable regulatory regimes. To this extent, the tables representing the requirements of the regulatory regimes are based on the answers received by some authorities in the survey on non-bank lending. As such, it must be kept in mind that they do not provide the full overview of the national regimes applicable to specific business models, rather examples of national regimes applicable. Therefore, the limited number of MS included in the tables for certain business models in the next subsections does not imply that these business models remain unregulated at domestic level, but rather that they may fall under a more general framework, or they may not be present in the market.

6.1 Peer-to-peer (P2P) lending platforms / marketplace lending

64. The concept of P2P lending[82] is based on digital platforms providing an online market that allows lenders to trade directly with borrowers. At the EU level, crowdfunding for business has been defined [83] and harmonised by Regulation (EU) 2020/1503 on European crowdfunding service providers for business (ECSPR). However, as the ECSPR falls outside of the scope of the analysis of non-bank lending, in this report we use the terms 'P2P lending platforms' and 'marketplace lending' in relation to consumer and property lending[84], which currently remain unregulated at the EU level.

65. FinTech lending models were originally built around decentralised P2P lending platforms where individual lenders were able to choose borrowers or projects to lend to in a market-like framework. The peer-to-peer lending platforms, in general, facilitate matching consumers and creditors (investors), as they use a common digital lending platform for the purposes of getting/granting a credit after they accept the terms of use of the platform.

66. Two main types of business models[85] can be identified in relation to P2P lending:

a. 'Traditional' P2P lending or 'segregated account' model: Under this model, loans are granted directly from the lenders to the borrowers, without the platform being engaged in risk transformation. Rather, platforms typically act as operators matching borrowers and lenders that directly enter into loan agreements, while the P2P lending platforms typically do not assume any credit risk. The level of engagement by the platform may vary, e.g. the platform only conducts a prescreening of projects or conducts a more in-depth credit risk assessment/scoring of creditors, based on its own rating methodology or drawing on external assessments. Interest rates for the loans might be set by the platform but also through reverse auctions. The platform might take fees from the borrower as well as from the lender.

b. Marketplace model: Under this model, platforms cooperate with credit institutions or other lenders that originate the loans and conclude the loan agreement with the borrower. The credit institution / lender resells the repayment claim arising from the

[82] Other terms used for P2P lending are marketplace lending, crowdfunding, crowdlending and social lending.

[83] According to Article 2(1) points (a), (d) and (e) ECSPR: (a) 'crowdfunding service' means the matching of business funding interests of investors and project owners through the use of a crowdfunding platform and which consists of any of the following activities: (i) the facilitation of granting of loans; (ii) the placing without a firm commitment basis, as referred to in point (7) of Section A of Annex I to Directive 2014/65/EU, of transferable securities and admitted instruments for crowdfunding purposes issued by project owners or a special purpose vehicle, and the reception and transmission of client orders, as referred to in point (1) of that section, in relation to those transferable securities and admitted instruments for crowdfunding purposes; (d) 'crowdfunding platform' means a publicly accessible internet-based information system operated or managed by a crowdfunding service provider; (e) 'crowdfunding service provider' means a legal person who provides crowdfunding services.

[84] However, it should be noted that there are cases where the property lending may fall within the scope of the ECSPR, i.e. when it entails business project owners (rather than consumer ones).

[85] The different crowdfunding business models have already been discussed at length in the EBA reports on the regulatory perimeter: EBA (2017), Report on OFIs and regulatory perimeter issues, and EBA (2019), *Report on Regulatory perimeter, regulatory status and authorisation approaches in relation to FinTech activities*, 18 July.

loan agreement in the form of partial claims to individual investors through agreements on the purchase of receivables and transfers the receivables. These partial claims are publicly offered to investors – directly or through an intermediary – by using an online platform. The credit institution / lender might receive fees as a fixed percentage of the loan amount as well as fees from the monthly repayments of the borrower. This type of model is becoming more and more common, and some concerns have been expressed on the creation, de facto, of a secondary market for loans, which may fall outside of EU rules and have also implications of money creation.

67. Over time, some platforms have moved to funding loans from institutional investors (marketplace lending) rather than from individual lenders (pure P2P lending). Between these two main P2P lending models, some hybrid models could also be identified, for instance:

- P2P platforms that rely on credit institutions within the same group;
- P2P lending companies using their own balance sheet to retain some part of credit risks (in one jurisdiction there is a licensed non-bank lender, which owns the P2P lending platform connecting potential lenders with borrowers, but it also directly finances a share of loans granted to borrowers).

68. Based on the survey on non-bank lending, the main supervisory concerns related to the P2P lending model are related to the following:

- The P2P platforms often do not fall under any domestic regimes for non-bank lenders, so they are not subject to any specific prudential requirements.
- If the P2P platform operates on a cross-border basis, the competent authorities may have very little visibility on its operations, especially if the platform is not regulated.
- If P2P lending platforms do not bear any risk, they may have little incentive to ensure robust creditworthiness assessment of borrowers, thus increasing the chance of granting credit to higher-risk customers. Moreover, the information used by automated credit scoring models applied by lending platforms are not always subject to data-quality checks, and this may exacerbate the risk of granting credit to financially fragile customers. Ultimately, this can lead to overindebtedness of borrowers and increase the risk of losses for lenders/investors, especially for unsecured consumer P2P loans.

69. Table 7 on the next page summarises examples of the regulatory treatment of P2P/marketplace lending, based on the responses to the survey on non-bank lending. To this extent, different approaches have been registered. In one jurisdiction, the P2P business model and regulatory requirements cover both credit intermediation and mortgage credit intermediation. In other cases, the business of granting credit generally requires a licence (irrespective of deposit taking) so the operation of a peer-to-peer platform typically involves a credit institution, while no authorisation is required for the pure brokerage of loans. In two other jurisdictions it is also required that payments flows originated through the lending platform are managed by a payment service provider (which is subject to specific prudential

regulatory requirements, as well as to AML/CFT rules). Finally, in another jurisdiction (FR), the P2P lending intermediation is subject to a dedicated legal framework including registration and fit and proper, liability insurance and consumer protection requirements.

Table 7. Examples of regulatory requirements for P2P/marketplace consumer lending

	DE	EE	FI	FR	IT	LT	NO
CCD requirements	■	■	■		■	■	■
MCD requirements	■	■			■	■	
Authorisation/licensing/registration	■	■	■	■	■	■	■
Own funds	■				■		
Capital	■	■			■	■	■
Large exposures	■				■		■
Liquidity	■						
Leverage	■						
Operational resilience	■	■	■ *	■	■		
Controlling persons/qualifying shareholders	■	■	■		■	■	■
Approved persons, governance and remuneration	■	■	■	■	■	■	■
Activities restrictions	■	■		■	■		■
Supervisory reporting	■	■		■	■	■	■
Other requirements	■	■	■	■	■	■	■

DE: the requirements only apply at the level of the credit institution, in cases in which this assumes the risks. These requirements do (commonly) not apply at the platform level.

ES: Law 5/2015 of 27 April 2015, on the promotion of business financing, covers crowdfunding services and platforms and establishes for them similar requirements to those envisaged by Regulation (EU) 2020/1503 of 7 October 2020 on European crowdfunding service providers for business. Depending on the specific business model, certain forms of P2P consumer lending may fall within the scope of this law. In such cases consumer protection legislation (including rules transposing the CCD) shall apply. Specific information requirements also apply when the promoter is a natural person.

IT: The requirements in the table refer to the 'hybrid model', where P2P lending companies use their own balance sheet to retain some part of credit risks. The P2P platforms operating under the client segregated account model are outside this framework as they are not subject to a licensing requirement as a financial institution. In cases where the P2P platform operates under the client segregated account model but also offers other services (e.g. payment services), it will be subject to the corresponding sectoral legislation.

** Only if the company holds clients' money.*

Box 1. Key market developments in P2P/marketplace lending (secondary market for loans)

In 2020, P2P/marketplace consumer lending represented the largest business model of the FinTech credit in the EU (31% of all digital alternative lending). P2P consumer lending had grown steadily since 2013 until 2019, while in 2020 its volume declined significantly due to the Covid-19 outbreak. In 2020, P2P/marketplace property lending represented only 7% of the EU FinTech credit even though it had been growing consistently until 2020. For the sake of completeness, it should also be noted that in 2020 P2P business lending (which is outside of the scope of this analysis) amounted to 25% of the EU FinTech credit and has been growing steadily since 2013.

Following a trend already observed in the US, the largest P2P platforms started to apply for banking licences enabling them to use more leverage and have access to central bank liquidity. The entry into a regulated banking space enables P2P platforms to scale up their activities, increase profitability by having access to cheaper and more stable funding sources. Even though P2P lending platforms might be cost-efficient compared to banks, their funding costs are often significantly higher, thus affecting their ability to operate in a profitable way, especially if P2P lending platforms are subject to national restrictions on the maximum interest rates they can apply to borrowers.

The survey on non-bank lending also enquired on some aspects of marketplace lending, amid its rapid growth over the past years. Out of the twelve authorities that provided information, six of them confirmed the presence, in their respective jurisdictions, of firms that are operating in the secondary market for loans (resale platforms) / marketplace lending, although only in one case are there specific requirements in terms of authorisation or licensing by the competent authorities. In the remaining cases, the activity would remain unregulated or subject only to registration according to the Commercial Code. In addition, the authorities that observed that these entities are not subject to any specific regulatory regime at sectoral level expressed some concerns that, being focused on lending to consumers, these entities would remain out of the regulatory scope of the ECSPR (crowdfunding for business). It was also observed that, under the current EC proposal for the revision of the CCD, it will be discussed whether crowdfunding platforms for consumer loans and credit intermediaries will fall within the scope of the new directive, so requirements at activity level could potentially be applied, and, in that case, whether a bespoke, dedicated regime may be an appropriate solution. However, the prudential requirements that are envisaged by the ECSPR for platforms that operate with corporate borrowers are more structured than the ones that are included in the current proposal Commission revision of the CCD, which would leave the secondary market for consumer loans under-regulated when compared with the one for corporate loans. In this regard, it is important to ensure consistency between the crowdfunding regulation with regard to businesses and consumers. Finally, while pure lending-based crowdfunding platforms do not create money, as they just intermediate credit between lenders and borrowers, there are some concerns that the activities of marketplace lending could imply some form of money creation, as the proceeds from selling loans in the marketplace can be used to fund other loans.

<u>Examples of P2P/marketplace consumer lending platforms in the EU:</u>

Latvian Mintos (consumer and business loans, with consumer loans including: short-term, personal; cars and mortgage loans, operating in several EU countries), Latvian Twino (unsecured consumer loans in DK, ES, PL), German Auxmoney, Estonian Bondora (allowing users to invest in loans granted through the Bondora Group to borrowers in EE, FI and ES), Croatian Robocash.

<u>Examples of P2P/marketplace property lending platforms in the EU</u>:

Estonian Crowdestate (development projects allowing investing in the construction and sale of properties by real estate developers, and rental projects allowing investing in projects with available cash flow from rents, operating in EE, LV, FI and IT), Estonian EstateGuru, Estonian Reinvest24 (rental projects allowing investors to buy a share in a property for a specific period of time). P2P property loans are secured by mortgages.

6.2 Buy-Now-Pay-Later (BNPL)

70. Buy Now Pay Later (BNPL) products are interest-free short-term loans that allow consumers to delay paying for items or to spread the cost of purchases into smaller instalment payments (usually 3-4). Business models usually rely on merchant fees paid by the retailer to the BNPL provider, based on a percentage of the order value. In most cases, interest-free BNPL service is free to the consumer, as long as repayments are made on time.

71. From a financing perspective, BNPL is very similar to traditional point-of-sale (POS) lending and credit cards. It resembles POS because it is typically offered at checkout, but it is usually assimilated to credit cards, because the average maturity is shorter than the traditional POS (6 weeks for BNPL versus 12–24 months for POS), and amounts are typically smaller.

72. BNPL platforms operate both through web-based online-purchase platforms and through smartphone apps, which are usually deployed at the point of sale in stores that offer it as a payment option or online. As such, they offer fast, simple ways to help consumers access alternative credit or credit-like facilities and allow consumers to either delay paying for items or spread the cost of purchases.

73. Competent authorities have expressed some concerns about the increasing use of this type of financial instrument by consumers:

- BNPL products may promote quick purchase decisions, potentially leading consumers to overspend and putting them at risk of taking on financial commitments that they may not be able to meet. Because of the small amount of these loans and the multiple deadlines, consumers may lose track of their spending, or end up spending more than anticipated, ultimately becoming overindebted.
- There may be a lack of transparency about the BNPL service conditions that may entail high fees for consumers for late or missed payments.
- These products are often used by consumers with a limited credit history as a viable alternative to more traditional forms of regulated lending.
- BNPL usually does not require interest rate payments, therefore it might fall within the scope of the current CCD exclusions concerning '*credit agreements where the credit is granted free of interest and without any other charges and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable*' (Article 2(2)(f)). Moreover, many small-amount BNPL loans (i.e. smaller than EUR 200) may also fall out of the scope of the current CCD (which covers only loans between EUR 200 and EUR 75,000)[86].
- As BNPL combines features of payments and credit, it is often provided by PIs or EMIs that are subject to PSD2/EMD2 regulatory requirements; PSD2/EMD2 allow institutions to undertake credit activities ancillary to payment services which nevertheless can be

[86] While there are no exact figures available for the EU, the Woolard report for UK (*The Woolard Review - A review of change and innovation in the unsecured credit market (fca.org.uk)*) indicates an average amount of GBP 65-75.

provided according to national legislation. In those instances, consumers may not be fully aware that the product they are buying is indeed a debt.

- BNPL providers are not required to report repayment history to credit registers, which might create asymmetries in information when assessing a consumer's ability to repay future loans.

Box 2. Key market developments in BNPL

The BNPL trend was pioneered by two financial technology providers - Swedish FinTech Klarna[87] and Australian firm Afterpay[88]. In recent years there has been significant growth in BNPL solutions. BNPL has become an increasingly popular method of payment for retail goods both in Europe and worldwide. In 2020 and 2021, during Covid-19, BNPL service providers such as Klarna and Afterpay (in Europe operating as Clearpay) experienced very high growth rates, and in Europe the BNPL payment option was offered by one-fifth of retailers in 2021.

In 2020 BNPL represented 2% of all global online purchases and it was higher for Europe at 7%, with Australia further ahead at 10%. However, it is the fastest-growing payment method globally, and some markets in Europe see the highest adoption (from 2017 to 2020 growth in Sweden was from 20% to 23%, in Germany from 8% to 19%)[89].

Examples of BNPL providers in the EU:

- FinTech firms with cross-border operations: PayPal (in FR and DE), Clearpay/Afterpay;
- FinTech with a banking licence: Klarna (DE, ES, SE) offers BNPL products via debit charge at a credit institution; it also recently announced to strategically partner with FinTech Stripe to foster BNPL (Klarna) and to provide instalments via credit card (Stripe);
- local BNPL providers: Alma, ViaBill, Twisto, Zilch, Revo;
- partnerships of BigTechs and FinTechs: Amazon and Fintonic, Amazon and Cofidis (ES);
- banks entering or planning to enter the BNPL market.

Examples of BNPL providers outside of the EU:

- In the UK FinTech firms Monzo and Revolut are planning to enter the BNPL industry.
- In the US BNPL products are offered by FinTechs (e.g. Affirm), some banks (e.g. Citibank and J.P. Morgan Chase) and card providers (e.g. Mastercard).
- US partnerships of BigTechs and FinTechs/banks: Amazon and Affirm, Apple and Affirm, Apple and Goldman Sachs (planned), Afterpay being sold to Square which is the payments company owned by Twitter CEO.
- Australian partnerships of BigTechs and FinTechs: eBay and Zip Co, Facebook and Zip Co (Facebook is testing the BNPL option to allow SMEs to use the ZiP Co payment service for advertising on its social media platform).

[87] Klarna started to operate as a FinTech but later it acquired a banking licence, so it collects deposits, and provides other financial products beyond BNPL, such as SME lending.

[88] It should be noted that any seller / service provider may offer deferred payment or instalments without a special licence or permission, where it does not raise capital from a third party.

[89] Morgan Stanley (2021), BNPL– High Growth, High Valuation; what's the opportunity?, 13 September.

Regulatory response to BNPL outside of the EU:

- In the UK there is a plan to regulate the BNPL sector by introducing a requirement that BNPL providers make affordability checks before lending to customers and creating the ability to escalate complaints to the financial ombudsman[90].
- In Australia, from October 2021 BNPL providers need to ensure that the BNPL product is appropriate for the target customers. They are not regulated under the National Consumer Credit Protection Act 2009. However, they are regulated as credit providers under the Australian Securities and Investments Commission Act 2001, making them subject to new product intervention powers and the forthcoming design and distribution obligations

Regulatory requirements applicable to the BNPL business model

74. Based on the responses to the survey on non-bank lending, there is no specific regulatory framework introduced for BNPL; for instance, in one MS the applicable framework refers to providers of credit registered in the non-bank financial institutions register; in another case, the BNPL product is treated as consumer credit. A competent authority reported that in its jurisdiction a vendor may provide BNPL services to its clients when selling its own goods, but a banking authorisation would be required in the case where it provides BNPL services as a marketplace for selling goods of a third-party vendor. Finally, in some other jurisdictions, BNPL falls within the more general regime applicable to non-bank credit grantors.

6.3 Microcredit

75. While at EU level there is no EU level 1 text definition of microcredit[91], some Member States (e.g. EL, FR, IT, PT[92]) have developed their own definition and dedicated regulatory framework for microcredit as a financial tool for improving financial and social inclusion. It is thus dedicated to debtors that have difficulties in accessing the traditional financing. Such regulated microcredit might be business-oriented (promoting the business of micro and small enterprises) or social (designed for persons who are in a difficult economic situation). For instance, the microcredit can be granted to very small firms and individual/young entrepreneurs, natural persons belonging to socially vulnerable groups, beneficiaries of public policy implementation programmes, or persons intending to finance their education, training or apprenticeship or even the unemployed. In some cases, the lender can/must provide the supply of ancillary services, designed to support and monitor debtors, with the aim of ensuring the affordability of the loan (e.g. business skills or finance management training for micro-

[90] Financial Conduct Authority (2021), *The Woolard Review - A review of change and innovation in the unsecured credit market*, 02 February.

[91] However, the *European Code of Good Conduct for Microcredit Provision* published by the Commission includes the following definition of 'microcredit providers' – organisations that provide microloans of up to EUR 25,000 to microentrepreneurs directly or in partnership with other financial institutions (e.g. banks) (June 2020).

[92] PT – a dedicated regime exists for the authorisation of entities intending to provide microcredit, although there are currently no entities authorised and/or registered under said regime.

entrepreneurs). The maximum amount of these types of strictly regulated microcredit can be significant and reach EUR 25,000 in EL and FR, or EUR 75,000 in IT[93].

76. On the other hand, there are also other MS which do not have any formal definition and bespoke regime developed for microcredit (e.g. DE, ES, LV). In such jurisdictions, some lenders might offer microcredit as low-value, short-term and often unsecured loans. Nevertheless, these types of micro-loans do not constitute any specific tool for financial or social inclusion. The table below summarises examples of the regulatory treatment of microcredit, based on the responses to the survey on non-bank lending.

77. There are no specific concerns expressed by competent authorities on entities providing microcredit, as lending conditions are quite favourable to borrowers and there are no hidden fees applied by this category of non-bank lenders. However, it has been noted that regulated microcredit aimed at achieving financial and social inclusion is currently exempted from CCD requirements based on Article 2(2)(l) CCD which envisages an exemption for *'credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market'*[94].

Table 8. Examples of regulatory requirements applicable to microcredit

	EL	FI	FR	IT	LV	MT	SK
CCD requirements		■			■		■
MCD requirements					■		
Authorisation/licensing/registration	■	■	■	■	■	■	■
Own funds	■	■	■			■	■
Capital	■		■	■	■	■	■
Large exposures			■				
Liquidity			■			■	
Leverage							
Operational resilience		*	■			■	
Controlling persons/qualifying shareholders	■	■	■	■	■	■	■
Approved persons, governance and remuneration	■	■		■	■	■	■
Activities restrictions	■		■	■	■	■	■
Supervisory reporting	■		■	■	■	■	■
Other requirements	■	■		■			■

SK= 'otherwise defined creditors' authorised for the provision of credit or loan contracts which are not consumer credits (value of less than EUR 100 and more than EUR 75,000, or payable within a period not exceeding three months)

** Only if the company holds client money.*

[93] According to the Italian regime, the maximum amount of microcredit is EUR 75,000 for micro and small enterprises (it was increased from EUR 25,000 to EUR 40,000 by Decreto Liquidità and from EUR 40,000 to EUR 75,000 by Law no 234/2021), while for individuals the maximum amount is still EUR 10,000. In some cases, microcredit for small and medium enterprises can reach EUR 100,000.

[94] The Commission proposal for a review of the CCD does not foresee the removal of that exemption (see Section 8).

6.4 Pawnshops

78. Pawnshops grant short-term loans to retail customers that are secured by items of personal property, used as collateral. The items can be gold, silverware, jewellery, watches or gemstones. Under certain conditions, pawnshops also accept e.g. paintings, bags, furs and carpets. Thus, the loan origination relies on the value of properties used as collateral, instead of the debtor's creditworthiness. The financial liability of customers is limited to the pledged items and no other assets of the pledger can be collected.

79. At loan origination, the pawnshop issues a document, which grants the borrowers the right to recover the property by repaying the loan. At the loan expiration date, in order to recover the item, the owner has to present the document to the pawnshop, as well as repay the amount received, plus interest and fees. However, if the loan is not repaid within a certain period from the expiration of the credit contract, the pawnshop is entitled to keep or sell the pledged item. Meanwhile, customers are entitled to repay the loans early to have the item back, even before the contractual maturity of the lending. The table on the next page summarises examples of the regulatory treatment of pawnbrokers, based on the responses to the survey on non-bank lending.

Table 9. Examples of regulatory requirements applicable to pawnshops*

	DE	FI	IT	HU	LV	NO
CCD requirements						
MCD requirements						
Authorisation/licensing/registration						
Own funds						
Capital						
Large exposures						
Liquidity						
Leverage						
Operational resilience						
Controlling persons/qualifying shareholders						
Approved persons, governance and remuneration						
Activities restrictions						
Supervisory reporting						
Other requirements						

** Pawnshops in France are credit institutions, thus not mentioned in this table. In Lithuania, the Law on Consumer Credit does not apply to lending activities carried out by pawnshops due to the legal exemption for credit agreements envisaging that the consumer must deposit an item as security in the creditor's safe-keeping and where the liability of the consumer is strictly limited to that pledged item. Such activities are not supervised by the Bank of Lithuania either from a prudential or from a consumer protection perspective.*

NO: non-bank-lenders (pawnshops, financial leasing companies, factoring companies and other non-bank lenders) need a finance company licence to offer services. The CRD and CRR also apply to finance companies, which are covered by the same regulations as credit institutions. Some of the finance companies have, after a specific assessment, been granted an exemption from some of the provisions in the regulations, such as the minimum capital requirement.

6.5 Financial leasing

80. A finance lease transfers all the risks and rewards incidental to ownership of an underlying asset[95]. Leasing is substantially an asset-driven activity, requiring expert knowledge of the economic utility and technical characteristics of an asset. It enables businesses and consumers to benefit from assets in return for monthly payments. Leasing involves the lessee that uses the goods chosen for professional or private use, and the leasing company (the lessor) that buys and delivers them to the user. During the lease contract duration, the lessee assumes all risks related to the leased assets, although they remain in the ownership of the leasing company. At the contractual maturity, the lessee can decide whether to buy the item at a pre-fixed price.

81. Leasing can be used to finance various categories of assets such as automotive, equipment, machinery, ICT and real estate. Various non-bank lending entities provide leasing in the EU, including bank-owned subsidiaries[96], the financing arms of manufacturers, and other independently owned leasing companies.

82. In the majority of cases financial leasing is offered to businesses, especially to SMEs[97] but also to large corporations. For instance, in Italy almost 90% of leasing is granted to businesses. According to the Greek national regime financial leasing is only available for business borrowers (companies or professionals)[98]. Leasing is also used by the public sector (e.g. schools, hospitals). However, in some jurisdictions financial leasing is provided to consumers as well (e.g. FR, IT, LU, LV, SI, SK).

83. According to the responses provided by competent authorities in the survey on non-bank lending, financial leasing is regulated according to specific regimes, and in some cases providers have to comply with the same legal provisions as credit institutions, to the extent necessary, based on the size of the institution and the nature, scale, complexity and risk

[95] Examples of situations that would normally lead to a lease being classified as a finance lease include the following: the lease transfers ownership of the asset to the lessee by the end of the lease term; the lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than fair value at the date the option becomes exercisable that, at the inception of the lease, it is reasonably certain that the option will be exercised; the lease term is for the major part of the economic life of the asset, even if the title is not transferred at the inception of the lease; the present value of the minimum lease payments amounts to at least substantially all of the fair value of the leased asset; the leased assets are of a specialised nature such that only the lessee can use them without major modifications being made.

[96] Pursuant to information provided by Leaseurope (July 2021) in Europe, more than 80% of the total leasing volumes are provided by leasing companies regulated under the CRR directly (i.e. banks offering leasing) or indirectly through the parent company's consolidated reporting. Leaseurope has 46 member associations representing leasing, long-term and/or short-term automotive rental industries in the 32 European countries. The scope of products covered by its members' ranges from hire purchase and finance leases to operating leases of all asset categories (automotive, equipment, machinery, ICT and real estate). It also includes the short-term rental of cars, vans and trucks. Leaseurope represents around 1,700 leasing companies across Europe and represents approximately 91% of the European leasing market (Leiseurope website, July 2021).

[97] According to the European Central Bank (2019), Survey on the Access to Finance of Enterprises (SAFE) in the euro area, 2019, leasing was used by around 43% of European SMEs.

[98] In EL, assets leased by means of financial leasing should solely be destined for the lessee's professional use. Thus, any person (legal entity, natural person) may be eligible to contract a financial leasing agreement as long as such persons exercise any kind of profession or business activity and intend to use the leased asset for such purposes. On the contrary, employees, consumers, public servants and/or any other person not conducting a commercial business activity are not entitled, in principle, to financial leasing.

content of its business activities (see Table *10* for examples of regulatory treatment of financial leasing, based on the responses to the survey on non-bank lending).

Table 10. Examples of regulatory requirements applicable to financial leasing

	DE	EL	FI	FR	IT	LU	LT	LV	NO	RO	SI	SK
CCD requirements												
MCD requirements												
Authorisation/licensing/registration												
Own funds												
Capital												
Large exposures												
Liquidity												
Leverage												
Operational resilience												
Controlling persons/qualifying shareholders												
Approved persons, governance and remuneration												
Activities restrictions												
Supervisory reporting												
Other requirements												

LT: the financial leasing of businesses or for business purposes is regulated by general rules of the Civil Code and is not supervised by the Bank of Lithuania.

NO: non-bank-lenders (pawnshops, financial leasing companies, factoring companies and other non-bank lenders) need a finance company licence to offer services. The CRD and CRR also apply to finance companies, which are covered by the same regulations as credit institutions. Some of the finance companies have, after a specific assessment, been granted an exemption from some of the provisions in the regulations, such as the minimum capital requirement.

6.6 Factoring

84. Factoring is a financing method whereby the factoring company (a factor) pays to a company the value of the receivables on its balance sheet less a discount for commissions and fees, allowing businesses to manage their working capital and meet their liquidity needs.

85. The invoices of a debtor are transferred from a creditor company to a factoring institution, in order to obtain liquidity in advance. The transfer may be with or without recourse. While the no-recourse factoring implies that the factoring firm is exposed to the credit risk of the factored debtor, the factoring with recourse entails that, in case of a debtor's insolvency, the factor can have recourse to the transferor. In addition to financing, some factoring companies also offer credit scoring services, aimed at assessing the factored debtor's creditworthiness. They may also specialise in credit management and collection activities, maintaining all the necessary records. Factoring operations are largely used by SMEs[99] but also by large corporations.

[99] According to information provided to the EBA (from May 2021) by the EU Federation for the Factoring and Commercial Finance Industry, SMEs constituted 75% of all users of factoring services in 2018.

86. Notably, factoring is favoured by the mismatch between the productive and the financial cycles, due to the time lag between the provision of a service and the payment. This may cause a liquidity shortage, that factoring firms address by providing cash in advance of the receivables. As the factor provides credit based on invoices' value and not on the firm's creditworthiness, often firms can obtain cash at a lower cost than their own credit profile would allow them to.

87. Factoring is often offered by banks or non-bank entities belonging to banking groups. Innovative technologies, digitalisation and new market entrants such as FinTech also have played a role in the factoring and invoice trading market over recent years. For instance, most factoring companies have currently digitalised or are in the process of digitalising a significant share of the front-end processes. Despite an increase of the role of FinTech players, the role of FinTechs in actually providing factoring services (as opposed to only providing technology-based trading or brokerage platforms) is still rather marginal with respect to the total EU factoring market. Nevertheless, the interest of BigTechs in financial markets and products and their increasing engagement in this field may change this situation in the future[100].

88. Another form of factoring is supply chain finance (SCF, also known as reverse factoring). It consists of factoring services that are generally required by industrial groups or large enterprises, which are the upstream firms of the supply chain, in order to support their suppliers. The buyer uploads the receivables, and the factored debtor approves the assignment. Generally, the operation is without recourse and revolving. Given the relationship-based agreement and the high standing of the buyer, the service is provided at a low cost. Two respondents to the survey on non-bank lending noted that SCF providers in their jurisdictions are subject to the same national regulatory regime as factoring providers.

89. Both factoring and SCF might be classified into a wider business model of invoice trading, that is often used in relation to FinTech lending. It should be noted that, according to the CCAF 2021 benchmarking report on alternative finance, increasingly the invoice trading business models are expanding into SCF activities, even though at present this subset activity is too small to categorise as its own model.

90. Table 11 summarises examples of the regulatory treatment of factoring, based on the responses to the survey on non-bank lending:

[100] Information provided to the EBA by the EU Federation for the Factoring and Commercial Finance Industry.

Table 11. Examples of regulatory requirements applicable to factoring

	DE	EL	FI	FR	IT	NO	RO
CCD requirements							
MCD requirements							
Authorisation/licensing/registration							
Own funds							
Capital							
Large exposures							
Liquidity							
Leverage							
Operational resilience							
Controlling persons/qualifying shareholders							
Approved persons, governance and remuneration							
Activities restrictions							
Supervisory reporting							
Other requirements							

FR: own funds, capital and large exposures according to the CRR/CRD regime.
IT: the CRR/CRD regime is applied.
NO: non-bank-lenders (pawnshops, financial leasing companies, factoring companies and other non-bank lenders) need a finance company licence to offer services. The CRD and CRR also apply to finance companies, which are covered by the same regulations as credit institutions. Some of the finance companies have, after a specific assessment, been granted an exemption from some of the provisions in the regulations, such as the minimum capital requirement.

6.7 Balance sheet lending

91.In balance sheet lending, the lending provider grants a loan directly to a consumer or to a corporate borrower. Therefore, the loan remains on the provider's balance sheet, as it assumes the risk and it is directly liable for any losses. The lending provider will earn revenues from its fee structure and from the interest payments accruing from the loans.

92.Depending on the ultimate purpose of the loan, balance sheet lenders can be classified as consumer, business and mortgage lenders. The responses to the survey indicate that, while no specific concern has been raised with regard to these lenders (the table on the next page shows that many MS apply prudential requirements), some risks have been highlighted in terms of consumer protection, mainly for misleading marketing information and/or aggressive direct marketing (e.g. non-bank lending services being advertised as 'banking services').

93.Tables 12, 13 and 14 summarise examples of the regulatory treatment of balance sheet lending, based on the responses to the survey on non-bank lending:

Table 12. Examples of regulatory requirements applicable to balance sheet consumer lending

	CZ	DK	EL	ES	ES2	FI	FR	HU	IE	IT	LV	MT	NO	PT	RO	SE	SI	SK
CCD requirements	X	X	X	X	X	X	X		X	X	X	X	X	X		X	X	X
MCD requirements	X			X	X				X		X	X	X	X			X	
Authorisation/licensing/registration	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X
Own funds			X	X			X			X		X	X	X	X	X		X
Capital	X		X	X			X	X		X	X	X	X	X	X			X
Large exposures				X			X			X			X	X	X			
Liquidity	X			X			X					X	X	X				
Leverage				X									X	X				
Operational resilience	X			X		X	X	X	X	X		X	X	X	X			
Controlling persons/qualifying shareholders	X		X	X		X	X	X	X	X	X	X	X	X	X		X	X
Approved persons, governance and remuneration			X	X		X	X		X	X	X	X	X	X	X		X	X
Activities restrictions				X			X	X		X	X	X	X	X	X			
Supervisory reporting	X	X	X	X			X	X	X	X	X	X	X		X		X	X
Other requirements			X	X		X				X	X		X		X		X	

ES: specialised lending institutions framework (CRR/CRD rules).
ES2: non-specialised lending institutions.
FR: sociétés de tiers financement.
IT: the national regime applicable to the balance sheet consumer lending providers is the broader regime applicable to financial institutions.
RO: requirements for own funds, large exposures, operational resilience and the quality of significant shareholders and of administrators only if registered in a special register of non-bank financial institutions.
NO: non-bank-lenders (pawnshops, financial leasing companies, factoring companies and other non-bank lenders) need a finance company licence to offer services. The CRD and CRR also apply to finance companies, which are covered by the same regulations as credit institutions. Some of the finance companies have, after a specific assessment, been granted an exemption from some of the provisions in the regulations, such as the minimum capital requirement.

Table 13. Examples of regulatory requirements applicable to balance sheet business lending

	ES	ES2	FI	FR	HU	IT	IE	NO	RO	SK
CCD requirements							X	X		
MCD requirements	X	X					X	X		
Authorisation/licensing/registration	X		X	X	X	X	X	X	X	X
Own funds	X			X		X		X	X	
Capital	X			X	X	X		X	X	
Large exposures	X			X		X		X	X	
Liquidity	X			X				X		
Leverage	X							X		
Operational resilience	X			X	X	X	X	X	X	
Controlling persons/qualifying shareholders	X		X	X	X	X	X	X	X	
Approved persons, governance and remuneration	X			X		X	X	X	X	
Activities restrictions	X			X	X	X		X	X	X
Supervisory reporting	X			X	X	X	X	X	X	
Other requirements	X		X			X		X	X	

ES: specialised lending institutions framework (CRR/CRD rules).
ES2: non-specialised lending institutions.
FR: sociétés de tiers financement.
IT: the national regime applicable to the balance sheet business lending providers is the broader regime applicable to financial institutions.
NO: non-bank-lenders (pawnshops, financial leasing companies, factoring companies and other non-bank lenders) need a finance company licence to offer services. The CRD and CRR also apply to finance companies, which are covered by the same regulations as credit institutions. Some of the finance companies have, after a specific assessment, been granted an exemption from some of the provisions in the regulations, such as the minimum capital requirement.

Table 14. Examples of regulatory requirements applicable to balance sheet mortgage lending

	CZ	DK	EE	ES	ES1	FR	HU	IE	LV	LT	PT	RO	SE	SK
CCD requirements														
MCD requirements														
Authorisation/licensing/registration														
Own funds														
Capital														
Large exposures														
Liquidity														
Leverage														
Operational resilience														
Controlling persons/qualifying shareholders														
Approved persons, governance and remuneration														
Activities restrictions														
Supervisory reporting														
Other requirements														

ES: specialised lending institutions framework (CRR/CRD rules).
ES1: non-specialised lending institutions (application of LCCI).
FR: sociétés de tiers financement.

94. Mortgages are traditionally issued by banks and retained on the bank's balance sheet. Banks are subject both to prudential requirements in terms of capital and liquidity and to requirements for consumer protection as set down in the MCD. On the other hand, non-credit institutions offering mortgages are subject only to the MCD requirements.

95. In some Member States, non-credit institutions usually set up their funding structure involving one or more alternative investment funds, which in turn issue capital instruments that are purchased by institutional investors. A first concern is related to ensuring a level playing field, as these funding structures are not consolidated within the non-bank lender, as it may happen in the case of a bank (as they may fall within the definition of ancillary services). A second concern is related to the risk of refinancing, as there are no liquidity requirements in place for non-bank lenders to match the assets and liabilities maturity structure[101].

6.8 Applicability of AML/CTF rules to non-bank lenders

96. Directive (EU) 2015/849 (AMLD), in Article 2, lists 'obliged entities' that have to comply with the AML/CFT rules set out in this directive. Obliged entities include credit and financial institutions, which are defined in Article 3 of that directive. Specifically to define 'credit institutions', Article 3 AMLD refers to the activities in Annex I of the CRD, which include lending[102]. Yet, certain non-bank lending activities are not listed and, therefore, providers

[101] For a more detailed analysis of the risks related to non-bank mortgage lenders see Sweden's Finansinspektionen (2019), *FI's View on Preconditions for Mortgage-Based Business Activities*, FI Ref. 19-1738, 25 January.

[102] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013.

of these activities do not need to be authorised or licensed under the CRD or other sectoral laws unless they are authorised or licensed as a result of their wider financial activities (e.g. as payment service providers, e-money issuers, MiFID investment firms). In addition, Member States can extend the list of obliged entities under the AMLD at the national level subject to conditions set out in Article 4 AMLD. This means that even in situations where non-bank lenders are not subject to an authorisation process under EU law, they could be subject to AML/CFT obligations under national law.

97. The survey results[103] show that in some Member States there is no authorisation or licensing regime in place for certain non-bank lending activities, which suggests that they are not subject to AML/CTF requirements. The survey results also show a different approach adopted in some Member States whereby, in the absence of the authorisation or licensing regime, AML/CFT rules are imposed on non-bank lenders through a mandatory registration process for AML/CTF purposes[104] Some CAs have revealed that requests for clarification from industry are frequent – in particular, firms engaging in lending (e.g. mortgage-backed securitisation and intra-group financing), including consumer credit and financial leasing. This reveals a lack of clarity in the definition of non-bank lending in the scope of AML/CFT law.

98. Based on the survey, the EBA has identified examples of non-bank lending providers that are not authorised or licensed or not ‘obliged entities’ in their own right and therefore not subject to AML/CTF rules. These examples include for instance non-bank lenders operating under the following business models: unregulated P2P/marketplace lending platforms; unregulated balance sheet business lending; and regulated microcredit provided by non-profit associations and foundations recognised as being of public utility. As regards P2P/marketplace lending platforms, they are not subject to national AML/CFT rules as such, but they may fall into one of the categories of ‘obliged entities’ (e.g. PIs or EMIs). Since these platforms act exclusively as brokers between investors and borrowers seeking funding, the platforms are not themselves subject to any licensing requirement as financial institutions and are consequently not subject to AML/CFT rules. In any case, it is required that payments between borrowers and lenders be managed by a PI or EMI, which are ‘obliged entities’ for AML/CFT purposes (under the PSD2/EMD2).

[103] Input from 14 respondents to the survey on non-bank lending that provided detailed information on legal requirements applicable to particular business models (CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, LU, LV, MT, SK).

[104] One authority (IE) specified that in its jurisdiction certain firms offering inter alia lending including consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, and financing of commercial transactions (including forfeiting), and not otherwise authorised or licensed by a central bank to carry on business, must register as ‘Schedule 2 firms’ for AML purposes.

7. Key risks and regulatory/supervisory issues

99. This section provides an overview of the risks and regulatory/supervisory issues leveraging, inter alia, on the results of the survey on non-bank lending, and on previous EBA and JC reports as referenced. For ease of exposition, they have been grouped into five broad categories:

i. prudential aspects and supervision;
ii. consumer protection;
iii. AML/CTF;
iv. macroprudential risks;
v. microprudential risks.

7.1 Prudential aspects and supervision

7.1.1 General aspects

100. Even though non-bank lenders typically operate in a relatively risky credit segment, most of the competent authorities did not raise immediate major prudential or supervisory concerns. However, some Member States and/or NCAs already consider non-bank lenders important enough for the financing of their economy or for the risks they may entail to financial stability, and have decided to regulate them at a national level. This means that these lenders are authorised/registered, supervised and have to comply with regulatory requirements. While these regimes are not harmonised at EU level and the existence of cross-border lending might raise level playing field issues, most of concerns were related to non-bank lenders that remain unregulated at a national level (e.g. lenders that in some cases are only subject to CCD activity-based regulations). In particular, it has been noted that it is sometimes difficult to qualify the services provided by the potential non-bank lenders that require authorisation because the combination of activities offered does not typically fit easily within existing licence categories (e.g. in the case of BigTechs). Moreover, some non-bank lenders hold multiple licences (e.g. PI, EMI, investment firm licence).

101. Therefore, while the volume of FinTech and BigTech lending at the moment remains limited compared to traditional bank lending, many authorities are of the view that its trends must be monitored closely, due to the fast-paced growth experienced by these companies over recent years and their potential to increase their activities rapidly.

102. In some jurisdictions, non-bank lenders do not fall into any entity-specific regime but are subject only to CCD and MCD requirements. As these are the only requirements that will enable supervisors to conduct supervision of these firms, some authorities noted that there

would be some merit in strengthening the provisions in terms of risk management, licensing/authorisation and compliance. For instance, Article 20 CCD only provides that '*Member States shall ensure that creditors are supervised by a body or authority independent from financial institutions or regulated. This shall be without prejudice to CRD'.* Similarly, Article 29 MCD requires that *'credit intermediaries shall be duly admitted to carry out all or part of the credit intermediation activities'* and sets some general 'admission' requirements.

7.1.2 Cross-border aspects

103. In light of the increased use of digital platforms to distribute financial products and services, including on a cross-border basis, the survey on non-bank lending asked competent authorities to identify issues related to cross-border provision of services by non-bank lenders. Only a few competent authorities indicated that firms registered or authorised in their jurisdictions were providing cross-border services, while some others mentioned that non-bank lenders registered or authorised in their jurisdiction are either not allowed to offer services on a cross-border basis or operate mainly at a national level.

104. To this extent, as already identified in the EBA Report on digital platforms[105], some concerns relate to the limited visibility over cross-border activities of firms providing their services via digital means (see also Annex II on cross-border ancillary lending provided by payment and e-money institutions), and in relation to the following:

- <u>Regulatory arbitrage</u>: In the absence of a common framework, a financial institution that markets and sells products in a host MS might not be subject to the same conditions and/or restrictions as a local financial institution. As these activities are not licensed under a European-wide regulation including common definitions, host authorities may face challenges to enforce effectively the applicable prudential requirements.
- <u>Home-host issues</u>: As highlighted in the ESA JC Report on cross-border supervision of retail financial services[106], some concerns may be identified in this area. Firstly, the Report mentions that *'the allocation of responsibilities between home and host supervisors remains unclear in many instances (…) partly due to the different approaches that the various EU directives and regulations have taken in assigning responsibilities'*. Moreover, when lending is carried out almost exclusively by digital means, it may be difficult to determine whether these activities are conducted via the Freedom to Provide Services (FoS) or Right of Establishment (RoE)[107], and therefore to identify which competent authority is responsible for supervising how the service is provided. For instance, if cross-border lending of non-banks generates or aggravates local vulnerabilities (such as excessive indebtedness), it may be difficult to address such risks by the host authority without the establishment of a local branch. To this extent, as explained in the EBA Report on the use of digital platforms (see Box 5 therein), it is

[105] EBA (2021), Report on the use of digital platforms in the EU banking and payments sector.

[106] Joint Committee of the ESAs (2019), *Report on cross-border supervision of retail financial services*, JC/2019-22, 09 July.

[107] EBA (2021).

important that the 1997 European Commission interpretative Communication on the freedom to provide services[108] is updated to provide guidance on how its principles should be adapted to the provision of digital services. Secondly, there may be a risk of prioritising the supervision of domestic markets, where home authorities pay less attention to activities carried out in other Member States, which is particularly relevant when a financial institution is more active in the host jurisdiction than in the home one.

- Reporting: Due to a lack of reporting obligations for cross-border lenders, both home and host CAs may not have access to information relating to their lending activities and the performance of such entities.
- Functioning of the single market: a few authorities expressed their concerns at the fact that a lack of harmonisation of regulatory requirements (e.g. in customer onboarding and consumer protection) hinders greater cross-border activity and scaling up of non-bank lending activities across the EU.

7.1.3 Prudential consolidation[109]

a. Definitions of financial institution and ancillary services undertaking

105. In the survey on non-bank lending, competent authorities were asked to identify whether non-bank lending entities operating under specific business models belong to banking groups and, if so, whether they are subject to CRR prudential consolidation. Very limited responses have been received in that regard; only a few authorities indicated some non-bank lending entities subject to prudential consolidation in their Member States; these were entities involved in consumer credit (4 CAs), factoring (3 CAs), leasing (2 CAs) and pawnshops (1 CA). However, as indicated in the EBA Report on other financial intermediaries and regulatory perimeter issues[110] (2017), non-bank lenders qualify as 'financial institutions' for the purpose of the CRR as lending activity is part of CRD Annex I. Hence, where they are in a banking group (i.e. where there is at least one credit institution in the group) they are consolidated. The same approach is adopted with the entry into application of the IFR for groups without the presence of credit institutions but with at least an investment firm[111].

106. According to Article 18(1) CRR, institutions shall fully consolidate all institutions and financial institutions that qualify as their subsidiaries or, where relevant, the subsidiaries of their parent (mixed) financial holding company. In addition, according to Article 18(2) CRR, ancillary services undertakings (as defined in point (18) of Article 4(1) CRR) are also required

[108] See the Commission interpretative Communication — *Freedom to provide services and the interest of the general good in the Second Banking Directive*, OJ C, C/209, 10.07.1997.

[109] This section is developed consistently with the analysis carried out for the purpose of Recommendation 7 in the January 2022 Joint ESA response to the Commission's Call for Advice on digital finance and related issues (see footnote 2)

[110] EBA (2017), *Report on OFIs*.

[111] See Article 4(14) IFR for the definition of 'financial institution' and Article 4(25) IFR for the definition of 'investment firm group'.

to be consolidated following the same rules applicable to institutions. Thus, the investment by an institution in one or more subsidiaries that qualify as ancillary services undertakings triggers, by itself, a requirement for consolidated supervision. Moreover, there are some provisions aimed at capturing situations when undertakings are managed on a unified basis or by the same persons under Article 18(3) and Article 18(6)(b) CRR. However, these provisions are applicable only in the case of institutions, financial institutions or ancillary services undertakings, so any other entity may escape prudential consolidation if it falls outside these definitions, unless it meets the conditions for the application of Article 18(8) CRR and in the opinion of the competent authority there is a substantial risk of step-in[112]. Therefore, ultimately, the integration under the consolidation scope depends on whether non-bank lending activities are captured under the definition of 'financial institutions' or 'ancillary services undertakings' as provided in the CRR, and thus it is crucial in driving the perimeter of prudential consolidation.

107. To this extent, point (26) of Article 4(1) CRR qualifies as a 'financial institution' an undertaking whose 'principal activity' is '*to acquire holdings or to pursue one or more of the activities listed in Annex I to the CRD*'. Point (18) of Article 4(1) CRR defines the principal activity of ancillary services undertakings as '*owning or managing property*' and '*managing data-processing services*' or '*a similar activity which is ancillary to the principal activity of one or more institutions*'.

108. Therefore, the definitions of 'financial institution' and 'ancillary services undertaking' must be commonly understood, to ensure a consistent approach to prudential consolidation across Member States for similar types of non-bank lenders. Ambiguities due to a lack of clarity in these definitions could otherwise leave room for the risk of regulatory arbitrage resulting in a circumvention of consolidation requirements based on an assessment that an entity is not considered a 'financial institution' or an 'ancillary services undertaking'. This could lead to underestimation of the actual risk exposure of the banking group[113] and, from an EU perspective, to level playing field issues[114].

109. In this respect it is important to acknowledge that the Commission's legislative proposal for the CRR3 already envisages some amendments to the relevant definitions on prudential

[112] It is to be noted that Article 18(8) CRR allows competent authorities to extend prudential consolidation also to undertakings which do not qualify as institutions, financial institutions or ancillary services undertakings, based on step-in risk considerations. However, the scope of application of Article 18(8) CRR is limited to subsidiary undertakings and to undertakings in which a participation is held.

[113] See further EBA (2017), *Opinion and report on regulatory perimeter issues relating to the CRDIV/CRR*, EBA/Op/2017/13, 09 November, and Joint Committee of the ESAs (2022), Joint ESA Response to the European Commission's February 2021 Call for Advice on digital finance.

[114] In EBA (2017), Report on OFIs, CAs were invited in a survey to indicate whether the OFI entities would be considered as a financial institution or as an ancillary services undertaking, should they form part of the same group as an institution. The main outcome of this analysis was that traditional consumer and corporate lenders were typically considered as financial institutions because Annex I to the CRD is fairly comprehensive with respect to lending activities and captures almost all sorts of lending activities (points (2), (3) and (6) of Annex I cover: 'lending including, inter alia, consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting), financial leasing, guarantees and commitments'). However, there was less clarity then on the categorisation as financial institutions of crowdfunding/P2P lending platforms.

consolidation[115] with the aim of reducing the risk of inconsistent application of the prudential framework and of mitigating regulatory arbitrage.

110. The progressive entry into the traditional lending market of new players and the digitalisation of services are blurring the frontier between categories and definitions, so that they may not be completely clear or even outdated. This might give rise to some loopholes taking account of market developments. These issues are explored in the January 2022 Joint ESA Response to the Commission's Call for Advice on digital finance,[116] in the context of Recommendations 7a and 7b.[117]

b. Consolidation rules

111. Moreover, as further explained in the January 2022 Joint ESA Response to the Commission's Call for Advice on digital finance, the current sectoral prudential consolidation rules may not capture the specific nature and the inherent risks of new combinations of activities carried out by new mixed activity groups, including BigTechs. In fact, currently groups including a credit institution can structure themselves in a way that allows non-regulated entities to escape consolidation. Moreover, some BigTechs may carry out via subsidiary companies a range of financial services, including lending, but these do not fall within existing consolidation rules under the CRD/CRR because there is no credit institution in the group because of the application of the relative threshold to qualify as financial holding companies.

112. Finally, a few respondents to the survey on non-bank lending raised a concern that many FinTechs and BigTechs aim at entering the EU financial markets with entities licensed under the PSD2 or EMD2 (mainly PIs). As there currently are no consolidation requirements in the PSD2 similar to the ones in the CRR or IFR, this would imply that such firms may not be subject to prudential consolidation rules, thus at times potentially limiting the visibility of risks and creating an uneven playing field for other types of financial institution offering similar services (notably credit institutions). This point is further explored in the context of Recommendation 7 of the January 2022 Joint ESA Response to the Commission's Call for Advice on digital finance.[118]

[115] Including, in particular, the definitions of 'ancillary services undertaking', 'financial holding company' and 'financial institution', 'parent undertaking' and 'subsidiary'.

[116] See footnote 9.

[117] Respectively, the need to revise relevant definitions for the purpose of the application of the consolidation frameworks in the CRD/CRR, including the definition of 'ancillary services undertaking', and the need to consider the creation of new bespoke consolidation rules to cover new types of mixed activity group.

[118] See footnote 9.

7.2 Consumer protection / conduct of business rules[119]

7.2.1 Scope of activity-based rules

113. Consumer protection requirements are critical to ensure that consumers are fairly treated when purchasing and using financial products and services. While consumer protection risks may arise both in the context of bank and non-bank lending, in some jurisdictions non-bank lenders are not subject to any specific entity-based prudential regime, while in some instances they must comply only with activity-based requirements as set out in the CCD and MCD, and in other cases they are left unregulated. This may translate into higher risks for consumer protection, especially when less demanding requirements also result in less robust organisational and governance structures.

114. Lately, the progressive digitalisation of financial services has led to new market developments and the growing presence of new products often provided by non-bank lenders, which may not be adequately captured by the current scope of the CCD framework.

115. Firstly, the current CCD requirements (Art. 2(2)(c)) do not apply to consumer credits of less than EUR 200 or more than EUR 75,000. However, many of the products that recently appeared on the market are typically small-amount loans, like payday loans, Buy-Now-Pay-Later (BNPL) loans or overdraft facilities, which are likely to fall out of the scope of the CCD. Notably, irrespective of the value of the single loan, BNPL loans fall outside the scope of the CCD, as Art. 2(2)(f) CCD excludes credit that is *'granted free of interest and without any other charges'*. These limitations leave consumers exposed to a number of risks in terms of opaque disclosure practices, promotion of fast spending decisions, and overindebtedness.

116. Secondly, the current scope of the CCD also leaves out some products that have become more and more widespread, like microcredit and credit provided by pawnshops, as Article 2(2)(k) CCD excludes *'credit agreements upon the conclusion of which the consumer is requested to deposit an item as security in the creditor's safe-keeping and where the liability of the consumer is strictly limited to that pledged item'*. Similarly, regulated microcredit aimed at achieving financial and social inclusion is exempted from CCD requirements based on Article 2(2)(l) CCD which refers to *'credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market'.* As these products are often used by more vulnerable consumers who cannot resort to more traditional sources of credit, the exclusion of this form of lending may exacerbate the lack of protection.

117. Finally, the current Article 2(2) CCD does not cover one of the fastest-growing credit products, i.e. unsecured loans through crowdfunding/peer-to-peer (P2P) lending platforms. Therefore, currently various approaches are applied by CAs across the EU. Moreover,

[119] It is to be noted that some authorities did not signal any specific concerns in terms of consumer protection.

Regulation (EU) 2020/1503 on European crowdfunding service providers for business (ECSPR) excludes from its scope crowdfunding services that are provided to project owners that are consumers. This combination would imply that consumers receiving credit through P2P platforms would not be subject to the same creditworthiness assessments as corporate borrowers (project owners) and would be less protected in terms of information disclosure about the financial transaction they are entering in, their rights and possible recourse actions.

7.2.2 Disclosure and transparency

118. In order for consumers to make informed decisions about financial products and services, they must have access to high-quality, clear and easily accessible information explaining the features and costs across the lifetime of the products and services.

119. The CCD and MCD already include provisions on advertising requirements and pre-contractual information. Moreover, the DMFSD (Distance Marketing of Consumer Financial Services Directive, Directive 2002/65/EC) – currently under review – already sets out important disclosure requirements for financial services being provided at a distance, thus ensuring a good degree of consumer protection[120]. However, some competent authorities have expressed concerns in terms of adequate and timely information provided to consumers, especially if the growing use of distance marketing/selling negatively affects the understanding of credit products and limits the awareness of the key elements and costs of the credit product, because the information requirements are not adapted to digital tools.

120. Some concerns have been expressed about consumers being pushed towards products on which they do not have enough information to take a well-reasoned decision, or that may be unsuitable for their needs, or they cannot afford. These practices may fall outside the safeguards currently provided in the CCD: for instance, the current formulation of Article 4 CCD establishes that information in advertising must be presented to consumers in a *'clear, concise and prominent way'*, but it does not establish exactly what information should be provided, although it provides a representative example. Moreover, although Article 5 CCD requires credit providers to provide *'adequate explanations'* to consumers, it has been noted that in some cases (e.g. BNPL) consumers might not adequately be informed that the product they are buying is in fact a credit, or they view the financial product they are buying as a regulated financial service and therefore are led to believe that such a service comes with the rights and protections of a regulated product, even when this is not the case.

121. On the other hand, Article 16 MCD already provides a more structured form of protection, by including the requirement for mortgage lenders to provide adequate explanations to the consumers on the proposed credit agreements to enable them to assess whether these proposed agreements are adapted to their needs and financial situations. Notably, point (c) of Article 16(1) aims at increasing consumers' financial awareness about the risks of financial

[120] For a detailed analysis of how current disclosure requirements should be made fit for the digital age, see Recommendation 2a in JC of the ESAs (2022), Joint ESA Response to the CfA on digital finance (footnote 9).

agreement they are entering in, by requiring that the information provided includes *'the specific effects the products proposed may have on the consumer, including the consequences of default in payment by the consumer'.*

122. As already highlighted by the EBA Opinion on disclosure to consumers through digital means[121], digital disclosures may not always be effective in adequately disclosing relevant information. Other examples where disclosure of information may not be effective or adequate to a digital context have also been provided by the results of the survey on non-bank lending:

a. While Article 5 CCD and the DMFSD itself provide that consumers shall be informed '*in good time*' before the signature of the contract, sometimes the marketing of loans through digital means leads to aggressive marketing practices, and consumers are brought swiftly through user interfaces, which may prevent a full understanding of the information that is disclosed. To this extent, competent authorities have signalled concerns about consumers being left with little time before deciding to enter into a financial agreement. For instance, some online retail platforms may present BNPL as the first payment option at checkout ahead of cheaper / less risky debit options.

b. Article 5(1) CCD currently requires the creditor or credit intermediary to provide information through the Standard European Consumer Credit Information (SECCI) form. However, some authorities observed that reading of these documents on mobile devices may not enable sufficient comprehension as the PDF format cannot be easily adapted to the size of the screen. In addition, the use of digital platforms both for marketing purposes and to provide information may lead to lack of transparency when consumers must be informed about any fees and charges that apply to the product they are sold.

7.2.3 Mis-selling practices

123. Mis-selling of lending products takes many forms and can cause serious detriment to consumers. Usually, it happens when a financial institution recommends the purchase of unsuitable products or gives misleading information to customers. While mis-selling practices are not new and they have been observed (and sanctioned) also for credit provided by banks, they have been reported also for non-bank lenders, in particular when credit was provided via digital means[122]. Examples of mis-selling practices are:

- <u>unfair contract terms</u> and commercial practices used in selling loans (e.g. via web, when a further financial product – such as an insurance policy can be added to the electronic cart during the sale process without the consumer being fully aware);

[121] EBA (2019), *Opinion on disclosure to consumers of banking services through digital means under Directive 2002/65/EC*, EBA-Op-2019-12, 23 October.

[122] For a more detailed analysis of the risks linked to mis-selling and cross-selling issues related to provision of financial products via digital means, see para. 105-113 of JC of the ESAs (2022), Joint ESA Response to the CfA on digital finance (footnote 9).

- misleading marketing information and/or aggressive direct marketing strategies (also disseminated by consumer or loan comparison platforms), or carried out by sending promotional e-mails to personal mailboxes. This includes non-bank lending services being marketed as 'banking services' (or it not being made sufficiently clear to consumers that the product/service is not a regulated financial service).

Mis-selling may also occur when a firm links (or 'bundles' or 'ties'[123]) two or more products or services (including non-financial services) and sells them to customers as a unique and distinct package (cross-selling). While it is not a new phenomenon, there is a risk that it may accelerate in a digitalisation context, given the expedited way in which consumers are enabled to make financial decisions.

7.2.4 Complaint handling

124. When buying financial services – including loans – via a digital platform, it may be difficult for customers to identify appropriate addressees to whom to file a complaint. This can be a particular issue where financial services from a range of parties are distributed using the same platform, or when banks may offer products issued by non-bank lenders: in these cases, consumers lack clarity about the entity with whom they are entering into a contractual agreement (i.e. either an intermediary, a bank, or a non-bank loan provider) and what the obligations of such entities are towards the customers. Further criticalities can arise when the use of robo-advisers makes it difficult for consumers to communicate their complaints in a fair and effective manner.

125. The difficulties for consumers to address their complaints may be exacerbated:

a. when the consumers enter into loan agreements with relatively small entities, which may lack robust and adequate organisational structures, which affects the ability to manage customer claims (e.g. for the lack of a proper complaints handling office);

b. when credit (and possibly bundled services) are provided on a cross-border basis via the Freedom to Provide Services or the Right of Establishment, which in turn may raise issues as to which authority is responsible for supervising compliance with the relevant complaint handling procedure.

7.2.5 Creditworthiness assessment

126. Among the majority of competent authorities that flagged risks about consumer protection, a relevant concern relates to a sound and proportionate creditworthiness assessment for borrowers, These concerns are directed towards two main issues: the affordability of credit and the risk of overindebtedness, and the uses of consumers' data.

[123] A tying arrangement happens when a seller requires a buyer to buy a second product when they buy the first. Bundling is when multiple products are packaged and sold together. In tying products are not made available to the consumer separately, while in bundling the product is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled.

Affordability and over-indebtedness

127. A robust assessment of creditworthiness is instrumental in protecting consumers from the risk of entering into financial agreements they cannot afford to repay, or of entering into multiple small-amount loans, thus increasing the risk of over-indebtedness. Therefore, these safeguards should be provided even when credit is granted by non-bank lenders. To this extent, fast credit granting decision-making processes may nudge consumers into loans that may not be in line with their affordability and risk profile. Moreover, some consumers may borrow from non-bank lenders because of their inability to meet the stricter criteria used by banks to assess their creditworthiness.

128. Currently, both the CCD and MCD include provisions on the borrowers' creditworthiness assessment, but they remain relatively high-level.

129. Article 8 CCD simply requires that the creditor shall assess the consumer's creditworthiness *'on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database'*. While it does not mention whether the assessment should be conducted from the creditor (i.e. risk assessment) or borrower (i.e. affordability) viewpoint, the reading of recital 26 of the CCD and several CJEU rulings have confirmed that Article 8 is aimed at avoiding over-indebtedness. This is also mentioned in the Impact Assessment carried out by the Commission for the review of the CCD[124], which nevertheless notes that Article 8 does not specify the factors and the elements that should be considered when conducting the creditworthiness assessment, nor does it establish the consequences of a negative outcome.

130. Similarly, Article 18 MCD is slightly more elaborated and provides that the creditor make a thorough assessment of the consumer's creditworthiness, taking *'appropriate account of factors relevant to verifying the prospect of the consumer to meet his obligations under the credit agreement'*. The same article prescribes that the assessment of creditworthiness shall not rely predominantly on the value of the residential immovable property exceeding the amount of the credit or the assumption that the residential immovable property will increase in value. Finally, while point (a) of Art. 18(5) MCD establishes the consequences of a negative creditworthiness assessment, there is no indication of the data that should be taken into account when conducting the creditworthiness assessment.

131. Recently, the EBA issued the Guidelines on loan origination and monitoring[125], introducing requirements for assessing the borrowers' creditworthiness, together with the handling of information and data for the purposes of such assessments, to complement the requirements of Article 8 CCD and Article 18 MCD. While the EBA Guidelines indeed aim at ensuring uniformity of criteria for creditworthiness assessment across different types of institutions and loans, from the consumer protection perspective they apply only in relation

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[124] See the Impact Assessment Report accompanying the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on consumer credits, available in *Consumer credit agreements – review of EU rules*, Commission website.

[125] EBA (2020), *Guidelines on loan origination and monitoring*, EBA/GL/2020/06, 29 May.

to credit (and the creditor) that is granted in accordance with the CCD or MCD and to all credit institutions under the CRD, so that entities that fall outside the scope of the Guidelines are not required to carry out a creditworthiness assessment of the borrowers according to the EBA Guidelines.

132. Lastly, the Regulation on crowdfunding (Regulation (EU) 1503/2020) foresees some requirements for the assessment of the credit risk of the project owner and mandates the EBA to specify the information and factors that crowdfunding service providers must employ when conducting credit risk assessment, as well as the features of the processes and procedures that support credit risk assessment. However, these rules apply only for crowdfunding platforms offering their services to corporates, while no similar requirement is currently envisaged for crowdfunding platforms and intermediaries facilitating credit for consumers, either unsecured or collateralised (e.g. mortgages).

Use of automated models and AI algorithms

133. As noted in the Impact Assessment of the Commission proposal for the CCD review, *'digitalisation has transformed the process of collection and analysis of consumers' data and information. Credit providers make large use of automated decision-making techniques, including Artificial Intelligence (AI), to process data'* that are instrumental to assess creditworthiness and for credit scoring. This becomes particularly relevant when a response from the assessment process is expected in a short time, which is typical of many new non-bank lenders. However, most data collected and elaborated through AI are not necessarily provided by, or known to, the borrower, like transactional data or social network information.

134. The use of new technologies for credit scoring and creditworthiness assessment may facilitate the access of consumers to loans, shortening the time between loan application and loan granting. However, consumers (and supervisors as well) may find it difficult to understand and analyse the output of these models, as well as to assess the correctness or appropriateness of the decision. Moreover, while these models tend to provide accurate predictions, some concerns relate to situations when – by effect of automated decisions – credit is provided to consumer who do not have the means to repay it.

135. The EBA Guidelines on loan origination and monitoring (see paragraph 41 therein) already establish that institutions should *'specify the use of any automated models in the creditworthiness assessment and credit decision-making processes in a way that is appropriate to the size, nature and complexity of the credit facility and the types of borrowers'*. Moreover, Article 22 GDPR gives the right to consumers *'not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her'.* This would be the case, for instance, of a consumer applying for a loan online, when the provider uses algorithms to provide an immediate yes/no decision on the application. However, currently there is no indication (either in the CCD or in the MCD) on whether the consumer should

have the right to obtain human intervention with the aim of correcting or explaining the outcome of the assessment made, including the main variables used in the process.

136. To this extent, there are concerns that the extensive use of automated models and AI algorithm, while increasing the speed and the overall effectiveness of the credit granting process, in the absence of provisions defining boundaries and processes may increase the risk model bias and unlawful discrimination, to the detriment of consumers. These risks are expected to be addressed via the upcoming Artificial Intelligence Act (AI Act)[126], which aims to reduce the risk of violations of consumers' safety or fundamental rights. To this extent, the AI Act recognises that AI systems used to evaluate the credit score, or creditworthiness of natural persons, should be classified as 'high-risk AI systems', as they may lead to discrimination of persons or groups and perpetuate historical patterns of discrimination.

7.3 ML/TF risks

137. Each sector and financial institution, including non-bank lending providers, are inherently exposed to different levels of ML/TF risks on the basis of their customers, products and services, distribution channels and geographies where they operate. Therefore, financial institutions are required to put in place sufficiently robust controls to mitigate these risks. In accordance with the applicable AMLD, all CAs responsible for the supervision of financial institutions – including non-bank lending providers' compliance with AML/CFT rules – are required to develop a good understanding of the ML/TF risks associated with the sectors and the individual financial institutions under their supervision.

138. Some respondents to the survey have assessed that non-bank lenders are exposed to a significant or moderate ML/TF risk, regardless of their regulated status. However, in those instances where the lending is provided by an unauthorised or unlicensed provider, there is a higher possibility that that the provider will not implement controls to mitigate ML/TF risks because they are unlikely to be obliged entities and therefore will not be required to apply such controls. For example, they might be reluctant to establish the purpose of the loan, which may increase the risk that the loan is used for ML/TF purposes, or yet to assess the source of the lending capital and funding which can itself be derived from criminal activities.

139. The respondents have identified the new distribution channels for lending products and products that allow anonymity as the key risk areas. For instance, there are concerns related to some non-bank lenders' exposure to crypto-assets, in particular privacy coins, that are known to have been used in some criminal activities (e.g. ransomwares), which may lead to an increased ML/TF risk exposure of those providers if the risk is not managed effectively.

140. The respondents have also highlighted certain risks associated with products provided by non-bank lenders, namely products that allow the repayment of loans before the end of the

[126] See *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS, 2021/0106 (COD), 21.4.2021.*

term. In such cases, criminals may use their illicitly obtained funds to repay the loan immediately after obtaining it or repay it early before the end of the loan term. There are also concerns with regard to products that allow the transferability of the contract or obligations to a third party as it might reduce the transparency of funds used to repay the loan by that third party.

141. The survey results also show that when non-bank lending is provided on a cross-border basis this may present exposure to additional ML/TF risks. For example, cross-border aspects might increase the ML/TF risk associated with distribution channels when using new technologies to onboard customers. Also, there are significant geographical risks associated with lending on a cross-border basis as the customers may be based or associated with jurisdictions associated with high ML risk, for example because the level of predicate offences to ML is high – increasing the risk that funds used to repay the loan come from illegitimate sources – and to TF because terrorist groups are known to be operating there.

7.4 Macroprudential risks

142. While there are challenges in data availability to precisely define the overall extent of non-bank lending in the EU, the information provided by national authorities and other sources tends to indicate that non-bank lending remains limited in volume compared to credit provided by banks.

143. However, despite its limited volumes, since FinTech credit, including P2P platforms, has been increasing quite steadily over recent years, consideration must be given to some potential risks, in particular:

- Over-indebtedness risk and creditworthiness: a few authorities noted that relatively lower credit underwriting standards and unsecured loans granted to vulnerable borrowers may increase their over-indebtedness and financial fragility. Moreover, since not all non-bank lenders are required to report data to the credit registers, the informative value of these databases may become less valuable as an instrument to assess creditworthiness.

- Contagion and step-in risk[127]: this risk may become relevant when non-bank lenders, as part of a financial group, become exposed to credit institutions and financial institutions [128]. However, according to the ESRB 2021 EU Non-bank Financial Intermediation Risk Monitor the interconnectedness of financial corporations engaged in lending (i.e. FCLs that broadly overlap with entities reflected in the EBA analysis of non-

[127] Step-in risk is defined as the risk that a bank 'provides financial support to an unconsolidated entity that is facing stress, in the absence of, or in excess of, any contractual obligations to provide such support' (Basel Committee on Banking Supervision (2017), *Guidelines on the identification and management of step-in risk*, October).

[128] To this extent, note that, according to SSM Supervisory Board Chair Enria (2019), new risks may emerge from the recent trend of 'slicing and dicing' the banking value chain, so that each small portion of the value chain may be occupied by one individual player, thus creating a new level of interconnectedness. If this trend gains more traction, then this will increase the risk that 'a problem in one part of the value chain could travel in all directions, affecting many players', thus increasing systemic risk.

bank lending) with the banking system appears to be low, as only 4% of FCL assets in 2020 had direct counterparty exposure to the banking sector[129].

- Regulatory arbitrage: while some Member States apply the same macroprudential tools for non-bank lenders as for banks (e.g. loan-to-value (LTV) or loan-to-income (LTI) limits, debt-service-to-income (DSTI) ratios, maturity limits), regulatory arbitrage risks may arise if borrower-based measures are only applied to banks and not extended to non-bank lenders. It has been observed that in such a situation banks may have the incentive to circumvent the restrictions by buying up loans to households issued by non-bank lenders. Finally, most macroprudential measures applied to banks are capital-based (e.g. buffers), while only in a few jurisdictions are non-bank lenders requested to own capital (and thus be possibly subject to capital-based measures), thus increasing further the risk of regulatory arbitrage.

7.5 Microprudential risks

144. In its inherent nature, the substance of the lending activities of non-bank lenders and banks is the same, i.e. extending credit to borrowers. However, non-bank lenders and banks are subject to microprudential risks (e.g. credit risk, liquidity risk, leverage risk) to a slightly different extent, as non-bank lenders are not allowed to take deposits and do not have access to central bank liquidity facilities.[130] In the survey on non-bank lending, competent authorities were asked to describe the most prominent microprudential risks that have actually materialised over the last five years in relation to non-bank lending for the business models operating in their jurisdiction. To this extent, only one authority provided a specific example[131].However, it was recognised that to some extent these risks might compare to the risks faced by banks and therefore need to be measured and monitored closely to avoid a sudden increase, in the context of several non-bank lenders moving fast and at the same time in the lending market.

Credit risk

145. The answers to the non-bank lending survey reveal that for the majority of authorities the most common concern in relation to microprudential supervision is related to credit risk, i.e. the possibility of a loss resulting from a deterioration of a borrower's creditworthiness. Some specificities were indicated in relation to particular business models:

  - Unsecured consumer credit is often offered by non-bank lenders to borrowers who may not meet the creditworthiness assessments of banks, and this may lead to higher default rates. The same issue applies also for certain types of business lending, when companies would not be eligible for bank credit.

[129] ESRB (2021), NBFI Monitor No 6.

[130] According to ESRB (2021), NBFI Monitor No 6, p.52, 'systemic risks emanating from financial corporations engaged in lending (FCL) appear to be low when leverage, liquidity and interconnectedness channels are considered'.

[131] Example of micro-lenders that have been subject to enhanced scrutiny from a conduct risk perspective, as they were materially impacted by claims for compensation leading to material reduction in business volumes.

- Microcredit is provided to consumers, micro and small enterprises that may be characterised by a lower creditworthiness and thus by a higher credit risk. However, the small or moderate amounts of loans by microcredit lenders may mitigate the exposure at default to a certain degree, and therefore the overall loss.
- Pawnshops grant small-amount loans to multiple borrowers, and the amount of the loan is lower than the value of pledged items (which are also easily marketable in the event of the borrower's default). This may limit the potential loss, although they tend to grant loans to borrowers that have a lower rating and may not have access to other forms of credit.
- Leasing companies bear the same risk as institutions that have developed leasing activities; however, the ownership of the leased goods can mitigate the risk, but their valuation must be carefully calibrated and monitored, as the residual value of goods may prove volatile.

Liquidity risk

146. Liquidity risk occurs when a non-bank lender cannot meet its short-term debt obligations and there is a maturity mismatch between inflows and outflows. The risk can be caused by the impossibility to raise funds on the market (funding liquidity risk) or by difficulty in selling financial assets (market liquidity risk). This risk is assessed as a marginal one for the majority of authorities, since non-bank lenders finance their assets via long-term liabilities, in particular equity, and they do not hold deposits. However, non-bank lenders belonging to banking groups often rely on parent companies to provide funding in case of a liquidity shortfall. In turn, this may create step-in and contagion risk towards the banking systems, although this has not been flagged as a prominent one at the moment. The risk for the continuity of the provision of lending to the EU economy by non-bank lenders should also be considered.

Operational risk

147. Operational risk is defined as the risk of loss resulting from inadequate or failed internal processes, people, controls and systems (e.g. fraud and technical failures), as well as loss caused by external events. This risk is common to all non-bank lenders, and proportionally comparable to operational risk faced by credit institutions.

148. In particular, the operational dimension has grown in the recent years due to an increasing use of technologies (not only for FinTech lenders, as the digitalisation of the provision of financial services is now pretty common) as the malfunctioning of IT systems could fully interrupt their business activities[132]. Moreover, many non-bank lenders do not have internal systems as advanced as credit institutions, thus making them less operationally advanced and potentially more open to operational risks. This may be mitigated if the non-bank lenders belong to a banking group, where the awareness of this type of risk is higher and the risk

[132] One competent authority has indicated that the national law requires P2P platforms to prepare and approve a business continuity plan to establish policies and procedures to ensure that the activities of the platform can be carried out permanently and continuously and must include also provisions for continuity of contractual arrangements.

management system is more robust and structured. But at the same time, belonging to a group can also expose these non-bank lenders to the operational risks of this group by contagion effect (cyber-attack for instance).

149. The operational resilience issues are also growing because of an increasing use of third-party providers by non-bank lenders. Indeed, from that point of view, it has been noted that when non-bank lenders outsource part of their activities to external providers, they may be exposed to the risk of non-compliance with the provisions of the prudential framework (e.g. contractual risk, breakdown of service, non-compliance with service level agreements) and with the vendor lock-in risk (i.e. dependence on the vendor to which the service is outsourced).

150. More generally, non-bank lenders also face other categories of operational risk, such as legal and compliance risks, and may be impacted by emerging operational risks (in particular climate risk for both natural disaster events and legal issues), like credit institutions.

8. Policy proposals

151. This section identifies a set of policy proposals to address the risks and concerns related to the various aspects of non-bank lending as identified in the previous section.

8.1 Prudential supervision

Authorisation and supervision

- Proposal 1a: harmonising and strengthening authorisation and supervision requirements in the CCD and MCD

In Member States where non-bank lenders are not subject to any entity-specific requirements, the only applicable provisions are the ones foreseen at activity level and included in the CCD and in the MCD. However, there is a difference in the breadth of existing requirements in terms of authorisation and supervision in the CCD and those included in the MCD. The current text of Art. 20 CCD requires that creditors *'are supervised by a body or authority independent from financial institutions, or regulated'*. On the other hand, Article 35 MCD requires that *'non-credit institutions are subject to adequate admission process including entering the non-credit institution in a register and supervision arrangements by a competent authority'.*

To this extent, the new Article 37 of the proposal put forward by the Commission on the review of the CCD indeed foresees a strengthening of the admission and authorisation provisions, requiring that *'creditors, credit intermediaries and providers of crowdfunding credit services that are not credit institutions (…) are subject to an adequate admission process and to registration and supervision arrangements set up by an independent competent authority'.*

This harmonisation of authorisation requirements for entities providing consumer loans and entities providing mortgages is a welcome development which can help strengthen the requirements for authorisation and registration, and execution of compliance, to close any gaps in the activity-based requirements, facilitating more intense supervisory scrutiny over activities of non-bank lenders that currently may not be subject to sufficient entity-based oversight.

Furthermore, while the limited time available did not allow a thorough assessment of the relevant costs and benefits, there may be some merit in considering the introduction of more specific authorisation requirements, through a proportionate application of some of the principles included in sectoral directives. For instance, Article 10 CRD requires credit institutions to provide *'a programme of operations and information about the structural organisation of the institution'.* Similarly, Article 7(2) MiFID requires that investment firms provide *'all information, including a programme of operations setting out, inter alia, the types of business envisaged and the organisational structure',* to ensure that all authorisation requirements have been fulfilled[133].

[133] It is to be noted that the requirements of Article 10 CRD are further detailed in EBA (2017), *Final Report Draft Regulatory Technical Standards under Article 8(2) of Directive 2013/36/EU and draft Implementing Technical Standards*

Scope of consolidation

Competent authorities responding to the survey have highlighted that it may be difficult to have full visibility on the activity of non-bank lenders at individual level, when they are not fully authorised or not subject to direct supervision. However, the same challenge has been reported also for those entities that belong to a group, as they may not fall within the perimeter of prudential consolidation. In turn, this would prevent adequate oversight and reporting. Therefore, the inclusion of non-bank lenders into a consolidated entity that is subject to a more robust supervisory framework and detailed reporting requirements is a crucial step to achieve adequate oversight on these entities. The proposals on the scope of consolidation are in line with Recommendations 7a and 7b already included in the Joint ESAs Report on Digital Finance and related issues are directly relevant to non-bank entities providing credit.

- Proposal 1b: revise the definitions dealing with the entities to be included in the scope of prudential consolidation, in particular for the ancillary services undertakings, as well as the definition of activities that are not considered outside the financial sector

As explained in Section 7.1, consolidation rules in the EU depend on the definition of 'financial institution', 'ancillary services undertaking' and 'financial holding company'. Therefore, unless the provisions of Article 18(8) CRR are applicable, for a non-bank entity to be included in the scope of consolidation, it must fall within one of these definitions. However, the lack of clarity in the CRD/CRR definition of 'ancillary services undertaking', and the limitations in the definition of 'financial holding company' may leave room for entities that are able to provide financial services, including lending, to escape consolidated supervision regardless of the absolute size of their financial activities (see further Recommendation 7 of the January 2022 Joint ESA Response to the Commission's Call for Advice on digital finance).

To this extent, it is worth mentioning that under Article 18(8) CRR competent authorities may require full or proportional consolidation of a subsidiary or undertaking in which an institution holds a participation where that subsidiary or undertaking is not an institution, financial institution or ancillary services undertaking based on step-in risk. In addition, the Commission's proposal for a regulation amending the CRR includes a number of modifications of the definitions of 'financial holding company', 'ancillary services undertaking' and 'financial institution', to ensure that financial groups that are headed by FinTech companies or include other entities that engage directly or indirectly in financial activities can be subject to consolidated supervision. Ultimately, this can help close existing loopholes with regards to prudential consolidation.

However, in keeping with the Joint ESA Response, notwithstanding the Commission's proposals to revise some of the definitions used in the CRD/CRR, revisions to Solvency II and the IFR are required to ensure cross-sectoral consistency.

under Article 8(3) of Directive 2013/36/EU, EBA/RTS/2017/08, EBA/ITS/2017/05, 14 July; and the requirements of Article 7(2) MiFID are detailed in the Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms, C/2016/4417, OJ L 276, 26.10.2017.

- Proposal 1c: to consider the extension of consolidation rules (through adapting the existing CRR/CRD or new bespoke rules) to ensure that they adequately capture the specific nature and inherent risks of non-bank groups carrying out financial services, including lending

The entry of new, non-bank players into the credit market raises the question of which rules should apply to groups with the presence of several types of financial (and non-financial) entities, including unregulated ones. This is particularly important for groups that may have more than one entity carrying out financial services, such as lending, but do not fall within existing consolidation rules (e.g. because there is no credit institution in the group, because of the placement of the financial entity within the group, or because the services fall below the relevant activity threshold). Therefore, it is proposed to consider the extension of consolidation rules to mitigate prudential risks and the risks of regulatory arbitrage.

In accordance with Recommendation 7b of the January 2022 Joint ESA response to the Call for Advice on digital finance, it is proposed that a cross-sectoral 'gap analysis' is carried out as regards the scope of application of existing prudential consolidation rules with respect to different types of group structures across the financial sector. This should also help determine whether banking rules with respect to the scope of consolidation may be fit also for mixed activity groups. In this context, it is also recommended that due consideration is given to:

- the intersection with new consolidation rules that may be introduced in the context of the PSD2 revision or by any future new EU-wide non-bank lending sectoral regime, where a group includes more than one relevant financial institution to which consolidation rules apply;
- the possibility to establish an intermediate parent undertaking to ensure the effective capture of risks and application of consolidation rules, and the definition of a threshold beyond which entities carrying out lending activities and that currently would remain unconsolidated could be included in the perimeter of consolidation. However, the identification of a threshold would require further analysis, to define clearly financial activities and ancillary services, which may be difficult in light of the fast pace of financial innovation.

In this context, it is worth pointing out that the current proposal for the CRR3[134] already envisages a specific mandate for the EBA to report to the Commission on the completeness and appropriateness of the new set of definitions and provisions. This would allow the EBA to further investigate, inter alia, whether the empowerments of the supervisors and their ability to adapt their supervisory approach to new sources of risks might be unintentionally constrained by any discrepancies or loopholes in the new regulatory provisions or in their interaction with the applicable accounting framework. In this context, the EBA will, inter alia, reflect further on:

a. the role and structure of mixed activity groups (MAGs) and how their activities meet the definition of financial institutions or ancillary services undertakings;

[134] Specifically, Article 18(10) of the current CRR3 proposal.

b. the interactions with the possible set-up of intermediate parent entities; and

c. ways to appreciate all the financial activities performed by the different entities within a group.

Reporting and data availability

- Proposal 1d: to improve rules on reporting on credit activity carried out by non-bank lenders

The results of the survey on non-bank lending revealed some supervisory concerns about the lack of visibility on the extent of the activities carried out by non-bank lenders even when these are subject to an authorisation procedure as set out in the CCD or MCD. To this extent, the lack of reporting obligations for entities that are subject only to activity-based rules like the CCD and MCD prevents authorities from having access to an adequate amount of information to monitor activities and identify upcoming risks, and ultimately hinders a comprehensive oversight.

Therefore, it is proposed that a reporting obligation to the authorising competent authority is established at activity-based level in the CCD and in the MCD, for all the entities that fall within their remit and that are not covered by other sectoral legislation (the CRD/CRR, PSD2, IFD/IIFR including where this legislation applies to NBL by virtue of the national law), whereby indeed a reporting obligation is established within the supervisory requirements. This would provide more reliable and comparable data to monitor future developments in non-bank lending, as well as to improve risk assessment and supervisory monitoring of cross-border activities (including sharing information among home and host authorities).

Cross-border aspects

- Proposal 1e: to provide more clarity in the identification and respective responsibilities of home and host supervisory authorities regarding the provision of cross-border non-bank lending

The growing relevance of digital means as a support to provide financial services, including lending, has the potential to stimulate the growth of cross-border activities. Financial entities can operate on a cross-border basis and when an EU harmonised framework is in place on the basis of the applicable national framework they can operate either through the Right of Establishment (RoE) or the Freedom to Provide Services (FoS) provisions. However, as stated in the ESA JC Report on cross-border supervision of retail financial services (para. 66)[135], currently there is no definition of cross-border provision of financial services in EU level 1 texts, so that there are no clear criteria for determining the location where the service is provided, *'which is key to determining whether there is cross-border provision of services and whether it falls under the Freedom to Provide Services (FPS) or Right of Establishment (ROE), and which CA is responsible for its supervision[136]. This lack of clear criteria is even more problematic when services and products are provided through digital means'.* In turn, this would make it more difficult to identify – together with the actual provider of lending

[135] Joint Committee of the ESAs (2019), *Report on cross-border supervision of retail financial services*, JC/2019-22, 9 July.

[136] For instance, the monitoring of compliance with requirements beyond authorisation and prudential supervision, such as L3 on internal complaints handling and disclosure towards customers.

– the competent authority that has direct supervision responsibilities, and would make the allocation of responsibilities between home and host supervisors more uncertain.

Therefore, in line with the ESA JC report on cross-border supervision of retail financial services and the ESA JC response to the Call for advice on digital finance, it is proposed that i) more clarity should be provided on whether activities carried out through digital means fall within the remit of the FPS or of the ROE in turn, facilitating the identification of the respective home and host authorities and their responsibilities; ii) level 1 provisions identifying and allocating responsibilities between the home and the host authorities should be further harmonised.

The last point is particularly relevant in regard to the application of consumer protection and conduct of business provisions. To this extent, the EBA would like to highlight the observation outlined under para. 77 of the ESA JC report on cross-border supervision that simultaneous exercise of the FPS and the ROE may create uncertainty not only for supervisors, but for consumers as well, *'as they may not be able to understand whether the service is provided by a branch in the host MS or by the parent company providing services in the host MS under the FPS'*, or which authority is responsible for complaints handling, of for disclosure requirements in the host jurisdictions. Therefore, more clarity on the identification of home and host authorities, as well as the respective competences, will help strengthen the consumer protection framework as well.

8.2 Consumer protection and conduct of business

- Proposal 2a: to widen the scope of the CCD

As shown in Section 7.2.1, the current scope of the CCD leaves out of supervisory oversight several types of entities that during recent years have become quite prominent in providing credit to consumers. The current formulation of Art. 2(2) CCD foresees a number of exemptions, e.g. for amounts smaller than EUR 200, for credits that are provided free of interest and without any other charges, and for credit agreements where consumers are requested to deposit an item as security in the creditor's safe-keeping. Moreover, the current CCD does not cover entities acting as crowdfunding service providers[137]. At EU level, these lenders are not covered by any specific entity-level prudential framework (some Member States, however, extend their sectoral-level legislation to certain non-bank lenders). Therefore, while the inclusion of these products in the CCD scope of action would need to consider a proportionate approach for those credits that pose lower risks to consumers, it may represent a common backstop at EU level, regardless of implementation of specific regulations at national level.

It should be noted that the current proposal of the Commission for a review of the CCD[138] already addresses the need to extend the scope of the directive, removing the exclusion from the scope of the CCD of loans below EUR 200[139], of leasing agreements that do not impose an obligation to

[137] It is to be noted that Regulation (EU) 2020/1503 on European crowdfunding service providers for business, regulating loans to business, already provides for some prudential requirements and provisions on investor protection and operational continuity; to this extent, there would be merit in ensuring consistency in the framework on P2P consumer lending platforms.

[138] See *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on consumer credits*, COM(2021) 347 final, 2021/0171 (COD), 30.6.2021.

[139] The Commission proposal now covers all credit agreements up to EUR 100,000 in the scope of the CCD.

purchase, and the one concerning zero-interest loans without any other charges. On the other hand, the Commission proposal does not remove the exemption of credit where the consumer is requested to deposit an item as security in the creditor's safe-keeping and the liability of the consumer is strictly limited to the deposited item (i.e. credit provided by pawnshops) and loans *'granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest or on other terms which are more favourable to the consumer than those prevailing on the market'* (i.e. credit provided by microcredit lenders – see also Section 6.3). To this extent, while the EBA supports the inclusion of small-amount loans, leasing agreements and BNPL loans in the scope of application of the CCD, further analysis should be conducted to identify the extent of lending carried out by other entities, and to consider further the merits or otherwise of their exclusion.

Notably, the Commission proposal for the review of the CCD currently includes crowdfunding service providers within the scope of application. In the absence of a dedicated sectoral framework, the potential inclusion within the CCD remit would allow consumer protection rules and requirements in terms of authorisation to be extended to a fast-growing sector that is currently not regulated at EU level. However, as crowdfunding for business is regulated by Regulation (EU) 1503/2020 (ECSPR), it is worthwhile to consider whether the specificities of the crowdfunding service for consumers would be better addressed through the introduction of a bespoke and proportionate regime for consumers to ensure a consistent and proportionate approach with respect to the regime introduced by Regulation (EU) 1503/2020.

Finally, widening the scope of the CCD to include entities that are currently excluded will also widen the application of the EBA Guidelines on loan origination and monitoring, thus providing further safeguards to consumers.

- <u>Proposal 2b: to enhance the requirements for disclosure of information, credit advertising, commercial practices and out-of-court complaint handling and ensure that they are fair, effective and well suited for lending via digital means</u>

New technologies are transforming financial products and services' offerings and how the respective information is provided to consumers; the provision of credit by non-bank lenders is no exception. Therefore, it is important that, when entering into loan agreements that may fall outside the traditional banking remit, consumers are informed in a timely manner about the characteristics of the product they are buying, the risk that it entails, and how they can address any complaint effectively.

To this extent, some of the loopholes in the current text of the CCD are addressed by the Commission proposal for the CCD review:

- The proposed Article 10 of the revised CCD on pre-contractual information, while replicating the requirements – in terms of the information to be specified – of the current Article 5, would provide more protection in terms of offering the consumer enough time for reflection and becoming aware of the risks. Whereas the current Article 5 only provides that the information should be provided *'in good time'* before the consumer is bound by the credit agreement, the Commission proposal envisages that pre-contractual information shall be provided to the consumer at least one day before he or she is bound by any credit agreement. Moreover, the proposed new Article provides that the credit provider shall send a reminder to the consumer about the possibility to withdraw from the credit agreement. As regards adequate explanations, it is noted that Article 12 of the Commission proposal is in line with the context of Article 16 of the MCD, thus providing some ground for an overall consistency of approach of the directives in this respect.

- The Commission proposal for the CCD introduces specific rules in regard to tying and bundling practices, and the provision of ancillary and advisory services and of unsolicited credit sale. Some of these provisions indeed address the concerns that have been highlighted by competent authorities in regard to some aggressive practices that may result in consumers being pushed into buying products that they do not need or cannot afford. For instance, the text of the Commission proposal for the CCD prohibits any unsolicited sale of credit[140] (new Article 17), as well as the inference that the consumer agrees to buy some products through default options like pre-ticked boxes (new Article 15). In line with the current Article 12(3) MCD, the proposed Article 14(3) CCD prohibits tying practices, unless the creditors can show that they result in a clear benefit of the consumer.

- The proposed Article 22 of the revised CCD would introduce some provisions to facilitate complaint handling and redress for consumers, as the provider of credit is required to communicate the means available to the consumer for lodging a complaint to an out-of-court and redress mechanism, the time period available for lodging any such complaint and the details of the competent authority where that complaint may be submitted. In addition, both the proposed Articles 10(3) and 21(1) would require that the pre-contractual information should include details on the possibility for the borrower of having recourse to an out-of-court complaint and redress mechanism for the consumer and the methods for having access to it. The need to strengthen the requirements on complaints handling is particularly relevant in light of digitalisation of financial services and the growth of digital platforms, as entities may provide their services on a cross-border basis, and the identification of the competent authority to whom the complaint should be addressed becomes essential (see also proposal 1e in Section 8.1).

In any case, while the amendments to the CCD envisaged in the proposal by the Commission are welcome and it would be beneficial to retain them in the final text, it is also proposed that the revision – currently ongoing – of the DMFSD must be consistent with the outcome of the CCD review, to ensure that the requirements for disclosure are adequate for business that is conducted via digital means[141]. To this extent, the ESA response to the Call for Advice on digital finance already

[140] While there is no exact definition of 'unsolicited sale of credit', the reference does not seem to be to marketing campaigns in general. Rather, the explanatory introduction of the Commission proposal for the CCD review mentions 'non requested pre-approved credit cards sent to consumers or consumers' overdraft/credit card spending limit being raised unilaterally by the creditor, without their prior request or explicit agreement'.

[141] For instance, some competent authorities indicated that, without prejudice to the availability of the PDF format, documents to meet pre-contractual disclosure requirements (such SECCI or ESIS) should be digitally designed according to the digital market best practices (e.g. with the application of 'responsive' and 'accordion' technologies; the former allows the automatic flexibility of the information disposal on the screen, while the latter lets the user read or hide easily the targeted piece of information).

identifies some concrete recommendations, both in terms of the overall features to be considered to ensure that disclosures are fit for the digital age in sectoral legislation, and in terms of specific proposals that could be taken into account by the Commission as part of the current review of the DMFSD[142].

- Proposal 2c: strengthening the requirements for creditworthiness assessment and ensuring that it is conducted also in the interest of consumers

The current text of the CCD only includes a very high-level requirement for credit providers to carry out a creditworthiness assessment of the borrowers. While this is complemented by the provisions included by the EBA Guidelines on loan origination and monitoring, the introduction of a more structured obligation within the directive could provide a stronger safeguard against the risk that the consumer may not be able to repay its obligations under the credit agreement, thus increasing credit risk for the lender and the risk of over-indebtedness and financial fragility for the consumer. Moreover, in those cases where the creditworthiness assessment is carried out through automated models or AI algorithms, some consideration – within appropriate limits – should be given to the right of consumers to request human intervention to review the decision taken by the credit providers.

Article 18 of the proposal set out by the Commission for the CCD review goes in this direction, requiring that:

- the creditworthiness assessment shall be done in the interests of the consumer, to prevent irresponsible lending practices and over-indebtedness;
- the creditworthiness assessment shall be conducted on the basis on information on the consumer income and expenses and other financial circumstances, based on proportionality and necessity, and that this information should be appropriately verified;
- when the creditworthiness assessment is done by means of automated models, the consumer has the right of request human intervention to review the decisions and that he can obtain an explanation of the assessment and contest its outcome.

While the EBA welcomes the proposal above, it should be noted that the need to ensure fair rights for a revision of the creditworthiness assessment should be duly balanced by the need to avoid the unintended consequence of an increase in litigation cases, which may even lead to detriment to consumers. Moreover, it is important to retain the proportionality principle in the element on which the creditworthiness assessment should be based, to avoid an undue restriction of the conditions to access to credit for the most vulnerable consumers. Finally, the EBA response to the Commission Call for Advice regarding the review of the MCD might also be considering a proposal to align the provisions of the MCD, while taking into account the principle of proportionality, the inherent differences between mortgage and consumer loans, as well as requirements set in the EBA Guidelines on loan origination and monitoring.

[142] See Recommendation 2a in the Response to the Call for Advice on digital finance.

8.3 AML/CTF aspects

- Proposal 3a: to cover all non-bank lenders in a more comprehensive way in the EU-wide AML/CTF rules

As stated in the previous AML/CFT-related sections, the AMLD does not cover in a comprehensive manner all lending activities and there is a lack of clarity at the EU level on the applicability of AML/CFT rules to non-bank lending.

As explored in Section 7.3, due to the inherent ML/TF vulnerabilities usually associated with lending activities, and the higher ML/TF risk where lending is provided by non-financial institutions not subject to AML/CFT obligations, it is proposed to the Commission to consider subjecting all categories of non-bank lending to the EU-wide AML/CFT rules (similar to the proposal under Section 8.1, from a prudential perspective) to guard against uneven approaches, regulatory arbitrage and associated gaps in the EU's AML/CFT defences. The EBA notes that this approach is in line with Financial Action Task Force (FATF) Recommendation 26 [143] that states that other financial institutions – where non-banking lending would fit – *'should be licensed or registered and adequately regulated, and subject to supervision or monitoring for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in that sector*'. This Recommendation in addition stresses that '*at a minimum, where financial institutions provide a service of money or value transfer, or of money or currency changing, they should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements*'.

Article 3 of the 2021 Commission legislative proposal for the AMLR goes some way towards addressing this recommendation (by extending the list of AML/CFT 'obliged entities' to creditors for mortgage and consumer credits, as well as mortgage and consumer credit intermediaries that are not credit institutions or financial institutions, and crowdfunding service providers which fall outside the scope of Regulation (EU) 2020/1503, as result of their exposure to ML/TF risks). However, with respect to other non-banking lending activities – as explained in Section 6.8 – those might fall within Annex I to the CRD, but this Annex does not include the full list of obliged entities carrying out non-bank lending activities. In order to ensure consistency of approaches across Member States – and to address the concerns identified in this Report – consideration should be given to capturing all these entities directly in Article 2 of the proposed AMLR, instead of referencing Annex I to the CRD, which currently is considered unclear and still outdated[144].

Nevertheless, in relation to credit intermediaries, further consideration should be given to whether and, if so, how they should be included within the scope of the EU's AML/CTF regime if those act as mere channels for other obliged entities which are the actual ones providing credit. Any

[143] See FATF Recommendation 26: Regulation and supervision of financial institutions available at https://cfatf-gafic.org/index.php/documents/fatf-40r/392-fatf-recommendation-26-regulation-and-supervision-of-financial-institutions#:~:text=Recommendation%2026%3A%20Regulation%20and%20supervision%20of%20financial%20institutions,supervision%20and%20are%20effectively%20implementing%20the%20FATF%20Recommendations.

[144] See EBA (2017), *Report on Other Financial Intermediaries and Regulatory Perimeter Issues*, 9 November 2017.

obligation resulting from their inclusion in the EU's AML/CTF regime should be proportionate to the risk of ML/TF to which they are exposed as a result of their activities and business models.

In addition to the specific recommendation set out above it is also relevant to ensure that AML/CFT supervisors:

- ensure cooperation and work together with prudential supervisors when approving applications for authorisations from non-bank lenders and throughout the cycle of supervisory activities;
- increase their understanding of ML/TF risks associated with non-bank lenders and keep abreast of changes in this sector.

8.4 Macroprudential risks

- Proposal 4a: to establish an oversight and monitoring system at EU level for regulated and unregulated non-bank lenders to help assess on a timely basis the build-up of systemic risks, as well as identify and address the most compelling risks at macro level

Many competent authorities that have responded to the survey on non-bank lending have signalled limited macroprudential risks at present, together with the implementation of some specific measures at local level. However, in consideration of the potential for a quick build-up of these risks, they have expressed the need of having more visibility on the risks that activities of non-bank lenders may entail, in particular when the provision of services is carried out on a cross-border basis.

The development and fast growth of non-bank lending and the proliferation of new entities, business models and organisational structures bring benefits in terms of increased competition and of increased risk-sharing across the financial system. However, as pointed out by the ESRB[145], it can also result in new risks and vulnerabilities, which need to be monitored and assessed, taking into account interconnectedness within the broader financial system. Therefore, *'vulnerabilities can build up unnoticed among entities where statistical information is not readily available or not sufficiently granular. Such gaps need to be closed, existing data reporting frameworks improved, and consistent metrics developed' (NBFI Risk Monitor, August 2021, p. 11).*

To this extent, it is proposed to consider – via a dedicated gap analysis with respect to the existing situation to avoid overlapping and duplication with the current monitoring work carried out by the ESRB – the setting up of a standardised reporting infrastructure at EU level, to enable an appropriate mapping and obtain one integrated overview of risks and vulnerabilities at macro-level[146].

- Proposal 4b: to develop the EU-wide activity-based minimum rules, based on a minimum and proportionate harmonisation of the main elements of already widely applied activity-

[145] ESRB (2021), NBFI Monitor No 6, *EU Non-bank Financial Intermediation Risk Monitor* 2021

[146] In Pires, F. (2019), *Non-banks in the EU: ensuring a smooth transition to a Capital Markets Union, SUERF Policy Note* it is suggested to consider the use of internationally agreed standards which allow for the unique identification of entities and financial instruments such as the International Securities Identification Number (ISIN) and global Legal Entity Identifier (LEI).

based instruments, allowing for the possibility to introduce activity-based macroprudential measures to cover all credit providers

While in some jurisdictions competent authorities already apply entity-based macroprudential measures according to national legislation, some consideration should be given to a more 'activity-based' approach, so to implement effectively the 'same activity, same risk, same rule' principle. However, non-bank entities may have different structures and are subject to different microprudential requirements to banks (for instance, only a few Member States envisage requirements in terms of own funds, large exposures or liquidity), so it would be difficult to envisage the same macroprudential framework to be applied without distinction to banks and non-banks at the same time. To this extent, the concept of 'congruent regulation' has been recently introduced by Metrick and Tarullo (2021) who state that '*forms of financial intermediation posing similar risks to financial stability should be regulated with similar stringency, regardless of legal form, chartering identity, or business'*[147]. It should also be considered that, while carrying out the same activity, different intermediaries may be exposed to very different risks (e.g. according to their balance sheet structure and/or the nature of their business). Therefore, any consideration of a uniform framework based on activity-based requirements should take into account any interaction or complementarity with requirements at entity level. This is without prejudice to the opportunity to achieve a minimum harmonisation framework for non-bank lenders (see below).

8.5 Microprudential risks

- Proposal 5a: to consider a more in-depth analysis to assess the benefits and costs of a minimum harmonisation framework for non-bank lenders

Despite it not being possible to have a full picture of non-bank lending in the EU due to lack of harmonisation in the reporting, the EBA thinks that there is merit in analysing further whether a more harmonised EU regulatory framework should be introduced to capture in particular non-bank lending provided by FinTechs and BigTechs[148] and passported activities, in order to avoid regulatory arbitrage and ensure that the same activities must comply with similar regulations.

At the moment, the deadline of the Call for Advice does not allow an in-depth comparison of the local frameworks with the purpose of a specific gap analysis, as well as a detailed analysis of costs and benefits. However, further insights should be pursued in considering the costs and the benefits of the introduction of a minimum harmonisation framework to be applied at entity or activity level to enhance the resilience of the non-banking sector, ensure the continuity of the financing of the EU economy and provide more protection to consumers. Some consideration should be given to the introduction of minimum common requirements – at EU level – for adequate governance and a robust and risk management framework, a solvency ratio and a measure to capture adequately the risks of long-term funding.

[147] Metrick, A. and Tarullo, D, (2021), *Congruent Financial Regulation, Brookings papers in economic activity. Taking a wider perspective;* in a recent BIS Working Paper Aramonte, Schrimpf and Shin (2021) state that 'a key goal of congruent regulation is to formulate a more holistic approach that allows to gauge the risk-taking capacity of the system as a whole'. See Aramonte, Schrimpf and Shin (2021), *Non-bank financial intermediaries and financial stability*, BIS Working Paper No 972.

[148] FinTechs and BigTechs as defined in Section 2.

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Annex I

Data on volumes in non-bank lending

Note: as already pointed out in Section 5, due to the different scope of the enquiry, there may be differences between the business models reported in Table 3 in the text and the entities referred to for information on authorisation/registration reported in the table below. This is due to the fact that the former provides an overview of the activities that are present in a certain jurisdiction, while the latter reports the denomination for registration/authorisation of activities.

MS	Type of non-bank lender with an indication if it is authorised (A) or registered (R)	Subject to regulatory requirements[149]	Subject to supervision[150]	Subject to reporting requirements	Volume of non-bank lending (stock as of 31 Dec. 2020, EUR mn)	Volume of non-bank lending (flow in 2020, EUR mn)
AT	Leasing (R) Pawnbroking (R)	No No	No No	No No		
BE	Mortgage credit (A) Consumer credit (A)	Yes (activity-based) Yes (activity-based)	Yes Yes	No No	52.4 344.7	
BG	Lending (R) Financial leasing (R) Factoring and other invoice trading (R) Guarantees (R)	Yes (entity-based) Yes (entity-based) Yes (entity-based) Yes (entity-based)	Yes Yes Yes Yes	Yes Yes Yes Yes		
CZ	Consumer credit (A) Mortgage credit (A)	Yes (activity-based) Yes (activity-based)	Yes Yes	Yes Yes	1,254 7.7	N/A N/A
DE	Financial leasing (A) Factoring (A) Pawn shops (R)	Yes (entity-based) Yes (entity-based) No	Yes Yes No	Yes Yes No	7,896 32,407 n/a	+131 -1,976 n/a

[149] Regulatory requirements other than restrictions in activities and prohibition on taking deposits and other funds from the public.

[150] Supervision by relevant competent authorities other than chambers of commerce.

DK	Consumer credit (A)	Yes (activity-based)	Yes	Yes	N/A	
	Mortgage credit (A)	Yes (activity-based)	Yes	Yes	N/A	
EE [151]	Creditors (A)	Yes (activity-based)	Yes	Yes	176.7	
	Mortgage creditors (A)	Yes (activity-based)	Yes	Yes	43.6	
	Credit intermediaries [including P2P platforms] (A)	Yes (activity-based)	Yes	Yes		
	Mortgage credit intermediaries [including P2P platforms] (A)	Yes (activity-based)	Yes	Yes		
	Advisory services (A)	Yes (activity-based)	Yes	No		
	Licensed creditors operating with an exemption (R)	Yes (activity-based)	Yes	Yes	955.3	
	Credit agents (R)	Yes (activity-based)	Yes	No		
EL	Financial leasing (A)	Yes (entity/activity-based)	Yes	Yes	2,686	172
	Factoring (A)	Yes (entity/activity-based)	Yes	Yes	1,876	138
	Consumer credit (A)	Yes (entity/activity-based)	Yes	Yes	98	-16
	Debt refinancing (A)	Yes (entity/activity-based)	Yes	Yes	-	-
	Microcredit (A)	Yes (entity/activity-based)	Yes	Yes	-	
ES	Specialised lending institutions (A)[152]	Yes (entity-based)	Yes	Yes	44,632	-9 473
	Real estate non-bank lenders (R)	Yes (entity-based)	Yes	Yes		
	Real estate credit intermediaries and real estate non-bank lenders (R)	Yes (entity-based)	Yes	Yes	493[153]	139
	Mutual guarantee companies (A)	Yes (entity-based)	Yes	Yes	197	43
FI	Pawnshops (A)	Yes (entity-based)	Yes	Yes	27	
	Consumer credit (R)	Yes (entity-based)	Yes	Yes	4,710	
	Factoring and invoice trading (R)		Yes	Yes	205	
				Yes		

151 EE: Credit intermediaries, mortgage credit intermediaries, advisory service providers and credit agents do not provide credit, but intermediate credit or provide other ancillary services. Still they are licensed or registered (credit agents) under the Creditors and Credit Intermediaries Act. Licensed creditors in Estonia operating with an exemption are subsidiaries of credit institutions.

152 More than 80% of specialised lending institutions are prudentially consolidated into banking groups.

153 (*) These figures are initial estimates which correspond to both real estate credit intermediaries and real estate non-bank lenders. The amount of loans is still being computed and it is subject to further revisions since several entities have not reported yet for the whole 2020 period. The available data from Banco de España's Central Balance Sheet Data Office suggests that the maximum stock of loans (figures may also include additional assets which could not be distinguished with the data we currently have available) held by these entities as of 31 Dec 2020 is EUR 493 million.

	Leasing (R) Business (B2B) loans (R) Export finance, EME finance with full/partial state ownership (R)	Yes, only AML (‘category: company providing *finance services*’) Yes (exact requirements depend on the type of leasing and customer group) Yes, only AML (‘category: company providing *finance services*’) Yes, only issuance of bonds under supervision of the FIN-FSA	Yes Yes Yes	Yes Yes	2,894 (Financial leasing only) 1,222 8,673	
FR	Finance companies (A) Third-party financing companies (A)	Yes (entity-based) Yes (activity-based)	Yes Yes	Yes Yes		
HR	Leasing (A) Factoring (A)	Yes (entity-based) Yes (entity-based)	Yes Yes	Yes Yes		
HU	Lending Pawnbroking Financial leasing Factoring and other invoice trading	Yes (entity-based) Yes (entity-based)	Yes Yes	Yes Yes	HUF 656 billion HUF 17 billion HUF 1,072 billion HUF 93 billion	HUF 533 billion No data available HUF 751 billion HUF 378 billion
IE	Retail credit firms (A) Licensed moneylenders (A) Credit information providers (R) Financial institutions (R)	Yes (entity-based) Yes (entity-based) No No	Yes Yes No Yes[154]	Yes Yes Yes Yes	6,200 141	N/A 198 N/A N/A
IT	Financial institutions (A)	Yes (entity-based)	Yes	Yes		

[154] In IE ‘financial institutions’ are registered and supervised for AML purposes only.

	Of which: - Credit financial institutions[155] (salary-backed loans, consumer credit, factoring, leasing and P2P lending) - Pawnshop - Credit unions and mutual (s.c. confidi)[156] Microcredit operators (R)	Yes (entity-based)	Yes	Yes	113,986 464.6 572.2 18.6	157,655 219 310 7.5
LT	Consumer credit (A) Mortgage credit (A)	Yes (activity-based) Yes (activity-based)	Yes Yes	Yes Yes	632.6 4.4 *(credit unions excluded)*	390.8 1.1 *(credit unions excluded)*
LU	Professionals performing lending operations (A)	Yes (entity-based)	Yes	Yes	878.8	N/A
LV [157]	Consumer lending (A): - Pawnshop credit - Consumer credit - Leasing - Mortgage credit - Distance credits (also FinTech)	Yes (entity-based)	Yes	Yes	754.09 5.87 134.43 414.17 36.75 162.88	500.95 -37.54 -110. 91 -147.78 -7.38 197.34
MT	Lending (A) Guarantees and commitments (A) Credit intermediaries	Yes (activity-based) Yes (activity-based) Yes (activity-based)	Yes Yes No	Yes Yes N/a	2,453.8 0 NA	- 191.4 0 NA

[155] The data provided in the table do not include the volume of non-bank lending (both stock and flow) granted by those entities that are classified in a residual category (called 'other financial institutions'). These companies grant credit in forms with peculiarities that make them impossible to be assembled into a specific business model.

[156] Although the data provided in the table refer to lending granted by confidi, it is recalled that the main activity of confidi is providing guarantees (lending is a residual business). Therefore, the most significant and representative data are deemed to be the amount of financial assets, which includes the guarantees granted. On 31 December 2020, the volume of financial assets was equal to EUR 11,269,128,182. The flow of guarantees provided in 2020 was EUR 3,544,156,437.

[157] For LV, flow volume has been calculated as the new (gross) lending incurred through the year 2020.

NL	Financial service providers (A) Credit unions (A) Cryptocurrency platforms (R)	Yes (entity-based) Yes (entity-based) Yes (entity-based)	Yes Yes Yes	No No No		
PT	Financial credit companies (4) Mutual guarantee companies (4)	Yes (entity-based)	Yes	Yes	1,635.3	
RO	Non-bank financial institutions (R) Pawnshops (R) Credit Unions (R) Entities operating lending activities exclusively from public funds or made available on the basis of intergovernmental agreements(R)		YES No No No	YES No No No	6,662.8	
SE	Consumer credit (A) Mortgage credit (A)	No input provided	Yes Yes	Yes Yes	465.2 2,975.8	553.8 315.3
SI	Consumer lending (A) Consumer real estate leasing services or advisory services in connection with these loans (A)	Yes (activity-based) Yes (activity-based)	Yes Yes	Yes Yes	478.4	-53.2
SK	Business-to-consumer (B2C) lending (A) Business-to-business (B2B) lending (R) Factoring B2B lending (R) Financial leasing B2B lending (R)	Yes (activity-based) No No No	Yes No No No	Yes No No No	917 n/a n/a n/a	217 n/a n/a n/a

Annex II – Lending by payment institutions and e-money institutions

Within the EU sectoral legislation, a case that deserves particular attention in the context of new players entering the credit market relates to lending activities provided by payment institutions and e-money institutions. This is especially relevant for the role played by BigTech firms, which often enter financial markets through provision of payment services, which are functional to their 'core' activities (e.g. e-commerce, advertising, etc.), and can entail the provision of credit as an ancillary service to the provision of payment services. This can allow them to transition to the provision of other financial services, including lending, more easily.

In this connection, Article 18(4) PSD2 provides the possibility for payment and e-money institutions to grant credit relating to payment services as referred to in point (4) or (5) of Annex I PSD2 ('ancillary lending') only if all of the following conditions are met:

a. the credit shall be ancillary and granted exclusively in connection with the execution of a payment transaction and to ensure compliance with this condition, institutions adopt appropriate systems and procedures to monitor loans granted;

b. the credit granted in connection with a payment shall be repaid within a short period which shall in no case exceed 12 months, unless it is granted in relation to payments made with credit cards;

c. such credit shall not be granted from the funds received or held for the purpose of executing a payment transaction;

d. the own funds of the payment institution shall at all times and to the satisfaction of the supervisory authorities be appropriate in view of the overall amount of credit granted.

In addition, Article 18(6) PSD2 states that the Directive '*shall be without prejudice to Directive 2008/48/EC, other relevant Union law or national measures regarding conditions for granting credit to consumers not harmonised by this Directive that comply with Union law*'. Therefore, within the survey on non-bank lending, EU competent authorities were also asked to answer a number of questions with respect to lending activities provided by payment and e-money institutions, in particular whether:

I. additional authorisation is needed to provide lending services;

II. additional prudential requirements are imposed on institutions that provide ancillary lending in accordance with Art. 18(4) PSD2;

III. competent authorities have visibility on cross-border activities carried out by payment institutions, either as home or host.

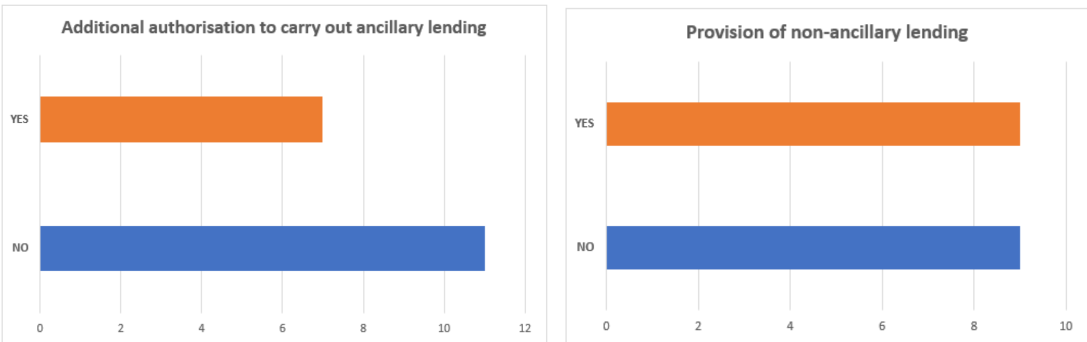
To this extent, 18 competent authorities provided their feedback, and the responses are reported in the next subsections.

Authorisation to carry out lending activities

152. Article 5 PSD2 sets out, inter alia, the information on the internal organisation, governance and ICT security policies to be provided for authorisation as a payment institution. Article 11 sets out the conditions for granting the authorisation. Article 18(4) defines the conditions according to which payment and e-money institutions can provide credit as already indicated. To this extent, the survey asked the following:

    1. *Do payment institutions (PIs) and e-money institutions (EMIs) require in your jurisdiction an additional authorisation for carrying out credit ancillary to their payment activities according to Article 18(4) PSD2? (Figure A1, LHS)*
    2. *Do PIs and EMIs in your jurisdiction in addition to their PI/EMI licence hold also other lending licence(s) that enable them to provide also other lending than ancillary credit according to Article 18(4) PSD2? (Figure A1, RHS)*

Figure A1 – Ancillary (LHS) and non-ancillary (RHS) lending by payment and e-money institutions



153. The survey shows that the majority of respondents do not ask for additional authorisation to carry out lending according to Art. 18(4) PSD2. In a couple of cases, even if additional authorisation is not required, there are some conditions to be fulfilled (e.g. a statement indicating that the PI or EMI intends to provide credit, in line with the requirements of PSD2). On the other hand, when additional authorisation is needed, it is required to confirm that it will be in accordance with the conditions set out in Art. 18(4) PSD2

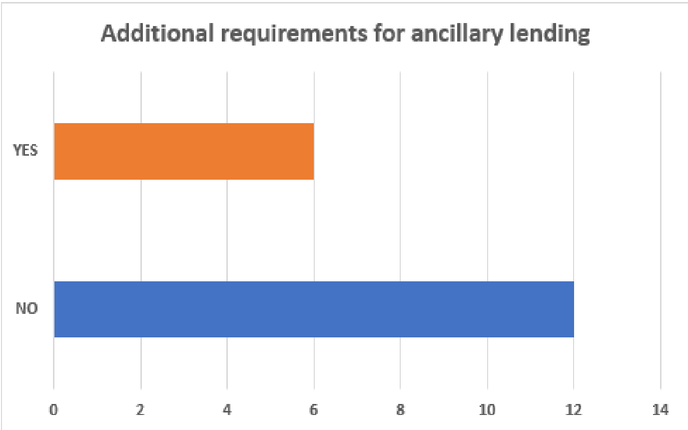
154. In half of the jurisdictions, PIs and EMIs do not need to hold additional lending licences to enable them to provide credit other than the ancillary one in accordance with Art. 18(4) PSD2. Where PIs and EMIs also provide lending other than ancillary credit, they need to hold specific licences (consumer credit, NBFI, financial intermediaries or hybrid institutions). In one case, when additional activities impair the financial strength of the institution / create difficulties for its supervision, the PI/ EMI may also be required to set up a separate entity.

Regulatory requirements for ancillary lending

Payment and e-money institutions are subject to a number of regulatory requirements in terms of initial capital (Art. 7 PDS2) and own funds (Art. 8–9 PSD2). To this extent, the survey asked competent authorities to indicate the following:

3. *Are PIs and EMIs that carry out only credit ancillary to their payment activities subject to national lending-specific regulatory requirements in your jurisdiction (e.g. additional capital requirements for lending activity) in addition to requirements stemming from PSD2/EMD2? (Figure A2)*

Figure A2 – Additional requirements for ancillary lending



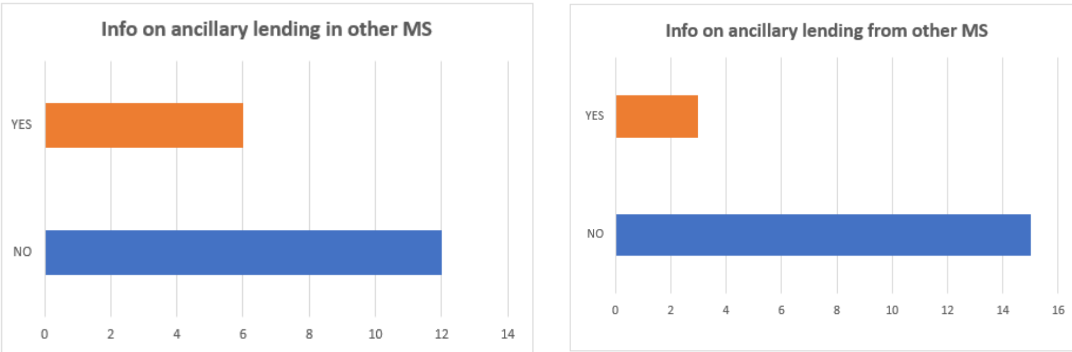
In the majority of jurisdictions, no additional prudential requirements are envisaged for ancillary credit, although in one case the institution is required to provide more documentation (on creditworthiness assessment), while in another one some additional requirements are asked for only from small institutions (although they were not specified).

When additional requirements are asked for, only in one case is this an automatic capital requirement (6% of ancillary loans granted); in another case, it is decided on a case-by-case basis, although in practice the authority explained that if a PI or EMI is engaged in continuous credit granting, it will be subject to a capital requirement. In other cases, the requirements are more related to the existence of adequate mechanisms for consumer protection, and of appropriate creditworthiness assessments.

Cross-border provisions of ancillary lending

Finally, given the relevance of the cross-border nature of some payment services and related activities (including lending), the survey also explored whether competent authorities have visibility on cross-border activities carried out by payment institutions in their jurisdictions, either as home or host institution:

4. *Do you have precise information on PIs and EMIs established in your jurisdiction that carry out ancillary credit activities in other Member States? (Figure A3 LHS)*
5. *Do you have precise information on PIs and EMIs established in other Member States that carry out ancillary credit activities in your jurisdiction? (Figure A3 RHS)*



The survey shows that most of the CAs do not have information on PIs and EMIs that are carrying out ancillary lending in other MS. One CA clarified that having passported out the provision of payment services where ancillary credit is provided does not specifically imply that the PI and EMI is effectively carrying out such services in other Member States. In two other cases, although the CAs indicated that they may be able to retrieve this information, they also stated that their PIs and EMIs do not carry out ancillary lending in other MS.

Similarly, only three competent authorities reported having information on lending activities carried out in their jurisdictions, and in two cases only when this activity is carried out through branches. One authority indicated that, while they are aware that some PIs/ EMIs from other MS are carrying out ancillary lending in its jurisdiction, there is no information available, while in another case it was indicated that such information is only available when the home authority notifies the commencement of activities.

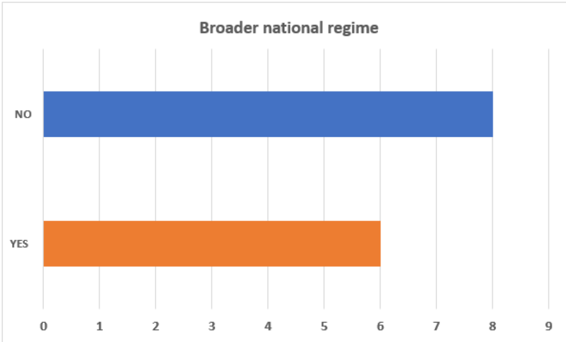
Annex III

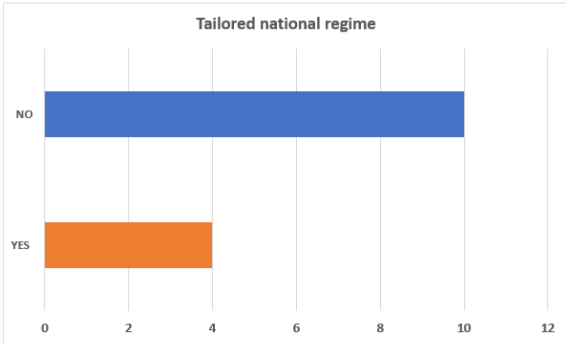
The charts on the following pages summarise the results of the responses provided by competent authorities in relation to the regulatory regime applicable to specific non-bank entities providing credit to the economy. In particular, it was asked whether:

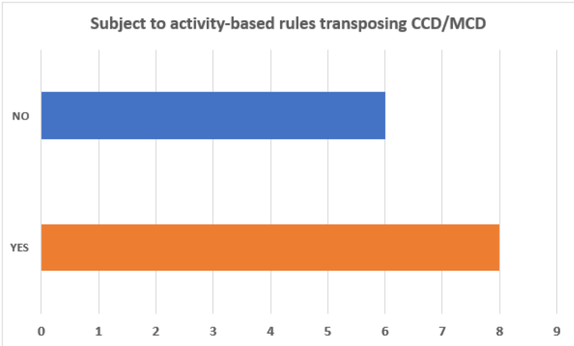
1) the entities were subject to a specific, tailored national regime;
2) the entities were subject to a broader national regime (e.g. CRR/CRD, IFR, AIFMD);
3) the entities were subject to CCD/MCD requirements (as transposed into national regimes);
4) the entities were subject to an AML/CFT regime.

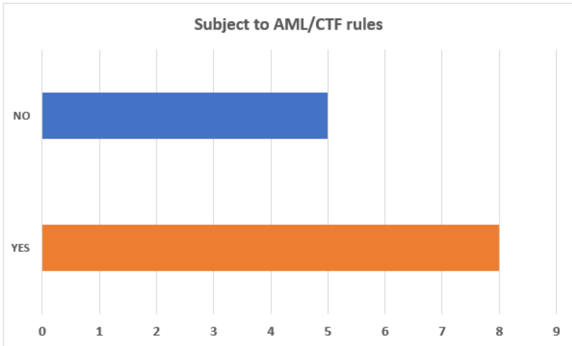
Disclaimer: please note that the information in the next pages refers both to jurisdictions which provided detailed information as reported in Section 6 and jurisdictions which provided only general information on the regime applicable to each business model. Therefore, there may not be perfect correspondence between the information provided in this Annex and the more granular information provided in the tables in Section 5 and Section 6 describing the specific requirements applicable to each business model in each jurisdiction.

P2P PLATFORMS / MARKETPLACE CONSUMER LENDING



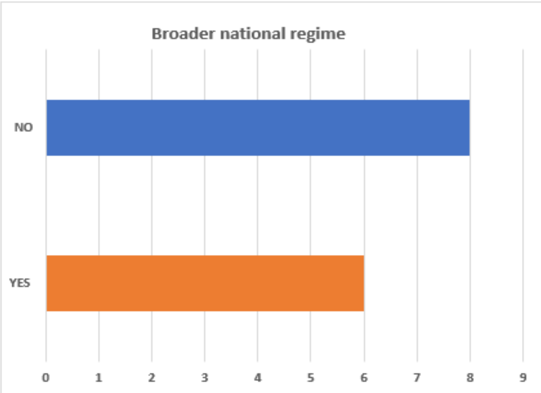


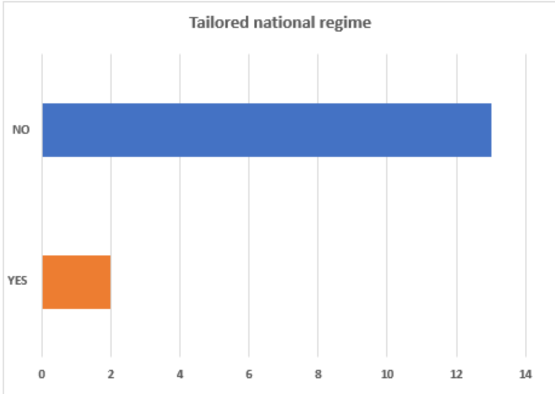


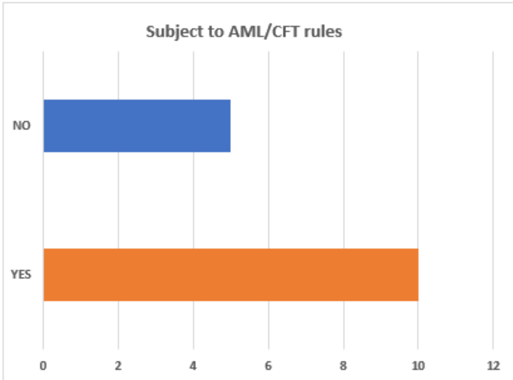


- P2P and marketplace consumer lending is regulated by a tailored regime in four MS, but falls under the scope of a broader regime in six jurisdictions, e.g. consumer lending, banking or non-bank financial institutions regulations.
- In one MS, a broader regime applies only if the platform itself grants credit as in the case of the hybrid model, i.e. there is a licensed non-bank lender that owns the P2P lending platform and participates pro quota (i.e. 1% of the lending) in the lending activity as a signalling factor for private lenders, in which case the company is a financial institution subject to the relevant regulatory framework.
- The majority of jurisdictions apply CCD/MCD rules to this business model, while two MS reported that it is regulated according to the CCD (and the MCD in one case) when the P2P platforms act as a creditor or as a credit intermediary, or is a financial institution.
- Three MS reported this business model constitutes an unregulated lending activity within their jurisdiction, while one jurisdiction noted that standard P2P lending was forbidden.
- In more than 60% of the MS that reported an answer, this activity does not seem to fall yet under AML/CFT rules.

BUY-NOW-PAY-LATER (BNPL)

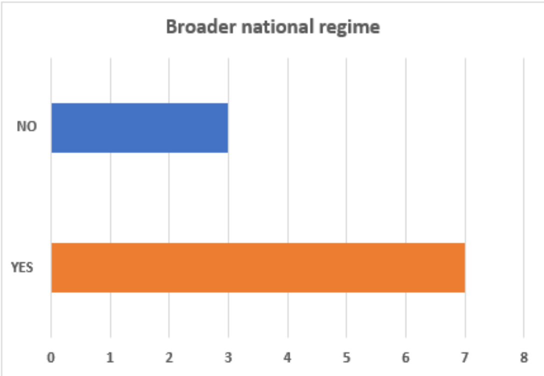


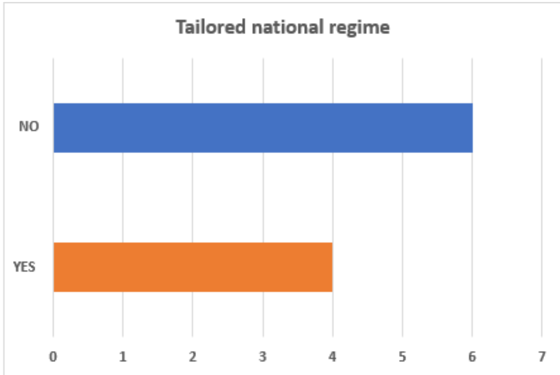


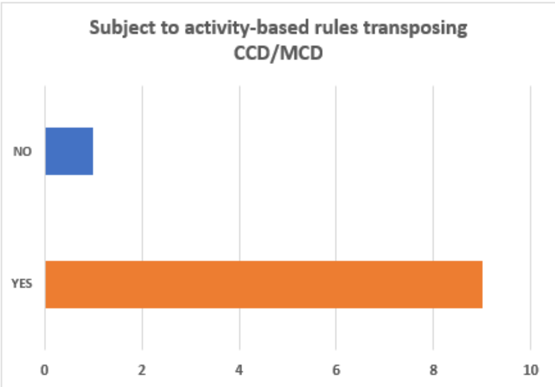


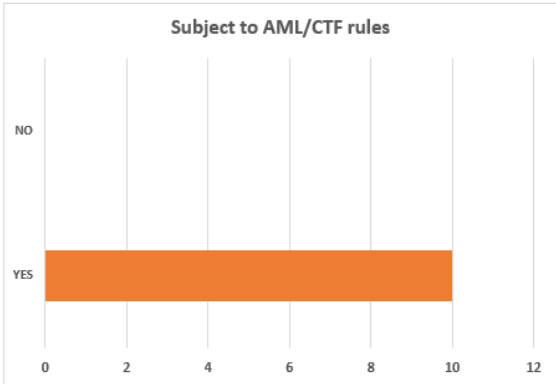
- The vast majority of the jurisdictions do not envisage a specific national regime for BNPL, while there are a number of cases when other broader national regimes are applied, e.g. factoring and consumer credit. In one MS, depending on the business model, BNPL is covered under factoring, which is an activity regulated in the Banking Act.
- In most of the jurisdictions, BNPL is subject to AML/CFT rules, while application of activity-based rules from the CCD is present in roughly 60% of cases. One MS stated that BNPL is regulated according to the CCD if any interests or other costs regarding deferral payment exist.
- The AML/CFT regime is applied in two-thirds of the jurisdictions where this model is present.

BALANCE SHEET CONSUMER LENDING



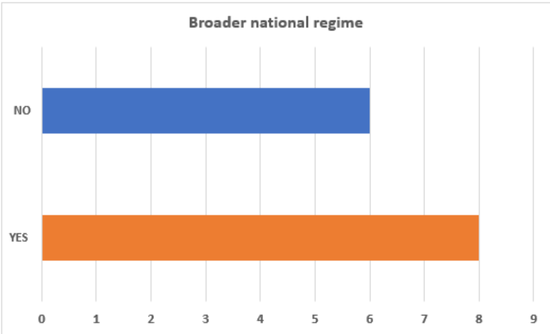


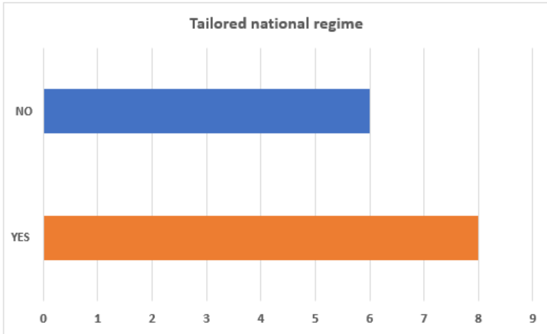


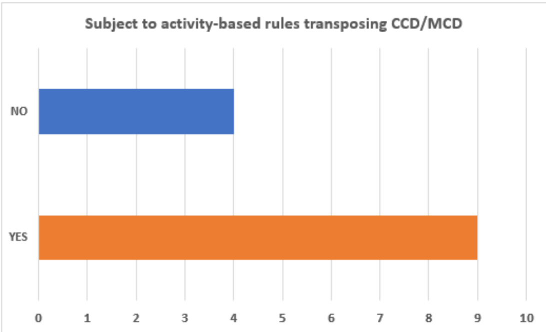


- Only four national regimes are tailored to balance sheet consumer lending, otherwise it is regulated in seven jurisdictions by a broader national regime, e.g. banking, consumer credit, creditors and credit intermediaries, financial institutions or non-bank financial institutions regulations.
- One NCA reported that balance sheet consumer lending falls under the general authorisation for the provision of consumer credits in unlimited scope.
- Regarding rules transposing the CCD/MCD, they apply to balance sheet consumer lending in nearly all the jurisdictions. In one MS, the Law on Consumer Credit transposing CCD applies to consumer credits below EUR 200 or interest-free consumer credits; such credits are subject to the general rules applicable to consumer credits.
- The business model is subject to AML/CFT rules in all jurisdictions without exception.

MICROCREDIT







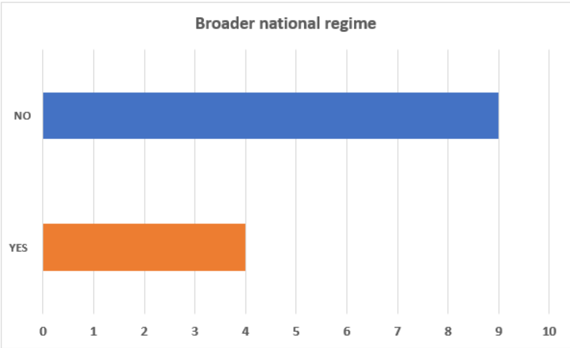
- Microcredit is regulated by a tailored regime in most jurisdictions (eight), and by a broader regime in eight MS, including banking, consumer credit, creditors and credit intermediaries, financial institutions or non-bank financial institutions regulations. In one MS, a specific regime covering aspects other than prudential ones (e.g. registration or disclosure to customers requirements) is included in the Consolidated Banking Law.

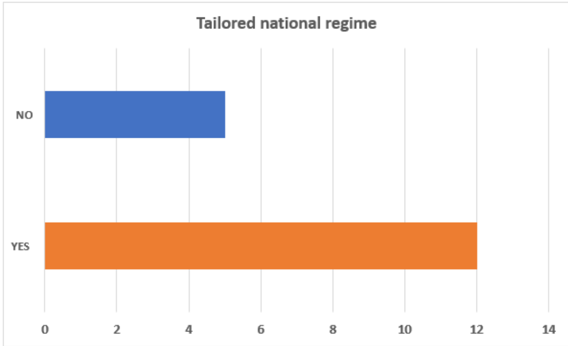
- One MS noted that there was no lower or upper limit in the Consumer Credit Act for microcredit.

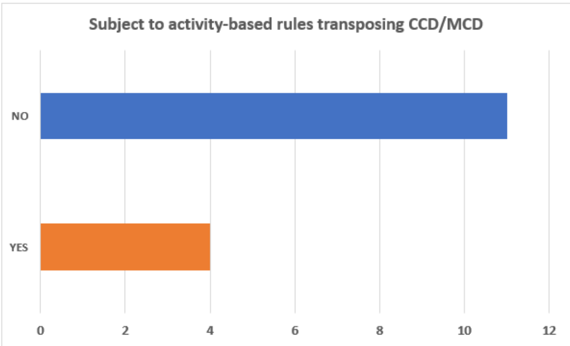
- Microcredit is subject to activity-based rules transposing the CCD/MCD in the majority of (nine) MS; in one jurisdiction, CCD rules apply when the credit exceeds EUR 200. One MS exempts microcredit from CCD requirements. AML/CFT rules apply to microcredit in nearly all jurisdictions.

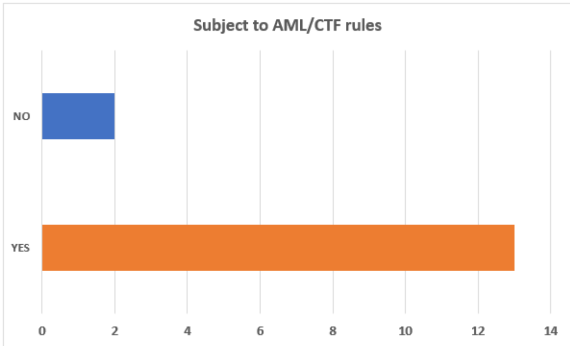
- In one jurisdiction, 'otherwise defined creditors' are entitled to provide credit or loan contracts which are not consumer credits, including credits with a value of less than EUR 100, solely on the basis of an authorisation from the central bank.

PAWNSHOPS









- Pawnshops are regulated in four MS by a broader national regime, e.g. a non-financial regulation or the regulation applicable to financial institutions. They fall under a tailored regime in 12 MS.

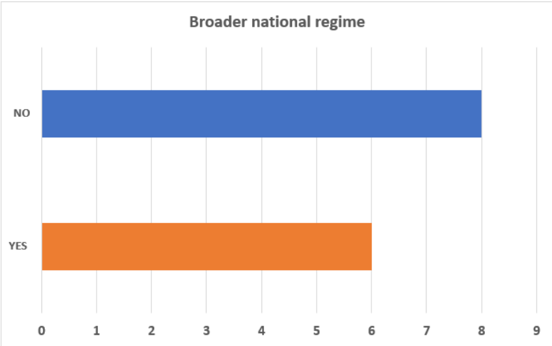
- In some MS, this business model can only be carried out by banks and financial institutions. In one MS, pawnshops are considered as non-bank financial institutions and recorded in the Entry Register for statistical purposes only.

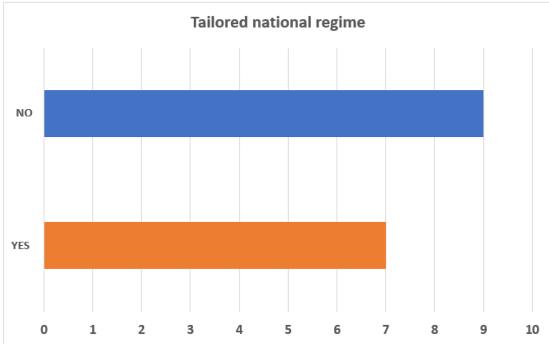
- One MS reported that pawnbroking was exempted from the Banking Act, the activity being instead regulated by a specific regulation. In another MS, pawnshops are exempted from the Law on Consumer Credits, and their lending activities are governed by the Civil Code.

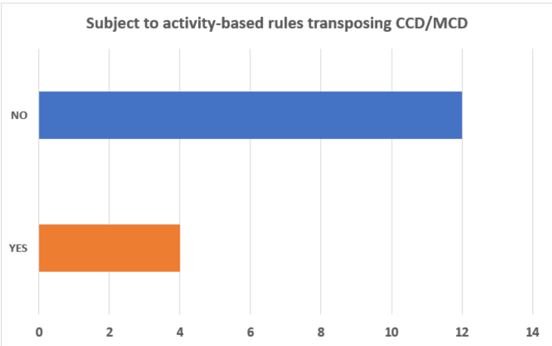
- In one MS, pawnshop activities are subject to authorisation, to be issued by the General Secretariat for Economic Activities. In another jurisdiction, the notification of the Trade Licensing Office and a so-called 'non-regulated trade licence' is required, with no further regulatory requirements.

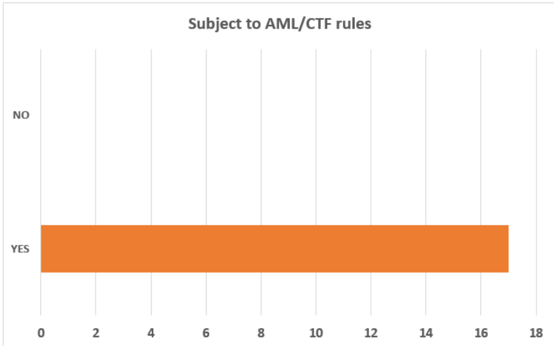
- Pawnshops are subject to rules transposing the CCD/MCD in only four out of 15 MS. In one MS, pawnshops are expressly excluded from the scope. However, AML/CFT rules apply in 87% of cases (13 MS).

FINANCIAL LEASING







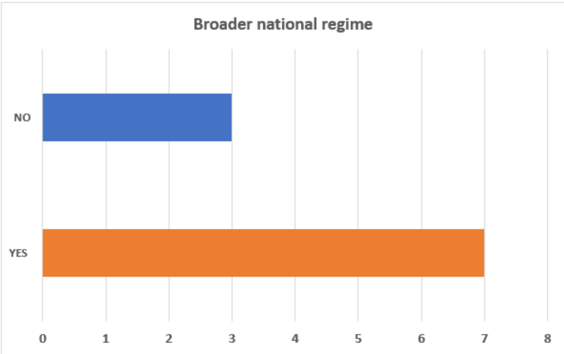


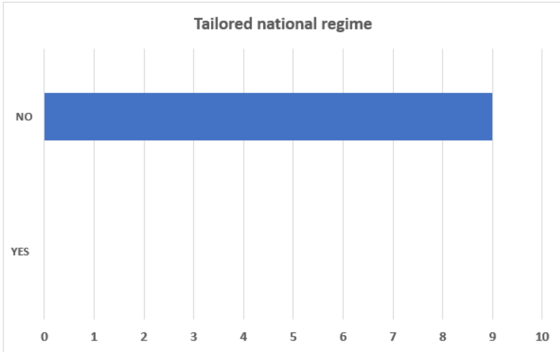
- In seven MS, a tailored regime applies to financial leasing, while in six MS a broader national regime regulates financial leasing, e.g. regulations applicable to banks, credit institutions, financial institutions, non-bank financial institutions or professionals performing lending operations; one MS referred to the law on currency exchange and other financial activities.

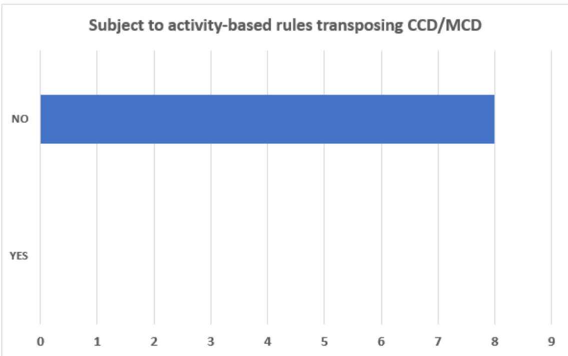
- In one MS, leasing activities are regulated when lending is provided to consumers, in which case the Law on Consumer Credit transposing the CCD applies; when provided to businesses, or for business purposes, financial leasing is not regulated and governed by the Civil Code.

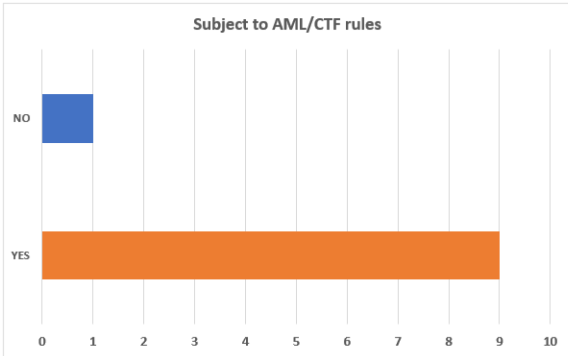
- It is subject to rules transposing the CCD/MCD in only 25% of cases (four MS), but it is subject to AML/CFT rules in all jurisdictions without exception.

ACCOUNTS RECEIVABLE (AR) FINANCING / INVOICE TRADING









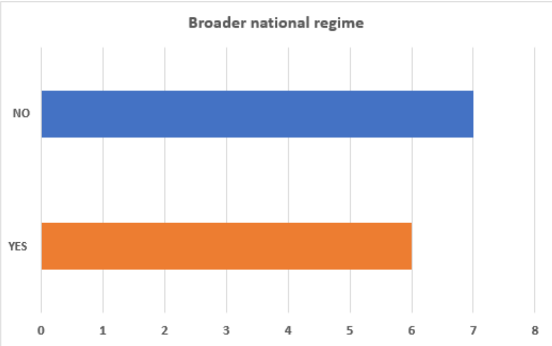
- The sample consists of ten responses, as nine NCAs were unable to provide data due to a lack of detailed information on this particular business model or because they have not yet observed this business model in their jurisdiction.

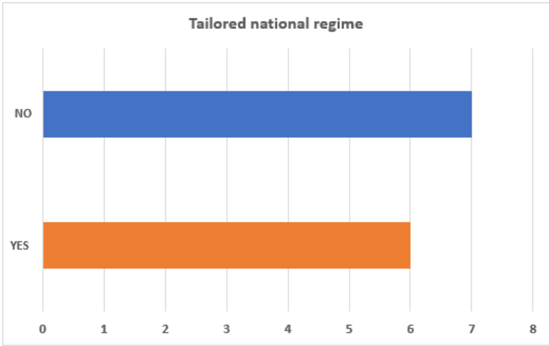
- AR financing / invoice trading is only regulated in seven MS, by a broader national regime, e.g. banking or non-bank financial institutions regulations; in one MS, this business model falls under the factoring/forfaiting regime, whilst in another it falls under the law on currency exchange and other financial activities.

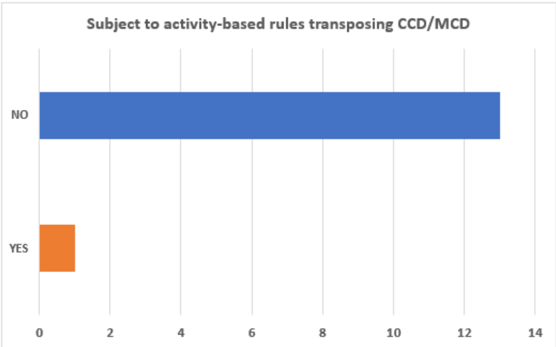
- It is not subject to rules transposing the CCD/MCD in any jurisdiction, however it is in 90% of cases subject to AML/CFT rules.

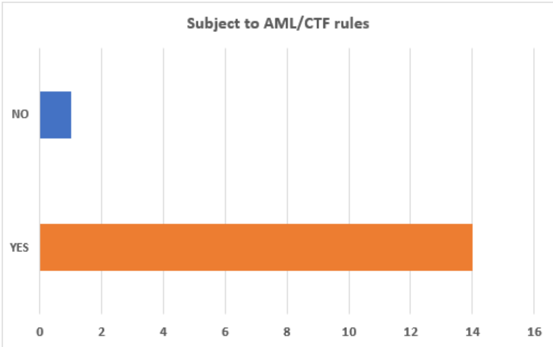
- One MS noted that this activity is typically provided by specialised lending institutions.

FACTORING









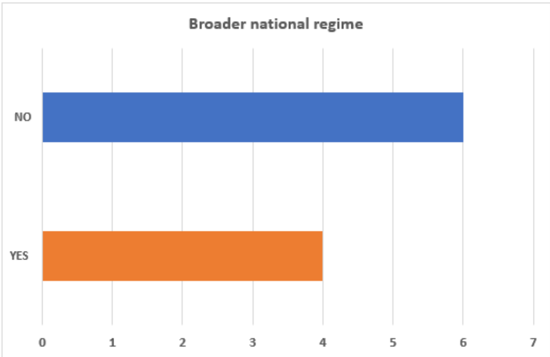
- In six MS a broader national regime regulates factoring, e.g. banking, financial institutions or non-bank financial institutions regulations; in one MS the law on currency exchange and other financial activities applies to factoring. In one MS factoring can only be carried out by banks and other financial institutions; for the latter a specific national prudential regime comparable to the banking one applies. Besides this, a regime tailored to factoring is applicable in six MS.

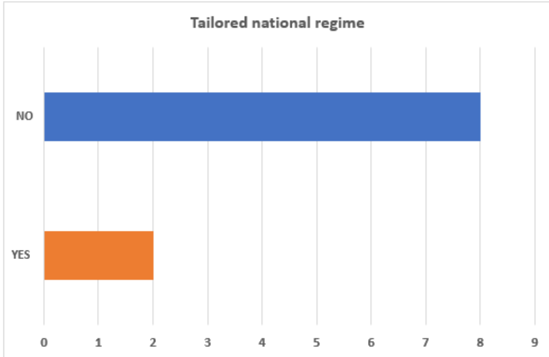
- In almost all jurisdictions (13), factoring is not subject to rules transposing the CCD/MCD. It is in only one MS, where the entities authorised to provide factoring are subject to the CCD, with some exceptions.

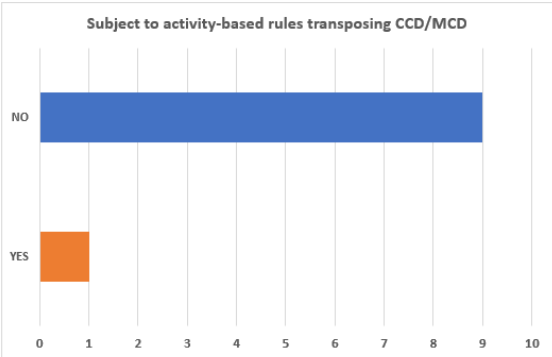
- In almost all jurisdictions (14), factoring is subject to AML/CFT rules.

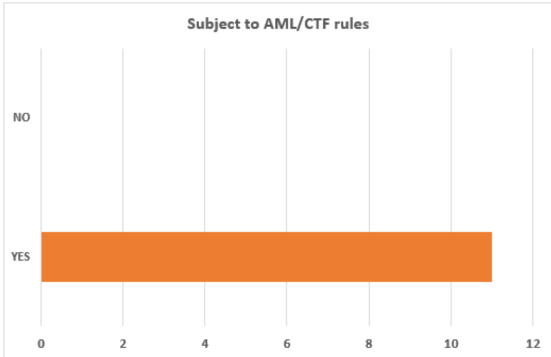
- One MS reported that factoring was usually provided by banks to businesses in its jurisdiction and unregulated, whilst lending activities were governed by the Civil Code.

BALANCE SHEET BUSINESS LENDING (including SME lending)







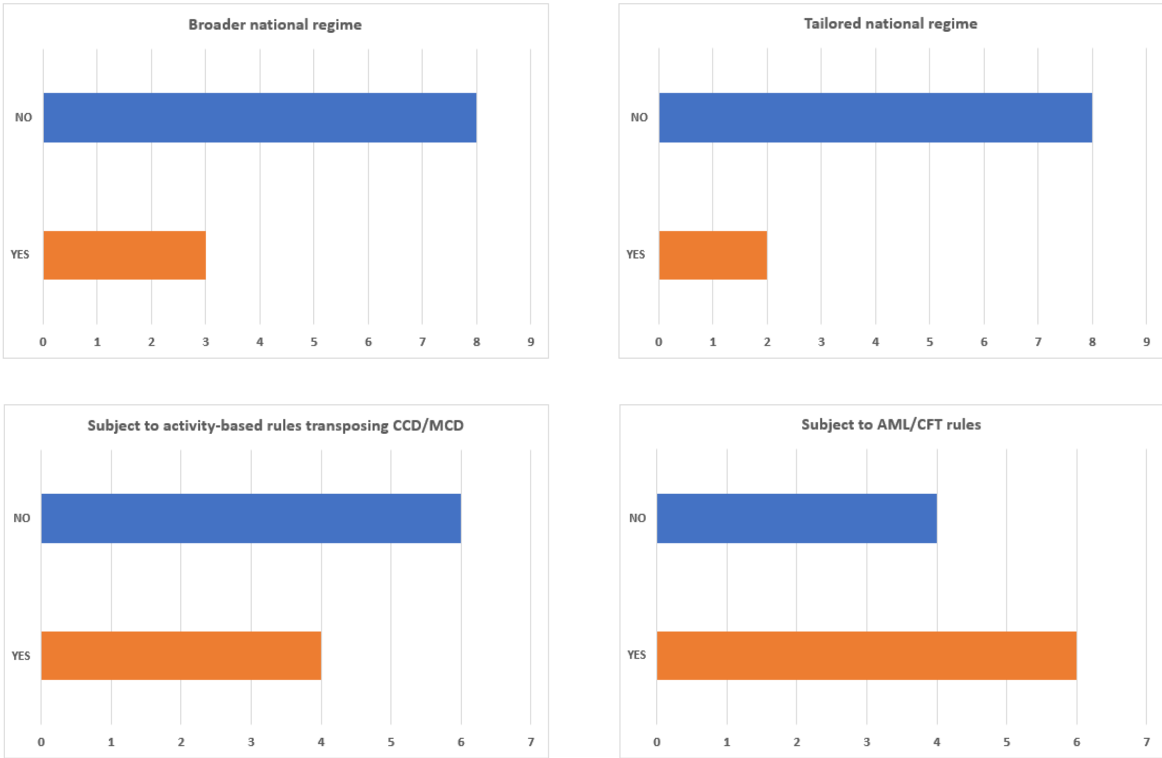


- Balance sheet business lending is regulated by a broader regime in four MS and by a tailored regime in two jurisdictions. It constitutes an unregulated lending activity, not prohibited by national law, in five jurisdictions.

- The vast majority of respondents reported that balance sheet business lending was not subject to rules transposing the CCD/MCD in their jurisdictions. Only one MS reported otherwise, with the entities authorised to provide lending having to comply with the CCD, with some exceptions.

- In all jurisdictions without exception, balance sheet business lending is subject to AML/CFT rules.

MARKETPLACE PROPERTY LENDING PLATFORMS



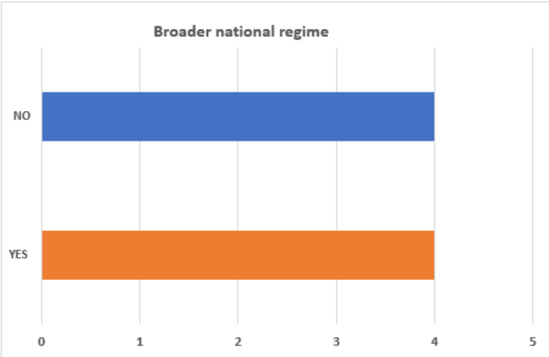
- The sample consists of 11 responses, as eight NCAs were unable to provide data due to a lack of detailed information on this particular business model or because they have not yet observed this business model in their jurisdiction.

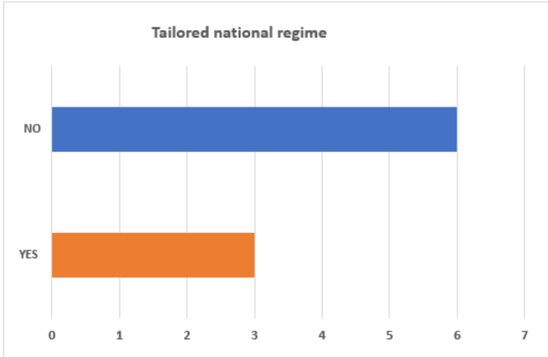
- In six MS, marketplace property lending platforms are not regulated by law, and constitute an unregulated lending activity prohibited by national law in two jurisdictions.

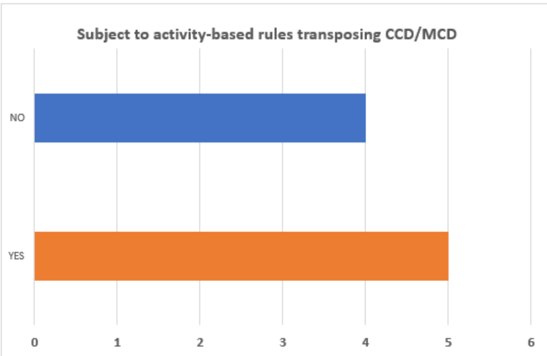
- It is regulated by a broader national regime, e.g. banking legislation, in three jurisdictions; one of them noted that these platforms may fall under the credit intermediary act provisions, even though it has not been observed yet. Two jurisdictions have a tailored regime in place; one of which does not exclude by law real estate or property-related projects.

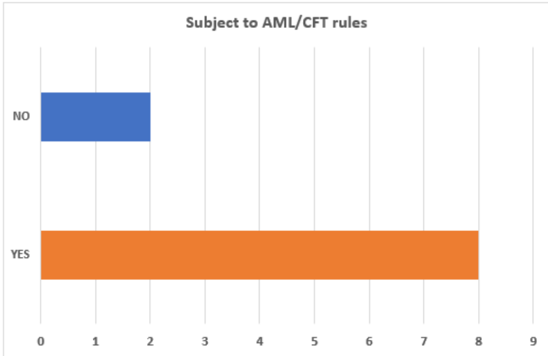
- Marketplace property lending platforms are not subject to rules transposing the CCD/MCD in the majority of cases (six), whilst they are in four MS. As for AML/CFT rules, they apply to marketplace property lending platforms in the majority of jurisdictions (six), and do not apply in four cases.

BALANCE SHEET PROPERTY LENDING







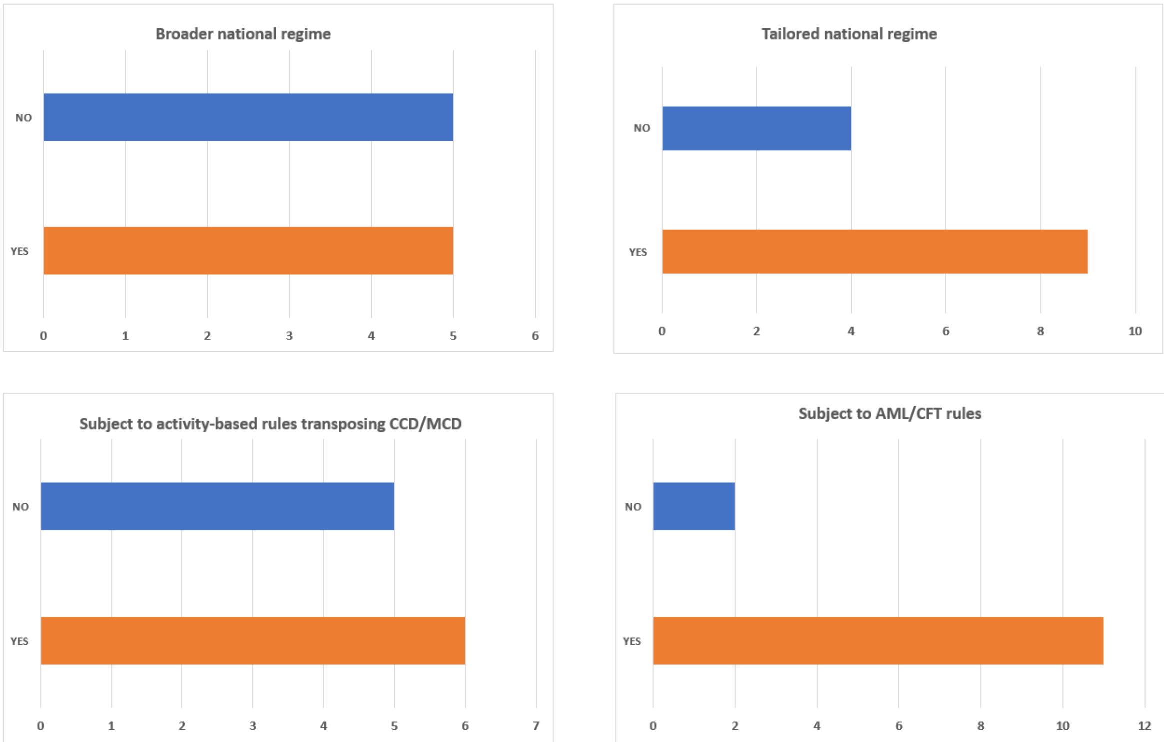


- Out of ten responses provided, only three jurisdictions apply a tailored national regime, e.g. the regime applicable to real estate non-bank lenders or real estate credit intermediaries. A broader national regime is applicable in four countries: in a couple of them, only authorised credit institutions and financial companies are allowed to perform balance sheet property lending and banking provisions apply; in another one, the non-bank financial institutions regime applies.

- In one jurisdiction, a tailored regime only applies to balance sheet property lending to consumers, as B2C non-bank creditors are entitled to offer and provide mortgages when authorised, although no mortgage lending authorisation has been granted yet; however, balance sheet property lending to businesses falls under the balance sheet business lending regime.

- Balance sheet property lending is subject to activity-based rules transposing the CCD/MCD in five jurisdictions, while it is not the case in four MS. Regarding AML/CFT rules, they apply in nearly all the jurisdictions that have reported.

CREDIT UNIONS AND MUTUALS

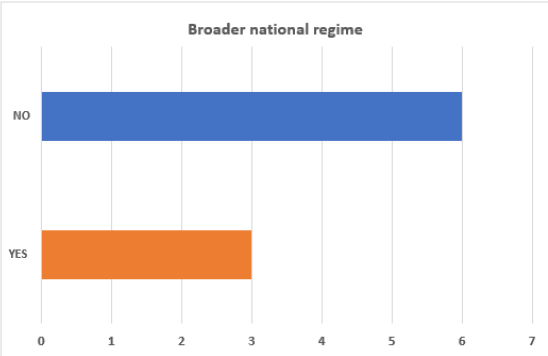


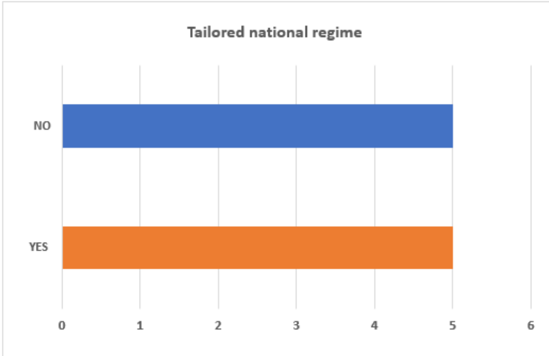
- In the majority of countries (nine), a national regime tailored to credit unions and mutuals is applicable; only four countries have no tailored regime currently in place.

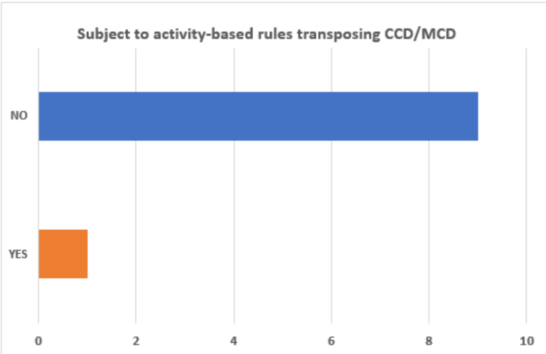
- In five countries, credit unions and mutuals fall into the scope of broader applicable regimes. For instance, credit unions and mutuals may be deemed to be credit institutions and thus subject to the provisions of the banking legislation, or they may be considered non-bank financial institutions; one country also introduced a size threshold on which the prudential supervisory regime depends.

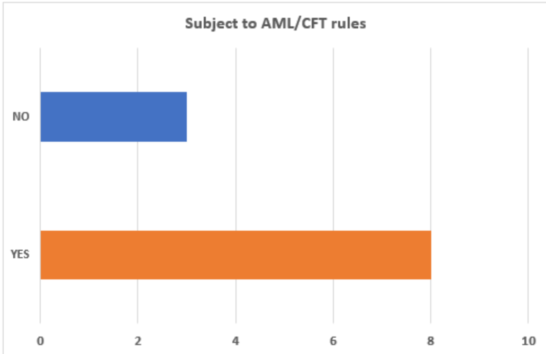
- Roughly half of the MS that have reported having provisions in place for credit unions apply the activity-based rules transposing the CCD/MCD. As for AML/CFT rules, they apply to credit unions and mutuals in nearly all the jurisdictions.

GUARANTEE PROVIDERS









- Five MS have a tailored national regime for guarantee provision (e.g. for companies providing their partners with guarantees, exclusively for corporate purposes). In three MS, guarantees fall under a broader national lending regime (e.g. the prudential supervisory regime applicable to non-bank financial institutions).

- Guarantee providers are subject to activity-based rules transposing the CCD/MCD in only one MS. They are subject to AML/CFT rules in eight countries.

- In one MS, guarantees are usually provided by banks, i.e. fall outside the scope of this survey. One MS referred in the survey to insurance companies – credit insurance and suretyship insurance. In another MS, guarantees were possibly supervised under insurance law.