

THE IMPACT OF THE MORTGAGE CREDIT DIRECTIVE
2014/17 IN MALTA

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Summary

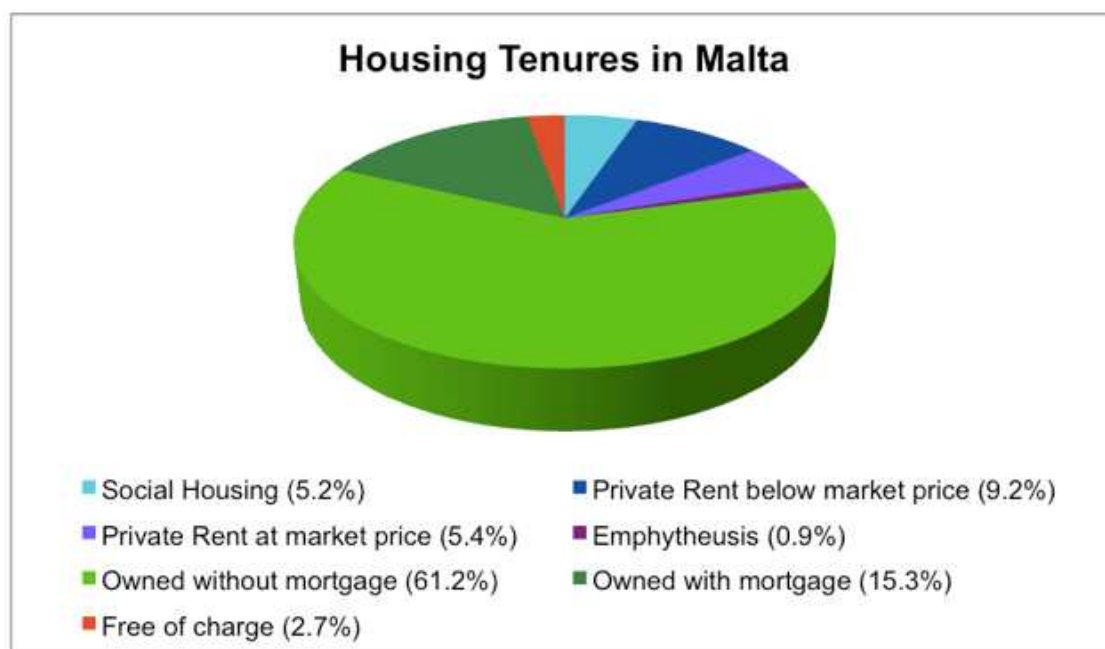
PART I. GENERAL OVERVIEW OF CONSUMER CREDITS SECURED BY IMMOVABLES	3
1. The preference for ownership	3
2. Securities over immovable property under the Maltese Civil Code	5
3. Foreign investment in immovable property	6
4. Effect of the financial crisis	7
PART II. THE IMPACT OF DIRECTIVE 2014/17	10
1. The transposition of Directive 2014/17	10
2. Impact of the Directive	10
3. Maltese Home Loan Regulations	12
4. The Regulatory Bodies	13
PART III. FINAL COMMENTS	15

Part I. General overview of consumer credits secured by immovables

1. The preference for ownership

The dominant form of tenure in Malta is home ownership, which, on itself, constitutes 76% of the total housing stock. As is typical of Liberal as well as Southern European welfare models¹, renewed and sustained policies along the years made ownership all the more accessible, thereby further stigmatizing individuals that could not afford to own property.

Figure 1 Proportion of Housing Tenures in Malta²



The roots of this policy go back to the visits of two prominent British experts who as far back as the mid-1950s had aimed to stimulate house building and encourage local investment in housing.³ One of these advisors in particular encouraged the Maltese themselves to direct their savings into property rather than invest them in foreign

¹ See: G. Esping-Andersen, *Three Worlds of Welfare Capitalism* (Cambridge, UK: Polity Press, 1990); F.G. Castles & M. Ferrera, "Home Ownership and the Welfare State: Is Southern Europe Different?", *South European Society and Politics*, 1996:1(2), 164-165.

² K. Xerri, "National Eviction Profile: Malta", *Pilot project - Promoting protection of the right to housing – Homelessness prevention in the context of evictions*, (Human European Consultancy/FEANTSA/National University of Ireland Galway, 2014) [unpublished].

³ C. Vakili-Zad, *Housing Policy in Malta*, (Marsa: Union Print/YMCA Homeless/Department of Public Policy – University of Malta, 2007), 129.

schemes.⁴ These recommendations soon came to life under the subsequent governments when not only did the administration start selling plots in the context of the Home Ownership programme, but it also undertook to start selling government units to sitting tenants at significantly discounted rates.⁵ A Home Ownership Scheme (HOS) was subsequently launched by the succeeding administration, in which government-owned land was divided into plots and granted on perpetual emphyteusis to prospective home owners.⁶ The Church itself issued a parallel scheme through which it offered more than 2,000 plots.⁷ Social forces also kept pressuring the government to come up with plans for building new low-income housing, which resulted in the strengthening of the massive housing programme.⁸ This policy culminated in the Building Development Areas Act (BDA) enacted in the early 1980s, which empowered government to distribute further plots of land, even outside the development boundaries, and selling them freehold for nominal prices.⁹

The nineties eventually saw the setting up of the Planning Authority¹⁰, which instilled a fear that development land would no longer be available. This caused a sudden rise in property prices¹¹ which, in turn, diffused the perception that property was the most secure area of investment. Government no longer needed to encourage home loans¹² and lending conditions improved drastically upon HSBC's entry into the local market (until that time the main lending institution was the Bank of Valletta). The latter, in fact, eliminated the discriminatory practice of lending only to males and it also gave more generous terms regarding the length of the repayment and the minimum deposit

⁴ The United Kingdom Government Funds seems to have been a popular choice at the time (Vakili-Zad, *Ibid.*)

⁵ P. V. Mifsud, *An Evaluation of Housing Patterns and Policies in Malta*, Dissertation submitted to the Department of Environmental Social Sciences, Keele University, 1997, 88.

⁶ A. Camilleri, *Building Trends and Policies 1943-1981*, Dissertation submitted to the Department of Architecture and Civil Engineering, University of Malta, 1982, 99. Applicants were subject to a means test that excluded individuals who already owned property. Around 14,000 plots were allocated under this scheme that subjected the applicants to a very low amount of ground rent that could be redeemed – thereby becoming a full owner – at will.

⁷ Vakili-Zad, *Housing Policy in Malta*, 2007, 188.

⁸ Vakili-Zad, *Housing Policy in Malta*, 2007, 183.

⁹ P.V. Mifsud, *The effects of planning policies on housing affordability in Malta*, paper presented to the Housing Affordability Conference, Malta, 1999; data relating to 2005 retrieved from: NSO, Census on Population and Housing 2005. The Building Development Areas Act (BDA) was soon abrogated due to its detrimental effect on Malta's limited land resources.

¹⁰ The Structure Plan published in 1990 had set the boundaries within which new property developments could take place.

¹¹ *Ibid.* Mifsud.

¹² In the 1970s government set up the Lohombus Corporation (Loans for Home and Business) to support people in building or buying their houses through relatively easy credit. This new entity was meant to solve the reluctance of the main local banks to lend money with long repayment terms. This was a very significant innovation at the time since people who had to borrow money to buy property were stigmatized and facilities to borrow money were both restricted and restrictive.

required.¹³ Competing institutions started ensuring easily accessible and low interest rates. The amount of outstanding loans for house purchases, in fact, has seen an astounding increase in the past few years: whilst it hovered around €150 million in 1999, it grew to €2,458 million in 2009 and even further to €4,066 million as reported by the Central Bank of Malta in July of 2016.¹⁴

The constant emphasis on ownership meant that other forms of tenure were neglected by the policy maker. The private rented sector is currently not regulated¹⁵, meaning that other than the general Civil law rules on *locatio conductio*, landlords are free to set initial rents, rent increases as well as the duration of the contractual relationship. As a result rentals are a particularly unstable housing option and hardly, if not at all, an alternative to ownership. Social housing is, on the other hand, a saturated market with the current administration declaring that rather than the construction of new dwellings the Housing Authority will be focusing on the continued sale of public dwellings, and the restoration of existing dwellings¹⁶ (the number of applicants on the waiting list as at November 2015 was that of 2,620).¹⁷

Due to all these factors in Malta there exists a prevalent home ownership culture wherein the ownership of one's dwelling is the only avenue capable of offering housing stability and even affordability since in certain cases ownership is even cheaper than renting.¹⁸

2. Securities over immovable property under the Maltese Civil Code

Immovable properties in Malta are usually secured by three main causes of preference: general hypothecs, special hypothecs and special privileges. In line with general Civil law rules, Article 2011 defines a hypothec as "a right created over the

¹³ *Ibid.* Vakili-Zad, 151.

¹⁴ Central Bank of Malta, Quarterly Review, 2016:2, 102.

¹⁵ This is true for leases negotiated after 1995. Pre-1995 leases are governed by a number of protective statutes which have been recently held, both at an ECHR as well as a domestic Constitutional Court level, to be in violation of the landlords' right to property. The reluctance of the various subsequent administrations to liberalize those leases are one of the main reasons for the skepticism of government intervention in the private rented sector.

¹⁶ Parliamentary Question addressed to the Hon. Marie Louise Coleiro Preca, *Minister for Family and Social Solidarity*, Legislature XII, PQ no. 95 (22 October 2013).

¹⁷ Parliamentary Question addressed to the Hon. Michael Farrugia, *Minister for Family and Social Solidarity*, Legislature XII, PQ no. 21200 (25 November 2015).

¹⁸ This was certainly true during the early 2000s (D.H. Camilleri, "A long-term analysis of housing affordability in Malta", *International Journal of Housing Markets and Analysis*, 2011:4(1), 50; V. Macdonald, "Home Sweet Home?", *The Times (Malta) Business*, 23 September 2004) although recent reports on rising rents across the island coupled with lowered interest rates on loans seem to have brought about the same anomaly (K. Micallef, "Housing 'at its most affordable for years'", *Times of Malta*, 14 January 2015).

property of a debtor or of a third party, for the benefit of the creditor, as security for the fulfilment of an obligation". Article 2012 further states that a hypothec may be general when it affects all the property present and future of the debtor, and special when it affects only one or more particular immovable. Contrary to the general hypothec, a special hypothec continues to attach to the immovable regardless of whoever's possession such immovable may pass into. Article 2016 of the Code expressly allows creditors to register a special hypothec in addition to the general hypothec, as a further security of the same debt.

The Civil Code defines a privilege as "a right of preference which the nature of a debt confers upon a creditor over the other creditors, including hypothecary creditors".¹⁹ Article 2010 expressly grants a special privilege to the creditor who would have, by means of a public deed, supplied in whole or in part the money for the transfer of the immovable, provided that the deed of loan specifies that the money would have been supplied for that specific purpose. Special privileges over immovable must be registered in the Public Registry within two months from the date of the contract in order to be effectual.²⁰

3. Foreign investment in immovable property

The number of foreign nationals taking up residence in Malta has risen dramatically during the past years. Figures relating to the employment of EU as well as Third Country Nationals reveal a steady increase particularly following the years of recent economic crisis.²¹

Although there are no official figures in this regard, anecdotal evidence suggests that the majority of these foreign nationals opt for private rentals rather than house purchases. Nevertheless, the newly-introduced Individual Investor Programme imposes, as a condition for the acquisition of the Maltese citizenship, the acquisition of real estate worth a minimum of €350,000 or a five-year lease of a property at a minimum annual rent of €16,000.²² This scheme seems to have been met by considerable interest since in 2015 alone it attracted 578 applicants, out of which as many as 476 had made it to the second stage of the process.²³ The Central Bank itself has acknowledged that the rise in foreign workers in Malta and to a more limited

¹⁹ Civil Code, Article 1999.

²⁰ Civil Code, Article 2029.

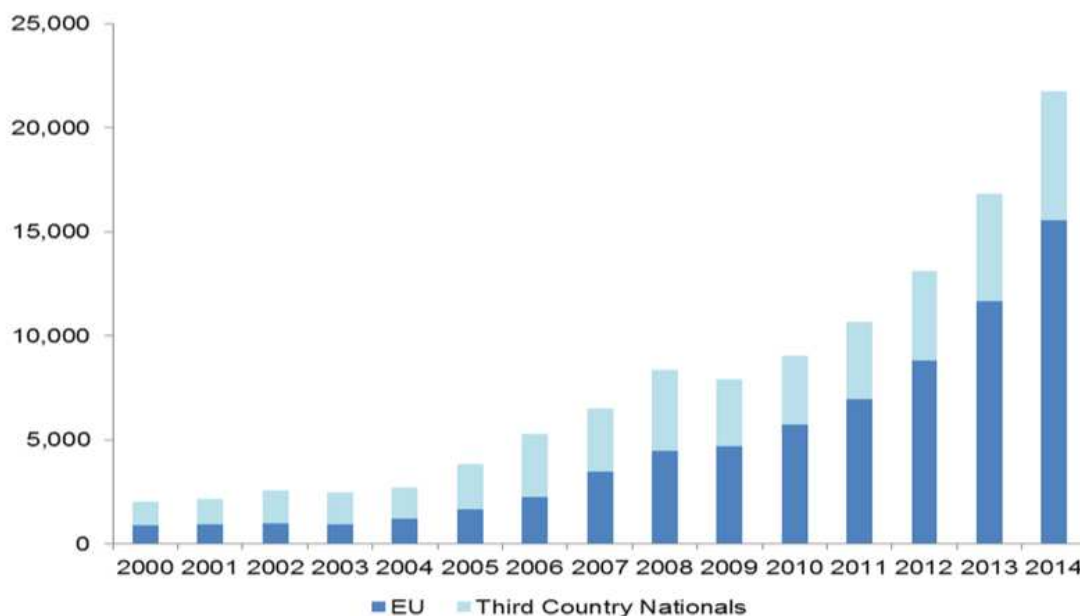
²¹ Foreign workers, and EU nationals in particular, tend to concentrate in services, with most of them working in administrative and professional activities, tourism and health sectors (International Monetary Fund (IMF), *Malta: 2015 Article IV Consultation*, IMF Country Report No. 16/20, July 2015, 6).

²² Legal Notice 47 of 2014.

²³ Parliamentary Question addressed to the Hon. Owen Bonnici, *Minister for Justice, Culture and Local Government*, Legislature XII, PQ no. 23677 (8 March 2016).

extent the Individual Investor Programme have been supporting demand for house purchases.²⁴

Figure 2 Number of full-time and part-time foreign workers in Malta²⁵



4. Effect of the financial crisis

Malta has withstood the effects of the crisis well and the IMF itself has underlined the fact that Malta has maintained macroeconomic stability in the face of major economic difficulties across the continent.²⁶ The fact that the core domestic banking sector is largely funded by resident deposits has been identified as one of the main factors that contained the financial spill over from the euro area although the traditional business model adopted by Malta's main two financial institutions (HSBC and Bank of Valletta) is highly exposed to the property market and collateral in the form of real estate. This risk was found, however, to have been limited by "the very high share of owner-occupied properties, prudent loan-to-value ratios, and fair market valuations".²⁷ Even at the height of the economic downturn in 2009, in fact, one of the main local banks

²⁴ Central Bank of Malta, Quarterly Review 2016:2, 51.

²⁵ A. G. Grech, *Understanding the Macroeconomic Impact of Migration in Malta*, Central Bank of Malta, Policy Note (December 2015).

²⁶ International Monetary Fund (IMF), *Malta: 2013 Article IV Consultation*, IMF Country Report No. 13/203, July 2013, 1.

²⁷ *Ibid.* 5-7, 9.

claimed to have a non-performing loans ratio coming in at less than 4%.²⁸ Neither of the banks that are at the heart of the system held asset-backed securities associated with sub-prime loans, and they followed prudent lending policies.²⁹ Moreover, capital adequacy ratios remained well above the statutory thresholds and the banks continued to hold high levels of liquidity.³⁰

These results are reflected in the low rate of foreclosures with only 3.25% of home loans being classified in the doubtful category by Bank of Valletta in the financial year 2015 (down by 0.25% on the previous year).³¹ These figures compared very well with statistics relative to the pre-crisis period since in 2007 the Central Bank of Malta reported that the proportion of household non-performing loans to total household loans was stable at 2.3%.³² BoV attributed this sound position to its policy revolving around caps on loan-to-value (LTV) and repayment-to-income ratios; the Bank's average LTV on newly sanctioned loans stands at 74%.³³

Statistics relating to the performance of home loans during the period characterised by the 2007 global recession reveal that the local market was only marginally affected by the surrounding global events. This has certainly been aided by constant financial incentives, mainly in the form of fiscal exemptions, aimed at enabling more people to become owners of their own home.³⁴ Even after the outbreak of the recession, in fact, growth in mortgages remained the dominant purpose for bank borrowing by residents.³⁵ Home loans accounted for just over half of the growth in overall credit to the private sector during 2009 and the property market itself registered growth since the downward correction in property prices encouraged more buyers to acquire property.³⁶

Home loans seemed, in fact, to be completely detached from the surrounding climate, scoring significant growth rates in the face of an uncertain climate. This also emerges from the below figure which contrasts the steady performance of house purchases against the declining trends in consumer credit; in fact it was the expansion in loans for

²⁸ Bank of Valletta, *Annual Report 2009*, xii.

²⁹ Central Bank of Malta, *Annual Report 2008*, 13.

³⁰ *Ibid.*, 16.

³¹ Bank of Valletta, *Annual Report 2015*, 18.

³² Central Bank of Malta, *Annual Report 2007*, 60.

³³ Bank of Valletta, *Annual Report 2014*, 17.

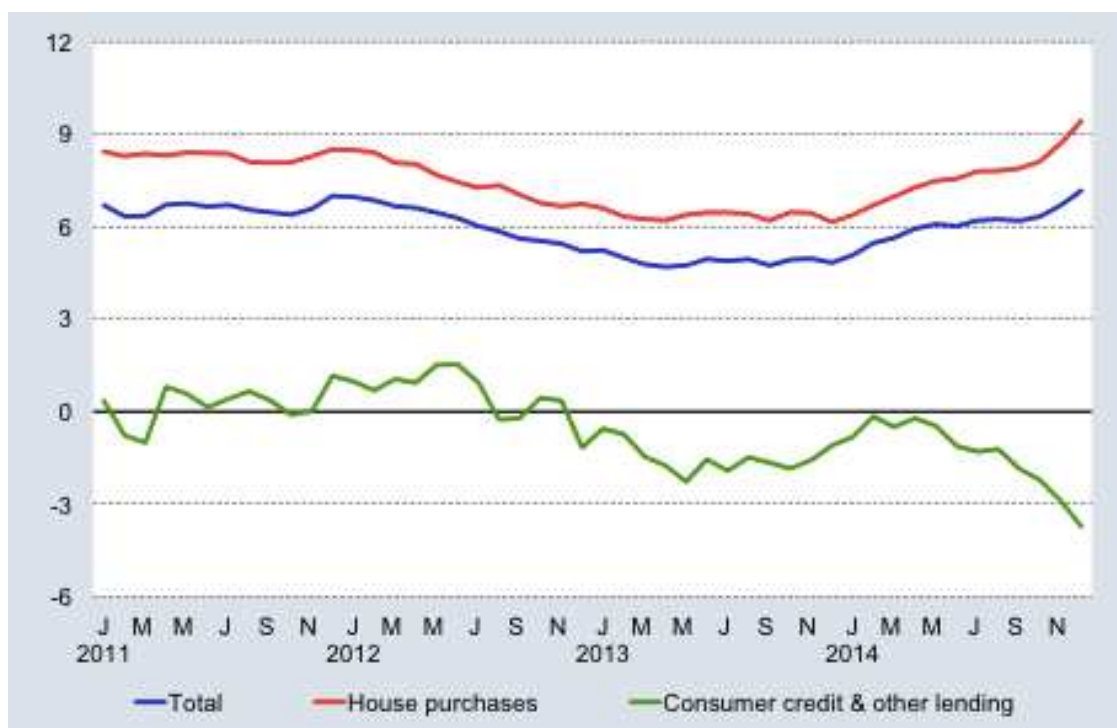
³⁴ The fiscal incentives came in the form of a preferential rate of 3.5% on the first €117,000 of the price of the property, which was eventually raised to cover the first €150,000 (Duty on Documents and Transfers Act (Cap. 364), Article 32(4)). The incumbent administration subsequently introduced a one-time exemption for all first-time property buyers between 5 November 2013 and 31 December 2014 on the initial €150,000 of the price of the property (Legal Notice 393 of 2013). This latter initiative was renewed for a further two years.

³⁵ Central Bank of Malta, *Annual Report 2008*, 30.

³⁶ Central Bank of Malta, *Annual Report 2009*, 40.

house purchases that offset declines in consumer loans and other lending.³⁷ Whilst lending for house purchases accounted for 85% of bank lending to households at the end of 2014, consumer credit and other lending to households declined considerably by 3.7%.³⁸

Figure 3 Loans to households (annual % changes)³⁹



These events bring out the significance of home loans as against credit grants for any other consumer product. The fact that lending for house purchases followed an entirely different dynamic than that of any other product is not only the result of government support and improved market conditions (driven by lower lending rates and a slight deflation in property prices) but also because of the importance of accessing home ownership in a housing market that offers no other viable solution. The completely divergent performance of loans for house purchases and other lending to households brings out the altogether different dimension of home loans with respect to loans for other products. Accessing credit for house purchase is not merely dictated by a desire for that product, but it becomes a matter of necessity for every household, even during times of economic uncertainty.

³⁷ Central Bank of Malta, *Annual Report 2013*, 25.

³⁸ Central Bank of Malta, *Annual Report 2014*, 30.

³⁹ *Ibid.*, 31.

Part II. The Impact of Directive 2014/17

1. The transposition of Directive 2014/17

The Mortgage Credit Directive was transposed through Legal Notice 259 of 2016, which amended S.L. 378.10 entitled *Credit Agreements for Consumers Relating to Residential Immovable Property Regulations*.⁴⁰ The transposition and implementation of the MCD required the liaison between the Office for Consumer Affairs within the Malta Competition and Consumer Affairs Authority (MCCAA) and the Malta Financial Services Authority (MFSA). To this end, the Consumer Affairs Act⁴¹ had to be amended so as to provide for the necessary “vires” to enable the Minister for Social Dialogue, Consumer Affairs and Civil Liberties to make regulations on the advice of both the MFSA and the Consumer Affairs Council for the purpose of transposing, implementing and, or giving effect to the requirements of the Directive.⁴² The Directive was not transposed in time due to matters beyond the control of the Director General (Consumer Affairs).⁴³ The Legal Notice was eventually published on 29 July 2016.

2. Impact of the Directive

The previous sections may have certainly underlined that not only are local bank practices extremely prudent but that the Maltese economy was not so hard-hit by the crisis. In this respect, the mild economic climate has certainly fended off any possible legal challenges to the system. In a very generic address to the House of Representatives on the occasion of the Second Reading of the draft Bill, the Minister for Social Dialogue, Consumer Affairs, and Civil Liberties underlined the importance of this directive in protecting the most vulnerable consumers, whether financially illiterate or economically unstable, in taking such a critical decision in their lives.⁴⁴

A Member of Parliament from the opposition asserted that the regulations introduced by the MCD have already been utilised informally in Malta for years. He justified his statement by referring to the proper organisation of the five banks that lent money to households, the healthy competition amongst them and the thorough financial checks on their customers including verification of income and long-term or indefinite employment. The MP, who is also a Notary Public by profession, outlined the local practices by banks to explain the features of the product being offered on the first meeting and to measure the impact of such a loan on the household’s disposable

⁴⁰ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10467&l=1>.

⁴¹ Cap. 378 of the Laws of Malta

⁴² Act XXX of 2016.

⁴³ *The Malta Government Gazette*, No. 19,615, Friday 29th July 2016, Government Notices, 5460.

⁴⁴ Hon. Dr. Helena Dalli, Sitting No. 392, Twelfth Legislature (2013-), Monday 23rd May 2016.

income; a definite answer would only be given after two or three meetings. He added that the conditions contained in the Sanction Letter were further explained by the notary on the signing of the deed of loan and sale.⁴⁵

The duty of the notary to ascertain the will of the contracting parties and to inquire, after reading over and explaining the act to them, whether it is in accordance with their will is contained in the Notarial Profession and Notarial Archives Act.⁴⁶ Moreover, every notarial act must contain a statement confirming that the notary would have duly explained the contents of the act before its publication and, in the absence of the latter, the act would be annulable.⁴⁷

The MCD is also unlikely to bring much change in respect of defaulting borrowers since Banks already exercise a considerable degree of forbearance and allow reasonably wide margins of recovery. The standard procedure in one of the major banks, in fact, involves two separate stages prior to the call in of the loan. Struggling debtors would first of all be directed to seek advice within a rehabilitation unit and if this stage is successful he could even revert directly to the previous repayment terms. If the situation results to be more problematic, the process would reach the stage of remediation where the bank would make its final attempt at restoring the debtor's financial situation. It is only at this point that the Bank would demand the payment of the remaining balance.⁴⁸

The Malta Bankers' Association (MBA) was reported to have embraced all the amendments that were proposed to the Home Loan Regulations. One particular objection was raised in regard to the applicability of the Regulations to 'bridging loans',⁴⁹ although the Government opted for their inclusion nonetheless. In its response to the consultation on the proposed Regulations, Government undertook to liaise closely with the MBA in determining the appropriate level of knowledge and competence of the staff.⁵⁰

*** Regarding the impact of certain provisions on the Maltese lending system (remuneration of staff/pre-contractual information etc.) the author will be following up this research with an interview with the chairperson of the Malta Bankers' Association.**

⁴⁵ Hon. Dr. Anthony Abela, Sitting No. 392, Twelfth Legislature (2013-), Monday 23rd May 2016.

⁴⁶ Cap. 55 of the Laws of Malta, Article 25(5).

⁴⁷ *Ibid.* Articles 28(1)(h) and 40(2)(e).

⁴⁸ Interview with Head Litigation, Succession & Garnishee Orders at Bank of Valletta, on the 11 July 2014 (*Ibid.* Xerri, "National Eviction Profile: Malta", 2014).

⁴⁹ As per Article 3(3)(d) of the MCD.

⁵⁰ Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, *Government response to the consultation on Credit Agreements for Consumers Relating to Residential Immovable Property Regulations*, 27 June 2016, 5.

3. Maltese Home Loan Regulations

Despite the Directive being a minimum harmonisation measure the Maltese legislator has hardly exceeded the protection afforded by the MCD saving for some exceptions. One such example relates to pre-contractual information where the Directive specifies that the consumer should be allowed a minimum time period of 7 days prior to the signing of the contract; the Maltese Regulations do not afford a longer period, which is further defined as one of *reflection*. The Regulations, in fact, do not establish a period of withdrawal.⁵¹

There are instances where, however, the Maltese legislator has bound the creditor by more duties. In relation to content, an interesting addition to the creditor's obligations to provide *inter alia* a description of the types of available credit agreements and a list of related cost elements such as administrative costs, insurance costs and legal costs, is represented by the creditor's duty to provide details to the consumer on how to obtain information on tax relief on the credit agreement interest or other public subsidies.⁵² Another right given to the consumer, beyond what is contained in the Directive concerns the creditworthiness assessment where the creditor is now bound to explain the logic involved in the automated decision to the consumer and the latter would be entitled to request for the decision to be reviewed manually.⁵³ A third instance where the Maltese legislator has leaned further towards the consumer is in relation to arrears and foreclosure. Although the Directive contains a general obligation on the Member States to cap such charges, the Maltese Regulations have limited any additional fees to whichever amount would be necessary to compensate the creditor for the costs that it would have incurred as a result of the default.⁵⁴

There are also instances where the Regulations have introduced rights that were already informally in place. The consumer is now entitled by law to receive, free of charge, both a copy of the draft credit agreement, if the creditor would be willing to proceed to its conclusion, as well as a copy of the public deed of loan from the Notary Public upon the signing thereof (in addition to a copy of the public deed of loan that would have been duly registered at the Public Registry, within ten days from its registration).⁵⁵ This practice is, however, already well-diffused both amongst creditors as well as notaries. Another new obligation that will merely be formalising a common practice is the duty on the part of creditors to specify in a clear, concise and prominent way a warning concerning the risk of losing the immovable property in the event of

⁵¹ S.L. 378.10, Article 7.

⁵² S.L. 378.10, Article 8.

⁵³ S.L. 378.10, Article 10.

⁵⁴ S.L. 378.10, Article 17C.

⁵⁵ S.L. 378.10, Article 14.

non-observance of the commitments linked to the credit agreement.⁵⁶ This duty to inform borrowers is also already generally complied with, in particular prior to the signing of the deed where notaries warn debtors that upon the occurrence of any event of default of the loan agreement, the Bank would proceed to enforce its hypothecary rights.

As regards the penalties and infringements, creditors will be punishable by an administrative fine, ordered either by the MFSA or the Director General of Consumer Affairs but never cumulatively, in the range of €1,000 and €45,000. The law sets the basic amount at €20,000.⁵⁷ This amount may be increased or decreased depending on the circumstances, such as in cases of second or subsequent infringements and unfair commercial practices or of instances where creditor would have readily taken adequate steps to rectify the infringement without contestation. Appeals lie either before the Appeals Tribunal established by the Malta Competition and Consumer Affairs Authority Act or the Financial Services Tribunal, depending on the office that would have issued the fine (see more in Annex I).⁵⁸ The MFSA may also publish on any media, any administrative fines that it would have imposed including details regarding the breach as well as the identity of the creditor on whom the fine would have been imposed.⁵⁹

The Home Loan Regulations were made not made applicable to credit agreements existing before the coming into force of Legal Notice 259 of 2016 although creditors performing activities prior to 20 March 2014 will be made to comply with the duties relating to the adequate knowledge and competence requirements of their staff members by 21 March 2017.⁶⁰

4. The Regulatory Bodies

The duties prescribed by the MCD are shared between the MFSA and the Director General of Consumer Affairs. Their simultaneous roles reflect the wide scope of Directive which ranges from the supervision of credit institutes to the guidance of consumers. This dual responsibility, described in detail in Annex 1, is also reflected in

⁵⁶ S.L. 378.10, Article 19.

⁵⁷ S.L. 378.10, Article 23. In case of non-compliance the Director General of Consumer Affairs could further impose daily fine of between €130 and €230.

⁵⁸ S.L. 378.10, Article 23A. If the penalty is ordered by the MFSA and the person who is served with the notice, fails to pay amount within a period of thirty days and fails to appeal, or appeals to the Financial Services Tribunal, and fails within a period of fifteen days to pay the administrative fine as confirmed or as reduced by that Tribunal, it shall be due to the MFSA as a civil debt and it shall constitute an executive title.

⁵⁹ S.L. 378.10, Article 23C.

⁶⁰ S.L. 378.10, Article 25A.

the specific functions that the two entities are bound to perform. The MFSA is, in fact, primarily responsible for ensuring compliance by the creditors and establishing the minimum standards of knowledge and competence amongst the members of the staff. The Third Schedule of the Regulations laying down the minimum knowledge for banking staff states that these will be (until 21 March 2019):

knowledge of credit products

knowledge of laws related to credit agreements for consumers, in particular consumer protection

understanding of the immovable property purchasing process

appropriate knowledge of security valuation

appropriate knowledge of organisation and functioning of land registers

appropriate knowledge of the market in Malta

appropriate knowledge of business ethics standards

knowledge of the consumers' creditworthiness assessment process or, where applicable, competence in assessing the consumer's creditworthiness

appropriate level of financial and economic competence

The MFSA also has the primary obligation to carry out investigations, even through onsite inspections and, to this effect, it has the authority to require any relevant information or documentation that it deems necessary for its purposes. A duty, which would have perhaps been more competent to the Director General of Consumer Affairs, relates to the support of consumer education and information of a legal nature.⁶¹

On his part, the Director General's function is mainly that of ensuring that negotiations between credit institutions and consumers are held in a fair context which is, first and foremost, represented by his duty of ensuring proper advertising standards.⁶² Nevertheless, his responsibilities reach beyond the banking sector as the Director General is bound both to see to the adequate statistical monitoring of the residential property market⁶³ as well as to the reliability of the standards for the valuation of residential property, including the competence and independence of those appraisers

⁶¹ S.L. 378.10, Articles 3B and 3C.

⁶² S.L. 378.10, Article 19. His duties include that of ensuring that an appropriate framework is in place for the conversion of credit agreements into alternative currencies.

⁶³ S.L. 378.10, Article 21A.

who carry out valuations of property.⁶⁴ Beyond these specific tasks, the Director General is also bound by legislation to deal directly with credit institutions in order to encourage them to exercise reasonable forbearance with defaulting consumers and to ensure that measures to facilitate repayment in place where after the foreclosure, outstanding debts remain.⁶⁵

Part III. Final comments

The consistently low default rates on home loans as well as the positive remarks on the banking sector in Malta by international organisations such as the IMF, uphold the claims that Maltese banks have been very prudent about the granting of credit for house purchases. This judicious approach has led local banks to develop certain informal practices aimed at ensuring the borrower's capability of repayment. In this respect, the transposition of the Directive has merely formalised certain rights that had long been accepted at a local level. The new rules, nevertheless, enable the MFSA to take on a much closer supervisory role and, in view of the fact that no civil remedies were granted to private citizens, the effectiveness of this Directive on the local market will very much depend on the vigour with which it will monitor local practices. The same applies for Director General of Consumer Affairs whose role spans from the dissemination of information to the encouragement of creditors to exercise forbearance on non-performing creditors. The Director General's sense of initiative will be one of the main determinants for the true impact of this Directive.

More broadly, this Directive will hardly affect the housing dynamics that currently characterise the Maltese market since the credit lending criteria will remain unaltered. The Maltese situation evidences that a liberal housing policy, which sees minimal government intervention and is therefore incapable of offering any other form of tenure capable of ensuring housing stability, is heavily dependent on access to credit. The continued growth of lending for house purchases in Malta throughout the economic crisis, in comparison with the sharp decline in other consumer credit agreements, demonstrates the peculiarity of this specific retail sector. Contrary to other consumer products, homes are, in fact, a necessity and given the government's increasing detachment in the field of housing, home loans become key in providing a viable housing solution for households.

In view of this, a possible impact of these regulations, which might not have been foreseen by the local legislator, concerns their impediment to the formation of social banks. The latter initiative was recently proposed by a local NGO (Alliance Against

⁶⁴ S.L. 378.10, Article 13.

⁶⁵ S.L. 378.10, Article 17C.

Poverty) as an entity that would be capable of offering low-interest loans for those households that are specifically denied credit by the other commercial banks.⁶⁶ Such a project would be clearly intended to enable lower-income households to become home owners despite the fact that they would have failed the creditworthiness assessment.

Interestingly, although the Directive allows Member States to exclude “credit agreements granted to a restricted public under a statutory provision with a general interest purpose, free of interest or at lower borrowing rates than those prevailing on the market or on other terms which are more favourable to the consumer than those prevailing on the market and at borrowing rates not higher than those prevailing on the market”⁶⁷, the Maltese Regulations made no exception for such loans. The European legislator himself was aware of the perils of financial exclusion of certain types of individuals through the implementation of such rules and in the preamble the MCD itself provides for the exclusion of such agreements from the directive, insofar as adequate arrangements are in place in order to ensure the reaching of financial stability objectives.⁶⁸ Nevertheless, due to the high levels of risk that lending to such household entails and the fact that these are not contemplated in the Maltese regulations, it remains uncertain whether such banks could operate regularly in Malta. If so, then this Directive, or more precisely its implementation, could potentially limit the scope of social action as well as, consequently, access to decent housing for certain households.



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⁶⁶ A. Gauci Cunningham, "Aqbad €50 miljun mill-bejgh tal-passaporti u investi f'bank soċjali" (Take €50 million from the sale of passports and invest in a social bank), *illum*, 16 August 2016. Retrieved online on 3 October 2016 from:

http://www.illum.com.mt/ahbarijiet/socjali/46490/aqbad_50_miljun_millbejg_talpassaporti_u_investi_fbank_sojali#.V_KWw7WFA6g.

⁶⁷ MCD, Article 3(3)(c).

⁶⁸ MCD, Preamble (17).

ANNEX I

The competent authorities for the purposes of these regulations shall be the MFSA and the Director General (Article 3A). The single contact point designated by the law is the MFSA, although they are bound to cooperate and collaborate closely whenever necessary in order to carry out their duties under the regulations (Article 3A(2)).

Relevant Article under S.L.378.10	MFSA	Director General (Consumer Affairs)
Article 3B	Carry out the functions and duties prescribed by the Mortgage Credit Directive (MCD) and to ensure that creditors and credit intermediaries carrying out their activities in Malta comply with the Regulations	May require cooperation in the discharge of his/her duties from MFSA
	Monitor the activities of creditors and credit intermediaries so as to assess compliance with the requirements of the regulations	
	May, whenever it deems necessary, give by notice in writing such directives as it may demand appropriate in the circumstances in order to carry out the functions and duties prescribed by the regulations	
Article 3C (Financial Education of Consumers)	Shall promote measures that support the education of consumers in relation to responsible borrowing and debt management	
	Provide clear and general information to consumers on the credit granting process in relation to credit in order to guide consumers, especially those entering into a credit agreement for the first time	
	Request creditors, in writing, to provide clear and general information to consumers on the credit granting process in relation to credit, in order to guide	

	consumers	
	Disseminate information to consumers regarding the guidance which it may publish from time to time.	
Article 6 (Knowledge and Competence Requirements)	Shall be responsible for establishing the minimum knowledge and competence requirements for staff of Maltese creditors	
	Shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff of a foreign creditor operating a branch in Malta	
	Criteria established by the MFSA in order for creditors' staff to meet their professional requirements shall be made public	
Article 12 (Disclosure and verification of consumer information)		Shall ensure that consumers are aware of the need to provide correct information in respect to the creditor's request for information during the pre-contractual stage.
Article 13 (Property Valuation)		Shall ascertain that reliable standards for the valuation of residential immovable property for the purpose of credit agreements are developed in Malta
		Shall ensure that authorities responsible for regulating independent appraisers who carry out valuations comply with the rules
		Shall ensure that internal and external appraisers conducting property valuations are professionally

		competent and sufficiently independent from the credit underwriting process relating to credit agreements, so that they can provide an impartial and objective valuation
Article 16 (Early Repayment)		May provide that the exercise of the right of early repayment is made subject to any conditions such as time limitations on the exercise of the right, a different treatment depending on the type of the borrowing rate or on the moment the consumer exercises the right, or restrictions with regard to the circumstances under which the right may be exercised
Article 17A (Foreign currency loans)		Shall ensure that where a credit agreement relates to a foreign currency loan, an appropriate regulatory framework shall be in place at the time the credit agreement is concluded to ensure that the consumer has a right to convert the credit agreement into an alternative currency
Article 17C (Arrears and foreclosure)		Shall adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated
		Shall implement procedures or measures to enable the best price for the foreclosed immovable property to be obtained, where the price obtained for the immovable property affects the amount owed by the consumer
		Shall ensure that measures to facilitate repayment in order to protect consumers are put in place where after foreclosure proceedings outstanding

		debts remain
Article 19 (Advertising)	Shall, upon receipt of the notification from the DG regarding the inclusion of a warning concerning specific risks associated with credit agreements, notify those requirements to the European Commission without delay	Shall adopt criteria for determining a representative advertising example
		May require the inclusion of a concise and proportionate warning concerning specific risks associated with credit agreements and notify the MFSA without under delay
Article 21A (Flexible and reliable markets)		Shall ensure that appropriate mechanisms are in place in Malta to ensure that the claim against the security is enforceable by or on behalf of creditors
		Shall take the necessary measures to ensure an appropriate statistical monitoring of the residential property market, including for market surveillance purposes, where appropriate by encouraging the development and use of specific price indices which may be public or private or both
Article 22 (Enforcement and monitoring)	Are responsible for monitoring the effectiveness of these regulations and to take such measures as may be deemed necessary in order to ensure compliance with these regulations	
	Are responsible for supervising creditors and credit intermediaries in terms of these regulations and ensure that there is compliance by them with the obligations identified under the regulations	
Article 22A (Investigations)	Any officer, employee or agent of the MFSA may carry out investigations or carry out onsite inspections at the premises of any person who appears to be in possession of relevant information	
Article 22C	May require relevant information and documentation or require that any person answers relevant questions	

(Suspected breaches)	where it has reasonable grounds for suspecting that a person has contravened or failed to comply with any provision of these regulations	
Article 22H (Obligation to cooperate)	Shall cooperate with European regulatory authorities whenever necessary, for the purpose of carrying out its duties under the provisions of the Mortgage Credit Directive, making use of its powers, whether set out in these regulations or in any other law	
Article 22I (Settlement of disagreements between European regulatory authorities and the national authorities)	May refer the situation the European Banking Authority where a request for cooperation, in particular the exchange of information, by the MFS to a European regulatory authority has been rejected or has not been acted upon within a reasonable time by the European regulatory authority concerned	
Article 23 (Administrative fines)		May impose an administrative fine, issue such order or decision or take such measure as may be deemed appropriate in terms of the Act, upon any person who contravenes or fails to comply with any of the provisions of these regulations*
Article 23A (Administrative fines – powers of the MFSA)	May without recourse to a court hearing impose a fine on any person who is held to be in breach of any of the provisions of these regulations, or any such person who has failed to comply with a directive issued by the MFSA under these regulations*	
Article 23C (Publication of administrative fines)	May publish on its official website and in any other media as it consider appropriate any administrative fines imposed under the provisions of these regulations	

<p>Article 24A (Dispute resolution mechanism)</p>		<p>Shall ensure that appropriate and effective complaints and redress procedure are established for the out of-court settlement of consumer disputes with creditors and credit intermediaries in relation to credit agreements, using existing bodies where appropriate</p>
<p>Third Schedule (Minimum Knowledge and Competence Requirements)</p>	<p>Shall determine the appropriate level of knowledge and competence on the basis of personal qualifications (e.g. diplomas, degrees, training and competency tests) and professional experience</p>	

* Creditor may not suffer simultaneous administrative fines imposed by the MFSA and the DG for consumer affairs.