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## TEXTS ADOPTED

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### **P8\_TA(2015)0347**

## **Mortgage legislation and risky financial instruments in the EU: the case of Spain**

### **European Parliament resolution of 8 October 2015 on mortgage legislation and risky financial instruments in Spain (based on petitions received) (2015/2740(RSP))**

*The European Parliament,*

- having regard to Petition 626/2011 and 15 others on mortgage legislation in Spain (179/2012, 644/2012, 783/2012, 1669/2012, 0996/2013, 1345/2013, 1249/2013, 1436/2013, 1705/2013, 1736/2013, 2120/2013, 2159/2013, 2440/2013, 2563/2013 and 2610/2013),
- having regard to Petition 513/2012 and 21 others on risky financial instruments in Spain (548/2012, 676/2012, 677/2012, 785/2012, 788/2012, 949/2012, 1044/2012, 1247/2012, 1343/2012, 1498/2012, 1662/2012, 1761/2012, 1851/2012, 1864/2012, 169/2013, 171/2013, 2206/2013, 2215/2013, 2228/2013, 2243/2013 and 2274/2013),
- having regard to the deliberations in its Committee on Petitions with the petitioners concerned, most recently on 16 April 2015,
- having regard to Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010<sup>1</sup>,
- having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directives 2002/92/EC and 2011/61/EU<sup>2</sup>,
- having regard to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>3</sup>,

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<sup>1</sup> OJ L 60, 28.2.2014, p. 34.

<sup>2</sup> OJ L 173, 12.6.2014, p. 349.

<sup>3</sup> OJ L 95, 21.4.1993, p. 29.

- having regard to the Commission statement – in the joint debate of 19 May 2015 on insolvency proceedings – on the review and extension of the Commission recommendation of 12 March 2014 on a new approach to business failure and insolvency, with regard to family insolvency and second chances for individuals and households,
  - having regard to its resolution of 11 June 2013 on social housing in the European Union<sup>1</sup>,
  - having regard to its question to the Commission on mortgage legislation and risky financial instruments in Spain (based on petitions received) (O-000088/2015 – B8-0755/2015),
  - having regard to the motion for a resolution of the Committee on Petitions,
  - having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
- A. whereas numerous petitions received have brought to light thousands of tragic personal cases in which citizens experienced the partial or entire loss of their life savings, and whereas these petitions highlight the barriers that consumers face when seeking to obtain accurate and essential information on financial instruments;
  - B. whereas in Spain civil society organisations are continuing to protest against the hundreds of thousands of evictions, abusive terms in mortgage contracts and the lack of protection for borrowers; whereas, according to one of those organisations, the Platform of Mortgage Victims (Plataforma de Afectados por la Hipoteca – PAH), there were 19 261 evictions in Spain during the first quarter of 2015 (6 % more than in the first quarter of 2014); whereas PAH estimates that there have been more than 397 954 evictions in Spain since 2008; whereas more than 100 000 households have lost their homes;
  - C. whereas the impact of the crisis has aggravated the situation for evicted families, who still have to pay out their mortgage debt and the increasing interest on it; whereas the Spanish Government introduced the possibility of ‘datio in solutum’ as an exceptional measure under Law 6/2012; recalls that, according to official data for the second quarter of 2014, ‘datio in solutum’ has been approved for only 1 467 out of 11 407 applications, or 12,86 % of the total;
  - D. whereas a number of abusive clauses and practices in the Spanish mortgage sector have been identified by national and European courts (see Court of Justice judgments C-243/08 *Pannon GSM*; C-618/10, *Banco Español de Crédito*; and C-415/11, *Catalunyacaixa*), and should have been prevented by Directives 93/13/EEC, 2004/39/EC and 2005/29/EC had those directives all been fully transposed and implemented in Spain;
  - E. whereas Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (the Mortgage Credit Directive) will be applicable to mortgage credit agreements coming into existence after 21 March 2016, and will require creditors to inform consumers about the main characteristics of the credit agreement;
  - F. whereas, as a result of the *Aziz* ruling (Case C-415/11), the Spanish authorities adopted, under an accelerated procedure, Law 1/2013 of 14 May 2013 on measures to reinforce the protection of mortgage debtors, debt restructuring and social rental (Ley 1/2013 de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de la deuda y alquiler social);

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<sup>1</sup> Texts adopted, P7\_TA(2013)0246.

- G. whereas, as a result of the ruling in Case C-169/14, the Spanish authorities amended the national mortgage appeal system by means of a final provision in Law 9/2015 of 25 May 2015 on urgent measures in bankruptcy matters (*Ley 9/2015 de medidas urgentes en material concursal*), to bring it into line with Directive 93/13/EEC;
- H. whereas the Spanish parliament has adopted a ‘Code of good practice for a viable restructuring of debts relating to mortgages on habitual dwellings’, which has mostly been ignored by financial bodies owing to its voluntary status and has had very limited results in avoiding evictions or prompting ‘*datio in solutum*’, as the eligibility requirements disqualify more than 80 % of those affected;
- I. whereas in many cases consumers were not duly informed by banks about the extent of the risks associated with proposed investments, and whereas in such cases the banks also failed to perform suitability tests to determine whether clients had adequate knowledge to understand the financial risks they were exposing themselves to; whereas many of the affected citizens are elderly people who had invested their life savings in what they were told were no-risk investments;
- J. whereas over the past few years 700 000 Spanish citizens are estimated to have been the victims of financial fraud, as they were sold risky financial instruments in bad faith by their banks, without being duly informed about the extent of the risks and the real implications of not being able to access their savings;
- K. whereas the arbitration mechanism put in place by the Spanish authorities has been rejected by many of the victims of financial fraud;
- L. whereas the Markets in Financial Instruments Directive (MiFID) (Directive 2004/39/EC) regulates the provision of investment services by investment firms and credit institutions in relation to financial instruments, including preferred shares (‘*preferentes*’); whereas Article 19 of the MiFID formulates business obligations for those providing investment services to clients;
1. Calls on the Commission to monitor the implementation in all the Member States of the ruling in Case C-415 (*Aziz*) and of Directive 93/13/EEC on mortgage legislation, in order to guarantee full compliance by national authorities;
  2. Calls on financial entities across the Union to stop engaging in abusive behaviour towards clients in the field of mortgages, sophisticated financial products and credit cards, including the imposition of excessive interest rates and the arbitrary cancellation of service;
  3. Calls on financial entities across the Union to avoid resorting to the eviction of families living in their sole residence, and to engage instead in debt restructuring ;
  4. Calls on the Spanish Government to make use of the tools at its disposal in order to find a comprehensive solution for drastically reducing the intolerable numbers of evictions;
  5. Calls on the Commission to follow closely the transposition in all the Member States of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (the Mortgage Credit Directive);
  6. Calls on the Commission to share best practice regarding the application in certain Member States of ‘*datio in solutum*’, and to assess its impact on consumers and business;

7. Warns the Commission of the doubts expressed by the EU Advocate-General concerning the legality of the measures adopted by the Spanish Government to resolve the infringements denounced by the Court of Justice on 14 March 2013 and prevent abusive practices in the mortgage sector;
8. Calls on the Commission to monitor closely the effective implementation of the new measures adopted by the Spanish Government to resolve the existing problems and to prevent abusive banking and trading practices;
9. Calls on the Commission to launch information campaigns on financial products and to enhance financial literacy through education, in order to ensure that European citizens are better informed about the risks involved when subscribing to financial products;
10. Calls on the Commission to share best practices that enhance the protection of citizens in financial difficulty; believes that basic financial education should be considered as a complementary asset for avoiding the consequences of over-indebtedness;
11. Calls on the European Banking Authority (EBA) and the European Central Bank (ECB) to establish a best practice campaign in order to encourage banks and their employees to provide clear, understandable and correct information; stresses that consumers need to make an informed decision based on a full understanding of the risks they may incur, and that traders and banks must not mislead consumers;
12. Calls on the EBA and the ECB, in order to preserve the strength of the EU financial sector, to take further steps to require banks to separate potentially risky trading from their deposit-taking business where the pursuit of such activities compromises financial stability;
13. Calls on the Commission and the ECB to evaluate the Spanish arbitration mechanism put in place for citizens who are victims of financial fraud;
14. Calls on the Commission to monitor the correct transposition and application of EU law by Spain in relation to financial instruments, including preferred shares;
15. Calls on the Commission to follow up on the complaints received and to carry out the necessary investigations;
16. Asks the Commission to put forward a legislative proposal on family insolvency;
17. Instructs its President to forward this resolution to the Spanish Government, the Council, the Commission and the European Central Bank.