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REPORT

on the proposal for a directive of the European Parliament and of the Council
on credit agreements relating to residential property
(COM(2011)0142 – C7-0085/2011 – 2011/0062(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Antolín Sánchez Presedo

Rapporteur for the opinion (*):

Kurt Lechner, Committee on the Internal Market and Consumer Protection

(*) Associated committee – Rule 50 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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(*) Associated committee – Rule 50.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on credit agreements relating to residential property
(COM(2011)0142 – C7-0085/2011 – 2011/0062(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0142),
 - having regard to Article 294(2) and Article 114(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0085/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 14 July 2011¹,
 - having regard to the opinion of the European Central Bank of 18 August 2011,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs (A7-0202/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 318, 29.10.2011, p. 133.

Amendment 1

Proposal for a directive Recital 3

Text proposed by the Commission

(3) The financial crisis has shown that irresponsible behaviour by market participants can undermine the foundations of the financial system, leading to a lack of confidence among all parties, in particular consumers, and potentially severe social and economic consequences. Many consumers have lost confidence in the financial sector and borrowers have found their loans increasingly unaffordable, with defaults and forced sales rising. ***In view of the problems brought to light in the financial crisis and in the context of efforts to ensure an efficient and competitive internal market, the Commission has proposed measures with regard to credit agreements relating to residential immovable property, including a reliable framework on credit intermediation, in the context of delivering responsible and reliable markets for the future and restoring consumer confidence.***

Amendment

(3) The financial crisis has shown that irresponsible behaviour by market participants can undermine the foundations of the financial system, leading to a lack of confidence among all parties, in particular consumers, and potentially severe social and economic consequences. Many consumers have lost confidence in the financial sector and borrowers have found their loans increasingly unaffordable, with defaults and forced sales rising. ***As a result, the G20 has commissioned work from the Financial Stability Board to establish principles on sound underwriting standards in relation to residential immovable property. Although some of the greatest problems in the crisis occurred outside the Union, consumers in the Union hold significant levels of debt, much of which is concentrated in loans related to residential immovable property. It is therefore appropriate to ensure that the Union's regulatory framework in this area is robust, consistent with international principles and makes appropriate use of the range of tools available, including loan-to-value, loan-to-income, debt-to-income and similar ratios. This is important in the context of efforts to ensure an efficient and competitive internal market which ensures financial stability, responsible markets and consumer confidence, in line with the commitment in the Commission's Communication entitled 'Single Market Act: Twelve levers to boost growth and strengthen confidence'¹.***

¹COM(2011)0206, 13.4.2011.

Amendment 2

Proposal for a directive Recital 4

Text proposed by the Commission

(4) A series of problems in *EU* mortgage markets associated with irresponsible lending and borrowing **at the pre-contractual stage** and the potential scope for irresponsible behaviour by credit intermediaries and non-credit institutions have been identified. Some problems concerned loans denominated in a foreign currency which consumers had taken out in that currency to take advantage of the interest rate offered but without having **an** adequate understanding of the currency risk involved. These problems are driven by market and regulatory failures as well as other factors such as the general economic climate and low levels of financial literacy. Other problems include ineffective, inconsistent, or non-existent registration, authorisation and supervision regimes for credit intermediaries and non-credit institutions providing credit for residential immovable property. The problems identified have potentially significant macroeconomic spill-over effects, can lead to consumer detriment, act as economic or legal barriers to cross-border activity and create an unlevel playing field between actors.

Amendment 3

Proposal for a directive Recital 5

Text proposed by the Commission

(5) In order to facilitate the emergence of a smoothly functioning internal market with a high level of consumer protection in the

Amendment

(4) **The Commission identified** a series of problems in mortgage markets **within the Union** associated with irresponsible lending and borrowing and the potential scope for irresponsible behaviour **by market participants including** credit intermediaries and non-credit institutions have been identified. Some problems concerned loans denominated in a foreign currency which consumers had taken out in that currency to take advantage of the interest rate offered but without having adequate **information about or** understanding of the currency risk involved. These problems are driven by market and regulatory failures as well as other factors such as the general economic climate and low levels of financial literacy. Other problems include ineffective, inconsistent, or non-existent registration, authorisation and supervision regimes for credit intermediaries and non-credit institutions providing credit for residential immovable property. The problems identified have potentially significant macroeconomic spill-over effects, can lead to consumer detriment, act as economic or legal barriers to cross-border activity and create an unlevel playing field between actors.

Amendment

(5) In order to facilitate the emergence of a smoothly functioning internal market with a high level of consumer protection in the

area of credit agreements relating to residential immovable property, *a* harmonised Union framework needs to be established in a number of areas. *It is further necessary to establish harmonised standards in order to ensure that consumers looking for credit agreements relating to residential immovable property are able to do so confident in the knowledge that the institutions they interact with act in a professional and responsible manner.*

Amendment 4

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Directive should therefore develop a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to residential immovable property, while promoting sustainable lending and borrowing and financial inclusion and hence providing a high degree of consumer protection.

Amendment 5

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) This Directive should improve conditions for the establishment and functioning of the internal market through the approximation of Member States' laws and the establishment of quality standards for certain services, notably with regard to the distribution and provision of credit through creditors and credit intermediaries. The establishment of quality standards for services for the provision of credit necessarily involves the introduction of provisions regarding authorisation and

(6) This Directive should improve conditions for the establishment and functioning of the internal market through the approximation of Member States' laws and the establishment of quality standards for certain services, notably with regard to the distribution and provision of credit through creditors and *credit intermediaries, and the promotion of good practices*. The establishment of quality standards for services for the provision of credit necessarily involves the introduction

prudential requirements.

of provisions regarding authorisation and prudential requirements.

Amendment 6

Proposal for a directive Recital 7

Text proposed by the Commission

(7) For those areas not covered by this Directive, Member States should be free to maintain or introduce national legislation. Member States should be able to maintain or introduce national provisions in areas such as contract law relating to the validity of credit agreements, property **valuation**, land registration, contractual information, post-contractual issues, **and handling defaults**.

Amendment

(7) For those areas not covered by this Directive, Member States should be free to maintain or introduce national legislation. ***In particular***, Member States should be able to maintain or introduce national provisions in areas such as contract law relating to the validity of credit agreements, property **law**, land registration, contractual information, **and** post-contractual issues ***not regulated here***.

Amendment 7

Proposal for a directive Recital 8

Text proposed by the Commission

(8) As consumers and enterprises are not in the same position, they do not need the same level of protection. While it is important to guarantee consumers' rights by provisions that cannot be derogated from by contract, it is reasonable to let enterprises and organisations engage in other agreements. ***This Directive should therefore apply to credit granted to consumers. Member States should, however, have the possibility to extend the scope to natural or legal persons that are not consumers, notably micro-enterprises, as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.***

Amendment

(8) As consumers and enterprises are not in the same position, they do not need the same level of protection. While it is important to guarantee consumers' rights by provisions that cannot be derogated from by contract, it is reasonable to let enterprises and organisations engage in other agreements.

Amendment 8

Proposal for a directive Recital 10

Text proposed by the Commission

(10) This Directive should not apply to certain credit agreements ***that will eventually be repaid*** from the sale ***proceeds*** of ***an*** immovable property and whose primary objective is to facilitate consumption, such as equity release products or other equivalent specialised products. Such credit agreements have specific characteristics which are beyond the scope of this Directive. An assessment of the borrower's creditworthiness, for example, is irrelevant since the payments are made from the creditor to the borrower rather than the other way round. Such a transaction would also require, amongst other things, substantially different pre-contractual information. Furthermore, other products, such as home reversions, which have comparable functions to reverse mortgages or lifetime mortgages do not involve the provision of credit and so would remain outside the scope of this Directive. However this Directive should apply to those secured loans whose primary objective is to facilitate the purchase of an immovable property, including those loans that do not require the reimbursement of the capital or those whose purpose is to provide temporary financing between the sale of one immovable property and the purchase of another.

Amendment

(10) This Directive should not apply to certain credit agreements ***where the creditor contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving*** from the sale of ***a residential*** immovable property and whose primary objective is to facilitate consumption, such as equity release products or other equivalent specialised products. Such credit agreements have specific characteristics which are beyond the scope of this Directive. An assessment of the borrower's creditworthiness, for example, is irrelevant since the payments are made from the creditor to the borrower rather than the other way round. Such a transaction would also require, amongst other things, substantially different pre-contractual information. Furthermore, other products, such as home reversions, which have comparable functions to reverse mortgages or lifetime mortgages do not involve the provision of credit and so would remain outside the scope of this Directive. However this Directive should apply to those secured loans whose primary objective is to facilitate the purchase of an immovable property, including those loans that do not require the reimbursement of the capital or those whose purpose is to provide temporary financing between the sale of one immovable property and the purchase of another.

Amendment 9

Proposal for a directive Recital 10a (new)

Text proposed by the Commission

Amendment

(10a) It is also appropriate to allow Member States under certain conditions to exclude certain other credit agreements, such as those which are granted to a restricted public on advantageous terms or which are provided by credit unions, in order to provide an appropriate balance between the needs of financial stability and the single market on one hand and financial inclusion and access to credit on the other.

Amendment 10

Proposal for a directive Recital 11

Text proposed by the Commission

Amendment

(11) For reasons of legal certainty, the Union framework in the area of credit agreements relating to residential immovable property should be consistent with and complementary to other Union acts, particularly in the areas of consumer protection and prudential supervision. ***Essential definitions of terms such as ‘consumer’, ‘creditor’, ‘credit intermediary’, ‘credit agreements’ and ‘durable medium’ as well as key concepts used in standard information to designate the financial characteristics of the credit, such as the total cost of the credit to the consumer, the total amount payable by the consumer, the annual percentage rate of charge and the borrowing rate,*** should be in line with those in Directive 2008/48/EC so that the same terminology refers to the same type of facts irrespective of whether the credit is a consumer credit or a credit relating to residential immovable property.

(11) For reasons of legal certainty, the Union framework in the area of credit agreements relating to residential immovable property should be consistent with and complementary to other Union acts, particularly in the areas of consumer protection and prudential supervision. ***Certain essential*** definitions should be in line with those in Directive 2008/48/EC so that the same terminology refers to the same type of facts irrespective of whether the credit is a consumer credit or a credit relating to residential immovable property. Member States should therefore ensure in the transposition of this Directive that there is ***an appropriate*** consistency of application and interpretation.

Member States should therefore ensure in the transposition of this Directive that there is *a* consistency of application and interpretation.

Amendment 11

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

11a. The definition of a 'credit intermediary' should not cover the mere referral of a consumer to a credit intermediary or creditor, if the person does not otherwise carry out the activities listed in the definition.

Amendment 12

Proposal for a directive Recital 12

Text proposed by the Commission

Amendment

(12) In order to ensure a consistent framework for consumers in the area of credit as well as to minimise the administrative burden for creditors and credit intermediaries, the core framework of this Directive should follow the structure of Directive 2008/48/EC, notably the notions that information included in advertising concerning credit agreements relating to residential immovable property should be provided to the consumer by means of a representative example, that detailed pre-contractual information should be given to him by means of a standardised information sheet, that the consumer should receive adequate explanations before the conclusion of the credit agreement and that creditors should assess the consumer's creditworthiness before the provision of a loan. Similarly, non-discriminatory access for creditors to

(12) In order to ensure a consistent framework for consumers in the area of credit as well as to minimise the administrative burden for creditors and credit intermediaries, the core framework of this Directive should follow the structure of Directive 2008/48/EC ***as far as possible***, notably the notions that information included in advertising concerning credit agreements relating to residential immovable property should be provided to the consumer by means of a representative example, that detailed pre-contractual information should be given to him by means of a standardised information sheet, that the consumer should receive adequate explanations before the conclusion of the credit agreement, ***that the basis for calculating the cost of credit should be harmonised and should exclude notary fees***, and that

relevant credit databases should also be ensured in order to achieve a level playing field with the provisions as guaranteed by Directive 2008/48/EC. Similarly to Directive 2008/48/EC, this Directive should ensure the appropriate authorisation, registration and supervision of all creditors providing credit agreements relating to residential immovable property and should introduce requirements for the establishment of, and access to, out-of-court dispute resolution mechanisms.

creditors should assess the consumer's creditworthiness before the provision of a loan. Similarly, non-discriminatory access for creditors to relevant credit databases should also be ensured in order to achieve a level playing field with the provisions as guaranteed by Directive 2008/48/EC. Similarly to Directive 2008/48/EC, this Directive should ensure the appropriate authorisation, registration and supervision of all creditors providing credit agreements relating to residential immovable property and should introduce requirements for the establishment of, and access to, out-of-court dispute resolution mechanisms.

Amendment 13

Proposal for a directive Recital 13

Text proposed by the Commission

(13) This Directive should supplement Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC which requires that **the** consumer be informed of the existence or absence of a right of withdrawal and foresees a right of withdrawal. However, while Directive 2002/65/EC foresees the possibility for the supplier to communicate pre-contractual information after the conclusion of the contract, this would be inappropriate for contracts for credit agreements relating to residential immovable property given the significance of the financial commitment for the consumer. Furthermore, as foreseen in Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (Doorstep Selling Directive), consumers should have a right of withdrawal for credit agreements relating

Amendment

(13) This Directive should supplement Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC which requires **that in distance sales a** consumer be informed of the existence or absence of a right of withdrawal and foresees a right of withdrawal. However, while Directive 2002/65/EC foresees the possibility for the supplier to communicate pre-contractual information after the conclusion of the contract, this would be inappropriate for contracts for credit agreements relating to residential immovable property given the significance of the financial commitment for the consumer. Furthermore, **in addition to their rights under this Directive**, as foreseen in Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (Doorstep Selling

to residential immovable property concluded off-premises and should be informed about the existence of that right.

Directive), consumers should have a right of withdrawal for credit agreements relating to residential immovable property concluded off-premises and should be informed about the existence of that right.

Amendment 14

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) At the same time, it is important take into consideration the specificities of credit agreements relating to residential immovable property which justify a differentiated approach. Given the nature and the possible consequences of a credit agreement relating to residential immovable property for the consumer, advertising materials and personalised pre-contractual information should include specific risk warnings, for instance about the nature and implications of taking out a security. Following what already existed as a voluntary approach by the industry concerning home loans, general pre-contractual information should be made available at all times in addition to the personalised pre-contractual information. Furthermore, a differentiated approach is justifiable in order to take into consideration the lessons learnt from the financial crisis in order to ensure that loan origination takes place in a sound manner. In this respect, the provisions on the creditworthiness assessment should be strengthened in comparison to consumer credit, more precise information should be provided by credit intermediaries on their status and relationship with the creditors in order to disclose potential conflicts of interest, and all actors involved in the origination of credit agreements relating to residential immovable property should be adequately authorised, registered and

Amendment

(14) At the same time, it is important **to** take into consideration the specificities of credit agreements relating to residential immovable property which justify a differentiated approach. Given the nature and the possible consequences of a credit agreement relating to residential immovable property for the consumer, advertising materials and personalised pre-contractual information should include **adequate** specific risk warnings, for instance about the nature and implications of taking out a security. Following what already existed as a voluntary approach by the industry concerning home loans, general pre-contractual information should be made available at all times in addition to the personalised pre-contractual information. Furthermore, a differentiated approach is justifiable in order to take into consideration the lessons learnt from the financial crisis in order to ensure that loan origination takes place in a sound manner. In this respect, the provisions on the creditworthiness assessment should be strengthened in comparison to consumer credit, more precise information should be provided by credit intermediaries on their status and relationship with the creditors in order to disclose potential conflicts of interest, and all actors involved in the origination of credit agreements relating to residential immovable property should be adequately authorised, registered and

supervised.

supervised.

Amendment 15

Proposal for a directive Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) It is also necessary to regulate some additional areas to reflect the specificity of loans related to residential immovable property. Given the significance of the transaction it is necessary to ensure that consumers have adequate time for reflection before committing themselves to taking out a loan. It is also important to prevent practices which may induce consumers to enter into a credit agreement which is not in their best interests, such as tying of certain products, without restricting product bundling which can benefit consumers. It is also important to ensure that the residential immovable property is appropriately valued before the conclusion of the credit agreement and, where the valuation affects the residual obligation of the consumer, on default. It is also appropriate to regulate the handling of arrears and defaults. Member States should be permitted to maintain or introduce requirements in relation to the process to be followed in relation to arrears and foreclosure or the options which must be pursued prior to initiating foreclosure proceedings in relation to a property situated in their territory.

Amendment 16

Proposal for a directive Recital 15

Text proposed by the Commission

(15) Intermediaries often engage in more activities that just credit intermediation, in particular insurance intermediation or investment services provision. This Directive should therefore also ensure a degree of coherence with Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation and Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC. In particular, ***prudential requirements for intermediaries should be broadly in line with Directive 2002/92/EC*** in order to simplify the process of establishing as a credit intermediary and operating cross-border.

Amendment

(15) Intermediaries often engage in more activities that just credit intermediation, in particular insurance intermediation or investment services provision. This Directive should therefore also ensure a degree of coherence with Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation and Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC. In particular, ***credit institutions and insurance intermediaries should not require a separate authorisation to operate as a credit intermediary*** in order to simplify the process of establishing as a credit intermediary and operating cross-border.

Amendment 17

**Proposal for a directive
Recital 15 a (new)**

Text proposed by the Commission

Amendment

(15a) In order to increase the ability of consumers to make informed decisions for themselves about borrowing and managing debt responsibly, Member States should work with stakeholders to facilitate and promote the education of consumers in those areas. Member States should in particular ensure that assistance is available for vulnerable and less experienced consumers, such as first-time buyers.

Amendment 18

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) The applicable legal framework should give consumers the confidence that creditors and credit intermediaries are acting in the **best** interests of the consumer. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry. While this Directive should require relevant knowledge and competence to be proven at the level of the institution, Member States should be free to introduce or maintain such requirements applicable to individual natural persons.

Amendment

(16) The applicable legal framework should give consumers the confidence that creditors and credit intermediaries are acting in the interests of the consumer. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry, ***appropriate management of conflicts of interest including those arising from remuneration, and to require advice to be given in the best interests of the consumer.*** While this Directive should require relevant knowledge and competence to be proven at the level of the institution, Member States should be free to introduce or maintain such requirements applicable to individual natural persons.

Amendment 19

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) Creditors and credit intermediaries frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific provisions on the advertising of credit agreements relating to residential immovable property and a list of items to be included in advertisements and marketing materials directed at consumers are necessary to enable them to compare different offers. Such provisions take into account the specificities of credit agreements relating to residential

Amendment

(17) Creditors and credit intermediaries frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific ***final*** provisions on the advertising of credit agreements relating to residential immovable property and credit agreements secured by mortgages, and a list of items to be included in advertisements and marketing materials directed at consumers ***where such advertising specifies interest rates and costs***, are necessary to enable them to

immovable property, *for instance, the fact that if the loan repayments are not met, there is a risk of the consumer losing the property. Member States should remain free to introduce or maintain disclosure requirements in their national laws regarding advertising which does not contain information on the cost of credit.*

compare different offers. *Except for those specific final provisions, Member States should remain free to provide for information requirements in their national laws.* Such provisions should take into account the specificities of credit agreements relating to residential immovable property.

Amendment 20

Proposal for a directive Recital 18

Text proposed by the Commission

Advertising tends to focus on one or several products in particular, while consumers should be able to make their decisions in full knowledge of the range of credit products on offer. In this respect, general information plays an important role in educating the consumer in the broad range of products and services available from a particular creditor or credit intermediary and the key features thereof. Consumers should therefore be able at all times to access general information on the credit products available. *They should further receive personalised information in good time prior to the conclusion of the credit agreement in order to enable them to compare and reflect on the characteristics of credit products.*

Amendment

Advertising tends to focus on one or several products in particular, while consumers should be able to make their decisions in full knowledge of the range of credit products on offer. In this respect, general information plays an important role in educating the consumer in the broad range of products and services available from a particular creditor or credit intermediary and the key features thereof. Consumers should therefore be able at all times to access general information on the credit products available.

Amendment 21

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) Consumers should further receive personalised information in good time prior to the conclusion of the credit

agreement in order to enable them to compare and reflect on the characteristics of credit products. In accordance with the Commission Recommendation 2001/193/EC on pre-contractual information to be given to consumers by lenders offering home loans¹, the Commission monitored the European Standardised Information Sheet (ESIS) which provides information, personalised for the borrower, on the credit agreement being provided. Evidence collected by the Commission highlighted the need to revise the content and presentation of the ESIS to ensure that it is clear, understandable and contains all information found to be relevant for consumers. The content and layout of the ESIS should incorporate the necessary improvements identified during consumer testing in all Member States. The structure of the sheet, in particular, the order of the information items, should be revised, the wording should be more user-friendly, while sections, such as 'nominal rate' and 'annual percentage rate of charge', should be merged and new sections, such as 'risks and warnings', should be added.

¹ OJ L 69, 10.3.2001, p. 25.

Amendment 22

Proposal for a directive Recital 18 b (new)

Text proposed by the Commission

Amendment

(18b) In order to allow the consumer to compare an offer with other offers, obtain third party advice if necessary, assess its implications and take an informed decision on whether to accept the offer regardless of the means of conclusion of the contract, it is necessary to provide for a minimum period of reflection for consumers. Where consumers conclude a

credit agreement before the end of the reflection period a right of withdrawal should be provided. However, in order to accommodate the specificities of property transactions in Member States and the potential close link between the credit agreement and an associated property transaction, Member States should be able to provide that the right of withdrawal ceases to apply where the consumer undertakes any action, whether through a notary or otherwise, which under national law results in the transfer of a right in a property connected to or using funds obtained under the credit agreement.

Amendment 23

Proposal for a directive Recital 20

Text proposed by the Commission

Amendment

(20) The Commission Recommendation 2001/193/EC on pre-contractual information to be given to consumers by lenders offering home loans endorsed the Voluntary Code agreed in 2001 between associations and federations representing lenders and consumers and which contains a European Standardised Information Sheet (ESIS). This provides information, personalised for the borrower, on the credit agreement being provided. In its Recommendation, the Commission committed to monitoring compliance with the Code as well as its effectiveness, and to consider presenting binding legislation should the terms of the Recommendation not be fully complied with. Evidence collected by the Commission has since highlighted the need to revise the content and presentation of the ESIS to ensure that it is clear, understandable and contains all information found to be relevant for

deleted

consumers. The content and layout of the ESIS should incorporate the necessary improvements identified during consumer testing in all Member States. The structure of the sheet (in particular, the order of the information items) should be revised, the wording should be more user-friendly, while sections, such as 'nominal rate' and 'annual percentage rate of charge', should be merged and new sections, such as 'external complaint body' and 'risks and warnings', should be added.

Amendment 24

Proposal for a directive Recital 22

Text proposed by the Commission

(22) The consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Creditors, and where the transaction is through a credit intermediary, credit intermediaries should provide ***such*** assistance in relation to the credit products which they offer to the consumer. ***The*** relevant information, ***as well as*** the essential characteristics of the products proposed, ***should therefore be explained*** to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. Member States could determine when and to what extent such explanations are to be given to the consumer, taking into account the particular circumstances in which the credit is offered, the consumer's need for assistance and the nature of individual credit products.

Amendment

(22) The consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Creditors, and where the transaction is through a credit intermediary, credit intermediaries should provide assistance in relation to the credit products which they offer to the consumer ***by explaining*** the relevant information ***including*** the essential characteristics of the products proposed to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. Member States could determine when and to what extent such explanations are to be given to the consumer, taking into account the particular circumstances in which the credit is offered, the consumer's need for assistance and the nature of individual credit products. ***Such explanation and provision of personalised information should not necessarily constitute a***

personal recommendation.

Amendment 25

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Union, it is necessary to ensure the comparability of information relating to annual percentage rates of charge throughout the Union. The total cost of the credit to the consumer should comprise all the costs that the consumer has to pay in connection with the credit agreement, except for notarial costs. It should therefore include interest, commissions, taxes, fees for credit intermediaries and any other fees as well as the cost of insurance or other ancillary products, where these are obligatory in order to obtain the credit on the terms and conditions marketed. As the annual percentage rate of charge can at the pre-contractual stage be indicated only through an example, such an example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration. Given the complexities of calculating an annual percentage rate of charge (for instance, for credits based on variable interest rates or non-standard amortisation) and in order to be able to accommodate product innovation, ***technical regulatory standards could be employed to amend or specify the method of calculation of the annual percentage rate of charge.*** The definition of and methodology used for calculating the annual percentage rate of charge in this Directive should be ***the same as*** those in

Amendment

(23) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Union, it is necessary to ***uniformly*** ensure the comparability of information relating to annual percentage rates of charge throughout the Union. The total cost of the credit to the consumer should comprise all the costs that the consumer has to pay in connection with the credit agreement, except for ***registration fees and*** notarial costs. It should therefore include interest, commissions, taxes, fees for credit intermediaries and any other fees as well as the cost of insurance ***the valuation of the property*** or other ancillary products, where these are obligatory in order to obtain the credit on the terms and conditions marketed. As the annual percentage rate of charge can at the pre-contractual stage be indicated only through an example, such an example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration. Given the complexities of calculating an annual percentage rate of charge (for instance, for credits based on variable interest rates or non-standard amortisation) and in order to be able to accommodate product innovation, ***delegated acts could be used to amend the remarks or update the assumptions.*** The definition of and methodology used for calculating the annual percentage rate of charge in this Directive should be ***as close as possible to***

Directive 2008/48/EC in order to facilitate consumer understanding and comparison. Those definitions and methodologies may, however, differ in the future should Directive 2008/48/EC be modified at a later date. Member States are free to maintain or introduce prohibitions on unilateral changes to the borrowing rate by the creditor.

those in Directive 2008/48/EC in order to facilitate consumer understanding and comparison. Those definitions and methodologies may, however, differ in the future should Directive 2008/48/EC be modified at a later date. Member States are free to maintain or introduce prohibitions on unilateral changes to the borrowing rate by the creditor.

Amendment 26

Proposal for a directive Recital 24

Text proposed by the Commission

(24) **An** assessment of creditworthiness should take into consideration all **necessary** factors **that could influence a consumer's ability to repay** over the lifetime of the loan **including, but not limited to, the consumer's income, regular expenditures, credit score, past credit history, ability to handle interest rate adjustments, and other existing credit commitments. Additional provisions may be necessary to further elaborate on the different elements that may be taken into consideration in a creditworthiness assessment.** Member States may issue guidance on **the method and** criteria to assess a consumer's creditworthiness, for example by setting limits on loan-to-value or loan-to-income ratios.

Amendment

(24) **It is essential that the consumer's ability and propensity to repay the credit is assessed and verified before a credit agreement is concluded. The** assessment of creditworthiness should take into consideration all **relevant** factors over the lifetime of the loan. **In particular, the consumer's ability to service and fully repay the loan should include consideration of future payments needed due to negative amortisation or deferred payments of principal or interest, should not assume any appreciation in value unless the purpose of the credit agreement is to construct or renovate the immovable property and should be considered in the light of other expenditure and debts as well as savings and assets. Reasonable allowances should also be made for future events, such as a reduction in income where the loan term lasts into retirement or, where applicable, an increase in the interest rate or negative change to the exchange rate.** Member States may issue **additional** guidance on **those or additional** criteria **and on methods** to assess a consumer's creditworthiness, for example by setting limits on loan-to-value or loan-to-income ratios. **The creditor's decision as to whether to grant the credit should be**

consistent with the outcome of the creditworthiness assessment. However, a positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.

Amendment 27

Proposal for a directive Recital 25

Text proposed by the Commission

(25) A negative creditworthiness assessment should indicate to the creditor that the consumer is unable to afford the credit and as a consequence, the creditor should not grant the credit. Such a negative outcome may derive from a wide range of reasons, including but not limited to the consultation of a database or a negative credit score. A positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.

Amendment

deleted

Amendment 28

Proposal for a directive Recital 26

Text proposed by the Commission

(26) Consumers should provide all available relevant information on their financial situation and personal circumstances to the creditor or intermediary in order to facilitate the creditworthiness assessment. The consumer should not, however, be penalised where he is not in a position to provide certain information or assessments of the future evolution of his financial situation. In situations where consumers knowingly provide incomplete or inaccurate information, Member States should be able to determine the appropriate

Amendment

(26) In line with the recommendations of the Financial Stability Board, creditors should require consumers to provide relevant information on their income and financial situation in order to facilitate the creditworthiness assessment, since failure to do so will result in refusal of the credit they seek to obtain and the creditor should appropriately verify such information before granting the loan. In situations where consumers knowingly provide incomplete or inaccurate information, Member States should be able to determine the appropriate penalties.

penalties.

Amendment 29

Proposal for a directive Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) The Financial Stability Board has established principles to ensure that residential immovable property is appropriately valued. Member States should ensure that creditors value properties in accordance with those principles or other internationally accepted standards and that a register exists of professionally competent appraisers. It should be possible for that register to be operated by an appropriate professional association.

Amendment 30

Proposal for a directive Recital 27

Text proposed by the Commission

Amendment

(27) Consultation of a credit database is a useful element in the assessment of creditworthiness. Some Member States require creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database. Creditors should also be able to consult the credit database over the lifetime of the loan in order to identify and assess the potential for default. ***In the event that such a potential is evident or objectively demonstrated, the creditor should contact the consumer to discuss the different options to avoid the possibility of default, such as a rescheduling of the loan. In any event, the creditor should not consider withdrawing the credit without having first explored all possible alternatives with***

(27) Consultation of a credit database is a useful element in the assessment of creditworthiness. Some Member States require creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database. Creditors should also be able to consult the credit database over the lifetime of the loan in order to identify and assess the potential for default. Pursuant to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, consumers should be informed by creditors of the consultation of the credit database prior to its consultation, and should have the right

the consumer to avoid default. Pursuant to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, consumers should be informed by creditors of the consultation of the credit database prior to its consultation, and should have the right to access the information held on them in such a credit database in order to, where necessary, rectify, erase or block the personal data concerning them processed therein where it is inaccurate or has been unlawfully processed.

to access the information held on them in such a credit database in order to, where necessary, rectify, erase or block the personal data concerning them processed therein where it is inaccurate or has been unlawfully processed.

Amendment 31

Proposal for a directive Recital 28

Text proposed by the Commission

Amendment

(28) To prevent any distortion of competition among creditors, it should be ensured that all creditors (including credit institutions or non-credit institutions providing credit agreements relating to residential immovable property) have access to all public and private credit databases concerning consumers under non-discriminatory conditions. Such conditions should not therefore include a requirement to be established as a credit institution. Access conditions, such as the costs of access or requirements for any request for information to be based upon a request for credit would continue to apply. Member States are free to determine whether, within their jurisdictions, credit intermediaries may also have access to such databases.

deleted

Amendment 32

Proposal for a directive Recital 29

Text proposed by the Commission

(29) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, of the name of the database consulted and of any other elements required by Directive 95/46/EC so as to enable the consumer to exercise his right to access and, where necessary, rectify, erase or block personal data concerning him and processed therein. ***Where a decision to reject an application for credit is based on an automated decision or on systematic methods such as credit scoring systems, the creditor should inform the consumer thereof and explain the logic involved in the decision and of the arrangements enabling the consumer to request the automated decision to be reviewed manually.*** However, the creditor should not be required to give such information when to do so would be prohibited by other Union legislation such as legislation on money laundering or the financing of terrorism. Neither should such information be provided where to do so would be contrary to the objectives of public policy or public security such as the prevention, investigation, detection or prosecution of criminal offences.

Amendment 33

Proposal for a directive Recital 30 a (new)

Text proposed by the Commission

Amendment

(29) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, of the name of the database consulted and of any other elements required by Directive 95/46/EC so as to enable the consumer to exercise his right to access and, where necessary, rectify, erase or block personal data concerning him and processed therein. However, the creditor should not be required to give such information when to do so would be prohibited by other Union legislation such as legislation on money laundering or the financing of terrorism. Neither should such information be provided where to do so would be contrary to the objectives of public policy or public security such as the prevention, investigation, detection or prosecution of criminal offences.

(30a) To prevent any distortion of

competition among creditors, it should be ensured that all creditors, including credit institutions or non-credit institutions providing credit agreements relating to residential immovable property, have access to all public and private credit databases concerning consumers under non-discriminatory conditions. Such conditions should not therefore include a requirement to be established as a credit institution. Access conditions, such as the costs of access or requirements for any request for information to be based upon a request for credit would continue to apply. Member States should be free to determine whether, within their jurisdictions, credit intermediaries may also have access to such databases.

Amendment 34

Proposal for a directive Recital 31

Text proposed by the Commission

(31) In order to be in a position to understand the nature of the service, consumers should be made aware *of what constitutes a personalised recommendation on suitable credit agreements for that consumer's needs and financial situation ('advice')* and when it is being provided and when it is not. Those providing advice should comply with *general* standards in order to ensure that the consumer is presented with *a range of* products suitable for his needs and circumstances. *That service should be based on a fair and sufficiently wide-ranging analysis of the products available on the market, and on a close inspection of the consumer's* financial situation, preferences and objectives. *Such an assessment should be* based on up-to-date information and reasonable assumptions *on the consumer's* circumstances during the

Amendment

(31) *Providing advice in the form of a personalised recommendation is a distinct activity which may but need not be combined with other aspects of granting or intermediating credit.* In order to be in a position to understand the nature of the service, consumers should be made aware of when *advice* is being provided and when it is not. Those providing advice should comply with *certain* standards in order to ensure that the consumer is presented with products suitable for his needs and circumstances. *Advisers should also disclose whether they are advising on a wide range of products from across the market or only on the creditor's or credit intermediary's own product range. Advisers should be able to specialise in certain 'niche' products such as bridging finance and advise on a wide range of products within that specialist niche*

lifetime of the loan. Member States may clarify how the suitability of a given product for a consumer should be assessed in the context of the provision of *advice*.

provided that is made clear to the consumer. Where advice is given it should be based on an understanding of the consumer's financial situation, preferences and objectives based on up-to-date information and reasonable assumptions about the consumer's circumstances during the lifetime of the loan. Member States may clarify how the suitability of a given product for a consumer should be assessed in the context of the provision of advisory services.

Amendment 35

Proposal for a directive Recital 32

Text proposed by the Commission

(32) A consumer's ability to repay his credit prior to the expiry of his credit agreement may play an important role in promoting competition in the single market and the free movement of EU citizens. However, substantial differences exist between the national principles and conditions under which consumers have the ability to repay and the conditions under which such early repayment can take place. Whilst recognising the diversity in mortgage funding mechanisms and the range of products available, certain standards with regard to early repayment of credit are essential at Union level in order to ensure that consumers have the possibility to discharge their obligations before the date agreed in the credit agreement and the confidence to shop around for the best products to meet their needs. Member States should therefore ensure, either by legislation or by means of contractual clauses, that consumers have a statutory or contractual right to early repayment; nevertheless, Member States should be able to define the conditions for the

Amendment

(32) In line with the recommendations of the Financial Stability Board, given the long term nature of many loans related to residential property, some flexibility during the lifetime of the credit agreement is needed to enable both creditors and consumers to manage risks and changing circumstances to which they are exposed during the loan. It is therefore appropriate that consumers should have a right to fully or partially repay the credit agreement early as this encourages responsible borrowing and hence financial stability as well as competition in the single market. However, creditors should be entitled to fair and objectively justified compensation for the costs directly linked to the early repayment, taking into account also any savings thereby made by the creditor. Such compensation may be recovered in the form of a specific charge to cover possible costs for consumers who exercise the right to repay early or it may be recovered by absorbing the cost into the total cost of the credit agreement. Member States should be able to ensure that justified

*exercise of such a right. These conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, whether fixed or variable, restrictions with regard to the circumstances under which the right may be exercised. Member States could also provide that the creditor should be entitled to fair and objectively justified compensation for **potential** costs directly linked to early repayment of the credit. **In any event** if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a special interest on the part of the consumer. Such special interest may for example occur in case of divorce or unemployment. Where a Member State chooses to lay down such conditions, these should not make the exercise of the right excessively difficult or onerous for the consumer.*

*costs do not exceed a level compatible with market efficiency. Where the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a special interest on the part of the consumer specified by **the Member State**. Such special interest may for example occur in case of divorce or unemployment. Where a Member State chooses to lay down such conditions, these should not make the exercise of the right excessively difficult or onerous for the consumer. **It is also therefore appropriate to make provision for flexibility under certain conditions where credit agreements are denominated in a foreign currency, provided that the creditor is again entitled to fair and objectively justified compensation for possible costs directly linked to the exercise by consumers of the rights provided by the Directive.***

Amendment 36

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) It is also important to ensure that sufficient transparency exists to provide clarity on the nature of the commitments made in the interests of preserving financial stability. Member States should therefore develop frameworks to allow for flexibility, for example by accepting another property as equivalent collateral for the loan. Those measures should enable creditors to accept as equivalent collateral property located in another Member State where it is considered as equivalent for the purposes of being pooled in financial instruments traded in secondary markets.

Amendment 37

Proposal for a directive

Recital 34

Text proposed by the Commission

(34) Credit intermediaries should be **registered with the competent authority of the Member State where they have their residence or their head office, provided that they have been authorised in accordance with** strict professional requirements in relation to their competence, good repute, and professional indemnity cover. **With a view to promoting consumer confidence in** credit intermediaries, **Member States** should **ensure that authorised credit intermediaries are subject to ongoing and thorough supervision by their home Member State competent authority**. Such requirements should apply at least at the level of the institution; however, Member States may clarify whether such requirements for authorisation and subsequent registration apply to individual employees within the credit intermediary.

Amendment

(34) Credit intermediaries should be authorised **and supervised to ensure that they meet** strict professional requirements in relation to their competence, good repute, and professional indemnity cover. **Authorised** credit intermediaries should **also be registered**. Such requirements should apply at least at the level of the institution; however, Member States may clarify whether such requirements for authorisation and subsequent registration apply to individual employees within the credit intermediary. **It is also appropriate to allow credit intermediaries to appoint representatives to act on their behalf and under their responsibility and for the minimum regulatory requirements for such appointed representatives to be established in this Directive.**

Amendment 38

Proposal for a directive

Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) In order to facilitate the ability of credit intermediaries to provide their services on a cross-border basis, for the purposes of cooperation, information exchange and dispute resolution between competent authorities, the competent authorities responsible for the

authorisation and supervision of credit intermediaries should be those acting under the auspices of the EBA, as set out in Article 4(2) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) or other national authorities which are required to cooperate with such competent authorities.

Amendment 39

Proposal for a directive Recital 39

Text proposed by the Commission

(39) In order to take account of developments in the markets for credit relating to residential immovable property or in the evolution of credit products *as well as economic developments, such as inflation, and in order to provide further explanations on how to address certain of the requirements contained in this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.* In particular, the Commission should be empowered to adopt delegated acts to *specify the details concerning the professional requirements applicable to creditors' staff and credit intermediaries, the criteria used for assessing the creditworthiness of the consumer and in ensuring that credit products are not unsuitable for the consumer, and further harmonisation of key terms such as 'default' the registration criteria and data processing conditions to be applied to credit databases.*

Amendment

(39) In order *to ensure consistent harmonisation and to* take account of developments in the markets for credit relating to residential immovable property or in the evolution of credit products *or in economic conditions, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission.* In particular, the Commission should be empowered to adopt delegated acts *to supplement and update the content and presentation of the ESIS and to amend the remarks or update the assumptions used to calculate the APRC. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.*

Amendment 40

Proposal for a directive Recital 40

Text proposed by the Commission

Amendment

(40) In order to take account of developments in the markets for credit relating to residential immovable property, including the range of products available, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to amend the content of the standard information items to be included in advertising, the content and format of the European Standardised Information Sheet (ESIS), the content of the information disclosures by credit intermediaries, the formula and the assumptions used to calculate the annual percentage rate of charge and the criteria to be taken into account for the assessment of the consumer's creditworthiness.

deleted

Amendment 41

Proposal for a directive Recital 41

Text proposed by the Commission

Amendment

(41) In order to take account of economic developments, such as inflation and developments in markets for credit agreements related to residential immovable property, the Commission should be empowered to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee with regard to credit intermediaries by adopting regulatory technical standards.

deleted

Amendment 42

Proposal for a directive Recital 42

Text proposed by the Commission

(42) In order to facilitate the ability of credit intermediaries to provide their services on a cross-border basis, for purposes of cooperation, information exchange and dispute resolution between competent authorities, the competent authorities responsible for the authorisation and supervision of credit intermediaries should be those acting under the auspices of the EBA, as set out in Article 4(2) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority).

Amendment

deleted

Amendment 43

Proposal for a directive Recital 43

Text proposed by the Commission

(43) The European Parliament and the Council should have *two months* from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by *one month* with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.

Amendment

(43) The European Parliament and the Council should have *three months* from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by *three months* with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.

Amendment 44

Proposal for a directive Recital 44

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Text proposed by the Commission

(44) The efficient functioning of this Directive will need to be reviewed, as will progress on the establishment of an internal market with a high level of consumer protection for credit agreements relating to residential immovable property. The Commission should therefore review the Directive five years after the deadline for its transposition. The review should include, among other things, an analysis of the *evolution of the market* for non-credit institutions *providing credit agreements relating to residential immovable property* and an assessment on the need for further measures, including a passport for such non-credit institutions, an *examination of the necessity to introduce rights and obligations with regard to the post-contractual stage of credit agreements*, and an assessment of whether *an extension of the scope to include lending to small companies is warranted*.

Amendment 45

Proposal for a directive

Recital 46

Text proposed by the Commission

(46) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States *are encouraged to draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible*, the correlation between this Directive and the transposition measures, and to make them public,

Amendment 46

Proposal for a directive

Article 1

Amendment

(44) The efficient functioning of this Directive will need to be reviewed, as will progress on the establishment of an internal market with a high level of consumer protection for credit agreements relating to residential immovable property. The Commission should therefore review the Directive five years after the deadline for its transposition. The review should include, among other things, *an assessment of compliance with and the impact of this Directive*, an analysis of the *provision of credit agreements* by non-credit institutions and an assessment on the need for further measures, including a passport for such non-credit institutions, an assessment of whether the scope *remains appropriate and of whether additional measures are necessary to ensure the traceability of credit agreements secured against residential immovable property*.

Amendment

(46) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States *should* draw up tables illustrating the correlation between this Directive and the transposition measures and make them public,

Text proposed by the Commission

The purpose of this Directive is to lay down a framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning credit agreements relating to residential immovable property for consumers and concerning certain aspects of the prudential and supervisory requirements for credit intermediaries and creditors.

Amendment

1. This Directive lays down a framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning credit agreements concluded with consumers relating to consumer credit agreements secured by a mortgage or otherwise relating to residential immovable property for consumers and for associated prudential and supervisory requirements.

2. This Directive establishes an appropriately harmonised Union framework through, in particular, a common, consistent Union standard for the calculation of the annual percentage rate of charge, the provision of pre-contractual information through a standardised European Standardised Information Sheet and the obligation to undertake an assessment of creditworthiness in relation to credit agreements. In other areas of the Directive a framework of common minimum standards is established.

Amendment 47

Proposal for a directive Article 2

Text proposed by the Commission

1. This Directive shall apply to ***the following credit agreements***:
- (a) Credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property.
 - (b) Credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected

Amendment

1. This Directive shall apply to:
- (a) Credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property;
 - (b) Credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected

residential building.

(c) Credit agreements the purpose of which is the renovation of the residential immovable property a *person* owns or aims to acquire, ***which are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008.***

2. This Directive shall not apply to:

(a) Credit agreements ***which will eventually be repaid*** from the sale ***proceeds of an*** immovable property.

(b) Credit agreements where the credit is granted by an employer to his employees as a secondary activity where such a credit agreement is offered free of interest or at annual percentage rates of charge lower than those prevailing on the market and not offered to the public generally.

residential building;

(c) Credit agreements the purpose of which is the renovation of the residential immovable property a *consumer* owns or aims to acquire.

1a. Member States which have already applied Directive 2008/48/EC in full to credit agreements within the scope of point (c) of paragraph 1 may continue to apply that Directive to such loans where they do not fall within the scope of point (a) of paragraph 1 for a period of five years after ...*.

Member States which before ...* have implemented an information sheet that meets at least the same information requirements as those set out in Annex II may continue to use it for the purposes of Article 9a on pre-contractual information for a period of five years after ...*.

2. This Directive shall not apply to:

(a) Credit agreements ***where the creditor contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the sale of a residential immovable property or a right relating to residential immovable property; and will not seek full repayment of the credit until the occurrence of one or more specified life events defined by Member States, unless a breach of contractual obligations that allows the creditor to terminate the credit agreement occurs;***

(b) Credit agreements where the credit is granted by an employer to his employees as a secondary activity where such a credit agreement is offered free of interest or at annual percentage rates of charge lower than those prevailing on the market and not offered to the public generally;

(ba) Credit agreements to defer credit agreements for a period of no more than six months, where the borrowing rate for the deferral does not exceed the rate in the credit agreement, where the consumer agrees to be exempted from this Directive;

(bb) Credit agreements in the form of overdraft facilities where the consumer agrees to be exempted from the provisions of this Directive;

(bc) 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;

(bd) Credit agreements which are the outcome of a settlement reached in court or before another statutory authority.

2a. Member States may:

(a) waive the provisions of Articles 7 to 9a, Article 11 and Annex II for credit agreements of a total value exceeding EUR 2 million.

(b) decide that some or all of the Articles of this Directive do not apply to credit agreements where the property is not to be occupied as a dwelling by the consumer or a related person, where the consumer agrees to be exempted from the provisions of this Directive;

(c) decide that some or all of the Articles of this Directive do not apply to credit agreements where the credit is due to be repaid within 12 months, where the consumer accepts to be exempted from the provisions of this Directive;

(d) decide that some or all of the Articles of this Directive do not apply to credit agreements which relate to the deferred payment, free of charge, of an existing debt, where the consumer agrees to be exempted from this Directive.

2b. Member States may exclude the following from this Directive provided that an equivalent framework is in place to ensure that consumers receive timely and complete information about credit agreements:

(a) credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, free of interest or at lower interest 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 interest rates not higher than those prevailing on the market;

(b) credit agreements where the creditor is an organisation within the scope of Article 2(5) of Directive 2008/48/EC.

**** OJ: please insert the date of entry into force of this Directive.***

Amendment 48

Proposal for a directive Article 3

Text proposed by the Commission

For the purposes of this Directive, the following definitions shall apply:

- (a) 'Consumer' means a consumer as defined in Article 3(a) of Directive 2008/48/EC.
- (b) 'Creditor' means a natural or legal person who grants or promises to grant credit within the meaning of Article 2 in the course of his trade, business or profession.
- (c) 'Credit agreement' means an agreement whereby a creditor, directly or through a credit intermediary, grants or promises to grant, to a consumer, a credit within the

Amendment

For the purposes of this Directive, the following definitions shall apply:

- (a) 'Consumer' means a consumer as defined in Article 3(a) of Directive 2008/48/EC.
- (b) 'Creditor' means a natural or legal person who grants or promises to grant credit within the meaning of Article 2 in the course of his trade, business or profession.
- (c) 'Credit agreement' means an agreement whereby a creditor, directly or through a credit intermediary, grants or promises to grant, to a consumer, a credit within the

meaning of Article 2 in the form of a deferred payment, loan or other similar financial accommodation.

(d) 'Ancillary service' means a **financial** service offered to the consumer by the creditor or credit intermediary in conjunction with the credit agreement.

(e) 'Credit intermediary' means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for **a fee**, which may take a pecuniary form or any other agreed form of financial consideration:

(i) offers credit agreements **within the meaning of Article 2** to consumers;

(ii) assists consumers by undertaking preparatory work in respect of credit agreements **within the meaning of Article 2** other than as referred to in point (i);

(iii) concludes credit agreements **within the meaning of Article 2** with consumers on behalf of the creditor.

(f) 'Tied credit intermediary' means any credit intermediary who acts on behalf of and under the full responsibility of **only one creditor or one group**.

(g) 'Group' means, for the purpose of this Directive, creditors which are joined for the purposes of consolidated accounts, as defined in Directive 83/349/EEC.

(h) 'Credit institution' means credit institution as defined in Article 4(1) of Directive 2006/48/EC.

(i) 'Non-credit institution' means any **natural or legal person who grants or promises to grant credit within the meaning of Article 2 in the course of his trade, business or profession and** is not a credit institution.

(j) 'Staff' means **any employees of the creditor or credit intermediary having**

meaning of Article 2 in the form of a deferred payment, loan or other similar financial accommodation.

(d) 'Ancillary service' means a service offered to the consumer by the creditor or credit intermediary in conjunction with the credit agreement.

(e) 'Credit intermediary' means a natural or legal person who is not acting as a creditor **or notary** and who, in the course of his trade, business or profession, for **remuneration**, which may take a pecuniary form or any other agreed form of financial consideration:

(i) **presents or** offers credit agreements to consumers;

(ii) assists consumers by undertaking preparatory work **and/or administration** in respect of credit agreements other than as referred to in point (i);

(iii) concludes credit agreements with consumers on behalf of the creditor; **or**

(iiia) provides advisory services.

(f) 'Tied credit intermediary' means any credit intermediary who acts on behalf of and under the full responsibility of **one or more creditors or groups**.

(g) 'Group' means, for the purpose of this Directive, creditors which are joined for the purposes of consolidated accounts, as defined in Directive 83/349/EEC.

(h) 'Credit institution' means credit institution as defined in Article 4(1) of Directive 2006/48/EC.

(i) 'Non-credit institution' means any **creditor that** is not a credit institution.

(j) 'Staff' means:

contacts with consumers and who are engaged in the activities covered by this Directive.

(k) 'Total cost of the credit to the consumer' means the total cost of the credit to the consumer as defined in Article 3(g) of Directive 2008/48/EC.

(l) 'Total amount payable by the consumer' means the total amount payable by the consumer as defined in Article 3(h) of Directive 2008/48/EC.

(m) 'Annual percentage rate of charge' means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in Article 12(2).

(n) 'Borrowing rate' means the borrowing rate as defined in Article 3(j) of Directive 2008/48/EC.

(o) 'Creditworthiness assessment' means the evaluation of *a consumer's ability to meet his debt* obligations.

(p) 'Durable medium' means durable medium as defined in Article 3(m) of Directive 2008/48/EC.

(q) 'Home Member State' means:

(i) where the creditor or credit intermediary is a natural person, the Member State in which his *residence* is situated *and in which he carries on his business*;

(i) any natural person working for the creditor, credit intermediary or appointed representative who is engaged or has contacts with consumers in the activities covered by this Directive; or

(ii). any natural person directly managing and/or supervising the natural persons referred to in point (i).

(k) 'Total cost of the credit to the consumer' means the total cost of the credit to the consumer as defined in Article 3(g) of Directive 2008/48/EC *including valuation of property but excluding registration fees for the mortgage or another comparable security.*

(l) 'Total amount payable by the consumer' means the total amount payable by the consumer as defined in Article 3(h) of Directive 2008/48/EC.

(m) 'Annual percentage rate of charge' means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in Article 12(2).

(n) 'Borrowing rate' means the borrowing rate as defined in Article 3(j) of Directive 2008/48/EC.

(o) 'Creditworthiness assessment' means the evaluation of *the prospect for the obligations resulting from the credit agreement to be met.*

(p) 'Durable medium' means durable medium as defined in Article 3(m) of Directive 2008/48/EC.

(q) 'Home Member State' means:

(i) where the creditor or credit intermediary is a natural person, the Member State in which his *head office* is situated;

(ii) where the creditor or credit intermediary is a legal person, the Member State in which its registered office is situated *or*, if under national law it has *no* registered office, ***the Member State in which its*** head office *is* situated.

(r) 'Host Member State' means the Member State in which the creditor or credit intermediary has a branch or provides services.

(ii) where the creditor or credit intermediary is a legal person, the Member State in which its registered office is situated , if under national law it has a registered office, ***and*** head office ***are*** situated.

(r) 'Host Member State' means the Member State in which the creditor or credit intermediary has a branch or provides services.

(ra) 'Advisory services' means the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements and constitutes a separate activity from the granting of a credit.

(rb) 'Residential immovable property' means an item of immovable property primarily intended for residential purposes.

(rc) 'Appraiser' means a natural or legal person who, in the course of his trade, business or profession, carries out valuations of residential immovable property or the land on which such residential immovable property is or could be situated.

(rd) 'Tying practice' means the offering of one or more ancillary services with the credit agreement in a package where the credit agreement is not made available to the consumer separately.

(re) 'Bundling practice' means the offering of one or more ancillary services with the credit agreement in a package where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.

(rf) 'Total amount of credit' means the ceiling or the total sums made available under a credit agreement, irrespective of whether they are paid to the consumer or

to a third party.

(rg) 'Foreign currency loan' means a loan which is:

(i) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the loan is to be repaid; or

(ii) denominated in a currency other than that of the Member State in which the consumer is resident.

(rh) 'Variable rate loan' means a credit agreement where the borrowing rate for a part or the totality of the agreement is not determined solely by a fixed percentage agreed on the conclusion of the credit agreement and is usually based on the movement of an underlying index or reference rate regardless of the existence of floors or caps in its evolution.

Amendment 49

Proposal for a directive Article 4

Text proposed by the Commission

Member States shall designate the competent authorities empowered to ensure implementation of this Directive and shall ensure that they are granted all the powers necessary for the performance of their duties.

Member States shall ensure that the authorities designated as competent for ensuring the implementation of Articles 18, 19, 20 *and* 21 of this Directive are *one of those competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority).*

Amendment

1. Member States shall designate the *national* competent authorities empowered to ensure implementation *and enforcement* of this Directive and shall ensure that they are granted all the *investigating and sanctioning* powers *and resources* necessary for the *efficient and effective* performance of their duties.

2. Member States shall ensure that the authorities designated as competent for ensuring the implementation of Articles 18, 19, *19a*, 20, 21, *22, 22a and 23* of this Directive are:

(i) one of those competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); or

(ii) other national authorities provided that national legislation or administrative regulations require those authorities to cooperate with the authorities referred to in point (i) whenever necessary in order to carry out their duties under this Directive.

Member States shall inform the Commission of the designation of the competent authorities, indicating any division of the respective duties between different competent authorities.

2. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.

3. Member States shall inform the Commission **and EBA** of the designation of the competent authorities, indicating any division of the respective duties between different competent authorities. **The Commission shall publish a list of the competent authorities referred to in paragraph 1 in the Official Journal of the European Union at least once a year, and update it continuously on its website.**

4. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely **among themselves and with EBA** so that they can discharge their respective duties effectively.

5. Member States shall put in place procedures for the collection and exchange of information from those authorities, in particular for the purpose of implementing Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board¹ and Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 24 November 2011 on the prevention and correction of macroeconomic imbalances².

¹ OJ L 331, 15.12.2010, p. 1.

Amendment 50

Proposal for a directive Chapter 1 a (new)

Text proposed by the Commission

Amendment

Chapter 1a Financial education Article 4a

Financial education of consumers

- 1. Member States shall ensure that measures are in place to support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to credit agreements.*
- 2. Clear, informative documents shall be provided to all first-time buyers, as well as information regarding further assistance in the form of consumer organisations and national supervisory bodies.*
- 3. Member States shall ensure that all stakeholders are adequately involved in the design and development of the measures referred to in this Article.*

Amendment 51

Proposal for a directive Article 5

Text proposed by the Commission

Amendment

1. Member States shall require that, when granting, intermediating or **advising** on credit and, where appropriate, ancillary services to consumers, the creditor or the credit intermediary acts honestly, fairly and professionally **in accordance with** the **best** interests of the consumer.

1. Member States shall require that, when **designing**, granting or intermediating on credit and, where appropriate, ancillary services to consumers, **or when implementing a credit agreement**, the creditor or the credit intermediary acts honestly, fairly, **transparently** and professionally **taking due account of** the

rights and interests of the consumer. This shall involve taking all steps necessary to meet a consumer's needs and circumstances, taking into account all relevant information relating to a consumer's specific circumstances and any specific requirement made known by a consumer.

2. Member States shall ensure that the manner in which creditors remunerate their staff and *the relevant* credit intermediaries and the manner in which credit intermediaries remunerate their staff do not impede compliance with the obligation to *act in accordance with the best interests of the consumer*, as referred to in paragraph 1.

2. Member States shall ensure that the manner in which creditors remunerate their staff and credit intermediaries and the manner in which credit intermediaries remunerate their staff *and appointed representatives* do not impede compliance with the obligation referred to in paragraph 1.

2a. Member States shall in particular ensure that remuneration of staff responsible for the assessment of creditworthiness is consistent with the remuneration policies for risk takers set out in Annex V, section 11, paragraphs 23(a) and 23(b) of Directive 2006/48/EC and is not contingent on the number or proportion of applications accepted;

2b. Member States shall ensure that where creditors, credit intermediaries or appointed representatives provide advisory services the remuneration structure of the staff involved does not prejudice their ability to provide an objective recommendation and, in particular, that the outcome of those advisory services is not contingent on individual product results or sales targets.

Amendment 52

Proposal for a directive Article 6

Text proposed by the Commission

Minimum competence requirements

Amendment

*Minimum **knowledge and** competence requirements*

1. *Home* Member States shall ensure that:

(a) The staff of creditors and credit intermediaries possess an appropriate level of knowledge and competence in relation to the offering or granting of credit agreements within the meaning of Article 2, or the activity of credit intermediation as defined in Article 3(e). Where the conclusion of a credit agreement includes an ancillary service related to it, in particular insurance or investment services, they shall also possess appropriate knowledge and competence in relation to that ancillary service in order to satisfy the requirements set out in Article 19 of Directive 2004/39/EC and Article 4 of Directive 2002/92/EC.

(b) The natural persons within the management of creditors and credit intermediaries who are responsible for or have a role in the intermediation, advice or approval of the credit agreement, possess appropriate knowledge and competence in relation to credit agreements.

(c) Creditors and credit intermediaries are monitored in order to assess whether the requirements referred to in paragraph 1, points (a) and (b), are complied with on a continuing basis.

2. *Home* Member States shall *ensure that the appropriate level of knowledge and competence is determined on the basis of*

1. Member States shall ensure *that creditors and credit intermediaries require their staff to possess an appropriate level of knowledge and competence in relation to product design, the offering or intermediation of, advising on or granting of credit agreements. Where the conclusion of a credit agreement includes an ancillary service related to it, they shall possess appropriate knowledge and competence in relation to that ancillary service, including that required by sectoral legislation.*

2. Member States shall *establish the minimum knowledge and competence requirements for creditors', credit*

recognised qualifications or experience.

intermediaries' and appointed representatives' staff in accordance with the principles set out in Annex III.

2a. Where a creditor or credit intermediary provides its services within the territory of one or more another Member State:

(i) through a branch, the host Member State shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff of a branch;

(ii) under the freedom to provide services, the home Member State shall be responsible for establishing compliance with the minimum knowledge and competence requirements applicable to the staff in accordance with Annex III, except for those requirements referred to in Annex III paragraphs 1(a), 1(b), 1(c), 1(e), 1(f), 1(h), 2 and 3 which shall be established by the host Member State.

2b. The persons referred to in the first paragraph shall be required to undergo professional training on an ongoing basis to update and validate their knowledge and competence.

3. Home Member States shall make public the criteria they have established in order for credit intermediaries or creditors' staff to meet their competence requirements. Such criteria shall include a list of any recognised qualifications.

4. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to specify the requirements provided in paragraph 1 and 2 of this Article, and in particular, the necessary requirements for appropriate knowledge and competence.

Amendment 53

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The first subparagraph shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph.

Justification

Alignment with Article 4(1) of the Consumer Credit Directive.

Amendment 54

Proposal for a directive

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. The standard information shall specify ***the following*** in a clear, concise and prominent way by means of a representative example:

2. The standard information shall specify in a clear, concise and prominent way by means of a representative example:

Justification

Alignment with Article 4(2) of the Consumer Credit Directive.

Amendment 55

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) that the product advertised is a credit agreement and, where applicable, is

deleted

secured either by a mortgage or another comparable security commonly used in a Member State on residential immovable property or by a right related to residential immovable property;

Justification

Mortgages are generally not sold directly on the basis of an advert. Market research shows that consumers retain very little information from mortgage advertising, so it is more effective to focus on a few key principles.

Amendment 56

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point c

Text proposed by the Commission

(c) the borrowing rate, indicating whether this is fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer;

Amendment

(c) the borrowing rate, indicating whether this is fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer; ***the annual percentage rate of charge shall be included into the advertisement at least as prominently as any other numerical information;***

Amendment 57

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point f

Text proposed by the Commission

(f) the duration of the credit agreement;

Amendment

(f) ***if applicable***, the duration of the credit agreement;

Justification

Alignment with Article 4(2)(f) of the Consumer Credit Directive.

Amendment 58

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point g

Text proposed by the Commission

Amendment

(g) the amount of the instalments;

(g) *if applicable*, the amount of the instalments;

Justification

Alignment with Article 4(2)(f) of the Consumer Credit Directive.

Amendment 59

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point h

Text proposed by the Commission

Amendment

(h) *the total amount payable by the consumer;*

deleted

Amendment 60

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point i

Text proposed by the Commission

Amendment

(i) *a warning, where applicable, concerning the risk of losing the residential immovable property in the event of non-observance of the commitments linked to the credit agreement when the credit is secured by a mortgage or another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property.*

deleted

Justification

Too detailed for inclusion on advertising material, and is not in keeping with the image of a responsible consumer.

Amendment 61

**Proposal for a directive
Article 8 – paragraph 2 – subparagraph 2**

Text proposed by the Commission

The standard information shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising and marketing.

Amendment

The standard information shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising and marketing.

Any information provided throughout the advertising shall adhere to the displayed representative example.

Member States shall adopt criteria for defining a representative example.

Amendment 62

**Proposal for a directive
Article 8 – paragraph 4**

Text proposed by the Commission

4. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to further specify the list of standard information items to be included in advertising.

In particular, the Commission, when adopting such delegated acts shall amend, where necessary, the list of the standard information items laid down in paragraphs 2(a) to (i) of this Article.

Amendment

deleted

Amendment 63

Proposal for a directive Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Tying and related unfair commercial practices

- 1. Member States shall allow bundling practices but not tying practices.*
- 2. Notwithstanding paragraph 1, Member States may permit tying practices where creditors require the opening or maintaining of a payment account or savings product where it is a fully integrated part of the credit or whose only purpose is to accumulate capital to repay or service the credit, or to conclude a separate credit agreement in conjunction with a shared-equity credit agreement. Furthermore, Member States shall allow creditors to require the consumer to hold a relevant insurance policy and to refuse to grant credit where the consumer does not have an insurance policy with similar characteristics to those offered by the creditor's preferred supplier.*

Amendment 64

Proposal for a directive Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that general information about credit agreements is made available by creditors *or, where applicable, credit intermediaries* at all times *in* a durable medium *or* in electronic form.

Member States shall ensure that ***accessible and comprehensible*** general information about credit agreements is made available by creditors ***and provided to the consumer, either by the creditor in the case of direct sales, or through the credit intermediary,*** at all times ***on paper or on another*** durable medium ***or, upon request,*** in electronic

form.

Justification

It is not clear who is responsible for drawing up this document. Intermediaries do not necessarily have access to all the relevant information. It should therefore be the responsibility of the creditor to provide this information to the intermediary or - when the creditor is distributing directly - directly to the consumer.

Amendment 65

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) forms of surety;

(c) forms of surety, ***including the possibility for the collateral to be located in a different Member State;***

Amendment 66

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point g

Text proposed by the Commission

Amendment

(g) ***an indicative*** example of the total cost of credit for the consumer and annual percentage rate of charge;

(g) ***a representative*** example of the total cost of credit for the consumer and annual percentage rate of charge;

Amendment 67

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(ga) an indication of possible additional costs, such as in connection with the registration of mortgages or other comparable securities;

Amendment 68

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point i

Text proposed by the Commission

Amendment

(i) whether there is a possibility of early repayment and, where applicable, a description of the conditions attached to early repayment;

(i) a description of the conditions attached to early repayment;

Amendment 69

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point k

Text proposed by the Commission

Amendment

(k) details on how to obtain information on tax relief on credit agreement interest or other public subsidies.

deleted

Justification

The requirement to provide these details conflicts with the image of a responsible consumer and could also constitute an obstacle to the Single Market. Also brings text into line with the Consumer Credit Directive.

Amendment 70

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point k a (new)

Text proposed by the Commission

Amendment

(ka) In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the pre-contractual information required under paragraph 2 shall include a clear and concise statement that such credit agreements do not provide for a

guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

Justification

Alignment with Article 5(5) of the Consumer Credit Directive.

Amendment 71

Proposal for a directive

Article 9 – paragraph 2 – paragraph 5

Text proposed by the Commission

Amendment

2. Member States shall ensure that the creditor and, where applicable, the credit intermediary, without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 14, provides the consumer with the personalised information needed to compare the credits available on the market, assess their implications and take an informed decision on whether to conclude a credit agreement. Such information, on paper or on another durable medium, shall be provided by means of the European Standardised Information Sheet ('ESIS'), as set out in Annex II.

deleted

Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be accompanied by an ESIS. In such circumstances, Member States shall ensure that the credit agreement cannot be concluded until the consumer has had sufficient time to compare the offers, assess their implications and take an informed decision on whether to accept an offer, regardless of the means of conclusion of the contract.

The creditor and, where applicable, the

credit intermediary shall be deemed to have fulfilled the requirements on information provision to the consumer prior to the conclusion of a distance contract as set out in Article 3 of Directive 2002/65/EC where they have supplied the ESIS.

Any additional information which the creditor or where applicable, the credit intermediary, may provide to the consumer shall be given in a separate document which may be annexed to the ESIS.

3. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to amend the standard information items laid down in paragraph 1 of this Article and the content and format of the ESIS set out in Annex II.

In particular, such delegated acts shall, where necessary:

(a) amend the list of the standard information items laid down in paragraph 1 of this Article;

(b) delete any of the information items laid down Annex II;

(c) make additions to the list of information items laid down in Annex II;

(d) amend the presentation of the contents of the ESIS as laid down in Annex II;

(e) elaborate on the instructions for the completion of the ESIS as laid down in Annex II.

4. In the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of Article 3(3)(b) of that Directive shall include at least the items referred to in Part A sections (2), (3), (4) and (5) of Annex II.

5. Member States shall ensure that the creditor or credit intermediary, upon request of the consumer, provides the consumer with a copy of the draft credit agreement free of charge. This provision shall not apply in cases where the creditor is unwilling, at the time of the request, to proceed to the conclusion of the credit agreement with the consumer.

Justification

Alignment with Article 5(5) of the Consumer Credit Directive.

Amendment 72

Proposal for a directive Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Pre-contractual information

1. Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, provides the consumer with the personalised information needed to compare the credits available on the market, assess their implications and take an informed decision on whether to conclude a credit agreement:

(a) without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 14; and

(b) in good time before the consumer is bound by any credit agreement or offer; such information, on paper or on another durable medium, shall be provided free of charge by means of the European Standardised Information Sheet ('ESIS'), as set out in Annex II.

Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be provided in a durable medium and accompanied by an ESIS if none has been provided to the consumer previously or the characteristics of the offer are different from the information contained in the ESIS previously provided.

2. Member States shall ensure that the consumer will have 14 days to compare the offers, assess their implications and take an informed decision. Member States shall ensure that this period can be envisaged either as a period where the offer remains binding on the creditor before the signing of the credit agreement or as a right of withdrawal without further costs. Member States shall ensure that consumers who wish to do so are able to accept the offer before the expiry of the 14-day period. Member States may provide that the right of withdrawal shall be reduced or cease to apply where the consumer undertakes any action which under national law results in the creation or the transfer of a right in a property connected to or using funds obtained under the credit agreement or in the cases where the credit agreement is, in accordance with the law of Member State, established through a system involving a public office-holder or agent who has a statutory obligation to be independent and impartial and who must ensure, by providing to the consumer a personalised and comprehensive contractual and legal information, that the consumer only concludes the agreement on the basis of careful legal consideration and with knowledge of its legal scope.

The creditor and, where applicable, the credit intermediary shall be deemed to have fulfilled the requirements on information provision to the consumer prior to the conclusion of a distance contract as set out in Article 3 of Directive

2002/65/EC only where they have at least supplied the ESIS prior to the conclusion of the contract.

Member States shall not modify the ESIS but where Member States require additional information, including legal warnings, to be provided to the consumer, that information may be annexed to the ESIS.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 26, to amend the standard information items laid down in Article 9 and in relation to the ESIS set out in Annex II to:

(a) supplement and update the list of information items laid down in Annex II;

(b) update the presentation of the contents of the ESIS as laid down in Annex II;

(c) supplement and update the instructions for the completion of the ESIS as laid down in Annex II.

4. In the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of point (b) of Article 3(3) of that Directive shall include at least the items referred to in Part A sections (2), (3), (4) and (5) of Annex II.

5. Member States shall ensure that the creditor or credit intermediary provides the consumer with a copy in a durable medium of the draft credit agreement free of charge. This provision shall not apply where the creditor is unwilling, at the time of the request, to conclude a credit agreement with the consumer.

Proposal for a directive
Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Supply and formalisation of the credit agreement

In relation to supply and formalisation of a credit agreement, the appraised or appraisal company, notaries, legal advisers or any other provider shall be chosen by mutual agreement of the parties.

Amendment 74

Proposal for a directive
Article 10

Text proposed by the Commission

Amendment

1. ***Prior*** to the performance of any of the services listed in *Article 3(e)*, a credit intermediary shall provide the consumer with at least the following information:

- (a) identity and the geographical address of the credit intermediary;
- (b) the register in which he has been included and the means for verifying that he has been registered;
- (c) where he is ***acting as a tied credit intermediary*** he shall identify himself as such and, ***at the consumer's request***, provide the names of the creditor(s) for which he is acting;
- (d) whether he ***has a holding, direct or indirect, representing more than 10 % of the voting rights or of the capital in a***

1. ***Member States shall ensure that prior*** to the performance of any of the services listed in *point (e) of Article 3*, a credit intermediary shall provide the consumer ***free of charge*** with at least the following information ***on paper or on another durable medium***:

- (a) identity and the geographical address of the credit intermediary;
- (b) the register in which he has been included, ***the registration number, where applicable***, and the means for verifying that he has been registered;
- (c) where he is tied ***to one or more creditors*** he shall identify himself as such and provide the names of the creditor(s) for which he is acting;
- (d) whether he ***offers the service of advice and, if so, indicates where the provision of this service is compulsory in accordance***

given creditor;

(e) whether a given creditor or parent undertaking of a given creditor has a holding, direct or indirect, representing more than 10 % of the voting rights or of the capital in the credit intermediary;

(f) the fee, where applicable, payable by the consumer to the credit intermediary for his services;

*(g) the procedures allowing consumers and other interested parties to register complaints **about credit intermediaries** and, where appropriate, the means by which recourse to the out-of-court complaint and redress procedures can be sought;*

(h) for those credit intermediaries that are not tied, the existence of commissions, where applicable, payable by the creditor to the credit intermediary for his services.

2. Credit intermediaries who are not tied shall, at the consumer's request, provide information on the variation in levels of commission payable by the different creditors providing the credit agreements being offered to the consumer. The consumer shall be informed that he has the right to request such information.

3. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to update the list of information items on credit intermediaries to be provided to the consumer, as laid down in paragraph 1 of this Article.

In particular, the Commission, when adopting such delegated acts shall amend, where necessary, the information items laid down in paragraph 1 of this Article.

In particular, the Commission, when

with Article 17;

*(e) the fee, where applicable, payable by the consumer to the credit intermediary **or creditor** for his services **or the basis on which the fee will be calculated**;*

*(f) the procedures allowing consumers and other interested parties to register complaints **internally** and, where appropriate, the means by which recourse to the out-of-court complaint and redress procedures can be sought;*

*(g) for those credit intermediaries that are not tied, the existence of commissions **or other inducements**, where applicable, payable by the creditor to the credit intermediary for his services.*

2. Credit intermediaries who are not tied shall, at the consumer's request, provide information on the variation in levels of commission payable by the different creditors providing the credit agreements being offered to the consumer. The consumer shall be informed that he has the right to request such information.

3. Member States shall ensure that the fee, if any, payable by the consumer to the credit intermediary, for its services is communicated to the creditor by the credit intermediary, for the purpose of calculating of the annual percentage rate of charge.

3a. Where the credit intermediary charges a fee and also receives a commission from the creditor, it shall explain to the consumer whether or not the commission will be fully or partially offset against the fee.

3b. Member States shall require credit

adopting such delegated acts shall amend, where necessary, the information items laid down in paragraph 1 of this Article.

intermediaries to ensure that in addition to the disclosures required by this Article, an appointed representative discloses to the consumer the capacity in which he is acting and the credit intermediary he is representing when contacting or before dealing with any consumers.

Amendment 75

Proposal for a directive Article 11

Text proposed by the Commission

Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer on the proposed credit agreement(s) and any ancillary service(s), in order to place the consumer in a position enabling him to assess whether the proposed credit agreements are adapted to his needs and financial situation. ***An adequate explanation shall include the provision of personalised information on the characteristics of the credits on offer, without however formulating any recommendation. Creditors and, where applicable, credit intermediaries shall accurately assess the level of knowledge and experience with credit of the consumer by any means necessary so as to enable the creditor or the intermediary to determine the level of explanations to be given to the consumer and adjust such explanations accordingly.***

2. Such adequate explanations shall include an explanation of the information and terms included in the pre-contractual information to be provided in accordance with Articles 9 and 10 and of the consequences that concluding the credit agreement may have for the consumer, including in the event of default in payment by the consumer.

Amendment

1. Member States shall ensure that creditors and, where applicable, credit intermediaries or their appointed representatives provide adequate explanations to the consumer on the proposed credit agreement(s) and any ancillary service(s), in order to place the consumer in a position enabling him to assess whether the proposed credit agreements and ancillary services are adapted to his needs and to his financial situation. The explanation shall include the pre-contractual information including the ESIS, the essential characteristics of the products proposed, and the specific effects they may have on the consumer, including the consequences of default in payment by the consumer and, where ancillary services are bundled with a credit agreement, whether each component can be terminated separately and the conditions for doing so.

2. Member States may adapt the manner by which and the extent to which the assistance referred to in paragraph 1 is given, as well as by whom it is given, to the circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the nature of the credit offered.

Justification

Alignment with the Consumer Credit Directive.

Amendment 76

Proposal for a directive Article 12

Text proposed by the Commission

1. The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Annex I.

2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined **excluding** any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement.

Where the opening of an account is obligatory in order to obtain the credit, the costs of maintaining such an account, the costs of using a means of payment for both payment transactions and drawdowns on that account, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer, unless the costs have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

3. The calculation of the annual percentage rate of charge shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.

Amendment

1. The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Annex I.

2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined **with the exception of** any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement.

The costs of opening and maintaining an account, of using a means of payment for both transactions on drawdowns on that account and of other costs relating to payment transactions shall be included in the total cost of credit to the consumer whenever the opening or maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed, unless the costs have been clearly and separately shown in an agreement concluded with consumer.

3. The calculation of the annual percentage rate of charge shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.

Where a fixed borrowing rate is agreed

4. ***In the case*** of credit agreements ***containing clauses*** allowing ***variations in the borrowing rate*** and, where applicable, in the charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will be calculated at the level set at the signature of the contract.

5. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to amend the formula and the assumptions used to calculate the annual percentage rate of charge as set out in Annex I.

The Commission shall, ***when adopting such*** delegated acts, ***amend, where necessary, the formula or assumptions laid down*** in Annex I, in particular if the

just for a limited period, a single annual percentage rate of charge can be only calculated for the fixed period.

4. ***For periods*** of credit agreements ***unconditionally*** allowing ***adjustable borrowing rates based on external factors*** and, where applicable, in the charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated ***under different assumptions, while avoiding competitive distortions in the market:***

(a) ***once*** on the assumption that the borrowing rate and other charges will be calculated at the level ***determined*** at the signature of the contract;

(b) ***once based on a best-case scenario based on data of the interest rate fluctuations during the last 20 years or since the underlying data for the calculation of the interest rate is available;***

(c) ***once based on a worst-case scenario based on data of the different interest rate fluctuations during the last 20 years or since the underlying data for the calculation of the interest rate is available.***

4a. ***In the case the credit agreement relates to a foreign currency loan the annual percentage rate of charge shall be once calculated on the assumption that the relation between the currency of the loan and the national currency is at the level determined at the signature of the contract and once based on a scenario based on the assumption, that the national currency loses 20 % of its value in relation to the currency of the loan.***

5. The Commission shall ***be empowered to adopt*** delegated acts ***in accordance with Article 26 to amend the remarks or update the assumptions used to calculate the***

assumptions set out in this Article and in Annex I do not suffice to calculate the annual percentage rate of charge in a uniform manner or are not adapted any more to the commercial situation at the market.

annual percentage rate of charge as set out in Annex I, in particular if the remarks or assumptions set out in this Article and in Annex I do not suffice to calculate the annual percentage rate of charge in a uniform manner or are not longer adapted to the commercial situation on the market.

Amendment 77

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

2. However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate correlates directly with a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

Amendment

2. However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate correlates directly with a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor, ***and communicated personally to the consumer together with the amount of new monthly instalments. The creditor may continue to inform consumers periodically about changes in the borrowing rate, where the borrowing rate does not correlate directly with a change in reference rate, if such provisions were in place prior to ...****

**** OJ: please insert the date of entry into force of this Directive.***

Justification

In einigen Mitgliedstaaten können die Verbraucher durch Anzeigen in nationalen Zeitungen über derartige Änderungen des Sollzinssatzes informiert werden. Wenn eine solche Gepflogenheit besteht und in dem betreffenden Mitgliedstaat umfassend anerkannt wird, sollten die Mitgliedstaaten das Recht haben, diese Regelung beizubehalten.

Amendment 78

Proposal for a directive

Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where changes in the borrowing rate are determined by way of auction on the capital markets and it is therefore impossible for the creditor to inform the consumer of any change before the change enters into force, the creditor shall, in good time before the auction, inform the consumer in writing of the upcoming procedure and the expected level of the new borrowing rate.

Justification

When changes of the borrowing rate are determined by an auction on the capital markets the creditor will not know the exact new rate until the auction has closed and the bonds have been sold.

Amendment 79

Proposal for a directive

Article 14

Text proposed by the Commission

Amendment

1. Member States shall ensure that, before the conclusion of the credit agreement, ***a thorough assessment of the consumer's creditworthiness is conducted by the creditor, based on criteria including the consumer's income, savings, debts and other financial commitments. That assessment shall be carried out on the basis of the necessary information, obtained by the creditor or, where applicable, credit intermediary from the consumer and from relevant internal or external sources and shall respect the requirements with regard to necessity and proportionality set out in Article 6 of Directive 95/46/EC. Member States shall***

1. Member States shall ensure that, before concluding a credit agreement, ***the creditor assesses the consumer's creditworthiness based on objective criteria in order to verify the prospect for the consumer to meet his obligations under the credit agreement. The information on which the assessment is based shall be documented and maintained¹.***

ensure that creditors establish appropriate processes to assess the creditworthiness of the consumer. These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.

2. Member States shall ensure *the following*:

(a) *Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to repay the credit over the lifetime of the credit agreement, the creditor refuses credit.*

(b) *Where the credit application is rejected, the creditor informs the consumer immediately and without charge of the reasons for rejection.*

(c) In accordance with Article 10 of Directive 95/46/EC, the creditor informs the consumer in advance that a database is to be consulted.

(d) Where the credit application is rejected on the basis of *the data contained, or lack thereof, in a database that has been consulted*, the creditor informs the consumer immediately and without charge of *the name of the database that was consulted as well as of its controller and of his right to access and, where necessary, his right to rectify his data in that database.*

(e) Without prejudice to the general right of access contained in Article 12 of the

1a. Member States shall ensure that where a creditor failed to correctly conduct the creditworthiness assessment as described in this Article and subsequently granted a credit agreement based on that incorrectly conducted creditworthiness assessment, the credit agreement shall not afterwards be cancelled or altered to the detriment of the consumer as a result.

2. Member States shall ensure *that*:

(a) *The creditor only makes the credit available to the consumer where the result of the creditworthiness assessment indicates that the obligations resulted from the credit agreement are likely to be met in the manner required under that agreement.*

(c) In accordance with Article 10 of Directive 95/46/EC, the creditor informs the consumer in advance that a database is to be consulted.

(d) If the credit application is rejected on the basis of *a database consultation*, the creditor informs the consumer immediately and without charge of the *result of such consultation and of the particulars of the database consulted.*

(e) Without prejudice to the general right of access contained in Article 12 of the

Directive 95/46/EC, where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the creditor informs the consumer immediately and without charge ***and that the creditor explains the logic involved in the automated decision to the consumer.***

(f) The consumer has the opportunity to request for the decision to be reviewed manually.

3. Member States shall ensure that, where the parties consider increases in the total amount of credit extended to the consumer after the conclusion of the credit agreement, the financial information at the disposal of the creditor concerning the consumer is updated and the consumer's creditworthiness re-assessed before any significant increase in the total amount of credit is granted.

4. Further to assessing a consumer's creditworthiness, Member States shall ensure that creditors and credit intermediaries obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives and consider a sufficiently large number of credit agreements from their product range in order to identify products that are not unsuitable for the consumer given his needs, financial situation and personal circumstances. Such considerations shall be based on information that is up to date at that moment in time and on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.

5. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to specify and amend the criteria to be considered in the conduct of a creditworthiness assessment as laid down in paragraph 1 of this Article and in

Directive 95/46/EC, where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the creditor informs the consumer immediately and without charge.

ensuring that credit products are not unsuitable for the consumer as laid down in paragraph 4 of this Article.

¹ *FSB Principles for Sound Residential Mortgage Underwriting Practices April 2012, (1.2.).*

Amendment 80

Proposal for a directive Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Property valuation

1. Member States shall ensure that sound valuation practices are applied in accordance with international standards and methods and the importance of sound regulation and oversight of appraisers is recognised.

2. Member States shall require that internal and external appraisers carrying out such valuations are professionally competent and sufficiently independent to provide an impartial and objective valuation to be documented in a durable medium and that lenders keep a record of it.

Amendment 81

Proposal for a directive Article 15

Text proposed by the Commission

Amendment

Disclosure *obligation on the part of the consumer*

1. Member States shall ensure that consumers provide creditors and, where

Disclosure and *verification* of consumer *information*

1. The creditworthiness assessment shall be carried out on the basis of sufficient,

applicable, credit intermediaries with complete and correct information on their financial situation and personal circumstances in the context of the credit application process. That information should be supported, when necessary, by documentary evidence from independently verifiable sources.

2. As regards the information to be provided by the consumer in order for the creditor to be able to conduct a thorough assessment of the consumer's creditworthiness and make a decision on whether or not to grant the credit, Member States shall ensure that creditors, at the pre-contractual phase, clearly specify the information, including independently verifiable evidence where necessary, that the consumer needs to provide. Member States shall also ensure that creditors state the exact timing by which consumers are required to provide such information.

Member States shall ensure that *in cases where the consumer chooses not to provide the information necessary for an assessment of his creditworthiness, the creditor or credit intermediary warns the consumer that they are unable to carry out a creditworthiness assessment and therefore that the credit may not be granted. This warning may be provided in a standardised format.*

3. This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, in particular Article 6 thereof.

proportionate and appropriately verified income and financial information obtained by the creditor from relevant internal or external sources.

2. Member States shall ensure that creditors specify *clearly and in an understandable form the necessary* information and independently verifiable evidence that the consumer needs to provide *and* state the timing by which consumers are required to provide *the* information. Member States shall *allow* creditors *to seek clarification of the information requested under paragraph 1 where necessary to enable the assessment of creditworthiness. Member States shall not allow creditors to use a failure to provide information to justify terminating the credit agreement once it has been concluded.*

3. Member States shall *have measures in place* to ensure that *consumers provide correct information in accordance with paragraph 2. Where the consumer chooses not to provide the information or verification* necessary for an assessment of his creditworthiness, the creditor *shall warn* the consumer that they are unable to carry out a creditworthiness assessment and therefore that the credit may not be granted. This warning may be provided in a standardised format.

Amendment 82

Proposal for a directive Article 16

Text proposed by the Commission

1. Each Member State shall ensure **non-discriminatory** access for all creditors to databases used in that Member State for assessing the creditworthiness of consumers and for monitoring consumers' compliance with the credit obligations over the life of the credit agreement. **Such databases comprise databases operated by private credit bureaux or credit reference agencies and public credit registers.**

2. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to define uniform credit registration criteria and data processing conditions to be applied to the databases referred to in paragraph 1 of this Article.

In particular, such delegated acts shall define the registration thresholds to be applied to such databases and shall provide for agreed definitions for key terms used by such databases.

3. The information in the databases shall be provided unless the provision of such information is prohibited by other Union legislation or is contrary to objectives of public policy or public security.

4. This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Amendment

1. Each Member State shall ensure access for all creditors to databases used in that Member State for assessing the creditworthiness of consumers and for monitoring consumers' compliance with the credit obligations over the life of the credit agreement. **The conditions for access shall be non-discriminatory.**

2. This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Amendment 83

Proposal for a directive Article 17

Text proposed by the Commission

Advice standards

1. For the purposes of this Directive, 'advice' constitutes a separate service from the granting of a credit. Such a service can only be marketed as advice when the remuneration of the individual providing the service is transparent to the consumer.

2. Member States shall ensure that the creditor **or** credit intermediary informs the consumer, in the context of a given transaction, whether **or not advice is** being or **will** be provided. **This may be done through additional pre-contractual information. Where advice is provided to consumers, in addition to the requirements set out in Articles 5 and 6, Member States shall ensure that creditors and credit intermediaries:**

(a) consider a sufficiently large number of credit agreements available on the market so as to enable the recommendation of the most suitable credit agreements for the consumer's needs, financial situation and personal circumstances;

(b) obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives so as to enable the recommendation of suitable credit agreements. Such an assessment shall be based on information that is up to date at

Amendment

Standards for advisory services

1. Member States shall ensure that the **creditor**, credit intermediary **or appointed representative explicitly** informs the consumer, in the context of a given transaction, whether **advisory services are** being or **can** be provided **to the consumer**.

2. Member States shall ensure that before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor, credit intermediary or appointed representative informs the consumer in a durable medium:

(a) whether the recommendation will be based on considering only their own product range in accordance with point (b) of paragraph 2a or a wide range from across the market in accordance with point (c) of paragraph 2a;

(b) where applicable, the fee payable by the consumer for the advisory services or the method used for its calculation.

that moment in time and on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.

2a. Where advisory services are provided to consumers, Member States shall ensure, in addition to the requirements set out in Articles 5 and 7, that:

(a) creditors, credit intermediaries or appointed representatives obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives so as to enable the recommendation of suitable credit agreements;

(b) creditors, tied credit intermediaries or appointed representatives appointed by tied credit intermediaries consider a sufficiently large number of credit agreements in their product range;

(c) not tied credit intermediaries or appointed representatives appointed by not tied credit intermediaries consider a sufficiently large number of credit agreements available on the market;

(d) creditors, credit intermediaries or appointed representatives act in the best interests of the consumer by recommending credit agreements which are suitable for the consumer's needs, financial situation and personal circumstances; and

(e) the creditor, credit intermediary or appointed representative providing the advisory services gives the consumer a record in a durable medium of the advice provided;

2b. Member States should only allow the use of the term "independent advice" or "independent advisor" when creditors, tied credit intermediaries or credit intermediaries or appointed representatives that provide advisory services:

- are not remunerated at all by one or more creditors; or

- are remunerated by a number of creditors representing at least a majority of the market given that the remuneration is disclosed to the consumer and does not incentivise the creditor to act against the best interests of consumers.

2c. Member States may provide for an obligation for creditors, credit intermediaries and appointed representatives to warn a consumer when considering the consumer's financial situation, a credit agreement may induce a specific risk for the consumer.

2d. Member States shall ensure that any creditor or credit intermediary providing advisory services is duly authorised and that the relevant staff are competent to make a personalised recommendation which is in the best interests of the consumer. Appointed representatives providing advisory services shall be duly registered.

2e. This Article shall be without prejudice to the ability of Member States to provide services for consumers to help them understand their financial needs and which types of products are likely to meet those needs.

Amendment 84

Proposal for a directive Chapter 8 a (new)

Text proposed by the Commission

Amendment

Chapter 8a

Sound performance of credit agreements

Article -18a

*Foreign currency loans and variable
interest rates*

1. Member States shall ensure that where a credit agreement relates to a foreign currency loan, the consumer shall have the right to convert the loan into an alternative currency, *in accordance with a transparent method disclosed to the consumer in pre-contractual information.*

2. *The alternative currency referred to in paragraph 1 shall be either:*

(a) the currency in which the consumer receives income or holds assets from which the loan is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the credit agreement was made; or

(b) the currency of the Member State in which the consumer is resident.

3. *Member States shall provide that where the right referred to in paragraph 1 is referred to:*

(a) the creditor is entitled to fair and objectively justified compensation for possible costs directly linked to the exercise of the right;

(b) the exchange rate used for the conversion shall be the market exchange rate applicable on the day of application for the conversion unless otherwise agreed by the parties or unless a Member State has specified other arrangements before the conclusion of the credit agreement;

(c) the creditor shall be entitled to adjust the interest rate and interest reference rate where this has been provided for in the credit agreement.

4. *Member States shall ensure that, for credit agreements in a foreign currency, a trigger credit amount payable or a maximum amount payable is included in the credit agreement. When the trigger credit amount payable or a maximum amount has been reached, the creditor shall warn the consumer of the high rise*

of the credit amount payable. In this case the consumer shall have the right to convert the loan pursuant to paragraph 1. In the case when the total credit amount in the national currency is not limited by any caps, a scenario should be provided to the consumer based on the assumption, that the national currency loses 20 % of value in relation to the currency of the loan.

5. Member States shall ensure that, where a credit agreement unconditionally allows variations on the interest rate unquantifiable at the time of the conclusion of the credit agreement and based on external factors, the underlying data for the calculation of the interest rate has to be available for at least 14 years.

For agreements on variable interest rates Member States shall ensure that creditors, tied credit intermediaries, credit intermediaries or appointed representatives inform the consumer before concluding the contract on the possible fluctuation of the interest rate. In cases where the variable interest rate is limited by caps, a best and worst-case scenario shall be provided to the consumer based on the caps. In cases where the variable interest rate is not limited by any caps, a best and worst-case scenario should be provided to the consumer based on data of the interest rate fluctuations during last 20 years or since the underlying data for the calculation of the interest rate is available.

Amendment 85

Proposal for a directive Article -18 b (new)

Article -18b

Variable rate loans and underlying indexes and reference rates

Where the credit agreement is a variable rate loan:

1. Member States shall ensure that any index or reference rate used to calculate the borrowing rate is clear, accessible, objective and verifiable by the parties to the credit agreement and the competent authorities.

2. Member States shall ensure that the providers of indexes used to calculate the borrowing rate keep the documentation used for its calculation and maintain their historical records.

3. Where justified, Member States may prohibit the standardised use of indexes that are not publicly available in a website or are not published in an official journal.

Member States may also require that the providers of the standardised indexes used to calculate the borrowing rate publish on a daily basis information on the average borrowing rate, the maximum borrowing rate and the minimum borrowing rate for the past 20 years or where such data is not available for the longest period for which data is available. Additionally Member States may require that creditors disclose such information to the consumer annexed to the ESIS before concluding a credit agreement.

4. Member States may adopt provisions to ensure symmetry between contractual clauses establishing limits such as floors and caps for the evolution of the variable rate.

Amendment 86

Proposal for a directive Chapter 8 – title

Text proposed by the Commission

Early repayment

Amendment

Sound performance of credit agreements

Amendment 87

Proposal for a directive Article 18

Text proposed by the Commission

1. Member States shall ensure that the consumer has ***a statutory or contractual*** right to discharge his obligations under a credit agreement prior to the expiry of that agreement. In such cases, ***he*** shall be entitled to a reduction in the total cost of the ***credit, such a reduction consisting of the interest and the costs for the remaining duration of the contract.***

2. Member States ***may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, or restrictions with regard to the circumstances under which the right may be exercised. Member States may also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In any event, if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a special interest on the part of the consumer.***

Where a Member State lays down such

Amendment

1. Member States shall ensure that the consumer has a right to discharge his obligations ***fully or partially*** under a credit agreement prior to the expiry of that ***agreement, without penalty on the consumer, while ensuring the indemnity of the creditor.*** In such cases, ***the consumer*** shall be entitled to a reduction ***equivalent to the early repaid amount*** in the total cost of the credit.

2. Member States ***shall*** provide that the creditor ***is*** entitled to ***a*** fair and objective compensation, ***where justified,*** for ***possible*** costs directly linked to ***the*** early repayment. ***The compensation shall not exceed the economic loss of the lender. The consumer shall be clearly and fully informed of the right referred to in paragraph 1 and of the amount of the compensation or of the transparent method for its calculation before signing the contract.***

2a. Where the early repayment falls

conditions, these shall not make the exercise of the right referred to in paragraph 1 excessively difficult or onerous for the consumer.

within a period for which the borrowing rate is fixed Member States may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions and without prejudice to the right of creditors in accordance with paragraph 2. In this case the exercise of the right may be subject to the existence of a legitimate interest on the part of the consumer whose nature shall be specified by Member States.

3a. Member States may opt for caps on the compensation payable under paragraph 2 or maximum periods after which such compensation may no longer be claimed by the creditor.

Amendment 88

Proposal for a directive Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18a

Flexible and reliable markets

1. Member States shall develop a framework:

(a) to allow creditors to transfer without registration of a new mortgage deed credit agreements or portfolios of credit agreements to other creditors unless explicitly forbidden by the credit agreement provided the loan conditions are not altered to the disadvantage of the consumer; and

(b) to allow creditors and consumers to agree on the portability of a credit agreement on moving house.

2. Member States that allow the marketing of reverse agreements in their territory may develop a framework to allow creditors and consumers to agree the replacement of a credit agreement with a

reverse agreement.

3. Member States shall ensure that effective mechanisms are in place to ensure that borrowers have a clear and legally enforceable title to the property and the traceability of credit agreements related to residential immovable property and related financial instruments.

4. The Joint Committee established under Article 54 of Regulations EU (No) 1093/2010 and (EU) No 1095/2010 shall coordinate the work of EBA and ESMA in developing guidelines on methodologies for ensuring traceability of credit agreements, associated collateral and related financial instruments.

5. Member States shall promote the use of indices of residential immovable property in order to provide an improved basis for the monitoring of trends in valuation of residential immovable property.

Amendment 89

Proposal for a directive Article 18 b (new)

Text proposed by the Commission

Amendment

Article 18b

Arrears and foreclosure

1. Member States shall ensure that creditors exercise reasonable forbearance and make all other reasonable attempts to resolve the position before initiating foreclosure proceedings.

2. Member States shall ensure that any charges to compensate damages for default to be paid by the consumer are proportionate to the costs incurred by the creditor.

3. Member States shall ensure that:

(a) creditors take reasonable steps to

obtain the best price for the foreclosed property, taking account of factors such as market conditions as well as any increase in the amount owed by the consumer;

(b) where the parties to the credit agreement expressly agree, the return of the collateral is sufficient to repay the loan;

(c) Where creditors have full recourse to a consumer's assets after foreclosure proceedings are completed and outstanding debt remains, measures to facilitate repayment arrangements are reasonable and have regard to the interests and practical circumstances of the consumer. This could include allowing measures to limit the seizure of wages, retirement pensions or equivalent to retain a minimum income and avoid household over-indebtedness are in place.

Amendment 90

Proposal for a directive Chapter 9 - title

Text proposed by the Commission

Chapter 9

Prudential and supervisory requirements

Amendment

Chapter 9

General prudential and supervisory requirements

Amendment 91

Proposal for a directive Article -19 a (new)

Text proposed by the Commission

Amendment

Article -19a

General requirements

1. Member States shall ensure that there is an effective framework of underwriting

standards for credit agreements, incorporating the principles set out in this Directive and measures to prevent household over-indebtedness, which can be effectively supervised and monitored. Such standards may include prudent loan-to-value ratios¹.

2. Member States shall ensure that competent authorities have powers to specify more stringent and proportionate underwriting criteria for the situations where the underlying risks are higher for consumers. These may include additional risk warnings, specifying loan-to-value or other ratios and guarantees and products to insure or hedge the risks.

3. EBA may on its own initiative or at the request of the ESRB in accordance with Article 9 of Regulation (EU) No 1092/2010, based on sound assessment of developments in the residential property market in a Member State, issue warnings to the relevant competent authorities and issue recommendations calling for the introduction of additional measures.

¹FSB Consultation on Principles for Sound Residential Mortgage Underwriting Principles, October 2011

Amendment 92

Proposal for a directive Article -19 b (new)

Text proposed by the Commission

Amendment

Article -19b

Supervision of credit registers

Member States shall ensure that credit registers operating on their territories are adequately supervised by the competent authorities and by data protection supervisors. Without prejudice to the

powers conferred by Regulation (EU) No 1093/2010, EBA shall contribute to the supervision of credit registers that operate cross-border within the Union.

Amendment 93

Proposal for a directive Article 19

Text proposed by the Commission

1. Credit intermediaries shall be duly authorised to carry out the activities set out in Article 3(e) by a competent authority **as defined** in Article 4 in their home Member State. Such authorisation shall be granted on the basis of requirements established in the home Member State of the credit intermediary and shall include the fulfilment of the professional requirements laid down in Article 20.

2. Home Member States shall ensure that authorised credit intermediaries comply with the conditions for initial authorisation on a continuing basis.

3. Home Member States shall ensure that the authorisation of credit intermediaries is withdrawn where either:

(a) the credit intermediary no longer fulfils the requirements under which authorisation was granted;

(b) the credit intermediary has obtained the authorisation through false statements or any other irregular means.

4. Member States shall ensure that authorised credit intermediaries are subject to supervision of their ongoing activities by their home competent authority as referred to in **Article 4**.

Amendment

1. Credit intermediaries shall be duly authorised to carry out the activities set out in Article 3(e) by a competent authority **referred to** in Article 4 in their home Member State. Such authorisation shall be granted on the basis of requirements established in the home Member State of the credit intermediary and shall include the fulfilment of the professional requirements laid down in Article 20.

1a. Appointed representatives appointed under Article 19a shall not be considered as credit intermediaries for the purposes of this Article.

2. Home Member States shall ensure that authorised credit intermediaries comply with the conditions for initial authorisation on a continuing basis.

3. Home Member States shall ensure that the authorisation of credit intermediaries is **suspended or** withdrawn where either:

(a) the credit intermediary no longer fulfils the requirements under which authorisation was granted;

(b) the credit intermediary has obtained the authorisation through false statements or any other irregular means.

4. Member States shall ensure that authorised credit intermediaries are subject to supervision of their ongoing activities by their home competent authority and, **where applicable, by the competent authority in**

the Member State where a branch is established as referred to in Articles 4 and 22.

4a. The provisions of this Article should apply neither to credit institutions nor to insurance companies which act as credit intermediaries. Provided that the obligations under Articles 9a, 14 and 17 of this Directive are complied with, they should also not be applied to those borrowers which are not creditors or credit intermediaries and are allowed by Member States to transfer, free of charge and with the agreement of the creditor, a credit agreement in parallel to the sale of a property.

Amendment 94

Proposal for a directive Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

Appointed representatives

- 1. Member States may decide to allow a credit intermediary to appoint appointed representatives.*
- 2. Member States shall require that the credit intermediary remains fully and unconditionally responsible for any action or omission on the part of the appointed representative when acting on behalf of the credit intermediary.*

However, where the credit intermediary that has appointed an appointed representative which is tied to only one creditor as set out in Article 3(f), the creditor shall remain fully and unconditionally responsible for any action or omission on the part of the appointed representative that is acting on behalf of the credit intermediary.

Member States shall require the credit intermediary to ensure that the appointed representative complies with the requirements set out in points (a) to (c) of Article 21(2) to 21(2). However, the home Member State may provide that the professional indemnity insurance or a comparable guarantee can be provided by a credit intermediary for which the appointed representative is empowered to act.

3. Member States that decide to allow a credit intermediary to appoint appointed representatives shall establish a public register. Appointed representatives shall be registered in the public register in the Member State where they are established. The register shall be updated on a regular basis. It shall be publicly available for consultation.

Where the Member State in which the appointed representative is established by way of a branch has decided, in accordance with paragraph 1, not to allow the credit intermediaries authorised by their competent authorities to appoint appointed representatives, those appointed representatives shall be registered with the competent authority of the home Member State of the credit intermediary on whose behalf it acts.

4. Member States shall require the credit intermediaries to monitor the activities of their appointed representatives in order to ensure full compliance with this directive. In particular, the credit intermediaries shall be responsible for monitoring compliance with the knowledge and competence requirements of the appointed representatives and its staff.

5. Member States may reinforce the requirements set out in this Article or add other requirements for appointed agents registered within their jurisdiction.

Amendment 95

Proposal for a directive Article 20

Text proposed by the Commission

1. Member States shall ensure that a register of authorised credit intermediaries is established and kept up to date.
2. Member States shall *ensure* that all authorised credit intermediaries, whether established as natural or legal persons, are registered with a competent authority as referred to in Article 4, in their home Member State.

As regards legal persons, the register referred to in paragraph 1 shall specify the names of the persons within the management who are responsible for the intermediation business. Member States may also require the registration of all natural persons who fulfil a client-facing function in an undertaking that pursues the activity of credit intermediation.

The register shall indicate the Member State(s) where the intermediary intends to conduct business under the rules on the freedom of establishment or on the freedom to provide services and has informed its home Member State competent authority thereof.

3. Member States shall ensure that credit intermediaries *who have had their*

Amendment

1. Member States shall ensure that a register of authorised credit intermediaries is established and kept up to date.

2. Member States shall *require* that:

(a) any credit intermediary which is a legal person shall have its head office in the same Member State as its registered office, if it has a registered office under its national law; and

(b) any credit intermediary which is not a legal person or which is a legal person but under its national law has no registered office shall have its head office in the Member State in which it actually carries on its business.

3. Member States shall ensure that *all authorised* credit intermediaries, *whether*

authorisation withdrawn are deleted from the register without undue delay.

established as natural or legal persons, are registered with a competent authority as referred to in Article 4, in their home Member State.

As regards legal persons, the register referred to in paragraph 1 shall specify the names of the persons within the management who are responsible for the intermediation business. Member States may also require the registration of all natural persons who fulfil a client-facing function in an undertaking that pursues the activity of credit intermediation.

The register shall indicate the Member State(s) where the intermediary intends to conduct business under the rules on the freedom of establishment or on the freedom to provide services and has informed its home Member State competent authority thereof.

3a. Member States shall ensure that credit intermediaries who have had their authorisation withdrawn are deleted from the register without undue delay.

4. Member States shall ensure that a single information point is established to allow quick and easy public access to information from the national register, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State referred to in Article 4.

4. Member States shall ensure that a single information point is established to allow quick and easy public access to information from the national register *of credit intermediaries*, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State referred to in Article 4. *Member States shall provide EBA with access to the single information point and EBA shall publish on its website references or hyperlinks to this information point.*

4a. The provisions of this Article shall apply neither to credit institutions nor to insurance companies which act as credit intermediaries.

Amendment 96

Proposal for a directive
Article 21 – paragraph 3

Text proposed by the Commission

Amendment

3. Powers are delegated to the Commission to adopt and, where necessary amend, regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b).

deleted

The regulatory technical standards referred to in subparagraph 1 shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

EBA shall develop draft regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b) for submission to the Commission [within 6 months of the adoption of the proposal]. EBA will review, and if necessary, develop draft regulatory technical standards to amend the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b) for submission to the Commission for the first time [4 years after entry into force of the Directive] and biannually thereafter.

Amendment 97

Proposal for a directive
Article 21 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall be entitled to restrict any payments by consumers to creditors and credit intermediaries before the actual conclusion of a credit agreement.

Justification

This is a necessary provision to prevent fraud attempts.

Amendment 98

Proposal for a directive Article 22

Text proposed by the Commission

1. The authorisation of credit *intermediaries* by *their* home Member State shall be effective for the entire territory of the Union without a **requirement for** further authorisation by the competent authorities of the host Member State(s).

2. Any credit intermediary intending to carry on business for the first time in one or more Member States under the freedom to provide services or the freedom of **establishment** shall inform the competent authorities of its home Member State.

Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member State(s) concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification.

Amendment

1. The authorisation of *a* credit *intermediary* by *the competent authority of its* home Member State **as laid down in Article 19** shall be effective for the entire territory of the Union without further authorisation by the competent authorities of the host Member State(s) **being required for the provision of these services, provided that the activities a credit intermediary intends to carry out in the host Member State(s) are covered by the authorisation. However credit intermediaries shall not be allowed to offer credit agreements of a non-credit institution to consumers in a Member State where non-credit institutions are not allowed to operate.**

1a. Paragraph 1 does not apply to appointed representatives.

2. Any **authorised** credit intermediary intending to carry on business for the first time in one or more Member States under the freedom to provide services or **establishing a branch** shall inform the competent authorities of its home Member State.

Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member State(s) concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification. **They shall also notify the competent authorities of the host Member State (s) concerned on**

the creditor or creditors to which the credit intermediary is tied and whether the creditor takes full and unconditional responsibility for credit intermediary's activities. The host Member State shall use the information received from the home Member State to introduce the necessary information in its register.

The credit intermediary may start business one month after the date on which he was informed by the competent authorities of the home Member State of the notification referred to in the second subparagraph.

3. In cases where the authorisation of credit intermediaries is withdrawn by the home Member State that home Member State shall notify the host Member State(s) of such withdrawal as soon as possible and at the latest within one month, by any appropriate means.

The credit intermediary may start business one month after the date on which he was informed by the competent authorities of the home Member State of the notification referred to in the second subparagraph.

3. Before the branch of a credit intermediary commences its activities or within two months of receiving the information referred to in paragraph 2, the competent authorities of the host Member State shall prepare for the supervision of the credit intermediary in accordance with Article 24 and, if necessary, indicate the conditions under which, in areas not harmonised in Union law, those activities shall be carried out in the host Member State.

Competent authorities of different Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive, making use of their powers whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of the other Member States. In particular, they shall exchange information and cooperate in any investigation or supervisory activities.

The competent authorities may refer situations to the EBA where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time, and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In such cases, the EBA may act in accordance with the powers

conferred on it by that Article.

4. Where the host Member State has clear and demonstrable grounds for concluding that a credit intermediary acting within its territory under the freedom to provide services or through a branch is in breach of the obligations set out in this Directive, it shall refer those findings to the competent authority of the home Member State which shall take the appropriate measures. In cases where, despite measures taken by the competent authority of the home Member State, a credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of host Member State consumers or the orderly functioning of markets, the following shall apply:

(a) The competent authority of the host Member State, after informing the competent authority of the home Member State shall take all the appropriate measures needed in order to protect consumers and the proper functioning of the markets including by preventing the offending credit intermediaries from initiating any further transactions within their territories. The Commission shall be informed of such measures without undue delay.

(b) In addition, the competent authority of the host Member State may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case, the EBA may act in accordance with the powers conferred on it by that Article.

4. Member States shall ensure that credit intermediaries whose approval has been withdrawn are deleted from the register without undue delay.

Amendment 99

Proposal for a directive Article 22 a (new)

Article 22a

Supervision of credit intermediaries and appointed representatives

- 1. Member States shall ensure that credit intermediaries are subject to supervision of their ongoing activities by the competent authorities of the home Member State.***
- 2. Where a home Member State allows appointed representatives as referred to in Article 19a those appointed representatives shall be subject to supervision either directly or as part of the supervision of the credit intermediary on behalf of which it acts.***
- 3. Where a credit intermediary has a branch in a Member State other than its home Member State, the competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down in Article 5(1) and Articles 6, 7, 8, 9, 9a, 10, 11, 15, 17 and 25 and in measures adopted pursuant thereto.***
- 4. The competent authority of the Member State in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Article 5(1) and Articles 6, 7, 8, 9, 9a, 10, 11, 12, 15, 17 and 25 and measures adopted pursuant thereto with respect to the services and/or activities provided by the branch within its territory.***
- 5. Where the competent authorities of a host Member State ascertain that a credit intermediary that has a branch within its territory is in breach of the legal or regulatory provisions adopted in that State***

pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the credit intermediary concerned to put an end to its irregular situation.

If the credit intermediary concerned fails to take the necessary steps, the competent authorities of the host Member State shall take all appropriate measures to ensure that the credit intermediary concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the home Member State.

If, despite the measures taken by the host Member State, the credit intermediary persists in breaching the legal or regulatory provisions referred to in the first subparagraph in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise further irregularities and, in so far as necessary, to prevent the credit intermediary from initiating any further transactions within its territory. The Commission shall be informed of such measures without undue delay.

Where the competent authority of the home Member State disagrees with such measures taken by the host Member State, it may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case, the EBA may act in accordance with the powers conferred on it by that article.

6. In cases where the authorisation of credit intermediaries is withdrawn by the home Member State that home Member State shall notify the host Member State(s) and EBA of such withdrawal as soon as possible and at the latest within one month, by any

appropriate means.

Competent authorities of different Member States shall cooperate with each other and with EBA whenever necessary for the purpose of carrying out their duties under this Directive, making use of their powers whether set out in this Directive or in other Union or national law. Competent authorities shall render assistance to competent authorities of the other Member States. In particular, they shall exchange information and cooperate in any investigation or supervisory activities.

The competent authorities may refer situations to the EBA where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time, and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In such cases, the EBA may act in accordance with the powers conferred on it by that Article.

7. Where the competent authority of the host Member State has clear and demonstrable grounds for concluding that a credit intermediary acting within its territory under the freedom to provide services is in breach of the obligations set out in this Directive or that a credit intermediary that has a branch within its territory is in breach of the obligations for which the competent authority of the host Member State does not have powers under paragraph 3 or 4, it shall refer those findings to the competent authority of the home Member State which shall take the appropriate measures. In cases where the competent authority of the home Member State fails to take any measures within one month of obtaining those findings or where, despite measures taken by the competent authority of the home Member State, a credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of host Member

State consumers or the orderly functioning of markets, the following shall apply:

(a) The competent authority of the host Member State, after informing the competent authority of the home Member State shall take all the appropriate measures needed in order to protect consumers and the proper functioning of the markets including by preventing the offending credit intermediaries from initiating any further transactions within their territories. The Commission and EBA shall be informed of such measures without undue delay.

(b) In addition, the competent authority of the host Member State may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case, the EBA may act in accordance with the powers conferred on it by that Article.

8. Each Member State shall provide that, where a credit intermediary authorised in another Member State has established a branch within its territory, the competent authorities of the home Member State of the credit intermediary, in the exercise of its responsibilities and after having informed the competent authorities of the host Member State, may carry out on-site inspections in that branch.

9. The allocation of tasks between Member States specified in this Article is without prejudice Article 4 and to the host Member State's powers in relation to fields not covered by this Directive, consistent with their obligations under Union law.

Amendment 100

Proposal for a directive Article 24 – paragraph 1

Text proposed by the Commission

1. Without prejudice to procedures for the withdrawal of authorisation or to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that appropriate administrative measures can be taken or administrative sanctions imposed against persons responsible where the provisions adopted in the implementation of this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

Amendment

Member States shall impose sanctions for infringements of the national provisions adopted on the basis of this Directive and shall take all measures necessary to ensure that they are implemented. Those sanctions shall be effective, proportionate and dissuasive.

Justification

Alignment with Article 23 of the Consumer Credit Directive.

Amendment 101

Proposal for a directive Article 24 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Member States shall provide for penalties in particular cases where consumers knowingly provide incomplete or incorrect information in order to obtain a positive creditworthiness assessment where the complete and correct information would have resulted in a negative creditworthiness assessment, and are subsequently unable to fulfil the conditions of the agreement, and shall take all measures necessary to ensure that they are implemented.

Amendment

deleted

Justification

Alignment with Article 23 of the Consumer Credit Directive.

Amendment 102

**Proposal for a directive
Article 25 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that appropriate and effective ***complaints and redress procedures are established for the out-of-court settlement of disputes concerning rights and obligations established under this Directive between creditors and consumers and between credit intermediaries and consumers, using existing bodies where appropriate. Member States shall further ensure that all creditors and credit intermediaries adhere to one or more such bodies implementing such complaint and redress procedures.***

Amendment

1. Member States shall ensure that appropriate and effective ***out-of-court dispute resolution procedures are put in place for the settlement of consumer disputes concerning credit agreements, using existing bodies where appropriate.***

Justification

Alignment with Article 24 of the Consumer Credit Directive.

Amendment 103

**Proposal for a directive
Article 25 – paragraph 2**

Text proposed by the Commission

2. Member States shall ***ensure that*** these bodies ***actively*** cooperate ***in the resolution of*** cross-border disputes.

Amendment

2. Member States shall ***encourage*** these bodies ***to*** cooperate ***so that*** cross-border disputes ***concerning credit agreements can also be resolved.***

Justification

Alignment with Article 24 of the Consumer Credit Directive.

Amendment 104

Proposal for a directive Article 26

Text proposed by the Commission

1. The powers to adopt delegated acts referred to in Articles 6(4), 8(4), 9(3), 10(3), 14(5) and 16(2) shall be conferred on the Commission for an indeterminate period of time following the entry into force of this Directive.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27 and 28.

Amendment

1. The power to adopt delegated acts is conferred on the Commission *subject to the conditions laid down in this Article.*

1a. The power to adopt delegated acts referred to in Article 9a(3) and Article 12(5) shall be conferred on the Commission for an indeterminate period of time.

2. The delegation of power referred to in Article 9a(3) and Article 12(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall terminate the delegation of the powers specified in that decision. It shall be published in the Official Journal of the European Union and shall take effect on the day following the publication of the decision in the Official Journal or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3a. A delegated act adopted pursuant to Article 9a(3) and Article 12(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that

period, the European Parliament and the Council have both informed the Commission that they will not object. At the initiative of the European Parliament or the Council that period shall be extended by three months.

Amendment 105

Proposal for a directive Article 27

Text proposed by the Commission

Amendment

Article 27

deleted

Revocation of the delegation

1. The delegation of powers referred to in Articles 6(4), 8(4), 9(3), 10(3), 14(5) and 16(2) may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for any revocation.

3. The decision of revocation shall terminate the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Amendment 106

Proposal for a directive Article 28

Text proposed by the Commission

Amendment

Article 28

deleted

Objections to delegated acts

1. The European Parliament and the Council may object to a delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by one month.

2. Where, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period where the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. Where either the European Parliament or the Council objects to an adopted delegated act within the period referred to in paragraph 1, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Amendment 107

**Proposal for a directive
Article 29 – paragraph 2**

Text proposed by the Commission

Amendment

2. Member States shall further ensure that the provisions they adopt in implementation of this Directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating credit

deleted

agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid its application.

Amendment 108

Proposal for a directive Article 29 – paragraph 3

Text proposed by the Commission

3. Member States shall take the necessary measures to ensure that consumers do not lose the protection granted by this Directive by virtue of the choice of the law of a third country as the law applicable to the credit agreement.

Amendment

3. Member States shall take the necessary measures to ensure that consumers do not lose the protection granted by this Directive by virtue of the choice of the law of a third country as the law applicable to the credit agreement, *if the credit agreement has a close link with the territory of one or more Member States.*

Justification

Alignment with Article 22(4) of the Consumer Credit Directive.

Amendment 109

Proposal for a directive Article 30 a (new)

Text proposed by the Commission

Amendment

Article 30a

Transitional Measures

The Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.

Amendment 110

Proposal for a directive Article 31

Text proposed by the Commission

The Commission shall undertake a review five years after the entry into force of this Directive. The review shall consider the effectiveness and appropriateness of the provisions on consumers and the internal market.

- (a) an assessment of ***consumer satisfaction*** with the ESIS;
- (b) other pre-contractual disclosures;
- (c) an analysis of cross-border business by credit intermediaries and creditors;
- (d) an analysis of the evolution of the market for non-credit institutions providing credit agreements relating to residential immovable property;
- (e) an assessment on the need for further measures, including a passport for non-credit institutions providing credit agreements relating to residential immovable property;
- (f) ***an examination of the necessity to introduce rights and obligations with regard*** to the post-contractual stage of credit agreements;
- (g) an assessment of the ***need to extend its scope to small companies***.

Amendment

The Commission shall undertake a review five years after the entry into force of this Directive. The review shall consider the effectiveness and appropriateness of the provisions on consumers and the internal market.

- (a) an assessment of ***compliance*** with the ***ESIS and consumer use, understanding and satisfaction thereof***;
- (b) other pre-contractual disclosures;
- (c) an analysis of cross-border business by credit intermediaries and creditors;
- (d) an analysis of the evolution of the market for non-credit institutions providing credit agreements relating to residential immovable property;
- (e) an assessment on the need for further measures, including a passport for non-credit institutions providing credit agreements relating to residential immovable property;
- (f) ***an assessment of the functioning*** of the post-contractual stage of credit agreements;
- (g) an assessment of the scope ***of this Directive in order to avoid the need for new legislation***;
 - (ga) ***an assessment of the impact of this directive on the market for other forms of credit including those which creditors or consumers may consider substitutable for those within its scope***;
 - (gb) ***an assessment of whether additional measures are necessary to ensure the traceability of credit agreements secured against residential immovable property***;
 - (gc) ***an assessment of the transparency and consistency of data on trends in prices of residential immovable property***.

Amendment 111

Proposal for a directive Article 31 a (new)

Text proposed by the Commission

Amendment

Article 31a

Further initiatives on responsible lending and borrowing

By ...*, the Commission shall submit a comprehensive report assessing the wider challenges of private over-indebtedness. The report shall identify the related markets, products and actors in the credit supply chain and analyse the different options to tackle these problems including macroeconomic measures related to credit evolution, its limits and uses, structural measures to protect savers in deposit institutions and measures addressed to highly leveraged institutions and to over-indebted households and consumers in difficulties and the consequent vulnerabilities in the financial system. The report shall be accompanied, where appropriate, by legislative proposals.

**** OJ please insert date: 12 months after the date of entry into force of this Directive.***

Amendment 112

Proposal for a directive Annex 1 – Section I – paragraph 2 – point d

Text proposed by the Commission

Amendment

d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5,

d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5,

the figure at *that particular* decimal place shall be increased by one.

the figure at *the preceding* decimal place shall be increased by one.

Amendment 113

Proposal for a directive Annex I – Section II – point j

Text proposed by the Commission

(j) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at that time.

Amendment

(j) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at that time, but is not less than the fixed borrowing rate. ***For credit agreements with a fixed borrowing rate of at least an initial period of five years and especially where a new fixed rate agreement is planned to proceed the agreement and variable conditions are only agreed on to prepare for the case that a new fixed deal has not yet been agreed on, only the initial fixed borrowing rate is to be taken into account.***

Amendment 114

Proposal for a directive Annex 2 – part A – table

Text proposed by the Commission

1. Lender
[Name]
[Geographical address]

Amendment

1. Lender
[Name]

[Telephone number]

[E-mail address]

[Web address]

Supervisory authority: [Name and Web address of supervisory authority]

Contact *person*: *[Full contact details of contact person]*

Supervisory authority: [Name and Web address of supervisory authority]

(Optional) Contact *point*

(Where applicable) Intermediary: [Name, level of service provided ("We recommend, having assessed your needs, that you take out this mortgage"/"We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice"), remuneration]

2. Main features of the loan

Amount and currency of the loan granted: [value][currency]

Where applicable) "This loan is not in [national currency]"

2. Main features of the loan

Amount and currency of the loan granted: [value][currency]

(Where applicable) "This loan is not in [national currency]" ***The total amount you will have to pay back in [national currency] could change. For example in the event that the value of [national currency] fell by 20 % relative to [credit currency], you would have to pay back a total of [insert amount in national currency]. (Where applicable) "The maximum you will have to pay back could be much more than this."***

You will receive a warning and possibility to renegotiate the conditions if the credit amount reaches [insert amount in national currency]."

(Where applicable) "The maximum you will have to pay back could be [insert amount in national currency]."

Duration of the loan: [duration]

[Type of loan]

[Type of applicable interest rate]

Duration of the loan: [duration]

[Type of loan]

[Type of applicable interest rate]

Total amount to be reimbursed:

[Maximum available loan amount relative to the value of the property]:

(Where applicable) [Security]

3. Interest rate

The APRC is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers. The APRC applicable to your loan is [APRC]. It comprises:

Interest rate [value in percentage]

[Other components of the APRC]

4. Frequency and number of payments

Repayment frequency: [frequency]

Number of payments: [number]

5. Amount of each instalment

[Amount] [currency]

(Where applicable) The exchange rate used for converting your repayment in [credit currency] to [national currency] will ***be the rate published by [name of institution publishing exchange rate] on [date].***

Total amount to be reimbursed:

(Where applicable) minimum value of the property required to borrow the illustrated amount)

(Where applicable) [Security]

3. Interest rate

The APRC is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers. The APRC applicable to your loan is [APRC]. It comprises:

Interest rate [value in percentage]

(Where applicable) Interest rate [value under best case scenario for variable interest rate] Interest rate [value under worst-case scenario for variable interest rate]

(Where applicable) Interest rate [value 20 % drop of national currency scenario]

(Where applicable) The actual amount you will have to pay in total or every [enter period] may differ heavily from the figure expressed by the APRC. Therefore the APRC is calculated as an example under different assumptions.

[Other components of the APRC]

4. Frequency and number of payments

Repayment frequency: [frequency]

Number of payments: [number]

5. Amount of each instalment

[Amount] [currency]

(Where applicable) ***The amount you have to pay in [national currency] could change. For example, if the value of [national currency] fell by 20 % relative to [credit currency] you would have to pay an extra [insert amount] each [insert period]. Your payments could increase by much more than this. The exchange rate used for converting your repayment in [credit currency] to [national currency] will***

be *calculated* on [date] *using [insert name of benchmark or method of calculation]*.

(Where applicable) Because the interest rate on [part of] this loan can vary, the amount of your instalments could change. [Warning on the variability of the instalments and scenarios pursuant to Article 18a(5) illustrating the impact of interest rate changes]

(Where applicable) The maximum you might have to pay each [insert period] could be [insert amount in national currency]

(Where applicable) [Warnings for interest only loans secured by mortgages or comparable securities, details on tied savings products, deferred-interest loans as listed in Part B Section 5.]

6. Illustrative repayment table

This table shows the amount to be paid every [frequency].

The instalments (column [relevant no.]) are the sum of interest paid (column [relevant no.]), capital paid (column [relevant no.]) and, where applicable other costs (column [relevant no.]). Where applicable, The costs in the other costs column relate to [list of costs]. Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed after each instalment.

[Amount and currency of the loan]

[Duration of the loan]

[Interest rate]

[Table]

(Where applicable) [Warning on the variability of the instalments]

7. Additional obligations and costs

The borrower must comply with the following obligations in order to benefit from the lending conditions described in

6. *(Where applicable)* Illustrative repayment table

This table shows the amount to be paid every [frequency].

The instalments (column [relevant no.]) are the sum of interest paid (column [relevant no.]), **where applicable**, capital paid (column [relevant no.]) and, where applicable other costs (column [relevant no.]). Where applicable, The costs in the other costs column relate to [list of costs]. Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed after each instalment.

[Table]

7. Additional obligations and costs

The borrower must comply with the following obligations in order to benefit from the lending conditions described in

this document.

[Obligations]

(Where applicable) Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with.

In addition to the costs already included in the [frequency] instalments, this loan entails the following costs:

Costs to be paid on a one-off basis

Costs to be paid regularly

Please make sure that you are aware of all other taxes and costs (e.g. notary fees) associated with this loan.

8. Early repayment

(Where applicable) You do not have the possibility to repay this loan early.

(Where applicable) You have the possibility to repay this loan early, either fully or partially.

(Where applicable) [Conditions]

[Procedure]

(Where applicable) Exit charge:

(Where applicable) Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge at that moment.

this document.

[Obligations]

(Where applicable) Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with.

In addition to the costs already included in the [frequency] instalments, this loan entails the following costs:

Costs to be paid on a one-off basis

Costs to be paid regularly

Please make sure that you are aware of all other taxes and costs (e.g. notary fees, ***registration fees, valuation fees [where not already included above] and taxes***) associated with this loan.

8. Early repayment

You have the possibility to repay this loan early, either fully or partially.

(Where applicable) [Conditions]

[Procedure]

(Where applicable) Exit charge: ***[insert amount or method of calculation]***

(Where applicable) You have the right to transfer this loan to another lender. [Insert conditions]

(Where applicable) You do not have the possibility to transfer this loan to another property

(Where applicable) You have the possibility to transfer this loan to another property: [Insert Conditions]

(Where applicable): You have the right to convert the loan into [national currency]. [Insert conditions]

(Where applicable) 9. Right of withdrawal

For a period of [length of withdrawal period] after the signing of the credit agreement, the borrower may exercise his right to cancel the agreement.

10. Internal complaint scheme

[Name of the relevant department]

[Geographical address]

[Telephone number]

[E-mail address]

Contact person: [contact details]

11. External complaint body

In the event of disagreement with the lender which remains unresolved the borrower has the possibility to address a complaint to:

[Name of the complaint body]

[Geographical address]

[Telephone number]

[E-mail address]

12. Non-compliance with the commitments linked to the loan: consequences for the borrower

[Types of non-compliance]

[Financial and/or legal consequences]

Should you encounter difficulties in making your [frequency] payments, we invite you to contact us as quickly as possible to explore possible solutions.

(Where applicable) **13.** Additional information *in the case of distance marketing*

(Where applicable) *The law taken by the creditor as a basis for the establishment of*

(Where applicable) 9. Right of withdrawal

For a period of [length of withdrawal period] after the signing of the credit agreement, the borrower may exercise his right to cancel the agreement. (**Where applicable**): *[Conditions] [Insert procedure]*

10. Complaints

If you have a complaint please [insert contact point or source of information on procedure]

If we do not resolve the complaint to your satisfaction, you can contact: [insert name of organisation]

11. Non-compliance with the commitments linked to the loan: consequences for the borrower

[Types of non-compliance]

[Financial and/or legal consequences]

Should you encounter difficulties in making your [frequency] payments, we invite you to contact us as quickly as possible to explore possible solutions.

(Where applicable) **12.** Additional information

(Where applicable) *Additional features: [insert explanation of additional features]*

relations with you before the conclusion of the credit contract is [applicable law].

Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] during the duration of the credit agreement.

14. Risks and warnings

- We draw your attention to the risks involved in taking out a *mortgage* loan.
- (Where applicable) The interest rate of this loan does not remain fixed during the whole duration of the loan.
- (Where applicable) This loan is not in [national currency]. Please note that the amount in [national currency] that you will need to pay at each instalment will vary in line with the [loan's currency/national currency] exchange rate.
- (Where applicable) This is an interest-only loan. This means that, during its duration, you will need to build up enough capital in order to reimburse the loan amount at maturity.
- You will also need to pay other taxes and costs (where applicable), e.g. notary fees.
- Your income may change. Please make sure that if your income falls you will still be able to afford your [frequency] repayment instalments
- (Where applicable) Your home may be repossessed if you do not keep up with payments.

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Proposal for a directive Annex 2 – part B

listed in Part B and, optionally, any other features offered by the lender as part of the credit agreement not mentioned in previous sections].

(Where the language envisaged differs from the language of the ESIS)

Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] during the duration of the credit agreement.

13. Risks and warnings

- We draw your attention to the risks involved in taking out a mortgage loan.
- (Where applicable) The interest rate of this loan does not remain fixed during the whole duration of the loan.
- (Where applicable) This loan is not in [national currency]. Please note that the amount in [national currency] that you will need to pay at each instalment will vary in line with the [loan's currency/national currency] exchange rate.
- (Where applicable) This is an interest-only loan. This means that, during its duration, you will need to build up enough capital in order to reimburse the loan amount at maturity.
- You will also need to pay other taxes and costs (where applicable), e.g. notary fees.
- Your income may change. Please make sure that if your income falls you will still be able to afford your [frequency] repayment instalments
- (Where applicable) Your home may be repossessed if you do not keep up with payments.

Text proposed by the Commission

In completing the ESIS, the following instructions shall be followed:

Section 'Introductory text'

(1) The validity date shall be properly highlighted.

Section 'Introductory text'

(1) The validity date shall be properly highlighted.

Section '1. Lender'

(1) ***Name, telephone number, geographical address and web address of the creditor shall refer to the creditor's headquarters.*** The relevant authority for the supervision of lending activities shall be indicated.

(2) Information on the contact person is optional.

(3) ***In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall indicate, where applicable, the name and geographical address of its representative in the Member State of residence of the borrower. Indication of the telephone number, e-mail address and web address of the representative of the credit provider is optional.***

(4) ***In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall indicate the name of the trade register in which the creditor is entered and its registration number or an equivalent means of identification in that register.***

Section '2. Main features of the loan'

(1) The duration of the credit shall be indicated in years or months, whichever is the most relevant. Where the duration of the credit can vary during the life of the

Amendment

In completing the ESIS, the following instructions shall be followed:

Section 'Introductory text'

(1) The validity date shall be properly highlighted.

Section 'Introductory text'

(1) The validity date shall be properly highlighted.

Section 1: 'Lender'

(1) The relevant authority for the supervision of lending activities shall be indicated.

(2) Information on ***a means to contact the lender*** is optional.

(3) ***Where the product information is being provided to the consumer by an intermediary, that intermediary shall give its name and inform the consumer whether it is providing information on the product as part of an advice service or not. It will also explain how it is being remunerated. If it is receiving commission from a creditor, the amount and the name of the creditor should be provided.***

Section 2: 'Main features of the loan'

(1) The duration of the credit shall be indicated in years or months, whichever is the most relevant. Where the duration of the credit can vary during the life of the

contract, the creditor shall explain when and under which conditions this can occur.

The description of the type of credit shall clearly indicate how the capital and the interest shall be reimbursed during the life of the credit (i.e. constant, progressive or regressive reimbursements).

(2) This section shall also explain whether the interest rate is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the interest rate variability, such as caps or floors. ***The formula used to revise the interest rate shall be explained. The creditor shall also indicate where further information on the indices or rates used in the formula can be found.***

Where the credit currency is different from the national currency, the creditor shall include information on the formula used to calculate the exchange rate spreads and the frequency of their adjustment

(3) 'Total amount to be reimbursed' shall be calculated as the sum of the credit amount and the total cost of the credit.

(4) 'Maximum available loan amount relative to the value of the property' shall indicate the loan-to-value ratio. This ratio is to be accompanied by an example in absolute terms of the maximum amount that can be borrowed for a given property value.

(5) Where the credit will be secured by a mortgage on the property or another commonly used guarantee, the creditor shall draw the borrower's attention to this.

Section '3. Interest rate'

contract, the creditor shall explain when and under which conditions this can occur.

(2) The description of the type of credit shall clearly indicate how the capital and the interest shall be reimbursed during the life of the credit (i.e. constant, progressive or regressive reimbursements) ***and specify whether the credit agreement is on a capital repayment or interest-only basis.***

(3) This section shall also explain whether the interest rate is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the interest rate variability, such as caps or floors. The formula used to revise the interest rate shall be explained. Where the credit currency is different from the national currency, the creditor shall include information on the formula used to calculate the exchange rate spreads and the frequency of their adjustment.

(4) 'Total amount to be reimbursed' shall be calculated as the sum of the credit amount and the total cost of the credit.

(5) Where applicable, the minimum value of the property required to borrow the illustrated amount should be stated.

(6) Where the credit will be secured by a mortgage on the property or another commonly used guarantee, the creditor shall draw the borrower's attention to this.

(7) Where loans are multi-part loans (e.g. part fixed rate, part variable rate), the information shall be given for each part of the loan.

Section '3. Interest rate'

(1) In addition to the interest rate, all the other costs contained in the APRC shall be listed (name and equivalence in percentage). Where providing a percentage rate for each of those costs is not possible or does not make sense, the creditor shall provide a global percentage rate.

(1) In addition to the interest rate, all the other costs contained in the APRC shall be listed (name and equivalence in percentage). Where providing a percentage rate for each of those costs is not possible or does not make sense, the creditor shall provide a global percentage rate.

(2) Where loans are multi-part loans (e.g. part fixed rate, part variable rate), the information shall be given for each part of the loan.

(3) Where the interest rate is subject to revision, the creditor should state any benchmark which is used to determine changes to the applicable interest rate and include: (1) where relevant, the applicable caps and floors; (2) an example of how the amount of the instalment would vary where the interest rate increases by 1% or by a higher percentage which may be further specified, where this is more realistic given the magnitude of normal changes to the interest rate, unless there is a cap on the interest rate which is lower than that this increase, and (3) where there is a cap, the instalment amount in the worst-case scenario.

Section '4. Frequency and number of payments'

(1) Where payments are to be done on a regular basis, the frequency of payments shall be indicated (e.g. monthly). Where the frequency of payments will be irregular, this shall be clearly explained to the borrower. The number of payments indicated shall cover the whole duration of the credit.

Section '5. Amount of each instalment'

(1) The loan currency shall be clearly indicated.

(2) Where the amount of the instalments may change during the life of the credit, the creditor shall specify the period during which that initial instalment amount will remain valid and when and how frequently

Section '4. Frequency and number of payments'

(1) Where payments are to be done on a regular basis, the frequency of payments shall be indicated (e.g. monthly). Where the frequency of payments will be irregular, this shall be clearly explained to the borrower. The number of payments indicated shall cover the whole duration of the credit.

Section '5. Amount of each instalment'

(1) The loan currency shall be clearly indicated

(2) Where the amount of the instalments may change during the life of the credit, the creditor shall specify the period during which that initial instalment amount will remain valid and when and how frequently

afterwards it will change.

(3) Where the credit currency is different to the borrower's national currency, the creditor shall include numerical examples clearly showing how ***changes to the relevant exchange rate may*** affect the amount of the instalments. ***The illustrated exchange rate changes need to be realistic, symmetrical and include at least the same number of unfavourable cases as favourable cases.***

(4) Where the currency used for the payment of instalments is different from the credit currency, the ***exchange rate to be used shall be clearly indicated. Such indications shall include the name of the institution publishing the exchange and the moment*** at which the applicable exchange is calculated.

afterwards it will change.

(3) Where the credit ***agreement is a foreign currency loan and where the credit*** currency is different to the borrower's national currency, the creditor shall include a numerical example clearly showing how ***a 5 % reduction in the value of the borrower's national currency would*** affect the amount of the instalments ***together with a prominent statement that the borrower's national currency could decline by more than the amount assumed in this illustration.***

(4) Where the currency used for the payment of instalments is different from the credit currency, ***the date*** at which the applicable exchange is calculated ***shall be given and the basis on which it will be*** calculated.

(5) Where all or part of the loan is an interest-only loan, the following statement shall be inserted prominently at the end of this section "You will still owe [insert amount of loan on an interest-only basis] at the end of the mortgage term. You will need to make separate arrangements to repay this. When comparing the payments on this mortgage with a repayment mortgage, remember to add any money that you may need to pay into a separate savings plan to build up a lump sum to repay this amount."

(6) If there is a requirement for the consumer to take out a tied savings product as a condition for being granted an interest-only loan secured by a mortgage or another comparable security, the details of this product, including the cost and frequency of any payments, must also be provided with the statement in (5).

(7) Where the loan is a deferred-interest loan, there should be an explanation of: how and when deferred interest is added to the loan as a cash amount; and what

Section '6. Illustrative repayment table'

(1) Where the interest may vary during the life of the credit, the creditor shall indicate, after the reference to the interest rate, the period during which that initial interest rate will remain valid.

(2) The table to be included in this section shall contain the following columns: 'repayment moment', 'amount of the instalment', 'interest to be paid per instalment', 'other costs included in the instalment' (where relevant), 'capital repaid per instalment' and 'outstanding capital after each instalment'.

(3) For the first repayment year the information shall be given for each instalment and a subtotal shall be indicated for each of the columns at the end of that first year. For the following years, the detail can be provided on an annual basis. An overall total row shall be added at the end of the table and shall provide the total amounts for each column. The total amount paid by the borrower (i.e. the overall sum of the 'amount of the instalment' column) shall be clearly highlighted and presented as such.

(4) Where the interest rate is subject to revision and the amount of the instalment after each revision is unknown, the creditor may indicate in the repayment table the same instalment amount for the whole credit duration. In such a case, the creditor shall draw that fact to the attention of the borrower by visually differentiating the amounts which are known from the hypothetical ones (e.g. using a different font, borders or shading). In addition, a clearly legible text shall explain for which

the implications are for the consumer in terms of their remaining debt.

(8) Where loans are multi-part loans (e.g. part fixed rate, part variable rate), the information shall be given for each part of the loan, and in total.

Section '6. Illustrative repayment table

(1) This section shall be included where the loan is a deferred interest loan, or where the repayment of principle is deferred for an initial period.

(2) The table to be included in this section shall contain the following columns: 'repayment moment', 'amount of the instalment', 'interest to be paid per instalment', 'other costs included in the instalment' (where relevant), 'capital repaid per instalment' and 'outstanding capital after each instalment'.

(3) For the first repayment year the information shall be given for each instalment and a subtotal shall be indicated for each of the columns at the end of that first year. For the following years, the detail can be provided on an annual basis. An overall total row shall be added at the end of the table and shall provide the total amounts for each column. The total amount paid by the borrower (i.e. the overall sum of the 'amount of the instalment' column) shall be clearly highlighted and presented as such.

(4) Where the interest rate is subject to revision and the amount of the instalment after each revision is unknown, the creditor may indicate in the repayment table the same instalment amount for the whole credit duration. In such a case, the creditor shall draw that fact to the attention of the borrower by visually differentiating the amounts which are known from the hypothetical ones (e.g. using a different font, borders or shading). In addition, a clearly legible text shall explain for which

periods the amounts represented in the table may vary and why. ***The creditor shall also include: (1) where relevant, the applicable caps and floors; (2) an example of how the amount of the instalment would vary where the interest rate increases or decreases by 1 % or by a higher percentage, where this is more realistic given the magnitude of normal changes to the interest rate and (3) where there is a cap, the instalment amount in the worst-case scenario.***

Section '7. Additional obligations and costs'

(1) The creditor shall refer in this section to obligations such as the need to insure the property, to purchase life insurance or to buy any other product or service. For each obligation, the creditor shall specify towards whom and by when the obligation needs to be fulfilled.

(2) The creditor shall also list each of the costs by category, indicating their amount, to whom they are to be paid and at what moment. Where the amount is not known, the creditor shall provide a possible range or an indication of how the amount will be calculated.

Section '8. Early repayment'

(1) ***Where the credit may be repaid early, the*** creditor shall indicate under what conditions, if any, the borrower can ***do so***. The creditor shall also indicate the steps the borrower should take in order to request the early repayment.

(2) Where an exit charge will be applied to the early repayment, the creditor shall draw the borrower's attention to this and indicate its amount. In cases where the amount of the exit charge would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of

periods the amounts represented in the table may vary and why.

Section '7. Additional obligations and costs'

(1) The creditor shall refer in this section to obligations such as the need to insure the property, to purchase life insurance or to buy any other product or service. For each obligation, the creditor shall specify towards whom and by when the obligation needs to be fulfilled.

(2) The creditor shall also ***provide a disaggregated list of*** each of the costs by category, indicating their amount, to whom they are to be paid and at what moment. ***This does not have to include costs incurred for breaches of contract obligations.*** Where the amount is not known, the creditor shall provide a possible range or an indication of how the amount will be calculated.

Section '8. Early repayment ***and flexibility***'

(1) ***The*** creditor shall indicate under what conditions, if any, the borrower can ***repay the loan early, in full or in part***. The creditor shall also indicate the steps the borrower should take in order to request the early repayment.

(2) Where an exit charge will be applied to the early repayment ***in order to compensate the creditor and preserve its indemnity***, the creditor shall draw the borrower's attention to this and indicate its amount. In cases where the amount of the exit charge would depend on different

the early repayment, the creditor shall indicate how the exit charge will be calculated. The creditor shall then provide *at least two illustrative examples in order to demonstrate to the borrower the level of the exit charge under different possible scenarios.*

factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the creditor shall indicate how the exit charge will be calculated. The creditor shall then provide, *where applicable, the maximum amount that the charge might be.*

(3) Where applicable, the creditor shall explain the conditions for transferring the loan to another creditor.

(4) Where the consumer has the option of transferring their loan to another property, the conditions for doing this will be explained.

(5) Where the loan is a foreign currency loan the creditor should state the right in Article -18a(1), and the conditions attached to exercise of that right in accordance with Article -18a(2) and (3). Where the income or assets on which the consumer is relying to repay the loan are in a different currency from that of the credit agreement or where the credit agreement is in a currency other than the national currency, the creditor shall state whether there is a right to convert the currency of the credit agreement and, if so, under what conditions.

Section '9. Right of withdrawal'

(1) Where a right of withdrawal exists, the creditor shall specify the conditions to which this right is subject, the procedure that the borrower will need to follow in order to exercise this right, inter alia, the address to which the notification of withdrawal should be sent, and the corresponding fees (where applicable).

(2) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the consumer shall be informed of the existence or absence of a right of withdrawal.

(3) In line with Article 5 of Directive 85/577/EEC, where the transaction is being offered away from business premises, the

Section '9. Right of withdrawal'

(1) Where a right of withdrawal exists, the creditor shall specify the conditions to which this right is subject, the procedure that the borrower will need to follow in order to exercise this right, inter alia, the address to which the notification of withdrawal should be sent, and the corresponding fees (where applicable).

(2) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the consumer shall be informed of the existence or absence of a right of withdrawal.

(3) In line with Article 5 of Directive 85/577/EEC, where the transaction is being offered away from business premises, the

consumer shall be informed of the existence of a right of withdrawal.

Section '10. Internal complaint scheme'

(1) Information on the contact person is optional.

Section '11. External complaint body'

(1) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall also specify whether or not there is an out-of-court complaint and redress mechanism for the borrower and, if so, explain the methods of access to it.

Section '12. Non-compliance with the consequences for the borrower': commitments linked to the credit:

(1) Where non-observance of any of the borrower's obligations linked to the credit may have financial or legal consequences for the borrower, the creditor shall describe in this section the different possible cases (e.g. late payments/default, failure to respect the obligations set out in Section 7 'Additional obligations and costs').

Section '13. Additional information *in the case of distance marketing*'

(1) Where applicable, this section will include a clause stipulating the law applicable to the credit agreement and/or the competent court.

consumer shall be informed of the existence of a right of withdrawal.

Section '10. Complaints'

(1) Insert a means of contacting the organisation to complain or a link to the complaints procedure on the relevant page of a website or similar information source, plus the name of the relevant external body for out-of-court complaints and redress.

Section '11. Non-compliance with the commitments linked to the credit: consequences for the borrower'

(1) Where non-observance of any of the borrower's obligations linked to the credit may have financial or legal consequences for the borrower, the creditor shall describe in this section the different possible cases (e.g. late payments/default, failure to respect the obligations set out in Section 7 'Additional obligations and costs').

(2) For each of those cases, the creditor shall specify, in clear, easily comprehensible terms, the penalties or consequences to which they may give rise. Reference to serious consequences should be highlighted.

Section '12. Additional information'

(1) The creditor shall state here whether it is compulsory for the consumer to hold any ancillary services to obtain the credit on the stated terms, and if so, whether the consumer is obliged to purchase them from the creditor's preferred supplier. Where the credit agreement is bundled

with other products the credit shall state the key features of those other products and clearly state whether the consumer has a right to terminate the credit agreement and/or the bundled products separately and the conditions for and implications of doing so.

(2) (Where Appropriate) Additional Features: Where the product contains any of the features listed in (4) below, this section must list these features and provide a brief explanation of: the circumstances in which the consumer can use the feature; any conditions attached to the feature; if the feature being part of the loan secured by a mortgage or comparable security means that the consumer loses any statutory or other protections usually associated with the feature; and the firm providing the feature (if not the creditor).

(2) If the feature contains any additional credit, then this section must explain to the consumer: the total amount of credit (including the credit secured by the mortgage or comparable security); whether the additional credit is secured or not; the relevant interest rates; and whether it is regulated or not.

(3) If the feature involves a savings vehicle, the relevant interest rate must be explained.

(4) The possible additional features are: 'Underpayments'; 'Payment holidays'; 'Borrow back'; 'Incentives'; 'Additional borrowing available without further approval'; 'Additional secured borrowing'; 'Credit card'; 'Unsecured borrowing'; 'Linked current account'; and 'Linked savings account'.

(5) The lender may also include any other features offered by the lender as part of the credit agreement not mentioned in previous sections.

(6) Where the firm intends to

communicate with the consumer during the life of the contract in a language different from the language of the ESIS that fact shall be included and the language of communication named.

Section '14. Risks and warnings'

(1) All the listed warnings shall be highlighted.

(2) Where applicable, the creditor shall recapitulate in this section the general interest rate revision rules and **provide** a **quantitative** example of how the instalments would increase if the credit's interest rate were to increase by X % (**as explained** in section '**Illustrative repayment table**') **and/or in the worst-case scenario (if there is a cap on the interest rate variability)**.

Section '13. Risks and warnings'

(1) All the listed warnings shall be highlighted.

(2) Where applicable, the creditor shall recapitulate in this section the general interest rate revision rules **and the risk to the consumer from interest rate increases in a clear, brief statement referring to the quantitative** example of how the instalments would increase if the credit's interest rate were to increase by X % in section 3(3).

Amendment 116

Proposal for a directive Annex II a (new)

Text proposed by the Commission

Amendment

Annex IIa

Minimum knowledge and competence requirements

1. The minimum knowledge and competence requirements for creditors', credit intermediaries' and appointed representatives' staff should include at least:

(a) appropriate knowledge of credit products secured by mortgages or other comparable securities and ancillary services typically offered together with such products;

(b) appropriate knowledge of the laws related to the credit agreements for consumers including consumer protection;

(c) appropriate knowledge and understanding of the property purchasing process;

(d) appropriate knowledge of security valuation;

(e) appropriate knowledge of organization and functioning of land registers;

(f) appropriate level of financial and economic competency and knowledge of market context;

(g) appropriate knowledge of business ethics standards;

(h) appropriate competence in assessing consumers' creditworthiness, where applicable, or knowledge of the assessment process.

2. When establishing minimum knowledge and competence requirements Member States may differentiate between the levels and types of requirements applicable to the staff of creditors, the staff of credit intermediaries or appointed representatives and the management of credit intermediaries or appointed representatives.

3. Member States shall determine the basis for demonstrating an appropriate level of knowledge and competence. This may include professional qualifications or competency tests. Relevant professional experience may also be taken into account where there is evidence that performance is consistent with the standards required. However, the basis for demonstrating competence shall not solely consist of a minimum number of years working in areas related to the origination, distribution or intermediation of credit products.

EXPLANATORY STATEMENT

I. EU MORTGAGE MARKETS

Mortgages are often the most important and longest financial commitment a family makes. They are essential for access to house ownership (near 70% in the EU) and have great economic importance. In 2009, mortgage credit amounted to 6,126 EUR billion - 52.3% of EU GDP. The market grew from 1998 to 2009 in almost all Member States, though due to the crisis there has been a decline since 2008.

EU markets for retail mortgage credit are fragmented, cross-border activity is rare, although according to the European Central Bank it has doubled between 1997 and 2008, and concentration is increasing.

Significant differences between Member States have not translated into diversity within each country. Product diversity enables financial inclusion and more mature markets offer a wider range to meet consumers' preferences.

Concentration levels are not homogenous (data shows a negative correlation between the size of the market and concentration) but recent information shows concentration has increased such that, on average, the market share of the 5 biggest lenders in each Member State is over 75%.

The price of mortgage credit is the sum of the lenders' profit margin, distribution and management costs, funding costs and those costs arising from risk taking.

Lenders are generally credit institutions but in at least 5 Member States non-credit institutions represent up to 12%.

In most countries, creditors distribute directly through their network of branches. Indirect distribution is particularly important in Hungary, Ireland, the Netherlands and the United Kingdom. Experts found that lenders funded mainly through deposits have wide, direct distribution networks while those mostly funded through capital markets have limited distribution networks and more reliance on intermediaries.

In 2002 61% of mortgages were funded by deposits, 17.5% by covered bonds and 10% by residential mortgage backed securities. Alternatives to deposit-based funding allow the duration of the credit and the funding to be matched, facilitate portability of portfolios and are essential for developing cross-border financing of secondary markets. After the crisis, spreads between credits and deposits have widened.

The US subprime market was the epicentre of the crisis. The EU has been affected through exposure to derivatives, worsening financial conditions and widening economic imbalances. This helped burst the "housing bubble" in some Member States and created tensions in others that had assumed important credit risk in foreign currency.

The need to lend and borrow responsibly has increased since the crisis. The FSA's July 2010 "Mortgage market review" recognizes that around 50% of all mortgages applications in 2007 and 2008 were processed without income verification and that "at the height of the market, almost 33% of all residential mortgages advanced in the UK were sold on an interest-only basis, with around three quarters of these having no specified repayment vehicle".

II. POLICY OBJECTIVE

Alongside the creation of the euro, the Financial Services Action Plan (1999) aimed to provide a modern financial framework which minimised the cost of capital and financial intermediation and ensured access to and security in retail markets.

Retail financial services market integration has been a goal since the FSAP, though not yet achieved. It is a prerequisite for fully benefitting from the internal market and an important contribution to growth. The Commission's 2007 White Paper on Mortgage Credit notes that "further integration of mortgage markets is essential for the European economy as well as for the functioning of the internal market".

Achieving the EU2020 goals of sustainable growth and learning lessons from the crisis in line with the G20 roadmap, demands an internal market for mortgage credit that is stable, resilient, efficient and open to competition. This requires sound underwriting practices, symmetrical relationships between the parties and good information for consumers; those conditions are also needed to promote financial inclusion and ensure a high level of consumer protection. Our goal should therefore be to achieve an internal market for mortgages in a sustainable way.

III. BETTER REGULATION

It is important to ensure that regulation at European level adds value. We should build on the existing *acquis* and keep coherence with the CCD (which some Member States have applied to mortgages) while acknowledging specificities due to the length and importance of mortgages.

Preserving subsidiarity and proportionality, we should remove internal market barriers but regard diversity at national level as an asset. Models that work and result from established legal and cultural traditions should be preserved. There is no case for full harmonisation and in most areas only a common basis should be established, leaving room for Member States to add national measures. In a few cases a ceiling may be needed to ensure market efficiency, providing a 'framed' harmonisation.

IV. THE COMMISSION'S PROPOSAL: OUR ASSESSMENT

Your Rapporteur was appointed in October 2010 following a 2009 consultation and 2010 working paper by the Commission on Responsible Lending and Borrowing. He then wrote to Commissioner Barnier stating that "irresponsible lending and borrowing was at the heart of excessive indebtedness, one of the main causes of the financial crisis" and calling for the scope of any proposal to be "broader than retail aspects of mortgage lending".

Once the limited scope of the proposal was confirmed, the ECON Committee Chair and your Rapporteur wrote again to the Commissioner explaining that "evidence shows that the main problems are not posed by defaults by consumers on loans related to residential property" and seeking "assurance that this proposal will be only the first step of a coherent EU strategy for addressing the poor lending practices". Given Commissioner Barnier's commitment that the Commission "will not ignore these issues moving forward", your Rapporteur focused on the current proposal and has introduced a clause on "Further initiatives on responsible lending and borrowing".

Having met numerous stakeholders your Rapporteur believes the proposal is welcomed though it needs to be fine-tuned and complemented.

The proposal relates to conditions applicable to creditors and credit intermediaries, competent authorities and supervisory requirements. These need to be strengthened in a way coherent with the new European supervisory architecture. It also contains provisions on information and practices preliminary to the conclusion of the credit agreement, annual percentage rate of charge, creditworthiness assessment, database access, advice and early repayment. These need to reflect the principles of the Financial Stability Board's review of mortgage underwriting (2011) and take account of the US Dodd-Frank Act (2010) to promote global consistency.

The proposal should address other critical issues without delay: a risk based approach, financial education, sound performance and transparency. It is necessary to define a category of special risk agreements to correct excessive uniformity of regulation; to combat financial illiteracy at the root of irresponsible practices; to deal with key problems during the life of a credit agreement by guaranteeing flexibility through an enhanced balance of competition and stability; and to promote transparent, smart and reliable mortgage markets.

V. KEY ISSUES OF THE REPORT

Further initiatives on responsible lending and borrowing: As explained above, the Commission is asked to report on options to tackle excessive leverage, including macroeconomic measures related to credit evolution, its limits and uses, and measures to protect savers and address highly leveraged institutions to determine what other legislative proposals are needed.

Special risk agreements: this kind of agreement needs to be defined and the risks managed through extra measures including warnings for consumers and stricter prudential requirements so that those taking greater risks also bear the potential costs of taking such risks.

Creditworthiness assessment: this is key to achieving a sustainable market. The directive itself should reflect minimum standards recommended by the Financial Stability Board, even if these are further developed through technical standards. The assessment must be robust but to avoid financial exclusion, judgement should be used to protect consumers from arbitrary or unjustified decisions to deny credit.

Reflection period: consumers should have a time to compare offers and ask for advice. The report allows flexibility as to whether this is before or after conclusion of the contract, or a combination of the two.

Advice: It is important to define and provide clear standards for advice and to distinguish such advice, which includes a personalised recommendation, from personalised marketing material which does not contain such a recommendation. This includes ensuring remuneration does not inappropriately incentivise those providing advice.

Early repayment: consumers should have the right to repay early, under certain conditions. A common European framework should be based in Member States legal traditions, and take account of different mortgage funding structures. The framework should ensure that consumers are not penalised for exercising their right and, consistent with Dodd Frank, that creditors are indemnified to a level consistent with market efficiency.

Valuation: Both creditors and consumers have an accurate and impartial valuation of the property. Valuation standards are proposed, and in the case of foreclosure coherence is assured with the value determined under the CRD.

Traceability: The crisis has shown the importance of ensuring the traceability of rights in residential immovable property for creditors and for those investing in instruments for which the right in the residential immovable property provides collateral. A European Mortgage Key Identifier should be allocated to new credit agreements ensuring that the link between the loan and the property can be identified in primary and secondary markets.

Local competent authorities: the Member State where the property is located should be able to determine standards applicable to loans related to property in their territory. Such standards should be applied through co-operation among competent authorities. Co-ordination at European level is needed, particularly relating to the identification and management of systemic risk.

26.1.2012

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION(*)

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council on credit agreements relating to residential property
COM(2011)0142 – C7-0085/2011 – 2011/0062(COD)

Rapporteur (*): Kurt Lechner

Rapporteur: Alexandra Thein, Committee on Legal Affairs

(*) Associated committee – Rule 50 of the Rules of Procedure

SHORT JUSTIFICATION

Although there is as yet no EU legislation on mortgage loans, the March 2001 Voluntary Code of Conduct on pre-contractual information for home loans (Commission Recommendation 2001/193/EC) is certainly relevant. And although the Consumer Credit Directive (2008/48/EC) does not apply to loans secured by a mortgage, Member States have implemented some of its provisions in connection with mortgage loans as well.

Mortgage credit markets are of major significance in the Single Market, but their degree of integration ranges from ‘little’ to ‘none at all’. In addition to the general problems that impede the contracting of cross-border loans – including consumer loans – such as language difficulties, differing financing cultures and the existence of specifically regional relationships of trust, the process of taking out mortgages is hampered by further obstacles, in particular major differences between Member States in the areas of land law, the rules on valuation, the law on land registers and mortgages and the law on foreclosure. These obstacles are not addressed in the proposal for a directive and there is no prospect of their being eliminated even in the medium term. The Commission is therefore correct in asserting that the scope for creating a single market, particularly on the consumer side, is extremely limited, and that any harmonisation should be cautious and should do no more than outline a possible framework. What is more, in view of the financial crisis, there are other initiatives relating to capital market legislation that take priority over this proposal.

From a consumer protection point of view, it should primarily be borne in mind that for many

people buying a house is the biggest investment they make in their lives and therefore deserves protection. As a rule, people are aware of the implications of this transaction, seek out information and take advice. Consumer credit, by contrast, is more of a mass market with standardised products that can also be used across borders, and which bring with them the danger of inexperienced consumers being rushed into hasty decisions. In the case of residential property loans and mortgages, on the other hand, greater emphasis should be placed on maintaining product diversity, on the informed citizen's freedom to conclude contracts and on competition between suppliers.

The consumer's ability to ensure that his or her specific circumstances inform the individual contractual arrangements with the creditor, where appropriate with the assistance of an impartial adviser, should not be restricted by excessive regulation at European level, particularly since the cross-border impact is limited.

However, in spite of these differences between the sector covered by the Consumer Credit Directive and the proposed directive on residential property and mortgage credit agreements, care should be taken to ensure that, while the provisions of the two directives do not need to be identical, where the same subject matter is being regulated there should not be two different sets of rules on the same matters.

Many Member States have implemented provisions of the Consumer Credit Directive in such a way that they also apply to loans secured by mortgages. This should be taken into account.

With a view to safeguarding the stability of the financial markets, there is no need for more stringent regulation than that provided by the Consumer Credit Directive, because measures that have already been adopted, e.g. those on bank supervision, capital requirements and securitisation, are also effective and more suited to this purpose. In that connection, your rapporteur draws attention to the Commission proposal of 20 July 2011 on implementing the recommendation of the Basel Committee on Banking Supervision (Basel III).

Whereas in its Green and White Papers the Commission used the term 'mortgage', this proposal for a directive is entitled 'directive on credit agreements relating to residential property'. This wording is misleading, as is Article 1. Although this is not immediately apparent, the proposal covers only consumer credit agreements, but its scope is by no means restricted to credit agreements relating to residential property, extending to all consumer credit agreements secured by immovable property, even when they are intended, for example, to fund the building of a large commercial complex or the purchase of a car or of shares, or as a bridging loan, which is entirely normal in some Member States.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Title

Text proposed by the Commission

DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on credit agreements relating to residential
property

Amendment

DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on credit agreements relating to residential
property ***and credit agreements secured by
mortgages***

*(This amendment applies throughout the
text. Adopting it will necessitate
corresponding changes throughout.)*

Amendment 2

Proposal for a directive Recital 1

Text proposed by the Commission

(1) In March 2003, the Commission launched a process to identify and assess the impact of barriers to the internal market for credit agreements relating to residential immovable property. In 2007, it adopted a White Paper on the integration of EU mortgage credit markets. The White Paper announced the Commission's intention to assess the impact of, among other things, the policy options for pre-contractual information, credit databases, creditworthiness, the annual percentage rate of charge and advice. The Commission also established an Expert Group on Credit Histories to assist the Commission in preparing measures to improve the accessibility, comparability and completeness of credit data. Studies on the role and operations of credit intermediaries and non-credit institutions providing credit agreements relating to residential

Amendment

(1) In March 2003, the Commission launched a process to identify and assess the impact of barriers to the internal market for credit agreements relating to residential immovable property ***and credit agreements secured by mortgages***. In 2007, it adopted a White Paper on the integration of EU mortgage credit markets. The White Paper announced the Commission's intention to assess the impact of, among other things, the policy options for pre-contractual information, credit databases, creditworthiness, the annual percentage rate of charge and advice. The Commission also established an Expert Group on Credit Histories to assist the Commission in preparing measures to improve the accessibility, comparability and completeness of credit data. Studies on the role and operations of credit intermediaries and non-credit

immovable property and credit agreements secured by mortgages were also launched.

institutions providing credit agreements relating to residential immovable property **and credit agreements secured by mortgages** were also launched.

Amendment 3

Proposal for a directive Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Moreover, in its Communication entitled ‘Single Market Act: Twelve levers to boost growth and strengthen confidence’¹, dated 13 April 2011, the Commission committed itself to further improving the ‘protection of borrowers in the mortgage market’.

¹ COM(2011)0206.

Amendment 4

Proposal for a directive Recital 2

Text proposed by the Commission

Amendment

(2) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The development of a more transparent and efficient credit market within that area is vital to promote the development of cross-border activity and create an internal market in credit agreements relating to residential immovable property. There are substantial differences in the laws of the various Member States with regard to conduct of business in the granting of credit agreements relating to residential immovable property and in the regulation

(2) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The development of a more transparent and efficient credit market within that area is vital to promote the development of cross-border activity and create an internal market in credit agreements relating to residential immovable property **and credit agreements secured by mortgages**. There are substantial differences in the laws of the various Member States with regard to conduct of business in the granting of credit agreements relating to residential

and supervision of credit intermediaries and non-credit institutions providing credit agreements relating to residential immovable property. Such differences create obstacles that restrict the level of cross-border activity on the supply and demand sides, thus reducing competition and choice in the market, raising the cost of lending for providers and even preventing them from doing business.

immovable property *and credit agreements secured by mortgages* and in the regulation and supervision of credit intermediaries and non-credit institutions providing credit agreements relating to residential immovable property *and credit agreements secured by mortgages*. Such differences create obstacles that restrict the level of cross-border activity on the supply and demand sides, thus reducing competition and choice in the market, raising the cost of lending for providers and even preventing them from doing business.

Amendment 5

Proposal for a directive Recital 3

Text proposed by the Commission

(3) The financial crisis has shown that irresponsible behaviour by market participants can undermine the foundations of the financial system, leading to a lack of confidence among all parties, in particular consumers, and potentially severe social and economic consequences. Many consumers have lost confidence in the financial sector and borrowers have found their loans increasingly unaffordable, with defaults and forced sales rising. In view of the problems brought to light in the financial crisis and in the context of efforts to ensure an efficient and competitive internal market, the Commission has proposed measures with regard to credit agreements relating to residential immovable property, including a reliable framework on credit intermediation, in the context of delivering responsible and reliable markets for the future and restoring consumer confidence.

Amendment

(3) The financial crisis has shown that irresponsible behaviour by market participants can undermine the foundations of the financial system, leading to a lack of confidence among all parties, in particular consumers, and potentially severe social and economic consequences. Many consumers have lost confidence in the financial sector and borrowers have found their loans increasingly unaffordable, with defaults and forced sales rising. In view of the problems brought to light in the financial crisis and in the context of efforts to ensure an efficient and competitive internal market *that ensures financial stability and consumer protection*, the Commission has proposed measures with regard to credit agreements relating to residential immovable property, including a reliable framework on credit intermediation, in the context of delivering responsible and reliable markets for the future and restoring consumer confidence.

Amendment 6

Proposal for a directive Recital 7

Text proposed by the Commission

(7) For those areas not covered by this Directive, Member States should be free to maintain or introduce national legislation. Member States should be able to maintain or introduce national provisions in areas such as contract law relating to the validity of credit agreements, property valuation, land registration, contractual information, post-contractual issues, and handling defaults.

Amendment

(7) For those areas not covered by this Directive, Member States should be free to maintain or introduce national legislation. Member States should be able *in particular* to maintain or introduce national provisions in areas such as contract law relating to the validity of credit agreements, *property law*, property valuation, land registration, contractual information, post-contractual issues, and handling defaults.

Amendment 7

Proposal for a directive Recital 9

Text proposed by the Commission

(9) The objective of this Directive is to ensure that all credits provided to consumers benefit from a high level of protection. It should therefore apply to credits secured by *real estate, or credits which are used to purchase a property* in some Member States and to credits for the renovation of residential property that are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC which lays down rules at Union level concerning consumer credit agreements. Furthermore, this Directive should not be applied to certain types of credit agreements where the credit is granted by an employer to his employees under certain circumstances, as already provided in Directive 2008/48/EC.

Amendment

(9) The objective of this Directive is to ensure that all credits provided to consumers benefit from a high level of protection. It should therefore apply to credits secured by *a mortgage, or consumer credit agreements which are used to finance properties* in some Member States and to credits for the renovation of residential property that are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC which lays down rules at Union level concerning consumer credit agreements. Furthermore, this Directive should not be applied to certain types of credit agreements where the credit is granted by an employer to his employees under certain circumstances, as already provided in Directive 2008/48/EC.

Amendment 8

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Furthermore, in accordance with Directive 2008/48/EC, this directive should not apply to credit agreements relating to residential immovable property, and credit agreements secured by mortgages, for sums in excess of EUR 2 million. The following should also be excluded from its scope: deferral agreements, hiring or leasing agreements, credit agreements in the form of overdraft facilities, credit agreements where the credit is granted free of interest and without any other charges, credit agreements with investment firms, credit agreements which are the outcome of a settlement, credit agreements relating to deferred payment without charge, and credit agreements which relate to loans granted to a restricted public under a statutory provision.

Amendment 9

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

(16) The applicable legal framework should give consumers the confidence that creditors and credit intermediaries are acting in the best interests of the consumer. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry. **While** this Directive should require relevant knowledge and competence to be proven at

(16) The applicable legal framework should give consumers the confidence that creditors and credit intermediaries are acting in the best interests of the consumer. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry. This Directive should require relevant knowledge and competence to be proven at

the level of the institution, *Member States should be free to introduce or maintain such requirements applicable to individual natural persons.*

the level of the institution *as well as at the level of the natural person in case of a credit intermediary who works alone.*

Justification

In order to protect consumers and guarantee equal conditions of competition, every person directly involved in marketing credit agreements, also as an intermediary, should be required to prove that they have the relevant knowledge and competence. This should also apply to intermediaries who work alone as natural persons and have no employees.

Amendment 10

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Member States should take appropriate measures to facilitate and promote consumers' understanding of their responsibilities with respect to borrowing and debt management, especially as regards credit agreements for residential immovable property. Member States should ensure that information is accessible to all consumers, so that the absence of such information does not serve to make consumers vulnerable who would otherwise not be, and should particularly ensure that consumers whose profiles make them especially vulnerable when it comes to the conclusion of credit agreements for residential immovable property are protected.

Amendment 11

Proposal for a directive Recital 17

Text proposed by the Commission

Amendment

(17) Creditors and credit intermediaries

(17) Creditors and credit intermediaries

frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific provisions on the advertising of credit agreements relating to residential immovable property and a list of items to be included in advertisements and marketing materials directed at consumers are necessary to enable them to compare different offers. Such provisions take into account the specificities of credit agreements relating to residential immovable property, *for instance, the fact that if the loan repayments are not met, there is a risk of the consumer losing the property. Member States should remain free to introduce or maintain disclosure requirements in their national laws regarding advertising which does not contain information on the cost of credit.*

Amendment 12

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) The consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Creditors, *and where the transaction is through a credit intermediary, credit intermediaries should* provide such assistance in relation to the credit products which they offer to the consumer. The relevant information, as well as the essential characteristics of the products proposed, should therefore be explained to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his

frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific *final* provisions on the advertising of credit agreements relating to residential immovable property and credit agreements secured by mortgages, and a list of items to be included in advertisements and marketing materials directed at consumers *where such advertising specifies interest rates and costs*, are necessary to enable them to compare different offers. *For the rest, Member States should remain free to provide for information requirements in their national laws.* Such provisions should take into account the specificities of credit agreements relating to residential immovable property.

Amendment

(22) Despite the pre-contractual information to be provided, the consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. *Therefore, Member States should ensure that* creditors provide such assistance in relation to the credit products which they offer to the consumer. *Where appropriate*, the relevant *pre-contractual* information, as well as the essential characteristics of the products proposed, should be explained to the consumer in a personalised manner so that the consumer can understand the effects

economic situation. Member States could determine when and to what extent such explanations are to be given to the consumer, taking into account the particular circumstances in which the credit is offered, the consumer's need for assistance and the nature of individual credit products.

which they may have on his economic situation. ***Where applicable, this duty to assist the consumer should also apply to credit intermediaries.*** Member States could determine when and to what extent such explanations are to be given to the consumer, taking into account the particular circumstances in which the credit is offered, the consumer's need for assistance and the nature of individual credit products.

Amendment 13

Proposal for a directive Recital 23

Text proposed by the Commission

(23) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Union, it is necessary to ensure the comparability of information relating to annual percentage rates of charge throughout the Union. The total cost of the credit to the consumer should comprise all the costs that the consumer has to pay in connection with the credit agreement, except for notarial costs. It should therefore include interest, commissions, taxes, fees for credit intermediaries and any other fees as well as the cost of insurance or other ancillary products, where these are obligatory in order to obtain the credit on the terms and conditions marketed. As the annual percentage rate of charge can at the pre-contractual stage be indicated only through an example, such an example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration. Given the complexities of calculating an annual percentage rate of charge (for instance, for credits based on

Amendment

(23) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Union, it is necessary to ***uniformly*** ensure the comparability of information relating to annual percentage rates of charge throughout the Union. The total cost of the credit to the consumer should comprise all the costs that the consumer has to pay in connection with the credit agreement, except for ***costs incurred in connection with credit protection such as registration fees and*** notarial costs. It should therefore include interest, commissions, taxes, fees for credit intermediaries and any other fees as well as the cost of insurance or other ancillary products, where these are obligatory in order to obtain the credit on the terms and conditions marketed. As the annual percentage rate of charge can at the pre-contractual stage be indicated only through an example, such an example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration. Given the

variable interest rates or non-standard amortisation) and in order to be able to accommodate product innovation, technical regulatory standards could be employed to amend or specify the method of calculation of the annual percentage rate of charge. ***The definition of and methodology used for calculating the annual percentage rate of charge in this Directive should be the same as those in Directive 2008/48/EC in order to facilitate consumer understanding and comparison. Those definitions and methodologies may, however, differ*** in the future should ***Directive 2008/48/EC*** be modified ***at a later date***. Member States are free to maintain or introduce prohibitions on unilateral changes to the borrowing rate by the creditor.

complexities of calculating an annual percentage rate of charge (for instance, for credits based on variable interest rates or non-standard amortisation) and in order to be able to accommodate product innovation, technical regulatory standards could be employed to amend or specify the method of calculation of the annual percentage rate of charge. ***In order to facilitate comparison, the aim should be to create uniformity as far as possible between the definition of and methodology used for calculating the annual percentage rate of charge in this Directive and those in Directive 2008/48/EC. However, in the case of credits with a fixed initial interest rate, calculating the APCR in accordance with Directive 2008/48/EC may lead to serious misapprehensions among consumers. This should be corrected. Further discrepancies may arise in the future should the two directives be modified.*** Member States are free to maintain or introduce prohibitions on unilateral changes to the borrowing rate by the creditor.

Amendment 14

Proposal for a directive Recital 24

Text proposed by the Commission

(24) An assessment of creditworthiness should take into consideration all necessary factors that could influence a consumer's ability to repay over the lifetime of the loan including, but not limited to, the consumer's income, regular expenditures, credit score, past credit history, ability to handle interest rate adjustments, and other existing credit commitments. Additional provisions may be necessary to further elaborate on the different elements that may be taken into consideration in a

Amendment

(24) An assessment of creditworthiness should take into consideration all necessary factors that could influence a consumer's ability to repay over the lifetime of the loan including, but not limited to, the consumer's income, regular expenditures, credit score, past credit history, ability to handle interest rate adjustments, and other existing credit commitments. Additional provisions may be necessary to further elaborate on the different elements that may be taken into consideration in a

creditworthiness assessment. **Member States may issue guidance on the method and criteria to assess a consumer's creditworthiness, for example by setting limits on loan-to-value or loan-to-income ratios.**

creditworthiness assessment. **The creditworthiness assessment should take into account all relevant factors known to the creditor at the time of the application for the credit.**

Justification

This would be better addressed by the Capital Requirements Directive.

Amendment 15

Proposal for a directive Recital 25

Text proposed by the Commission

(25) A negative creditworthiness assessment should ***indicate to the creditor that the consumer is unable to afford the credit and as a consequence, the creditor should not grant the credit.*** Such a negative outcome may derive from a wide range of reasons, including but not limited to the consultation of a database or a negative credit score. A positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.

Amendment

(25) A negative creditworthiness assessment should ***mean that the credit will be granted only in exceptional circumstances. This should be documented by the supervisory authority for auditing purposes.*** Such a negative outcome may derive from a wide range of reasons, including but not limited to the consultation of a database or a negative credit score. A positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.

Amendment 16

Proposal for a directive Recital 26

Text proposed by the Commission

(26) Consumers should provide all available relevant information on their financial situation and personal circumstances ***to the creditor or intermediary in order to facilitate*** the creditworthiness assessment. ***The consumer should not, however, be penalised where he is not in a position to***

Amendment

(26) Consumers should provide all available relevant information on their financial situation and personal circumstances ***to enable the creditor or intermediary to carry out*** the creditworthiness assessment, ***since failure to do so will result in refusal of the credit they seek to obtain.*** In situations where

provide certain information or assessments of the future evolution of his financial situation. In situations where consumers knowingly provide incomplete or inaccurate information, Member States should be able to determine the appropriate penalties.

Amendment 17

Proposal for a directive

Recital 29

Text proposed by the Commission

(29) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, of the name of the database consulted and of any other elements required by Directive 95/46/EC so as to enable the consumer to exercise his right to access and, where necessary, rectify, erase or block personal data concerning him and processed therein. Where a decision to reject an application for credit is based on an automated decision or on systematic methods such as credit scoring systems, the creditor should inform the consumer thereof ***and explain the logic involved in the decision*** and of the arrangements enabling the consumer to request the automated decision to be reviewed manually. However, the creditor should not be required to give such information when to do so would be prohibited by other Union legislation such as legislation on money laundering or the financing of terrorism. Neither should such information be provided where to do so would be contrary to the objectives of public policy or public security such as the prevention, investigation, detection or prosecution of criminal offences.

consumers knowingly provide incomplete or inaccurate information, Member States should be able to determine the appropriate penalties.

Amendment

(29) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, of the name of the database consulted and of any other elements required by Directive 95/46/EC so as to enable the consumer to exercise his right to access and, where necessary, rectify, erase or block personal data concerning him and processed therein. Where a decision to reject an application for credit is based on an automated decision or on systematic methods such as credit scoring systems, the creditor should inform the consumer thereof and of the arrangements enabling the consumer to request the automated decision to be reviewed. However, the creditor should not be required to give such information when to do so would be prohibited by other Union legislation such as legislation on money laundering or the financing of terrorism. Neither should such information be provided where to do so would be contrary to the objectives of public policy or public security such as the prevention, investigation, detection or prosecution of criminal offences.

Amendment 18

Proposal for a directive Recital 31

Text proposed by the Commission

(31) *In order to be in a position to understand the nature of the service, consumers should be made aware of what constitutes a personalised recommendation on suitable credit agreements for that consumer's needs and financial situation ('advice') and when it is being provided and when it is not.*

Those providing advice should comply with general standards in order to ensure that the consumer is presented with a range of products suitable for his needs and circumstances. That *service* should be based on a fair and sufficiently wide-ranging analysis of the products available *on the market*, and on a close inspection of the consumer's financial situation, preferences and objectives. *Such an assessment* should be based on up-to-date information and reasonable assumptions on the consumer's circumstances during the lifetime of the loan. Member States may clarify how the suitability of a given product for a consumer should be assessed in the context of the provision of advice.

Amendment

(31) *Where the consumer is provided with advice as a service separate from the credit, he should be made clearly aware of this fact. A charge should only be made if the consumer is clearly informed about the charge and the method of its calculation.* Those providing advice should comply with general standards in order to ensure that the consumer is presented with a range of products suitable for his needs and circumstances. That *advice* should be based on a fair and sufficiently wide-ranging analysis of the products available, and on a close inspection of the consumer's financial situation, preferences and objectives, *and* should be based on up-to-date information and reasonable assumptions on the consumer's circumstances during the lifetime of the loan. *If the advice relates only to the adviser's own range of products, this should be drawn to the consumer's attention.* Member States may clarify how the suitability of a given product for a consumer should be assessed in the context of the provision of advice.

Amendment 19

Proposal for a directive Recital 32

Text proposed by the Commission

(32) A consumer's ability to repay his credit prior to the expiry of his credit agreement may play an important role in promoting competition in the single market

Amendment

(32) A consumer's ability to repay his credit prior to the expiry of his credit agreement may play an important role in promoting competition in the single market

and the free movement of EU citizens. However, substantial differences exist between the national principles and conditions under which consumers have the ability to repay and the conditions under which such early repayment can take place. Whilst recognising the diversity in mortgage funding mechanisms and the range of products available, certain standards with regard to early repayment of credit are essential at Union level in order to ensure that consumers have the possibility to discharge their obligations before the date agreed in the credit agreement and the confidence to shop around for the best products to meet their needs. Member States should therefore ensure, either by legislation or by means of contractual clauses, that consumers have a statutory or contractual right to early repayment; nevertheless, Member States should be able to define the conditions for the exercise of such a right. These conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, whether fixed or variable, restrictions with regard to the circumstances under which the right may be exercised. Member States could also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In any event, if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a *special* interest on the part of the consumer. Such *special* interest may for example occur in case of divorce or unemployment. ***Where a Member State chooses to lay down such conditions, these should not make the exercise of the right excessively difficult or onerous for the consumer.***

Amendment 20

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and the free movement of EU citizens. However, substantial differences exist between the national principles and conditions under which consumers have the ability to repay and the conditions under which such early repayment can take place. Whilst recognising the diversity in mortgage funding mechanisms and the range of products available, certain standards with regard to early repayment of credit are essential at Union level in order to ensure that consumers have the possibility to discharge their obligations before the date agreed in the credit agreement and the confidence to shop around for the best products to meet their needs. Member States should therefore ensure, either by legislation or by means of contractual clauses, that consumers have a statutory or contractual right to early repayment; nevertheless, Member States should be able to define the conditions for the exercise of such a right. These conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, whether fixed or variable, restrictions with regard to the circumstances under which the right may be exercised. Member States could also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In any event, if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a *legitimate* interest on the part of the consumer. Such *legitimate* interest may for example occur in case of divorce or unemployment.

Proposal for a directive
Recital 34

Text proposed by the Commission

(34) Credit intermediaries should be registered with the competent authority of the Member State where they have their residence or their head office, provided that they have been authorised in accordance with strict professional requirements in relation to their competence, good repute, and professional indemnity cover. With a view to promoting consumer confidence in credit intermediaries, Member States should ensure that authorised credit intermediaries are subject to ongoing and thorough supervision by their home Member State competent authority. Such requirements should apply at least at the level of the institution; however, Member States may clarify whether such requirements for authorisation and subsequent registration apply to individual employees within the credit intermediary.

Amendment

(34) Credit intermediaries should be registered with the competent authority of the Member State where they have their residence or their head office, provided that they have been authorised in accordance with strict professional requirements in relation to their competence, good repute, and professional indemnity cover. With a view to promoting consumer confidence in credit intermediaries, Member States should ensure that authorised credit intermediaries are subject to ongoing and thorough supervision by their home Member State competent authority. Such requirements should apply at least at the level of the institution ***and at the level of the natural person in the case of a credit intermediary who works alone***; however, Member States may clarify whether such requirements for authorisation and subsequent registration apply to individual employees within the credit intermediary.

Amendment 21

Proposal for a directive
Recital 39

Text proposed by the Commission

(39) In order to take account of developments in the markets for credit relating to residential immovable property or in the evolution of credit products as well as economic developments, such as inflation, and in order to provide further explanations on how to address certain of the requirements contained in this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European

Amendment

deleted

Union. In particular, the Commission should be empowered to adopt delegated acts to specify the details concerning the professional requirements applicable to creditors' staff and credit intermediaries, the criteria used for assessing the creditworthiness of the consumer and in ensuring that credit products are not unsuitable for the consumer, and further harmonisation of key terms such as 'default' the registration criteria and data processing conditions to be applied to credit databases.

Amendment 22

Proposal for a directive Recital 40

Text proposed by the Commission

(40) In order to take account of developments in the markets for credit relating to residential immovable property, including the range of products available, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to amend *the content of the standard information items to be included in advertising*, the content and format of the European Standardised Information Sheet (ESIS), *the content of the information disclosures by credit intermediaries*, the formula and the assumptions used to calculate the annual percentage rate of charge *and the criteria to be taken into account for the assessment of the consumer's creditworthiness*.

Amendment

(40) In order to take account of developments in the markets for credit relating to residential immovable property, including the range of products available, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to amend the content and format of the European Standardised Information Sheet (ESIS), and *to amend* the formula and the assumptions used to calculate the annual percentage rate of charge.

Amendment 23

Proposal for a directive Recital 41

Text proposed by the Commission

(41) In order to take account of economic developments, such as inflation and developments in markets for credit agreements related to residential immovable property, the Commission should be empowered to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee with regard to credit intermediaries by adopting regulatory technical standards.

Amendment

deleted

Amendment 24

Proposal for a directive Recital 43

Text proposed by the Commission

(43) The European Parliament and the Council should have *two months* from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by *one month* with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.

Amendment

(43) The European Parliament and the Council should have *three months* from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by *two months* with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.

Amendment 25

Proposal for a directive Article 1

Text proposed by the Commission

The purpose of this Directive is to lay

Amendment

The purpose of this Directive is to lay

down a framework for certain aspects of the laws, regulations and administrative provisions of the Member States ***concerning credit agreements relating to residential immovable property for consumers*** and concerning certain aspects of the prudential and supervisory requirements for credit intermediaries and creditors.

down a framework for certain aspects of the laws, regulations and administrative provisions of the Member States and concerning certain aspects of the prudential and supervisory requirements for credit intermediaries and creditors ***where they relate to consumer credit agreements secured by a mortgage or used to finance residential immovable property.***

Amendment 26

Proposal for a directive

Article 2 – paragraph 1 – introductory part

Text proposed by the Commission

1. This Directive shall apply to the following credit agreements:

Amendment

1. This Directive shall apply to the following ***consumer*** credit agreements:

Amendment 27

Proposal for a directive

Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) Credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property.

Amendment

(a) Credit agreements ***the purpose of which is to acquire or retain rights in land or residential immovable property and*** which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property.

Justification

All Member States would apply the provisions of the directive to home loans which are secured by a mortgage or a comparable security. As regards other loans which fall within the scope of the Commission proposal, the Member States would have the right to choose whether to apply the provisions of this directive or the provisions of the Consumer Credit Directive to them.

Amendment 28

Proposal for a directive
Article 2 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) Credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected residential building.

deleted

Amendment 29

Proposal for a directive
Article 2 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) Credit agreements the purpose of which is the renovation of the residential immovable property a person owns or aims to acquire, which are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008.

deleted

Amendment 30

Proposal for a directive
Article 2 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) Credit agreements which will eventually be repaid from the sale proceeds of an immovable property.

(a) Credit agreements where the creditor:

(i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the sale of an immovable property or a right relating to immovable property; and

(ii) will not seek full repayment of the credit until the occurrence of one or more specified life events defined in Member States (equity release).

Justification

Alignment with the intention described in Recital 10.

Amendment 31

Proposal for a directive

Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) Credit agreements for a total amount of credit exceeding EUR 2 million.

Amendment 32

Proposal for a directive

Article 2 – paragraph 2 – point b b (new)

Text proposed by the Commission

Amendment

(bb) Agreements to defer credit agreements for a period of no more than six months, where the borrowing rate for the deferral does not exceed the rate in the credit agreement.

Amendment 33

Proposal for a directive

Article 2 – paragraph 2 – point b c (new)

Text proposed by the Commission

Amendment

(bc) Credit agreements where the immovable property is not predominantly used by the consumer for his residential purposes.

Justification

Commercial loans used to purchase property as an investment are very different to standard residential mortgages, and the consumer and creditor require difference information and protection. The risks and nature of such lending is very different from that of a mainstream residential mortgage. For example, repayment relates not to the creditworthiness of the

individual consumer but to the rental income obtained.

Amendment 34

Proposal for a directive

Article 2 – paragraph 2 – point b d (new)

Text proposed by the Commission

Amendment

(bd) Hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement; such an obligation shall be deemed to exist if it is so decided unilaterally by the creditor.

Justification

Compare Article 2(2)(d) of the Consumer Credit Directive.

Amendment 35

Proposal for a directive

Article 2 – paragraph 2 – point b e (new)

Text proposed by the Commission

Amendment

(be) Credit agreements where the credit must be repaid within 12 months of the conclusion of the agreement, if so requested by a Member State with reference to some or all of the provisions of this Directive.

Justification

A niche market exists for short-term mortgage finance which typically exists to 'bridge' a linked series of property transactions. It therefore enables the purchase of a new home while the consumer's existing property is being marketed. The bridging loan is then repaid from the sale proceeds for the existing home. The standards laid down in this directive are therefore not appropriate for this type of mortgage.

Amendment 36

Proposal for a directive

Article 2 – paragraph 2 – point b f (new)

Text proposed by the Commission

Amendment

(bf) Credit agreements in the form of overdraft facilities.

Justification

Compare Article 2(2)(e) of the Consumer Credit Directive.

Amendment 37

Proposal for a directive

Article 2 – paragraph 2 – point b g (new)

Text proposed by the Commission

Amendment

(bg) 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.

Justification

Compare Article 2(2)(f) of the Consumer Credit Directive.

Amendment 38

Proposal for a directive

Article 2 – paragraph 2 – point b h (new)

Text proposed by the Commission

Amendment

(bh) Credit agreements concluded with organisations as defined in Article 2(5) of Directive 2008/48/EC, if so requested by a Member State with reference to some or all of the provisions of this Directive.

Justification

Alignment with the Consumer Credit Directive as regards credit unions, which play an important role in extending access to financial services to consumers who might otherwise be denied it.

Amendment 39

Proposal for a directive

Article 2 – paragraph 2 – point b i (new)

Text proposed by the Commission

Amendment

(bi) Credit agreements which are concluded with investment firms as defined in Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments or with credit institutions as defined in Article 4 of Directive 2006/48/EC for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section C of Annex I to Directive 2004/39/EC, where the investment firm or credit institution granting the credit is involved in such transaction.

¹ OJ L 145, 30.4.2004, p. 1.

² OJ L 177, 30.6.2006, p. 1.

Justification

Compare Article 2(2)(h) of the Consumer Credit Directive.

Amendment 40

Proposal for a directive

Article 2 – paragraph 2 – point b j (new)

Text proposed by the Commission

Amendment

(bj) Credit agreements which are the outcome of a settlement reached in court or before another statutory authority.

Justification

Compare Article 2(2)(i) of the Consumer Credit Directive.

Amendment 41

Proposal for a directive

Article 2 – paragraph 2 – point b k (new)

Text proposed by the Commission

Amendment

(bk) Credit agreements which relate to the deferred payment, free of charge, of an existing debt.

Justification

Compare Article 2(2)(j) of the Consumer Credit Directive.

Amendment 42

Proposal for a directive

Article 2 – paragraph 2 – point b l (new)

Text proposed by the Commission

Amendment

(bl) 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.

Justification

Start-up loans serve to promote economic, social and environmental objectives and are granted under statutory conditions on terms more favourable than those prevailing on the market. In keeping with Article 2(1)(l) of the Consumer Credit Directive, they should be excluded from the scope of this directive.

Amendment 43

Proposal for a directive

Article 3 – paragraph 1 – point d

Text proposed by the Commission

(d) 'Ancillary service' means a financial service offered to the consumer by the creditor or credit intermediary in conjunction with the credit agreement;

Amendment

(d) 'Ancillary service' means a financial service, ***required by the creditor - de jure or de facto - or by law and*** offered to the consumer by the creditor, or ***a*** credit intermediary ***or a third party*** in conjunction with the credit agreement.

Amendment 44

Proposal for a directive

Article 3 – paragraph 1 – point e – introductory part

Text proposed by the Commission

(e) 'Credit intermediary' means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:

Amendment

Does not affect English version.

Justification

Does not affect English version.

Amendment 45

Proposal for a directive

Article 3 – paragraph 1 – point e – indent ii

Text proposed by the Commission

(ii) assists consumers by undertaking preparatory work in respect of credit agreements within the meaning of Article 2 other than as referred to in point (i);

Amendment

(ii) assists consumers by undertaking preparatory work **and/or administration** in respect of credit agreements within the meaning of Article 2 other than as referred to in point (i); **or**

Justification

The addition of the word ‘or’ makes it clearer that a credit intermediary does not necessarily perform all of these activities. This is also what the definition of credit intermediary in the Consumer Credit Directive states.

Amendment 46

Proposal for a directive

Article 3 – paragraph 1 – point k

Text proposed by the Commission

(k) ‘Total cost of the credit to the consumer’ means the total cost of the credit to the consumer as defined in Article 3(g) of Directive 2008/48/EC;

Amendment

(k) ‘Total cost of the credit to the consumer’ means the total cost of the credit to the consumer as defined in Article 3(g) of Directive 2008/48/EC, **except for notarial fees and mortgage registration fees;**

Amendment 47

Proposal for a directive

Article 3 - point l a (new)

Text proposed by the Commission

Amendment

(la) ‘Total amount of credit’ means the ceiling or the total sums made available under a credit agreement, irrespective of whether they are paid to the consumer or to a third party.

Justification

Since the term is used in the proposal (Article 8(2)(d)), it should be defined; see also Article 3(1) of Directive 2008/48/EC.

Amendment 48

**Proposal for a directive
Article 3 – paragraph 1 – point n a (new)**

Text proposed by the Commission

Amendment

(na) ‘Fixed borrowing rate’ means a single fixed borrowing rate applicable for the entire life or part of the life of the credit agreement.

Amendment 49

**Proposal for a directive
Article 3 – point r a (new)**

Text proposed by the Commission

Amendment

(ra) ‘Residential immovable property’ means an item of immovable property intended primarily for residential purposes.

Justification

Since the term is used in the proposal, it should be defined.

Amendment 50

**Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

Amendment

Member States shall designate the competent authorities empowered to ensure implementation of this Directive **and** shall ensure that they are granted all the powers

Member States shall designate the competent authorities empowered to ensure implementation of this Directive and enactment of all its provisions **in the**

necessary for the performance of their duties.

*interest of the market and all market participants. They shall ensure that they are granted **sufficient resources and all the investigating and sanctioning** powers necessary for the performance of their duties.*

Member States shall ensure that the competent authorities can access all premises, request the notification of mortgage contracts, ESIS, books, invoices and all other professional documents and obtain or take copies of these by any means and on all media and collect information and proof by means of summons or in situ.

In the case of activity in a host Member State, supervision of the ongoing activities of creditors and credit intermediaries shall be performed by the competent authority of the host Member State. The competent authority of the home Member State shall be required to provide the competent authority of the host Member State with all relevant information. Competent authorities of the host Member State shall have the power to intervene if credit intermediaries fail to comply with their duties and responsibilities defined in this Directive. In addition, competent authorities of the host Member State shall be granted the right to refuse authorisations.

Justification

The competent authorities should be given the necessary competences in order to be able to act on behalf of consumers.

Amendment 51

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Member States shall ensure that the

Member States shall ensure that the

authorities designated as competent for ensuring the implementation of Articles 18, 19, 20 **and** 21 of this Directive are one of those competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority).

authorities designated as competent for ensuring the implementation of Articles 18, 19, 20, 21, **22 and 23** of this Directive are one of those competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority).

Amendment 52

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

2. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely ***so that they can discharge their respective duties effectively.***

Amendment

2. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely.

Amendment 53

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall require that, when granting, intermediating or advising on credit ***and, where appropriate, ancillary services to consumers,*** the creditor or the credit intermediary acts honestly, fairly and professionally ***in accordance with the best interests of the consumer.***

Amendment

1. Member States shall require that, when granting, intermediating or advising on credit, the creditor or the credit intermediary acts honestly, fairly and professionally.

Justification

Rules governing ancillary services within the meaning of this directive, such as insurance, are laid down elsewhere. For that reason, the lex specialis principle should apply. Interests can be aligned and it is therefore not desirable to make specific reference to the best interests of the consumer.

Amendment 54

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that the manner in which creditors remunerate their staff and the relevant credit intermediaries and the manner in which credit intermediaries remunerate their staff do not impede compliance with the obligation ***to act in accordance with the best interests of the consumer, as*** referred to in paragraph 1.

Amendment

2. Member States shall ensure that the manner in which creditors remunerate their staff and the relevant credit intermediaries and the manner in which credit intermediaries remunerate their staff do not impede compliance with the obligation referred to in paragraph 1.

Amendment 55

Proposal for a directive Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) The staff of creditors and credit intermediaries possess an appropriate level of knowledge and competence in relation to the offering or granting of credit agreements within the meaning of Article 2, or the activity of credit intermediation as defined in Article 3(e). Where the conclusion of a credit agreement includes an ancillary service related to it, in particular insurance or investment services, they shall also possess appropriate knowledge and competence in relation to that ancillary service in order to satisfy the requirements set out in Article 19 of Directive 2004/39/EC and Article 4 of Directive 2002/92/EC.

Amendment

deleted

Justification

To protect consumers it is sufficient to regulate the competence requirements of the management who would then be responsible that staff is competent to perform their tasks. This solution would also be in line with other Union legislation. Regulating the minimum

competence requirements of staff is excessive.

Amendment 56

Proposal for a directive

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) The natural persons within the management of creditors and credit intermediaries who are responsible for or have a role in the intermediation, advice or approval of the credit agreement, possess appropriate knowledge and competence in relation to credit agreements.

Amendment

(b) The natural persons within the management of creditors and credit intermediaries who are responsible for or have a role in the intermediation, advice or approval of the credit agreement, possess appropriate knowledge and competence in relation to credit agreements.

The persons referred to in the first paragraph of this point shall be required to undergo continuous professional training to validate their knowledge and competence.

The management of credit intermediaries shall ensure that staff members have an appropriate level of knowledge and competence to perform their tasks.

Amendment 57

Proposal for a directive

Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) Creditors and credit intermediaries are ***monitored*** in order to assess whether the requirements referred to in paragraph 1, points (a) and (b), are complied with on a continuing basis.

Amendment

(c) Creditors and credit intermediaries are ***supervised by the competent authority*** in order to assess whether the requirements referred to in paragraph 1, points (a) and (b), are complied with on a continuing basis.

Amendment 58

Proposal for a directive

Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that the minimum competence requirements referred to in paragraph 1 are established in accordance with the principles set out in Annex IIa.

Amendment 59

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

Amendment

4. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to specify the requirements provided in paragraph 1 and 2 of this Article, and in particular, the necessary requirements for appropriate knowledge and competence.

deleted

Amendment 60

Proposal for a directive Article 8 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

This obligation shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph.

Justification

Alignment with Article 4(1) of the Consumer Credit Directive.

Amendment 61

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

2. The standard information shall specify ***the following*** in a clear, concise and prominent way by means of a representative example:

Amendment

2. The standard information shall specify in a clear, concise and prominent way by means of a representative example:

Justification

Alignment with Article 4(2) of the Consumer Credit Directive.

Amendment 62

Proposal for a directive Article 8 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) that the product advertised is a credit agreement and, where applicable, is secured either by a mortgage or another comparable security commonly used in a Member State on residential immovable property or by a right related to residential immovable property;

Amendment

deleted

Justification

Mortgages are generally not sold directly on the basis of an advert. Market research shows that consumers retain very little information from mortgage advertising, so it is more effective to focus on a few key principles.

Amendment 63

Proposal for a directive Article 8 – paragraph 2 – subparagraph 1 – point c

Text proposed by the Commission

(c) the borrowing rate, indicating whether this is fixed or variable or both, together

Amendment

(c) the borrowing rate, indicating whether this is fixed or variable or both, together

with particulars of any charges included in the total cost of the credit to the consumer;

with particulars of any charges included in the total cost of the credit to the consumer;
the APRC should be included into the advertisement at least as prominently as any other numerical information;

Amendment 64

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point f

Text proposed by the Commission

Amendment

(f) the duration of the credit agreement;

(f) ***if applicable***, the duration of the credit agreement;

Justification

Alignment with Article 4(2)(f) of the Consumer Credit Directive.

Amendment 65

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point g

Text proposed by the Commission

Amendment

(g) the amount of the instalments;

(g) ***if applicable***, the amount of the instalments;

Justification

Alignment with Article 4(2)(f) of the Consumer Credit Directive.

Amendment 66

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point h

Text proposed by the Commission

Amendment

(h) the total amount payable by the consumer; ***deleted***

Amendment 67

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point i

Text proposed by the Commission

Amendment

(i) a warning, where applicable, concerning the risk of losing the residential immovable property in the event of non-observance of the commitments linked to the credit agreement when the credit is secured by a mortgage or another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property. ***deleted***

Justification

Too detailed for inclusion on advertising material, and is not in keeping with the image of a responsible consumer.

Amendment 68

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

The standard information shall be easily legible or clearly audible as appropriate, depending on the medium used for

The standard information shall be easily legible or clearly audible as appropriate, depending on the medium used for

advertising and marketing.

advertising and marketing.

Any information provided throughout the advertising must adhere to the displayed representative example.

Member States shall adopt criteria for defining a representative example.

Amendment 69

Proposal for a directive Article 8 – paragraph 4

Text proposed by the Commission

Amendment

4. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to further specify the list of standard information items to be included in advertising.

deleted

In particular, the Commission, when adopting such delegated acts shall amend, where necessary, the list of the standard information items laid down in paragraphs 2(a) to (i) of this Article.

Amendment 70

Proposal for a directive Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that general information about credit agreements is made available by creditors *or, where applicable, credit intermediaries* at all times *in* a durable medium *or* in electronic form.

Member States shall ensure that ***accessible and comprehensible*** general information about credit agreements is made available by creditors ***and provided to the consumer, either by the creditor in the case of direct sales, or through the credit intermediary,*** at all times ***on paper or on another*** durable medium ***and/or, upon request,*** in electronic form.

Justification

It is not clear who is responsible for drawing up this document. Intermediaries do not necessarily have access to all the relevant information. It should therefore be the responsibility of the creditor to provide this information to the intermediary or - when the creditor is distributing directly - directly to the consumer.

Amendment 71

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) forms of surety;

(c) forms of surety, ***including the possibility for the collateral to be located in a different Member State;***

Amendment 72

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point g

Text proposed by the Commission

Amendment

(g) ***an indicative*** example of the total cost of credit for the consumer and annual percentage rate of charge;

(g) ***a representative*** example of the total cost of credit for the consumer and annual percentage rate of charge;

Amendment 73

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(ga) an indication of possible additional costs, such as in connection with the registration of mortgages;

Amendment 74

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point i

Text proposed by the Commission

Amendment

(i) ***whether there is a possibility of early repayment and, where applicable, a description of the conditions attached to early repayment;***

(i) a description of the conditions attached to early repayment;

Amendment 75

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point k

Text proposed by the Commission

Amendment

(k) ***details on how to obtain information on tax relief on credit agreement interest or other public subsidies.***

deleted

Justification

The requirement to provide these details conflicts with the image of a responsible consumer and could also constitute an obstacle to the Single Market. Also brings text into line with the Consumer Credit Directive.

Amendment 76

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 2 – point k a (new)

Text proposed by the Commission

Amendment

(ka) In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the pre-contractual information required under paragraph 2 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the

credit agreement, unless such a guarantee is given.

Justification

Alignment with Article 5(5) of the Consumer Credit Directive.

Amendment 77

**Proposal for a directive
Article 9 – paragraph 2**

Text proposed by the Commission

2. Member States shall ensure that the creditor and, where applicable, the credit intermediary, ***without undue delay*** after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 14, ***provides*** the consumer with the personalised information needed to compare ***the credits available on the market, assess their implications and take an informed decision on whether to conclude a credit agreement. Such information, on paper or on another durable medium, shall be provided by means of the European Standardised Information Sheet ('ESIS'), as set out in Annex II.***

Amendment

2. In good time before the consumer is bound by a credit agreement or offer, the creditor and, where applicable, the credit intermediary ***shall***, after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 14, ***provide*** the consumer, ***on the basis of the credit conditions offered by the creditor and where appropriate, of the preferences expressed and details supplied by the consumer,*** with the personalised information needed to compare ***various offers and take a reasoned decision on whether he wishes to conclude a credit agreement.***

Member States shall ensure that the creditor informs the consumer as to whether the European Standardised Information Sheet (ESIS) constitutes a binding offer, how long it remains valid and which of its elements may be changed.

Such information, on paper or on another durable medium, shall be provided free of charge by means of the ESIS, as set out in Annex II. Member States may decide that such information is to be provided in a different data sheet which shall include all the information that is provided for in the ESIS.

Member States *shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be accompanied by an ESIS. In such circumstances, Member States shall ensure that the credit agreement cannot be concluded until the consumer has had sufficient time to compare the offers, assess their implications and take an informed decision on whether to accept an offer, regardless of the means of conclusion of the contract.*

The creditor and, where applicable, the credit intermediary shall be deemed to have fulfilled the requirements on information provision to the consumer prior to the conclusion of a distance contract as set out in Article 3 of Directive 2002/65/EC where they have supplied the ESIS.

Any additional information which the creditor or where applicable, the credit intermediary, may provide to the consumer shall be given in a separate document which may be annexed to the ESIS.

Member States *may stipulate that consumers should be afforded this scope to weigh up their decision through the granting of a statutory or contractual right of withdrawal pursuant to the provisions of Directive 2008/48/EC.*

The creditor and, where applicable, the credit intermediary shall be deemed to have fulfilled the requirements on information provision to the consumer prior to the conclusion of a distance contract as set out in Article 3 of Directive 2002/65/EC where they have supplied the ESIS.

The Member States may provide that the creditor shall supply additional information to the consumer. This, together with any additional information which the creditor or where applicable, the credit intermediary, may provide *voluntarily* to the consumer, shall be given in a separate document which may be annexed to the ESIS.

Justification

Alignment with the Consumer Credit Directive. Furthermore, significant national differences may also make it necessary to provide different sets of information for the purpose of consumer protection.

Amendment 78

Proposal for a directive Article 9 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Powers are delegated to the Commission in accordance with Article 26 *and subject to*

Amendment

Powers are delegated to the Commission in accordance with Article 26 to amend the

the conditions of Articles 27 and 28, to amend the standard information items laid down in paragraph 1 of this Article and the content and format of the ESIS set out in Annex II.

standard information items laid down in paragraph 1 of this Article and the content and format of the ESIS set out in Annex II.

Amendment 79

Proposal for a directive

Article 9 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) amend the list of the standard information items laid down in paragraph 1 of this Article; *deleted*

Amendment 80

Proposal for a directive

Article 9 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) delete any of the information items laid down in Annex II; *deleted*

Amendment 81

Proposal for a directive

Article 9 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) make additions to the list of information items laid down in Annex II; *deleted*

Amendment 82

Proposal for a directive

Article 9 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that the creditor or credit intermediary, upon request of the consumer, provides the consumer with a copy of the draft credit agreement free of charge. This provision shall not apply in cases where the creditor is unwilling, at the time of the request, to proceed to the conclusion of the credit agreement with the consumer.

Amendment

5. Member States shall ensure that the creditor or credit intermediary, upon request of the consumer, provides the consumer with a copy of the draft credit agreement free of charge. This provision shall not apply in cases where the creditor is unwilling, at the time of the request, to proceed to the conclusion of the credit agreement with the consumer. ***Moreover, it is understood that all pre-contractual information should be given by the creditor or, where applicable, by credit intermediaries free of charge to the consumer.***

Amendment 83

Proposal for a directive

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

1. Prior to the performance of any of the services listed in Article 3(e), a credit intermediary shall provide the consumer with at least the following information:

Amendment

1. Prior to the performance of any of the services listed in Article 3(e), a credit intermediary shall provide the consumer with at least the following information, ***free of charge:***

Amendment 84

Proposal for a directive

Article 10 – paragraph 1 – point h

Text proposed by the Commission

(h) ***for those credit intermediaries that are not tied***, the existence of commissions, where applicable, payable by the creditor to the credit intermediary for his services.

Amendment

(h) the existence of commissions ***or any other type of gratifications, including in kind***, where applicable, payable by the creditor ***or any other third party*** to the credit intermediary for his services.

Amendment 85

Proposal for a directive

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that the fee, if any, payable by the consumer to the credit intermediary for his services is communicated to the creditor by the credit intermediary, for the purpose of calculation of the annual percentage rate of charge.

Justification

Compare Article 21(c) of the Consumer Credit Directive.

Amendment 86

Proposal for a directive

Article 10 – paragraph 3

Text proposed by the Commission

Amendment

3. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to update the list of information items on credit intermediaries to be provided to the consumer, as laid down in paragraph 1 of this Article.

deleted

In particular, the Commission, when adopting such delegated acts shall amend, where necessary, the information items laid down in paragraph 1 of this Article.

Amendment 87

Proposal for a directive Article 10 – paragraph 4

Text proposed by the Commission

Amendment

4. In order to ensure uniform conditions of application of paragraph 1 of this Article, powers are conferred on the Commission to determine, where necessary, a standardised format and the presentation of the information items set out in paragraph 1 of this Article.

deleted

Amendment 88

Proposal for a directive Article 11

Text proposed by the Commission

Amendment

Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer ***on the proposed credit agreement(s) and any ancillary service(s), in order to place the consumer in a position enabling him to assess whether the proposed credit agreements are adapted to his needs and financial situation. An adequate explanation shall include the provision of personalised information on the characteristics of the credits on offer, without however formulating any recommendation. Creditors and, where applicable, credit intermediaries shall accurately assess the level of knowledge and experience with credit of the consumer by any means necessary so as to enable the creditor or the intermediary to determine the level of explanations to be given to the consumer and adjust such explanations accordingly.***

Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer, ***in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and financial situation, where appropriate by explaining the pre-contractual information and the information from the ESIS, the essential characteristics of the products proposed and the specific effects they may have on the consumer, including the consequences of default in payment by the consumer.***

Such adequate explanations shall include an explanation of the information and

Member States may adapt the manner by which and the extent to which such

terms included in the pre-contractual information to be provided in accordance with Articles 9 and 10 and of the consequences that concluding the credit agreement may have for the consumer, including in the event of default in payment by the consumer.

assistance is given, as well as by whom it is given, to the particular circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the type of credit offered.

Justification

Alignment with the Consumer Credit Directive.

Amendment 89

**Proposal for a directive
Article 12 – paragraph 2**

Text proposed by the Commission

2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined excluding **any** charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement.

Where the opening of an account is obligatory in order to obtain the credit, the costs of maintaining such an account, the costs of using a means of payment for both payment transactions and drawdowns on that account, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer, unless the costs have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

Amendment

2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined excluding charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement.

The costs of maintaining an account **recording both payment transactions and drawdowns**, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless **the opening of the account is optional and** the costs **relating to the account** have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

Justification

Alignment with Article 19(2) of the Consumer Credit Directive.

Amendment 90

Proposal for a directive Article 12 – paragraph 4

Text proposed by the Commission

4. In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, in the charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will be calculated at the level set at the signature of the contract.

Amendment

4. In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, in the charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will be calculated at the level set at the signature of the contract. ***Where a fixed borrowing rate has been set for the initial period, the borrowing rate shall be no less than that initially determined rate.***

If the consumer names alternative ancillary services providers, the creditor and the credit intermediary shall recalculate the APRC on the basis of the costs of those ancillary services.

Justification

The current calculation method used in Directive 2008/48/EC may lead to significant misunderstandings on the part of the consumer. Where appropriate, Directive 2008/48/EC should be adapted accordingly.

Amendment 91

Proposal for a directive Article 12 – paragraph 5

Text proposed by the Commission

5. Powers are delegated to the Commission in accordance with Article 26 ***and subject to the conditions of Articles 27 and 28***, to amend the formula ***and the assumptions*** used to calculate the annual percentage rate of charge as set out in Annex I.

Amendment

5. Powers are delegated to the Commission in accordance with Article 26 to amend the formula used to calculate the annual percentage rate of charge as set out in Annex I.

The Commission shall, when adopting such delegated acts, amend, where necessary, the formula or assumptions laid down in Annex I, ***in particular if the assumptions set out in this Article and in Annex I do not suffice to calculate the annual percentage rate of charge in a uniform manner or are not adapted any more to the commercial situation at the market.***

Amendment 92

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

2. However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate correlates directly with a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

The Commission shall, when adopting such delegated acts, amend, where necessary, the formula laid down in Annex I.

Amendment

2. However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate correlates directly with a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor, ***and communicated personally to the consumer together with the amount of new monthly instalments. The creditor may continue to inform consumers periodically about changes in the borrowing rate, where the borrowing rate does not correlate directly with a change in reference rate, if such provisions were in place prior to the entry into force of this Directive.***

Justification

In some Member States consumers can be informed of borrowing rate changes through the advertisement of such rate changes in national newspapers, where such a practice exists and is widely accepted in that Member State then the Member State should be entitled to maintain this system.

Amendment 93

Proposal for a directive

Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where changes in the borrowing rate are determined by way of auction on the capital markets and it is therefore impossible for the creditor to inform the consumer of any change before the change enters into force, the creditor will, in good time before the auction, inform the consumer in writing of the upcoming procedure and the expected level of the new borrowing rate.

Justification

When changes of the borrowing rate are determined by an auction on the capital markets the creditor will not know the exact new rate until the auction has closed and the bonds have been sold.

Amendment 94

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that, before the conclusion of the credit agreement, ***a thorough assessment*** of the consumer's creditworthiness ***is conducted by the creditor, based on criteria including the consumer's income, savings, debts and other financial commitments. That assessment shall be carried out on the basis of the necessary information, obtained by the creditor or, where applicable, credit intermediary from the consumer and from relevant internal or external sources and shall respect the requirements with regard to necessity and proportionality set out in Article 6 of Directive 95/46/EC.*** Member States shall

1. Member States shall ensure that, before the conclusion of the credit agreement, ***the creditor assesses*** 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.*** Member States shall ensure that creditors establish appropriate processes to assess the creditworthiness of the consumer. These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.

ensure that creditors establish appropriate processes to assess the creditworthiness of the consumer. These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.

Justification

There is no urgent need to depart here from the provisions of the Consumer Credit Directive, particularly since there are other instruments in this field such as the Capital Adequacy Directive (Directive 2006/49/EC) and the Directive relating to the taking up and pursuit of the business of credit institutions (Directive 2006/48/EC).

Amendment 95

**Proposal for a directive
Article 14 – paragraph 2 – point a**

Text proposed by the Commission

Amendment

(a) Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to repay the credit over the lifetime of the credit agreement, the creditor refuses credit.

deleted

Amendment 96

**Proposal for a directive
Article 14 – paragraph 2 – point b**

Text proposed by the Commission

Amendment

*(b) Where the credit application is rejected, the creditor informs the consumer immediately and without charge **of the reasons for rejection.***

(b) Where the credit application is rejected, the creditor informs the consumer immediately and without charge.

Justification

Information about the reasons for rejection might lead consumers to modify their application by providing false information.

Amendment 97

Proposal for a directive

Article 14 – paragraph 2 – point d

Text proposed by the Commission

(d) Where the credit application is rejected on the basis of ***the data contained, or lack thereof, in a database that has been consulted***, the creditor informs the consumer immediately and without charge of the ***name of the database that was consulted as well as of its controller and of his right to access and, where necessary, his right to rectify his data in that database***.

Amendment

(d) If the credit application is rejected on the basis of ***a database consultation***, the creditor informs the consumer immediately and without charge of the ***result of such consultation and of the particulars of the database consulted***.

Justification

Alignment with the Consumer Credit Directive.

Amendment 98

Proposal for a directive

Article 14 – paragraph 2 – point e

Text proposed by the Commission

(e) Without prejudice to the general right of access contained in Article 12 of the Directive 95/46/EC, where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the creditor informs the consumer immediately and without charge ***and that the creditor explains the logic involved in the automated decision to the consumer***.

Amendment

(e) Without prejudice to the general right of access contained in Article 12 of the Directive 95/46/EC, where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the creditor informs the consumer immediately and without charge.

Amendment 99

Proposal for a directive

Article 14 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) The consumer has the opportunity to request for the decision to be reviewed manually. ***deleted***

Justification

The added value of this provision to consumers is unclear.

Amendment 100

Proposal for a directive Article 14 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that, where the ***parties consider increases*** in the total amount of credit extended to the consumer after the conclusion of the credit agreement, the financial information at the disposal of the creditor concerning the consumer is updated and the consumer's creditworthiness re-assessed before any significant increase in the ***total*** amount of credit is granted.

3. Member States shall ensure that, where the ***consumer asks for an increase*** in the total amount of credit after the conclusion of the credit agreement, the financial information at the disposal of the creditor concerning the consumer is updated and the consumer's creditworthiness re-assessed before any significant increase in the amount of credit is granted.

Justification

The total amount of the credit can increase also as a result of varying borrowing rates. It should be made clear that the financial information should be updated only when the consumer asks for an increase in the credit.

Amendment 101

Proposal for a directive Article 14 – paragraph 4

Text proposed by the Commission

Amendment

4. Further to assessing a consumer's creditworthiness, Member States shall ensure that creditors and credit intermediaries obtain the necessary ***deleted***

information regarding the consumer's personal and financial situation, his preferences and objectives and consider a sufficiently large number of credit agreements from their product range in order to identify products that are not unsuitable for the consumer given his needs, financial situation and personal circumstances. Such considerations shall be based on information that is up to date at that moment in time and on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.

Justification

This paragraph to be deleted for reasons of data protection.

Amendment 102

**Proposal for a directive
Article 14 – paragraph 5**

Text proposed by the Commission

Amendment

5. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to specify and amend the criteria to be considered in the conduct of a creditworthiness assessment as laid down in paragraph 1 of this Article and in ensuring that credit products are not unsuitable for the consumer as laid down in paragraph 4 of this Article.

deleted

Amendment 103

**Proposal for a directive
Article 15 – paragraphs 1 and 2**

Text proposed by the Commission

Amendment

1. Member States shall ensure that

1. Member States shall ensure that

consumers provide creditors and, where applicable, credit intermediaries *with complete and correct* information on their financial situation and personal circumstances in the context of the credit application process. *That information should be supported, when necessary, by documentary evidence from independently verifiable sources.*

2. As regards the information to be provided by the consumer in order for the creditor to be able to conduct a thorough assessment of the consumer's creditworthiness and make a decision on whether or not to grant the credit, Member States shall ensure that creditors, at the pre-contractual phase, clearly specify the information, including independently verifiable evidence where necessary, that the consumer needs to provide. Member States shall also ensure that creditors state the exact timing by which consumers are required to provide such information.

Member States shall ensure that in cases where the consumer chooses not to provide the information necessary for the assessment of his creditworthiness, the creditor or credit intermediary warns the consumer that they are unable to carry out a creditworthiness assessment and therefore that the credit may not be granted. This warning may be provided in a standardised format.

Amendment 104

Proposal for a directive Article 16 – paragraph 2

Text proposed by the Commission

2. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles

creditors and, where applicable, credit intermediaries *request from consumers all necessary* information on their financial situation and personal circumstances in the context of the credit application process.

The creditor or credit intermediary shall inform the consumer in good time of what information, including independently verifiable evidence, the consumer is required to provide, and by what time, in order for the creditor to conduct the necessary assessment of the consumer's creditworthiness and take a decision on whether or not to grant the credit.

Amendment

deleted

27 and 28, to define uniform credit registration criteria and data processing conditions to be applied to the databases referred to in paragraph 1 of this Article.

In particular, such delegated acts shall define the registration thresholds to be applied to such databases and shall provide for agreed definitions for key terms used by such databases.

Amendment 105

Proposal for a directive Article 17 – paragraph 1

Text proposed by the Commission

1. For the purposes of this Directive, 'advice' constitutes a separate service from the granting of a credit. ***Such a service can only be marketed as advice when the remuneration of the individual providing the service is transparent to the consumer.***

Amendment

1. For the purposes of this Directive, 'advice' constitutes a separate service from the granting of a credit. ***A separate charge for advice can only be made if the consumer has been informed of the requirement to pay a charge and of method used for its calculation.***

Amendment 106

Proposal for a directive Article 17 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that the creditor or credit intermediary informs the consumer, in the context of a given transaction, whether or not advice is being or will be provided. This may be done through additional pre-contractual information. Where advice is provided to consumers, in addition to the requirements set out in Articles 5 and 6, Member States shall ensure that creditors and credit intermediaries:

Amendment

2. Member States shall ensure that the creditor or credit intermediary informs the consumer, in the context of a given transaction, whether advice will be provided ***to him and, if applicable, indicates the fee payable by the consumer for the provision of that advice.*** This may be done through additional pre-contractual information. Where advice is provided to consumers, in addition to the requirements set out in Articles 5 and 6, Member States shall ensure that creditors and credit intermediaries:

Justification

Clarification of the wording to make a clear distinction between cases where no advice is provided and cases where it is.

Amendment 107

Proposal for a directive Article 17 – paragraph 2 – point a

Text proposed by the Commission

(a) *consider a sufficiently large number* of credit agreements *available on the market so as to enable the recommendation of the most* suitable credit agreements for the consumer's needs, financial situation and personal circumstances;

Amendment

(a) *disclose to the consumer the range* of credit agreements *they consider so that the consumer understands the basis of the recommendation of* suitable credit agreements for the consumer's needs, financial situation and personal circumstances;

Amendment 108

Proposal for a directive Article 18 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the consumer has a statutory or contractual right to discharge his obligations under a credit agreement prior to the expiry of that agreement. In such cases, he shall be entitled to a reduction in the total cost of the credit, such a reduction consisting of the interest and the costs for the remaining duration of the contract.

Amendment

1. Member States shall ensure that the consumer has a statutory or contractual right to discharge *fully or partially* his obligations under a credit agreement prior to the expiry of that agreement. In such cases, he shall be entitled to a reduction in the total cost of the credit, such a reduction consisting of the interest and the costs for the remaining duration of the contract.

Justification

Alignment with Article 16(1) of the Consumer Credit Directive. It is important that the consumer has a right to a partial early repayment of the loan.

Amendment 109

Proposal for a directive
Article 18 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Member States may provide that the *exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, or restrictions with regard to the circumstances under which the right may be exercised.* Member States may also provide that the creditor should be entitled to fair *and objectively justified* compensation for potential costs directly linked to early repayment of the credit. *In any event, if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a special interest on the part of the consumer.*

Amendment

Member States may provide that the creditor should be entitled to fair compensation, *where justified*, for potential costs directly linked to early repayment of the credit. *This compensation should then be calculated using a transparent method laid down prior to the signing of the agreement.*

The consumer must be clearly informed of the right referred to in paragraph 1 and of the amount of the compensation or the method of calculating it.

Amendment 110

Proposal for a directive
Article 19 – paragraph 1

Text proposed by the Commission

1. Credit intermediaries shall be duly authorised *to carry out the activities set out in Article 3(3) by a competent authority as defined in Article 4 in their home Member State.* Such authorisation shall be granted on the basis of requirements established in the home Member State of the credit intermediary and shall include the fulfilment of the *professional* requirements laid down in

Amendment

1. Credit intermediaries shall be duly authorised *or registered with a competent authority as defined in Article 4 in their home Member State to carry out the activities set out in Article 3(e).* Such authorisation *or registration* shall be granted on the basis of requirements established in the home Member State of the credit intermediary and shall include the fulfilment of the requirements laid

Article 20.

down in **Articles 6 and 21**. **What is later on provided for regarding authorisation, applies to registration.**

Justification

From the point of view of consumer protection the essential thing is that credit intermediaries are obliged to fulfil the requirements laid down in Articles 6 and 21. Whether the procedure is called authorisation or registration should be left to be decided by the Member States depending on their administrative traditions. In this context, it should also be noted that according to Directive 2002/92/EC registration is required from insurance intermediaries.

Amendment 111

**Proposal for a directive
Article 21 – paragraph 3**

Text proposed by the Commission

Amendment

3. Powers are delegated to the Commission to adopt and, where necessary amend, regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b).

deleted

The regulatory technical standards referred to in subparagraph 1 shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. EBA shall develop draft regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b) for submission to the Commission [within 6 months of the adoption of the proposal]. EBA will review, and if necessary, develop draft regulatory technical standards to amend the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b) for submission to the Commission for the first time [4 years after entry into force of the Directive] and biannually thereafter.

Amendment 112

Proposal for a directive

Article 21 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States are entitled to restrict any payments by consumers to creditors and credit intermediaries before the actual conclusion of a credit agreement.

Justification

This is a necessary provision to prevent fraud attempts.

Amendment 113

Proposal for a directive

Article 22 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. Where the host Member State has clear and demonstrable grounds for concluding that a credit intermediary acting within its territory under the freedom to provide services or through a branch is in breach of the obligations set out in this Directive, it shall refer those findings to the competent authority of the home Member State which shall take the appropriate measures. In cases where, despite measures taken by the competent authority of the home Member State, a credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of host Member State consumers or the orderly functioning of markets, the following shall apply:

4. Where the host Member State has clear and demonstrable grounds for concluding that a credit intermediary acting within its territory under the freedom to provide services or through a branch is in breach of the obligations set out in this Directive ***which do not confer powers on the competent authority of the host Member State***, it shall refer those findings to the competent authority of the home Member State which shall take the appropriate measures. In cases where, despite measures taken by the competent authority of the home Member State, a credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of host Member State consumers or the orderly functioning of markets, the following shall apply:

Justification

Ensures that host Member State competent authorities are able to regulate conduct of

business on their territory, given the implications for consumer protection.

Amendment 114

Proposal for a directive Article 24 – paragraph 1

Text proposed by the Commission

Amendment

1. Without prejudice to procedures for the withdrawal of authorisation or to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that appropriate administrative measures can be taken or administrative sanctions imposed against persons responsible where the provisions adopted in the implementation of this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

Member States shall impose sanctions for infringements of the national provisions adopted on the basis of this Directive and shall take all measures necessary to ensure that they are implemented. Those sanctions shall be effective, proportionate and dissuasive.

Member States shall provide for penalties in particular cases where consumers knowingly provide incomplete or incorrect information in order to obtain a positive creditworthiness assessment where the complete and correct information would have resulted in a negative creditworthiness assessment, and are subsequently unable to fulfil the conditions of the agreement, and shall take all measures necessary to ensure that they are implemented.

Justification

Alignment with Article 23 of the Consumer Credit Directive.

Amendment 115

Proposal for a directive Article 24 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that the competent authority discloses to the public any measure or sanction that will be imposed for infringement of the provisions adopted in the implementation of this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

deleted

Justification

Compare Article 23 of the Consumer Credit Directive. These measures or sanctions should not seek to ‘name and shame’ anyone.

Amendment 116

Proposal for a directive Article 25 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that appropriate and effective **complaints and redress procedures are established for the out-of-court settlement of disputes concerning rights and obligations established under this Directive between creditors and consumers and between credit intermediaries and consumers, using existing bodies where appropriate. Member States shall further ensure that all creditors and credit intermediaries adhere to one or more such bodies implementing such complaint and redress procedures.**

1. Member States shall ensure that appropriate and effective **out-of-court dispute resolution procedures are put in place for the settlement of consumer disputes concerning credit agreements, using existing bodies where appropriate.**

Justification

Alignment with Article 24 of the Consumer Credit Directive.

Amendment 117

Proposal for a directive
Article 25 – paragraph 2

Text proposed by the Commission

2. Member States shall ***ensure that*** these bodies ***actively*** cooperate ***in the resolution of*** cross-border disputes.

Amendment

2. Member States shall ***encourage*** these bodies ***to*** cooperate ***so that*** cross-border disputes ***concerning credit agreements can also be resolved.***

Justification

Alignment with Article 24 of the Consumer Credit Directive.

Amendment 118

Proposal for a directive
Article 26

Text proposed by the Commission

1. The powers to adopt delegated acts ***referred to in Articles 6(4), 8(4), 9(3), 10(3), 14(5) and 16(2)*** shall be conferred on the Commission ***for an indeterminate period of time following the entry into force of this Directive.***

2. ***As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***

3. ***The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27 and 28.***

Amendment

1. The power to adopt delegated acts shall be conferred on the Commission ***subject to the conditions laid down in this Article.***

2. ***The power to adopt delegated acts referred to in Article 9(3)(d) and (e) and Article 12(5) shall be conferred on the Commission for an indeterminate period of time from...*.***

3. ***The delegation of powers referred to in Article 9(3)(d) and (e) and Article 12(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to***

the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision to revoke in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

3a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3b. A delegated act adopted pursuant to Article 9(3) (d) and (e) and Article 12(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. At the initiative of the European Parliament or the Council that period shall be extended by two months.

** The date of entry into force of this Directive.*

Amendment 119

Proposal for a directive Article 27

Text proposed by the Commission

Article 27

Revocation of the delegation

1. The delegation of powers referred to in Articles 6(4), 8(4), 9(3), 10(3), 14(5) and 16(2) may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding

Amendment

deleted

whether to revoke the delegation of powers shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for any revocation.

3. The decision of revocation shall terminate the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Justification

Alignment with previous deletions.

Amendment 120

Proposal for a directive Article 28

Text proposed by the Commission

Amendment

Article 28

deleted

Objections to delegated acts

1. The European Parliament and the Council may object to a delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by one month.

2. Where, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period where the European Parliament and the

Council have both informed the Commission of their intention not to raise objections.

3. Where either the European Parliament or the Council objects to an adopted delegated act within the period referred to in paragraph 1, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Amendment 121

Proposal for a directive Article 29 – title

Text proposed by the Commission

Amendment

Imperative nature of this Directive

Harmonisation and imperative nature of this Directive

Justification

Compare Article 22 of the Consumer Credit Directive.

Amendment 122

Proposal for a directive Article 29 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.

Justification

Alignment with the Consumer Credit Directive.

Amendment 123

Proposal for a directive Article 29 – paragraph 3

Text proposed by the Commission

3. Member States shall take the necessary measures to ensure that consumers do not lose the protection granted by this Directive by virtue of the choice of the law of a third country as the law applicable to the credit agreement.

Amendment

3. Member States shall take the necessary measures to ensure that consumers do not lose the protection granted by this Directive by virtue of the choice of the law of a third country as the law applicable to the credit agreement, ***if the credit agreement has a close link with the territory of one or more Member States.***

Justification

Alignment with Article 22(4) of the Consumer Credit Directive.

Amendment 124

Proposal for a directive Article 30 a (new)

Text proposed by the Commission

Amendment

Article 30a

Transitional measures

This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.

Justification

Alignment with Article 30 of the Consumer Credit Directive.

Amendment 125

Proposal for a directive Article 31 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) an assessment of ***consumer satisfaction***

(a) an assessment of ***compliance*** with the

with the ESIS;

ESIS and consumer use, understanding and satisfaction thereof;

Amendment 126

Proposal for a directive Annex I – Section II – letter j

Text proposed by the Commission

(j) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at that time.

Amendment

(j) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at that time, but is not less than the fixed borrowing rate. ***For credit agreements with a fixed borrowing rate of at least an initial period of five years and especially where a new fixed rate agreement is planned to proceed the agreement and variable conditions are only agreed on to prepare for the case that a new fixed deal has not yet been agreed on, only the initial fixed borrowing rate is to be taken into account.***

Amendment 127

Proposal for a directive Annex II – Part A – ESIS model – introductory part – point 1

Text proposed by the Commission

This document was produced on [current date] in reply to your request for information. This document does not constitute an obligation for us to grant you

Amendment

This document was produced on [current date] in reply to your request for information. This document does not constitute ***a legally binding offer or*** an

a loan.

obligation for us to grant you a loan.

Justification

It is necessary to make it clear that the ESIS is not a legally binding offer to the consumer.

Amendment 128

Proposal for a directive

Annex II – Part A – ESIS model – point 1 – introductory part

Text proposed by the Commission

Amendment

1. Lender

1. Lender *and (where applicable) the credit intermediary*

Justification

As the obligation under Article 9(2) to provide the ESIS also applies to the credit intermediary, the intermediary should therefore be included.

Amendment 129

Proposal for a directive

Annex II – Part A – ESIS model – point 1 – indent 6

Text proposed by the Commission

Amendment

Supervisory authority: [Name and Web address of supervisory authority] deleted

Justification

This reference has no added value and could lead to confusion, since the creditor already provides information about the internal complaint scheme.

Amendment 130

Proposal for a directive

Annex II – Part A – ESIS model – point 1 – indent 7

Text proposed by the Commission

Amendment

Contact person: [Full contact details of contact person] deleted

Justification

Including information on the contact person is superfluous as the name of the contact person may change during the repayment of the loan.

Amendment 131

Proposal for a directive Annex II – Part A – ESIS model – point 3

Text proposed by the Commission

3. Interest rate

The APRC is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers. The APRC applicable to your loan is [APRC]. It comprises:

Interest rate [value in percentage]

[Other components of the APRC]

Amendment

3. Interest rate

The APRC is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers. The APRC applicable to your loan is [APRC]. It comprises:

Borrowing rate [value in percentage]

[Other components of the APRC]

Amendment 132

Proposal for a directive Annex II – Part A – ESIS model – point 5 – introductory part

Text proposed by the Commission

5. Amount of each instalment;

Amendment

5. **For repayment loan**, amount of each instalment

Justification

Compared to point 9 of the original ESIS regarding the ‘amount of each instalment’, this point does not take account of interest-only mortgages. The ESIS should be capable of coping not only with repayment mortgages, but also interest-only mortgages which are available in certain EU Member States.

Amendment 133

Proposal for a directive Annex II – Part A – ESIS model – point 6

Text proposed by the Commission

Amendment

6. Illustrative repayment table *deleted*

This table shows the amount to be paid every [frequency].

The instalments (column [relevant no.]) are the sum of interest paid (column [relevant no.]), capital paid (column [relevant no.]) and, where applicable other costs (column [relevant no.]). Where applicable, the costs in the other costs column relate to [list of costs].

Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed after each instalment.

[Amount and currency of the loan]

[Duration of the loan]

[Interest rate]

[Table]

(Where applicable) [Warning on the variability of the instalments]

Justification

Given the large amount of information contained in the illustrative repayment table, it is proposed to move it to the end of the ESIS.

Amendment 134

Proposal for a directive

Annex II – Part A – ESIS model – point 8 – indent 1

Text proposed by the Commission

Amendment

(Where applicable) You do not have the possibility to repay this loan early. *deleted*

Amendment 135

Proposal for a directive

Annex II – Part A – ESIS model – point 14 – indent 2

Text proposed by the Commission

(Where applicable) The interest rate of this loan does not remain fixed during the whole duration of the loan.

Amendment

(Where applicable) The interest rate of this loan does not remain fixed during the whole duration of the loan. ***It may increase significantly once the fixed interest rate period has lapsed.***

Amendment 136

Proposal for a directive

Annex II – Part A – ESIS model – point 14 – indent 5

Text proposed by the Commission

You will also need to pay other taxes and costs (where applicable), e.g. notary fees.

Amendment

You will also need to pay other taxes and ***credit protection*** costs (where applicable), e.g. ***registration fees***, notary fees.

Amendment 137

Proposal for a directive

Annex II – Part A – ESIS model – point 14 – indent 8 (new)

Text proposed by the Commission

Amendment

Where payments do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital, your attention is drawn to the fact that the credit agreement or supplementary agreement does not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

Amendment 138

Proposal for a directive

Annex II – Part A – ESIS model – point 14 a (new)

Text proposed by the Commission

Amendment

14a. Illustrative repayment table

This table shows the amount to be paid every [frequency].

The instalments (column [relevant no.]) are the sum of interest paid (column [relevant no.]), capital paid (column [relevant no.]) and, where applicable other costs (column [relevant no.]). Where applicable, the costs in the other costs column relate to [list of costs].

Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed after each instalment.

[Amount and currency of the loan]

[Duration of the loan]

[Interest rate]

[Table]

[Warning on the variability of the instalments]

Justification

Given the large amount of information contained in the illustrative repayment table, it is proposed to move it to the end of the ESIS.

Amendment 139

**Proposal for a directive
Annex II – Part B – introductory part**

Text proposed by the Commission

Amendment

In completing the ESIS, the following instructions shall be followed:

In completing the ESIS, the following instructions shall be followed, ***and information should be provided in plain, clear language comprehensible to an average consumer:***

Justification

The ESIS should be understandable to an average consumer.

Amendment 140

Proposal for a directive Annex II – Part B – Section 3 – point 1

Text proposed by the Commission

(1) In addition to the *interest* rate, all the other costs contained in the APRC shall be listed (name and equivalence in percentage). Where providing a percentage rate for each of those costs is not possible or does not make sense, the creditor shall provide a global percentage rate.

Amendment

(1) In addition to the *borrowing* rate, all the other costs contained in the APRC shall be listed (name and equivalence in percentage). Where providing a percentage rate for each of those costs is not possible or does not make sense, the creditor shall provide a global percentage rate. ***Where a fixed borrowing rate is agreed in relation to the initial period, at the end of which the borrowing rate is adjusted according to an agreed indicator, your attention is drawn to the fact that the borrowing rate and the APRC may significantly exceed the fixed borrowing rate and the original APRC.***

Amendment 141

Proposal for a directive Annex II – Part B – Section 7 – point 2

Text proposed by the Commission

(2) The creditor shall also list *each of the costs by category, indicating their amount*, to whom they are to be paid and at what moment. Where the amount is not known, the creditor shall provide a possible range or an indication of how the amount will be calculated.

Amendment

(2) The creditor shall also *provide a detailed* list of costs, to whom they are to be paid and at what moment. Where the amount is not known, the creditor shall provide a possible range or an indication of how the amount will be calculated.

Amendment 142

Proposal for a directive Annex II – Part B – Section 7 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) The creditor shall inform the consumer on his freedom to choose ancillary services from another provider of his choice.

Justification

The consumer should be properly informed about his/her freedom to choose the provider of ancillary services.

Amendment 143

Proposal for a directive Annex II – Part B – Section 8 – point 2

Text proposed by the Commission

Amendment

(2) Where ***an exit charge*** will be applied to the early repayment, the creditor shall draw the borrower's attention to this and indicate its amount. In cases where the amount of the ***exit charge*** would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the creditor shall indicate how the ***exit charge*** will be calculated. The creditor shall then provide at least two illustrative examples in order to demonstrate to the borrower the level of the ***exit charge*** under different possible scenarios.

(2) Where ***compensation*** will be payable in respect of the early repayment, the creditor shall draw the borrower's attention to this and indicate its amount. In cases where the amount of the ***compensation*** would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the creditor shall indicate how the ***compensation*** will be calculated. The creditor shall then provide at least two illustrative examples in order to demonstrate to the borrower the level of the compensation under different possible scenarios.

Justification

Alignment with previous amendments.

Amendment 144

Proposal for a directive Annex II a (new)

Annex IIa

Minimum competence requirements

1. The minimum competence requirements of creditors' and credit intermediaries' staff should include:

(a) appropriate knowledge of mortgage products and ancillary services typically offered together with mortgage products;

(b) appropriate knowledge of the law of the Member States in which the product is being sold;

(c) appropriate knowledge and understanding of the property purchasing process in the Member State in which the product is being sold;

(d) appropriate knowledge of security valuation;

(e) appropriate knowledge of organization and functioning of land registers in the Member State in which the collateral is located;

(f) appropriate level of financial and economic competency;

(g) appropriate knowledge of ethics;

(h) ability to assess the consumer's creditworthiness.

2. The appropriate level of knowledge and competence should be determined on the basis of:

(a) recognised qualifications, e.g. diplomas, degrees, professional trainings, competency tests; Alt.

(b) professional experience, which may be defined as a minimum number of years working in areas related to the origination, distribution or intermediation of credit products.

3. Member States may differentiate between the level of professional

requirements for the staff of creditors, the staff of credit intermediaries and their management.

PROCEDURE

Title	Credit agreements relating to residential property			
References	COM(2011)0142 – C7-0085/2011 – 2011/0062(COD)			
Committee responsible Date announced in plenary	ECON 10.5.2011			
Committee(s) asked for opinion(s) Date announced in plenary	IMCO 10.5.2011			
Associated committee(s) - date announced in plenary	29.9.2011			
Discussed in committee	24.5.2011	12.7.2011	5.10.2011	22.11.2011
Date adopted	25.1.2012			
Result of final vote	+: -: 0:	33 3 1		
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Cristian Silviu Buşoi, Jorgo Chatzimarkakis, Sergio Gaetano Cofferati, Lara Comi, Anna Maria Corazza Bildt, Cornelis de Jong, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Małgorzata Handzlik, Iliana Ivanova, Philippe Juvin, Sandra Kalniete, Eija-Riitta Korhola, Edvard Kožušník, Kurt Lechner, Toine Manders, Hans-Peter Mayer, Phil Prendergast, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Bernadette Vergnaud, Barbara Weiler			
Substitute(s) present for the final vote	Mario Borghezio, Frank Engel, Ildikó Gáll-Pelcz, Anna Hedh, Liem Hoang Ngoc, María Irigoyen Pérez, Emma McClarkin, Kyriacos Triantaphyllides			

12.10.2011

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council on credit agreements relating to residential property
(COM(2011)0142 – C7-0085/2011 – 2011/0062(COD))

Rapporteur: Alexandra Thein

SHORT JUSTIFICATION

Your rapporteur has serious doubts as to whether, as the Commission claims, the proposed directive can be regarded as an effective instrument to address the financial crisis. It is also questionable as to whether an internal market in credit agreements relating to residential immovable property can be established. Initially, consideration should be given to the establishment of an internal market in credit agreements relating to commercial immovable property. The markets for credit agreements relating to residential immovable property are highly local in nature, and consumers first and foremost need local advice. This applies in particular to first-time buyers, for example families who are purchasing their first home and are therefore particularly deserving of protection. Cross-border demand is low. Language barriers are a particular problem; difficulties also arise on account of the substantial differences between the laws of the Member States, in particular in the area of property law, but also in those of bankruptcy and tax law.

The rapporteur therefore has doubts as to whether such detailed rules are required and as to whether the proposed measures can meet the objective set – that of combating the financial crisis.

In addition, there would seem to be considerable scope for revising the Commission proposal. The key criticisms are as follows:

- demarcation from and/or duplication of the consumer credit directive: a number of Member States have enacted provisions which go beyond the scope of the consumer credit directive and fall within that of the proposal for a directive under consideration here. For that reason alone, its provisions should depart from those of the consumer credit directive only in cases where the subject matter makes this absolutely essential. Any other approach would create substantial and unjustified red tape. By the same token, consumers should not be bombarded with unnecessary additional information.

The European legislator should not interfere too much with existing national administrative

structures. It is not clear, for example, why credit intermediaries should be supervised by authorities which are included among the competent authorities in the regulation on the establishment of a European Banking Authority.

Delegated acts: The scope of the delegation of legislative powers in the Commission proposal goes well beyond the limits laid down in Article 290 TFEU and should therefore – as in the case of the consumer credit directive – be restricted to the area of the annual percentage rate of charge.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Title

Commission proposal

Directive of the European Parliament and of the Council on credit agreements relating to residential property

Amendment

Directive of the European Parliament and of the Council on credit agreements relating to residential property ***for consumers***

Justification

In keeping with the title of the consumer credit directive, it should be made clear that the directive deals with consumer contracts.

Amendment 2

Proposal for a directive

Recital 2

Commission proposal

(2) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The development of a more transparent and efficient credit market within that area is vital to promote the development of cross-

Amendment

(2) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The development of a more transparent and efficient credit market within the area without internal frontiers is vital to

border activity *and create an internal market in credit agreements relating to residential immovable property*. There are substantial differences in the laws of the various Member States with regard to conduct of business in the granting of credit agreements relating to residential immovable property and in the regulation and supervision of credit intermediaries and non-credit institutions providing credit agreements relating to residential immovable property. Such differences create obstacles that restrict the level of cross-border activity on the supply and demand sides, thus reducing competition and choice in the market, *raising the cost of lending for providers and even preventing them from doing business*.

promote the development of cross-border activity. There are substantial differences in the laws of the various Member States with regard to conduct of business in the granting of credit agreements relating to residential immovable property and in the regulation and supervision of credit intermediaries and non-credit institutions providing credit agreements relating to residential immovable property. Such differences create obstacles that restrict the level of cross-border activity on the supply and demand sides, thus reducing competition and choice in the market.

Justification

The market for credit agreements relating to residential immovable property is highly local in nature. First-time buyers in particular need advice and will seek it locally.

Amendment 3

Proposal for a directive Recital 3

Commission proposal

(3) The financial crisis has shown that irresponsible behaviour by market participants can undermine the foundations of the financial system, leading to a lack of confidence among all parties, in particular consumers, and potentially severe social and economic consequences. Many consumers have lost confidence in the financial sector and borrowers have found their loans increasingly unaffordable, with defaults and forced sales rising. In view of the problems brought to light in the financial crisis and in the context of efforts to ensure an efficient and competitive internal market, the Commission has

Amendment

deleted

proposed measures with regard to credit agreements relating to residential immovable property, including a reliable framework on credit intermediation, in the context of delivering responsible and reliable markets for the future and restoring consumer confidence.

Justification

Addressing the financial crisis and preventing future crises is indeed a priority. However, the link with the proposal for a directive under consideration here is far from clear, not least in terms of the time frame (Green Paper 2005, start of the financial crisis late 2008).

Amendment 4

Proposal for a directive

Recital 4

Commission proposal

(4) A series of problems in EU mortgage markets associated with irresponsible lending and borrowing at the pre-contractual stage and the potential scope for irresponsible behaviour by credit intermediaries and non-credit institutions ***have been identified***. Some problems concerned loans denominated in a foreign currency which consumers had taken out in that currency to take advantage of the interest rate offered but without having an adequate understanding of the currency risk involved. These problems are driven by market and regulatory failures as well as other factors such as the general economic climate and low levels of financial literacy. Other problems ***include*** ineffective, inconsistent, or non-existent registration, authorisation and supervision regimes for credit intermediaries and non-credit institutions providing credit for residential immovable property. ***The problems identified have potentially significant macroeconomic spill-over effects, can lead to consumer detriment, act as economic or legal barriers to cross-border***

Amendment

(4) ***The Commission has identified*** a series of problems in EU mortgage markets associated with irresponsible lending and borrowing at the pre-contractual stage and the potential scope for irresponsible behaviour by credit intermediaries and non-credit institutions. Some problems concerned loans denominated in a foreign currency which consumers had taken out in that currency to take advantage of the interest rate offered but without having an adequate understanding of the currency risk involved. These problems are driven by market and regulatory failures as well as other factors such as the general economic climate and low levels of financial literacy. ***The Commission has identified as*** other problems ineffective, inconsistent, or non-existent registration, authorisation and supervision regimes for credit intermediaries and non-credit institutions providing credit for residential immovable property.

activity and create an unlevel playing field between actors.

Amendment 5

Proposal for a directive Recital 5

Commission proposal

(5) In order to *facilitate* the emergence of a smoothly functioning internal market with a high level of consumer protection in the area of credit agreements relating to residential immovable property, a harmonised Union framework *needs to be established* in a number of areas. *It is further necessary to establish* harmonised standards in order to ensure that consumers looking for credit agreements relating to residential immovable property are able to do so confident in the knowledge that the institutions they interact with act in a professional and responsible manner.

Amendment

(5) In order to *determine the scope for* the emergence of a smoothly functioning internal market with a high level of consumer protection in the area of credit agreements relating to residential immovable property, a harmonised Union framework *could prove useful* in a number of areas. *At the same time*, harmonised standards *could be established* in order to ensure that consumers looking for credit agreements relating to residential immovable property are able to do so confident in the knowledge that the institutions they interact with act in a professional and responsible manner. *In that connection, due account should be taken of the highly local nature of the market in credit agreements relating to residential immovable property. In this area in particular, consumers are very much in need of local advice.*

Justification

It is important to make clear that the market for credit agreements relating to residential immovable property is highly local in nature. First-time buyers in particular need advice and will seek it locally.

Amendment 6

Proposal for a directive Recital 9

Commission proposal

(9) The objective of this Directive is to

Amendment

(9) The objective of this Directive is to

ensure that all credits provided to consumers benefit from a high level of protection. It should therefore apply to credits secured by real estate, or credits which are used to purchase a property in some Member States and to credits for the renovation of residential property that are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC which lays down rules at Union level concerning consumer credit agreements. Furthermore, this Directive should not be applied to certain types of credit agreements where the credit is granted by an employer to his employees under certain circumstances, as already provided in Directive 2008/48/EC.

ensure that all credits provided to consumers benefit from a high level of protection. It should therefore apply to credits secured by real estate, or credits which are used to purchase a property in some Member States and to credits for the renovation of residential property that are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC which lays down rules at Union level concerning consumer credit agreements. Furthermore, this Directive should not be applied to certain types of credit agreements where the credit is granted by an employer to his employees under certain circumstances, as already provided in Directive 2008/48/EC. ***Like Directive 2008/48/EC, this Directive should also not apply to start-up loans.***

Justification

Start-up loans are granted under national public support programmes and are therefore subject to special requirements and, by their very nature, State supervision.

Amendment 7

Proposal for a directive Recital 11 a (new)

Commission proposal

Amendment

(11a) In keeping with Directive 2008/48/EC, for the purposes of this Directive ‘consumer’ should mean a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession. In that connection, activities which can be equated with the commercial rental of residential immovable property, for instance in cases where the rental of property secures a person’s livelihood, are not covered by the protection afforded by

this Directive.

Justification

It should be made clear that persons who purchase items of residential immovable property on a large scale with a view to renting them out and who take out credit for that purpose do not merit the same protection as consumers and should therefore not be covered by the directive.

Amendment 8

Proposal for a directive

Recital 11 b (new)

Commission proposal

Amendment

(11b) With a view to guaranteeing a high level of comprehensive consumer protection, when granting, intermediating or advising on credit and, where appropriate, ancillary services to consumers, creditors or credit intermediaries should act honestly, fairly and professionally in accordance with the best interests of the consumer.

Justification

This recital is based on Article 5(1) of the Commission proposal. Incorporating a provision of this kind into the operative part of the directive would give rise to serious implementing problems. In the interests of consumers, however, the substance of the provision should be incorporated into a recital.

Amendment 9

Proposal for a directive

Recital 40

Commission proposal

Amendment

(40) In order to take account of developments in the markets for credit relating to residential immovable property, including the range of products available, the Commission should be empowered to adopt delegated acts in accordance with

(40) In order to take account of developments in the markets for credit relating to residential immovable property, including the range of products available, the Commission should be empowered to adopt delegated acts in accordance with

Article 290 of the Treaty on the Functioning of the European Union to amend *the content of the standard information items to be included in advertising, the content and format of the European Standardised Information Sheet (ESIS), the content of the information disclosures by credit intermediaries*, the formula and the assumptions used to calculate the annual percentage rate of charge *and the criteria to be taken into account for the assessment of the consumer's creditworthiness*.

Article 290 of the Treaty on the Functioning of the European Union to amend the formula and the assumptions used to calculate the annual percentage rate of charge. *It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and give the experts sufficient time to deliver opinions. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council. In addition it is essential that the Commission should always set a sufficiently long deadline for the entry into force of delegated acts.*

Justification

The powers conferred on the Commission under Article 290 TFEU to adopt delegated acts go too far. The recital reflects the deletions made in the operative part of the text. In addition, the recital has been brought into line with the Common Understanding on delegated acts.

Amendment 10

Proposal for a directive Article 1

Does not affect English version.

Justification

It must be made clear that the proposal covers only credit agreements with consumers.

Amendment 11

Proposal for a directive Article 2 – paragraph 1 – point b

Commission proposal

Amendment

(b) Credit agreements the purpose of which

(b) Credit agreements the purpose of

is to acquire or retain property rights in land or in an existing or projected residential building.

which, *at the time they are concluded*, is to acquire or retain property rights in land or in an existing or projected residential building.

Justification

In the interests of legal clarity, it must be specified that the rule governing purpose applies when the credit agreement is concluded.

Amendment 12

**Proposal for a directive
Article 2 – paragraph 2 – point b a (new)**

Commission proposal

Amendment

(ba) 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.

Justification

In keeping with Article 2(1)(l) of Directive 2008/48/EC, start-up loans must be excluded from the scope of the directive under consideration here.

Amendment 13

**Proposal for a directive
Article 3 – point m a (new)**

Text proposed by the Commission

Amendment

(ma) 'Representative example' means an example mentioning all the assumptions used in order to calculate the annual percentage rate of charge and corresponding to the frequency of certain types of credit agreement in a specific

market.

Amendment 14

Proposal for a directive Article 3 – point r a (new)

Commission proposal

Amendment

(ra) ‘residential immovable property’ means an item of immovable property intended primarily for residential purposes;

Justification

Defining the term ‘residential immovable property’ makes for clarity and legal certainty.

Amendment 15

Proposal for a directive Article 4 – paragraph 1 – subparagraph 1

Commission proposal

Amendment

1. Member States shall designate the competent authorities empowered to ensure implementation of this Directive and shall ensure that they are granted all the powers necessary for the performance of their duties.

1. Member States shall designate the competent authorities empowered to ensure implementation of this Directive and shall ensure that they are granted all the powers necessary for the performance of their duties. ***If Member States implement provisions of this Directive by means of statutory provisions which, under their national law, are not subject to regulatory supervision, they shall not be required to designate a competent authority and/or grant powers to the authority so designated.***

Justification

If Member States implement provisions of the directive by means of statutory provisions which, under their national law, are not subject to regulatory supervision, e.g. by means of civil-law provisions, they should not be required to designate competent authorities.

Amendment 16

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2

Commission proposal

Member States shall ensure that the authorities designated as competent for ensuring the implementation of Articles 18, 19, 20 and 21 of this Directive are one of those competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority).

Amendment

If authorities are to be designated and have powers conferred on them, Member States shall ensure that the authorities designated as competent for ensuring the implementation of Articles 18, 19, 20 and 21 of this Directive are one of those competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority).

By way of derogation, Member States may also designate authorities which are not yet among the competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010, provided that they ensure that the relevant provisions of that Regulation implementing Articles 18, 19, 20 and 21 of this Directive apply mutatis mutandis.

Justification

The European legislator should not interfere too much with existing national administrative structures. It is not clear, for example, why credit intermediaries should be supervised by authorities which are included among the competent authorities in the regulation on the establishment of a European Banking Authority.

Amendment 17

Proposal for a directive

Article 4 – paragraph 2

Commission proposal

2. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate ***closely so that they can discharge their respective duties***

Amendment

2. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate.

effectively.

Justification

The European legislator should not interfere too much with existing national administrative structures. It is not clear, for example, why credit intermediaries should be supervised by authorities which are included among the competent authorities in the regulation on the establishment of a European Banking Authority.

Amendment 18

**Proposal for a directive
Article 5 – paragraph 1**

Commission proposal

Amendment

1. Member States shall require that, when granting, intermediating or advising on credit and, where appropriate, ancillary services to consumers, the creditor or the credit intermediary acts honestly, fairly and professionally in accordance with the best interests of the consumer.

deleted

Justification

Article 5(1) of the Commission proposal will give rise to serious problems in the areas of implementation and liability. In the interests of consumers, however, the substance should be incorporated into a recital.

Amendment 19

**Proposal for a directive
Article 5 – paragraph 2**

Commission proposal

Amendment

2. Member States shall ensure that the manner in which creditors remunerate their staff and the relevant credit intermediaries and the manner in which credit intermediaries remunerate their staff do not impede compliance with the obligation to act in accordance with the best interests of the consumer, as referred to in paragraph 1.

deleted

Justification

The provision is unclear and should be deleted.

Amendment 20

Proposal for a directive

Article 6 – paragraph 1 – point (c)

Commission proposal

Amendment

(c) Creditors and credit intermediaries are monitored in order to assess whether the requirements referred to in paragraph 1, points (a) and (b), are complied with on a continuing basis. **deleted**

Justification

The provision imposes a disproportionate burden on creditors and credit intermediaries and should be deleted.

Amendment 21

Proposal for a directive

Article 6 – paragraph 4

Commission proposal

Amendment

4. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to specify the requirements provided in paragraph 1 and 2 of this Article, and in particular, the necessary requirements for appropriate knowledge and competence. **deleted**

Amendment 22

Proposal for a directive

Article -7 (new)

Text proposed by the Commission

Amendment

Article -7

Information provision free of charge to the consumer

Member States shall ensure that, when information is provided to consumers in compliance with the requirements set out in this Directive, such information is provided without charge to the consumer.

Justification

Creditors and credit intermediaries shall not be allowed to charge the consumer for legal obligations they have to fulfil.

Amendment 23

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 1 a (new)

Commission proposal

Amendment

This obligation shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph.

Justification

The derogation laid down in Article 4(1)(2) of the consumer credit directive should also apply here.

Amendment 24

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – introductory part

Commission proposal

Amendment

2. The standard information shall specify

2. The standard information shall specify in

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the following in a clear, concise and prominent way by means of a representative example:

a clear, concise and prominent way by means of a representative example:

Justification

In line with Article 4(2) of the consumer credit directive.

Amendment 25

Proposal for a directive

Article 8 - paragraph 2 - subparagraph 1 - point f

Commission proposal

Amendment

(f) the duration of the credit agreement;

(f) *if applicable*, the duration of the credit agreement;

Justification

In line with Article 4(2)(d) of the consumer credit directive.

Amendment 26

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point g

Commission proposal

Amendment

(g) the amount of the instalments;

(g) *if applicable*, the amount of the instalments;

Justification

In line with Article 4(2)(f) of the consumer credit directive.

Amendment 27

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point h

Commission proposal

Amendment

(h) the total amount payable by the consumer;

(h) *if applicable*, the total amount payable by the consumer;

Justification

In line with Article 4(2)(f) of the consumer credit directive.

Amendment 28

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1 – point i

Commission proposal

Amendment

(i) a warning, where applicable, concerning the risk of losing the immovable property in the event of non-observance of the commitments linked to the credit agreement when the credit is secured by a mortgage or another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property.

deleted

Justification

Self-evident facts should not be a mandatory component of the standard information given in adverts, particularly as – depending on the medium – time and space are in short supply.

Amendment 29

Proposal for a directive

Article 8 – paragraph 4

Commission proposal

Amendment

4. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to further specify the list of standard information items to be included in advertising.

deleted

In particular, the Commission, when adopting such delegated acts shall amend, where necessary, the list of the standard information items laid down in paragraphs 2(a) to (i) of this Article.

Justification

We are not dealing here with decisions which supplement or amend non-essential elements of the directive, within the meaning of Article 290(1) TFEU. The Commission should not therefore be given powers to adopt delegated acts.

Amendment 30

**Proposal for a directive
Article 9 – title**

Commission proposal

Amendment

Pre-contractual information

General and pre-contractual information

Justification

Linguistic clarification: Article 9 does not contain only pre-contractual information.

Amendment 31

**Proposal for a directive
Article 9 – paragraph 1 – subparagraph 2 – point g**

Commission proposal

Amendment

(g) an indicative example of the total cost of credit for the consumer and annual percentage rate of charge;

(g) an indicative **representative** example of the total cost of credit for the consumer and annual percentage rate of charge; **where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components into account;**

Justification

Clarification; consistency with Article 8(2).

Amendment 32

Proposal for a directive

Article 9 – paragraph 2 – subparagraph 2

Commission proposal

Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be accompanied by an ESIS. In such circumstances, Member States shall ensure that ***the credit agreement cannot be concluded until*** the consumer has ***had*** sufficient time to compare the offers, assess their implications and take an informed decision on whether to accept an offer, regardless of the means of conclusion of the contract.

Amendment

Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be accompanied by an ESIS. In such circumstances, Member States shall ensure that the consumer has sufficient time to compare the offers, assess their implications and take an informed decision on whether to accept an offer, regardless of the means of conclusion of the contract. ***If the consumer has a right of withdrawal in respect of the credit agreement, this shall in itself be regarded as providing the consumer with sufficient time to take a decision.***

Justification

It is not clear what ‘the credit agreement cannot be concluded’ means. Should this provision have a bearing on whether the agreement is valid or null and void, an issue which is, moreover, a Member State matter according to Recital 7, the result will be considerable legal uncertainty. At all events, consumers, who in any case have a right of withdrawal, should not be granted any further time to make a decision.

Amendment 33

Proposal for a directive

Article 9 – paragraph 2 – subparagraph 4 a (new)

Commission proposal

Amendment

In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the creditor shall make additional pre-contractual information available which

makes it clear that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

Justification

Parallels with Article 5(5) of the consumer credit directive. A provision of this kind is particularly important in order to protect consumers concluding credit agreements relating to residential immovable property.

Amendment 34

**Proposal for a directive
Article 9 – paragraph 3**

Commission proposal

Amendment

3. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to amend the standard information items laid down in paragraph 1 of this Article and the content and format of the ESIS set out in Annex II.

deleted

In particular, such delegated acts shall, where necessary:

(a) amend the list of the standard information items laid down in paragraph 1 of this Article;

(b) delete any of the information items laid down Annex II;

(c) make additions to the list of information items laid down in Annex II;

(d) amend the presentation of the contents of the ESIS as laid down in Annex II;

(e) elaborate on the instructions for the completion of the ESIS as laid down in Annex II.

Justification

We are not dealing here with decisions which supplement or amend non-essential elements of

the directive, within the meaning of Article 290(1) TFEU. The Commission should not therefore be given powers to adopt delegated acts.

Amendment 35

Proposal for a directive

Article 10 – paragraph 1 a (new)

Commission proposal

Amendment

1a. Member States shall ensure that the fee, if any, payable by the consumer to the credit intermediary for his services is communicated to the creditor by the credit intermediary, for the purpose of calculation of the annual percentage rate of charge.

Justification

In line with Article 21(c) of the consumer credit directive.

Amendment 36

Proposal for a directive

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

2. Credit intermediaries who are not tied shall, ***at the consumer's request***, provide information on the variation in levels of commission payable by the different creditors providing the credit agreements being offered to the consumer. ***The consumer shall be informed that he has the right to request such information.***

2. Credit intermediaries who are not tied shall provide ***the consumer with*** information on the variation in levels of commission payable by the different creditors providing the credit agreements being offered to the consumer.

Amendment 37

Proposal for a directive Article 10 – paragraph 3

Commission proposal

Amendment

3. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to update the list of information items on credit intermediaries to be provided to the consumer, as laid down in paragraph 1 of this Article.

deleted

In particular, the Commission, when adopting such delegated acts shall amend, where necessary, the information items laid down in paragraph 1 of this Article.

Justification

We are not dealing here with decisions which supplement or amend non-essential elements of the directive, within the meaning of Article 290(1) TFEU. The Commission should not therefore be given powers to adopt delegated acts.

Amendment 38

Proposal for a directive Article 10 – paragraph 4

Commission proposal

Amendment

4. In order to ensure uniform conditions of application of paragraph 1 of this Article, powers are conferred on the Commission to determine, where necessary, a standardised format and the presentation of the information items set out in paragraph 1 of this Article.

deleted

Justification

We are not dealing here with decisions which supplement or amend non-essential elements of the directive, within the meaning of Article 290(1) TFEU. The Commission should not therefore be given powers to adopt delegated acts.

Amendment 39

Proposal for a directive Article 11 – paragraph 1

Commission proposal

Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer on the proposed credit agreement(s) and any ancillary service(s), in order to place the consumer in a position enabling him to assess whether the proposed credit agreements are *adapted* to his needs and financial situation. ***An adequate explanation shall include the provision of personalised information on the characteristics of the credits on offer, without however formulating any recommendation. Creditors and, where applicable, credit intermediaries shall accurately assess the level of knowledge and experience with credit of the consumer by any means necessary so as to enable the creditor or the intermediary to determine the level of explanations to be given to the consumer and adjust such explanations accordingly.***

Amendment

Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer, in order to put the consumer in a position to assess whether the proposed credit agreement is *suited* to his needs and to his financial situation, ***where appropriate by explaining the pre-contractual information to be provided in accordance with Article 9(2), the essential characteristics of the products proposed and the specific effects they may have on the consumer, including the consequences of default in payment by the consumer.***

Justification

Parallels with Article 5(6) of the consumer credit directive. In addition, the law cannot be used to stipulate how creditors and credit intermediaries should assess whether consumers need further explanations.

Amendment 40

Proposal for a directive Article 11 – paragraph 2 a (new)

Commission proposal

Amendment

Member States may adapt the manner by which and the extent to which such assistance is given, as well as by whom it

is given, to the particular circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the type of credit offered.

Justification

In line with Article 5(6) of the consumer credit directive.

Amendment 41

Proposal for a directive

Article 12 – paragraph 2 – subparagraph 2

Commission proposal

Where the opening of an account is obligatory in order to obtain the credit, the costs of maintaining *such* an account, the costs of using a means of payment for both payment transactions and drawdowns on that account, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer, unless the costs have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

Amendment

The costs of maintaining an account *recording both payment transactions and drawdowns*, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless *the opening of the account is optional and* the costs *of the account* have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

Justification

Parallels with Article 19(2)(2) of the consumer credit directive.

Amendment 42

Proposal for a directive

Article 12 – paragraph 5 – subparagraph 1

Commission proposal

5. Powers are delegated to the Commission in accordance with Article 26 *and subject to the conditions of Articles 27 and 28, to amend* the formula and the assumptions used to calculate the annual percentage rate of charge as set out in Annex I.

Amendment

5. Powers are delegated to the Commission in accordance with Article 26 *to adopt delegated acts concerning the amendment of* the formula and the assumptions used to calculate the annual percentage rate of charge as set out in Annex I.

Justification

Modification in line with the Common Understanding on delegated acts.

Amendment 43

Proposal for a directive Article 14 – paragraph 1

Commission proposal

1. Member States shall ensure that, before the conclusion of the credit agreement, a thorough assessment of the consumer's creditworthiness is conducted by the creditor, based on criteria including the consumer's income, *savings*, debts and other financial commitments. That assessment shall be carried out on the basis of the necessary information, obtained by the creditor or, where applicable, credit intermediary from the consumer and from relevant internal or external sources and shall respect the requirements with regard to necessity and proportionality set out in Article 6 of Directive 95/46/EC.

Member States shall ensure that creditors establish appropriate processes to assess the creditworthiness of the consumer. These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.

Amendment

1. Member States shall ensure that, before the conclusion of the credit agreement, a thorough assessment of the consumer's creditworthiness is conducted by the creditor, based on criteria including the consumer's income, *assets*, debts and other financial commitments. That assessment shall be carried out on the basis of the necessary information, obtained by the creditor or, where applicable, credit intermediary from the consumer and from relevant internal or, ***where appropriate***, external sources and shall respect the requirements with regard to necessity and proportionality set out in Article 6 of Directive 95/46/EC.

Justification

'Savings' is too narrow a term and should be replaced by 'assets'. In addition it is not clear what 'appropriate processes to assess the creditworthiness of the consumer' might be. Such processes should not differ too greatly from one Member State to another, however. If the Member States have the right to specify what form those processes should take, then experience shows that they will differ, a result at odds with the purpose of the legislation.

Amendment 44

Proposal for a directive

Article 14 – paragraph 2 – point a

Commission proposal

(a) Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to **repay the credit over the lifetime of the credit agreement**, the creditor refuses credit.

Amendment

(a) Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to **meet his debt obligations**, the creditor refuses credit.

Justification

The proposed wording is too narrow. In the case of credit agreements relating to residential immovable property in particular, it cannot always be assumed that the consumer can repay the credit over the lifetime of the credit agreement. The wording reflects the definition of 'creditworthiness' in Article 3(o).

Amendment 45

Proposal for a directive

Article 14 – paragraph 2 – point b

Commission proposal

(b) Where the **credit application is rejected**, the creditor informs the consumer immediately and without charge of the reasons **for rejection**.

Amendment

(b) Where the **granting of credit is denied, because the assessment of the consumer's creditworthiness has resulted in a negative prospect for his ability to meet his debt obligations**, the creditor informs the consumer immediately and without charge of the reasons.

Justification

The provision is too broad. It should only apply in cases where the assessment of creditworthiness results in a negative prospect.

Amendment 46

Proposal for a directive Article 14 – paragraph 4

Commission proposal

Amendment

4. Further to assessing a consumer's creditworthiness, Member States shall ensure that creditors and credit intermediaries obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives and consider a sufficiently large number of credit agreements from their product range in order to identify products that are not unsuitable for the consumer given his needs, financial situation and personal circumstances. Such considerations shall be based on information that is up to date at that moment in time and on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.

deleted

Justification

This provision is not included in the consumer credit directive, and it imposes a considerable burden on consumers and creditors and credit intermediaries alike. In particular, the consumer should not be required to give details of his personal circumstances if this is not essential for the assessment of his creditworthiness. This provision should be deleted, therefore.

Amendment 47

Proposal for a directive Article 14 – paragraph 5

Commission proposal

Amendment

5. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to specify and amend the criteria to be considered in the conduct of a creditworthiness assessment as laid

deleted

down in paragraph 1 of this Article and in ensuring that credit products are not unsuitable for the consumer as laid down in paragraph 4 of this Article.

Justification

We are not dealing here with decisions which supplement or amend non-essential elements of the directive, within the meaning of Article 290(1) TFEU. The Commission should not therefore be given powers to adopt delegated acts.

Amendment 48

**Proposal for a directive
Article 15 – paragraph 1**

Commission proposal

Amendment

1. Member States shall ensure that consumers provide creditors and, where applicable, credit intermediaries with complete and correct information on their financial situation and personal circumstances in the context of the credit application process. That information should be supported, when necessary, by documentary evidence from independently verifiable sources.

deleted

Justification

The provision is unclear; consumers should not be required to give information which is not essential for the assessment of their creditworthiness. In accordance with general principles, consumers are already required to give full and accurate information.

Amendment 49

**Proposal for a directive
Article 16 – paragraph 1**

Text proposed by the Commission

Amendment

1. Each Member State shall ensure non-discriminatory access for all creditors to databases used in that Member State for assessing the creditworthiness of

1. Each Member State shall ensure non-discriminatory access for all creditors to databases used in that Member State for assessing the creditworthiness of

consumers *and for monitoring consumers' compliance with the credit obligations over the life of the credit agreement*. Such databases comprise databases operated by private credit bureaux or credit reference agencies and public credit registers.

consumers *to be able to continue to assess it in the event of a consumer's first non-compliance with the obligation to pay the instalments*. Such databases comprise databases operated by private credit bureaux or credit reference agencies and public credit registers.

Justification

If consumers comply with their commitments under the credit agreement there is no requirement for ongoing checking and monitoring of their creditworthiness – queries need not be made without a specific reason.

Amendment 50

Proposal for a directive Article 16 – paragraph 2

Commission proposal

2. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to define uniform credit registration criteria and data processing conditions to be applied to the databases referred to in paragraph 1 of this Article.

In particular, such delegated acts shall define the registration thresholds to be applied to such databases and shall provide for agreed definitions for key terms used by such databases.

Amendment

deleted

Amendment 51

Proposal for a directive Article 18 – paragraph 2

Commission proposal

2. Member States may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right,

Amendment

2. Member States may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right,

different treatment depending on the type of the borrowing rate, or restrictions with regard to the circumstances under which the right may be exercised. Member States may also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In any event, if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a special interest on the part of the consumer.

Where a Member State lays down such conditions, these shall not make the exercise of the right referred to in paragraph 1 excessively difficult or onerous for the consumer.

different treatment depending on the type of the borrowing rate, or restrictions with regard to the circumstances under which the right may be exercised. ***Where a Member State lays down such conditions, these shall not make the exercise of the right referred to in paragraph 1 excessively difficult or onerous for the consumer.***

Member States may also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In any event, if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a special interest on the part of the consumer.

Justification

The provision of 'fair and objectively justified compensation for potential costs' cannot be regarded as making the exercise of their rights by consumers excessively difficult or onerous, as implied by the last subparagraph of the Commission text. Moving this sentence makes it clear that the Member States' discretion does not cover such cases.

Amendment 52

Proposal for a directive Article 21 – paragraph 3

Commission proposal

3. Powers are delegated to the Commission to adopt and, where necessary amend, regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b).

The regulatory technical standards

Amendment

deleted

referred to in subparagraph 1 shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

EBA shall develop draft regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b) for submission to the Commission [within 6 months of the adoption of the proposal]. EBA will review, and if necessary, develop draft regulatory technical standards to amend the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b) for submission to the Commission for the first time [4 years after entry into force of the Directive] and biannually thereafter.

Justification

We are not dealing here with decisions which supplement or amend non-essential elements of the directive, within the meaning of Article 290(1) TFEU. The Commission should not therefore be given powers to adopt delegated acts.

Amendment 53

Proposal for a directive

Article 24 – paragraph 1 – subparagraph 1

Commission proposal

1. Without prejudice to procedures for the withdrawal of authorisation or to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that appropriate administrative measures can be taken or administrative sanctions imposed against persons responsible where the provisions adopted in the implementation of this Directive have not been complied with. Member States shall ensure that these measures are effective,

Amendment

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Those sanctions shall be effective, proportionate and dissuasive.

proportionate and dissuasive.

Justification

In line with Article 23 of the consumer credit directive.

Amendment 54

**Proposal for a directive
Article 24 – paragraph 1 – subparagraph 2**

Commission proposal

Amendment

Member States shall provide for penalties in particular cases where consumers knowingly provide incomplete or incorrect information in order to obtain a positive creditworthiness assessment where the complete and correct information would have resulted in a negative creditworthiness assessment, and are subsequently unable to fulfil the conditions of the agreement, and shall take all measures necessary to ensure that they are implemented. Member States shall take all necessary measures to ensure compliance with this Regulation.

deleted

Justification

In line with Article 23 of the consumer credit directive.

Amendment 55

**Proposal for a directive
Article 25 – paragraph 1**

Commission proposal

Amendment

1. Member States shall ensure that *appropriate* and effective *complaints and redress procedures are established for the out-of-court settlement of disputes concerning rights and obligations established under this Directive between creditors and consumers and between*

1. Member States shall ensure that *adequate* and effective out-of-court *dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place*, using existing bodies where appropriate.

credit intermediaries and consumers, using existing bodies where appropriate. Member States shall further ensure that all creditors and credit intermediaries adhere to one or more such bodies implementing such complaint and redress procedures.

Justification

In line with Article 24 of the consumer credit directive.

Amendment 56

**Proposal for a directive
Article 25 – paragraph 2**

Commission proposal

2. Member States shall *ensure that these* bodies *actively* cooperate *in the resolution of* cross-border disputes.

Amendment

2. Member States shall *encourage those bodies to* cooperate in order to also resolve cross-border disputes concerning credit agreements.

Justification

In line with Article 24 of the consumer credit directive.

Amendment 57

**Proposal for a directive
Article 26**

Commission proposal

1. The powers to adopt delegated acts referred to in *Articles 6(4), 8(4), 9(3), 10(3), 14(5) and 16(2)* shall be conferred on the Commission *for an indeterminate period of time following the entry into force of this Directive.*

2. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the*

Amendment

1. The power to adopt delegated acts referred to in *Article 12(5)* shall be conferred on the Commission *subject to the conditions laid down in this Article.*

2. *The power referred to in Article 12(5) shall be conferred on the Commission for an indeterminate period of time following*

Council.

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27 and 28.

the entry into force of this Directive.

3. The delegation of power referred to in Article 12(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

3a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3b. A delegated act adopted pursuant to Article 12(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Justification

Changes in line with the deletions concerning delegated acts and the Common Understanding on delegated acts.

Amendment 58

**Proposal for a directive
Article 27**

Commission proposal

Article 27

Revocation of the delegation

Amendment

deleted

1. The delegation of powers referred to in Articles 6(4), 8(4), 9(3), 10(3), 14(5) and 16(2) may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for any revocation.

3. The decision of revocation shall terminate the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Justification

Changes in line with the deletions concerning delegated acts and the Common Understanding on delegated acts.

Amendment 59

**Proposal for a directive
Article 28**

Commission proposal

Article 28

Objections to delegated acts

1. The European Parliament and the Council may object to a delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by one month.

2. Where, on expiry of the period referred to in paragraph 1, neither the European

Amendment

deleted

Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period where the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. Where either the European Parliament or the Council objects to an adopted delegated act within the period referred to in paragraph 1, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Justification

Modification in line with the Common Understanding on delegated acts.

Amendment 60

Proposal for a directive Article 30 a (new)

Commission proposal

Amendment

Article 30a

Transitional measures

This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.

Justification

Parallels with Article 30(1) of the consumer credit directive.

Amendment 61

Proposal for a directive Annex I– Section I – point d

Does not apply to English text.

Justification

Does not apply to English text.

Amendment 62

Proposal for a directive Annex II – Part A – Section 'Introductory text' – paragraph 2

Text proposed by the Commission

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions. ***The*** information below ***remains*** valid until [validity date]. After that date, it may change in line with market conditions.

Amendment

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions. ***This document and the*** information below ***remain*** valid until [validity date]. After that date, it may change in line with market conditions. ***This document is an offer binding/non-binding on the creditor. (Delete as appropriate).***

PROCEDURE

Title	Credit agreements relating to residential property
References	COM(2011)0142 – C7-0085/2011 – 2011/0062(COD)
Committee responsible Date announced in plenary	ECON 10.5.2011
Committee(s) asked for opinion(s) Date announced in plenary	JURI 10.5.2011
Rapporteur(s) Date appointed	Alexandra Thein 24.5.2011
Discussed in committee	21.6.2011 12.7.2011
Date adopted	11.10.2011
Result of final vote	+: 24 –: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Diana Wallis, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Kurt Lechner, Eva Lichtenberger, Toine Manders
Substitute(s) under Rule 187(2) present for the final vote	Giuseppe Gargani

PROCEDURE

Title	Credit agreements relating to residential property		
References	COM(2011)0142 – C7-0085/2011 – 2011/0062(COD)		
Date submitted to Parliament	31.3.2011		
Committee responsible Date announced in plenary	ECON 10.5.2011		
Committee(s) asked for opinion(s) Date announced in plenary	IMCO 10.5.2011	JURI 10.5.2011	
Associated committee(s) Date announced in plenary	IMCO 29.9.2011		
Rapporteur(s) Date appointed	Antolín Sánchez Presedo 21.9.2010		
Discussed in committee	13.4.2011	31.8.2011	24.10.2011
Date adopted	7.6.2012		
Result of final vote	+: –: 0:	35 3 1	
Members present for the final vote	Elena Băsescu, Sharon Bowles, Udo Bullmann, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Philippe Lamberts, Werner Langen, Astrid Lulling, Arlene McCarthy, Alfredo Pallone, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Simon, Theodor Dumitru Stolojan, Sampo Terho, Marianne Thyssen, Corien Wortmann-Kool, Pablo Zalba Bidegain		
Substitute(s) present for the final vote	David Casa, Philippe De Backer, Vicky Ford, Robert Goebbels, Olle Ludvigsson, Marisa Matias, Mario Mauro, Gianni Pittella, Andreas Schwab, Theodoros Skylakakis, Emilie Turunen		
Date tabled	11.10.2012		