European Federation of Building Societies
Fédération Européenne d'Épargne et de Crédit pour le Logement
Europäische Bausparkassenvereinigung

Brussels, 6 May 2011

Position of the European Federation of Building Societies

on the European Commission's

Proposal for a Directive on credit agreements relating to residential property

The European Federation of Building Societies (EFBS) welcomes the opportunity to contribute to the discussion about the European Commission's Proposal for a Directive on credit agreements relating to residential property of 31 March 2011 with the following comments from its members:

I. General comments

The proposal for a Directive reflects a remarkable shift in the European Commission's fundamental position on the regulation of mortgage credit in a number of ways. From Federation members' perspective, it is particularly welcome that the Commission is no longer pursuing certain problematical aspects of its previous policy. For example, the Commission has dropped the idea of introducing Anglo-Saxon mortgage finance mechanisms for the EU as a whole, although this was the basic premise of the Green and White Papers on mortgage credit and of the studies on this topic carried out on behalf of the European Commission.

As it stands, however, the proposed Directive is counterproductive to creating a single European market for mortgage credit, in Federation members' view. Achieving a minimum level of harmonisation in respect of specific consumer rights will not remove the obstacles to cross-border lending. Nor will the proposal increase product diversity for the consumer in the housing loans sector. On the contrary, with its unsuitable provisions on the introduction of minimum standards, the proposal interferes with well-established national lending mechanisms but does very little to remove the existing obstacles to cross-border mortgage lending.

1. The Green and White Papers on mortgage credit / Study by London Economics (LE)

The Green Paper on Mortgage Credit in the EU, published in 2005, and the Study by London Economics – like the White Paper on the Integration of EU Mortgage Credit Markets**,** published in 2007 – signalled the Commission's clear preference for "inflating" the European housing finance markets in an unhealthy and risky manner through an expansion of the product offer and the EU-wide promotion of problematical Anglo-Saxon financing models (sub-prime lending). In the White Paper, the Commission was still predicting that these measures would result in significant increases in GDP and private consumption in the EU.

Since then, the building societies' warnings that this was the wrong course to take have been borne out by practical experience in those countries where these products have led not to more growth but to major housing market disruptions and very serious problems for many borrowers.

We therefore welcome the fact that in the proposed Directive, the Commission gives priority to minimising risk for borrowers and improving stability in the European housing finance markets as a whole. However, the Commission should not go to the other extreme and, with its numerous warnings, give consumers the impression that the risks associated with taking out a mortgage loan are simply too high.

2. No product regulation

As the Commission itself emphasises in the proposal, there are only a few Member States in which the financial crisis has caused problems in the housing markets/housing finance sector. In countries such as Germany, France and Luxembourg, where there has traditionally been a preference for long-term fixed-interest credit and a high owner's equity share, no problems have arisen at all. In the view of EFBS members, this is a strong argument against new rules at EU level and in favour of targeted legislative and supervisory responses in those countries where high-risk lending practices have caused problems.

In this context, a particular point of criticism for EFBS members is that the Commission – contrary to its original statements – has introduced a right for consumers to repay their credit at any time before the expiry of the credit agreement (early repayment) and has thus entered the realm of product regulation. In all our previous positions, we have consistently pointed out that regulations to ban or cap the compensation paid by a borrower to a lender for any loss incurred by early termination would squeeze out the very products from the market which offer consumers favourable interest rates over the long term. We believe that the market should decide which products become established; this means that the consumer should continue to have a free choice as to whether securing a long-term low interest rate is more important to them than flexible options for the repayment of the loan at a higher interest rate, or whether to accept the risk of rising interest rates by opting for variable-rate products.

Furthermore, in view of the wide diversities in the economic conditions, public attitudes towards borrowing and the specific characteristics of the legal systems in the Member States, we are convinced that product regulation would do more harm than good. Against this background, a single European market for mortgage credit cannot be created through regulatory intervention in well-established national mortgage credit markets, but only through a 28th regime, as an optional instrument for all Member States, with high standards of consumer protection[1]. This is borne out by Professor Mario Monti's report, *A new strategy for the Single Market*, in which the author proposes an optional regulatory regime as an alternative to harmonisation in response to the continuing fragmentation of the European single market for capital and financial services despite 17 years of the single market process. Regrettably, the Explanatory Memorandum to the proposed Directive, which focuses on the (supposed) need for a Directive, does not consider this option at all.

[1] cf. A European Internal Market for Housing Finance: Study of the Institut der deutschen Wirtschaft Köln (IW) in cooperation with Zentrum für Europäische Wirtschaftsforschung Mannheim (ZEW) and Prof. Dr. Johannes Köndgen, University of Bonn, *IFS Schriftenreihe*, vol. 73, Berlin 2010

3. No substantive deviations from the Consumer Credit Directive (2008/48/EC)

As the Commission rightly emphasises in the Explanatory Memorandum to the proposed Directive, most Member States apply the provisions of Directive 2008/48/EC on credit agreements for consumers not only to consumer credit but also to mortgage credit.

The deadline for the transposition of this Directive into national law was 12 May 2010. It is therefore essential to avoid a situation in which, as a result of the entry into force of the Directive on credit agreements relating to residential property, lending procedures which have only recently been amended during the transposition of the Consumer Credit Directive are required to undergo another round of radical restructuring.

During the legislative procedure, the aim should therefore be to achieve the greatest possible coherence between the provisions of the proposed Directive – particularly those concerning pre-contractual information, advertising, the reflection period following the mandatory provision of pre-contractual information, and the obligation to provide adequate explanations and advice – with the provisions of the Consumer Credit Directive (2008/48/EC).

4. Inadequate justification for the proposal for a Directive

The Commission states, in the Explanatory Memorandum, that an important factor contributing to the financial crisis was the growth in securitisation and certain lending practices, such as foreign currency lending (recital 4) and provision of mortgage credit without verification of income (salary). These two aspects are not addressed further in the regulatory content of the Directive, however.

The objectives of the Directive, as defined in the Commission's proposal, are firstly to create an efficient and competitive single market for mortgage credit (recital 2) and secondly, to promote financial stability by ensuring that mortgage credit markets operate in a responsible manner. The legal basis of the proposed Directive is Article 114 of the Treaty on the Functioning of the European Union (internal market), but no statements are made about the extent to which the requisite approximation of laws is to be achieved by means of conclusively harmonised rules. In the Commission's view, full harmonisation in this area is not necessary – a position which clearly conflicts with the creation of a single market.

The Commission also justifies the proposal on the grounds that the number of forced sales has risen throughout Europe as a consequence of flawed lending practices.

These assertions by the Commission are factually incorrect: in Germany in particular, the second largest mortgage market in Europe, there has been no discernable rise in the number of forced sales – on the contrary.

II. Comments on individual provisions of the proposal for a Directive

1. Delegation of powers to the Commission for the adoption of implementing directives

The proposal for a Directive provides for the wholesale delegation of powers to the Commission for the adoption of implementing directives (delegated acts) on various points of detail, with the European Parliament and the Council having only a right of revocation but no actual codecision rights.

Under the proposal, the Commission is empowered to adopt delegated acts in respect of the following:

- to specify the details concerning professional requirements applicable to creditors' staff and credit intermediaries,
- to specify the details concerning the criteria used for assessing the creditworthiness of the consumer,
- to specify the details for ensuring that credit products are not unsuitable for the consumer,
- to specify the details concerning key terms such as "default",
- to specify the details concerning the registration criteria and data processing conditions to be applied to credit databases,
- to amend the content of the standard information items to be included in advertising,
- to amend the content and format of the European Standardised Information Sheet (ESIS),
- to amend the content of the information disclosures by credit intermediaries,
- to amend the formula and the assumptions used to calculate the annual percentage rate of charge in accordance with Annex 1,
- to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee.

We reject the delegation of significant powers to the Commission (delegated acts) in respect of matters which, due to their fundamental importance for the mortgage credit institutions' business activities, should remain the preserve of the regular legislative procedure, for the following reasons:

1. the European Parliament and the Council will have no say on the content of the proposed arrangements, and

2. in accordance with the subsidiarity principle enshrined in the EC Treaty, these details should be regulated first and foremost by the Member States.

2. Scope (Article 2)

Article 2 (1) of the proposal states that this Directive shall apply to all credit agreements secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property.

Its material scope of application is therefore distinct from that of the Consumer Credit Directive, and this is welcomed in principle by the building societies.

a. Exemption for promotional loans

In the residential property sector, public funding schemes for energy efficiency upgrading of existing buildings and also for energy-efficient new builds are an important source of financing for many consumers, so it is important for them to have easy access to this type of credit agreement with minimal red tape. We therefore take the view that credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose (see Article 2 (2) l) of the Consumer Credit Directive) should be excluded from the scope of the present Directive.

Article 2 (2) of the proposed Directive should therefore be amended as follows:

"c) Credit agreements covered by Article 2 (2) l) of Directive 2008/48/EC of 23 April 2008."

b. Incorporation of exemptions pursuant to Article 2 (2) () to j) of the Consumer Credit Directive

There is no clear determination of the demarcation between the scope of application of the proposed Directive and the Consumer Credit Directive and its exemptions. For example, pursuant to the Directive on credit agreements relating to residential property, the proposed Directive would also apply to credit agreements secured by a mortgage which are the outcome of a settlement reached in court (see the exemption provided for in Article 2 (2) i) of the Consumer Credit Directive) or credit agreements which relate to the deferred payment, free of charge, of an existing debt (cf. the exemption provided for in Article 2 (2) j) of the Consumer Credit Directive). For the exemptions provided for in Article 2 (2) d) to j) of the Consumer Credit Directive, which are deemed to be objectively justified, it is immaterial whether the credit agreement concluded with a consumer is secured by a mortgage or not. For that reason, these exemptions should also be incorporated into the present proposal for a Directive on credit agreements relating to residential property. Otherwise, the new Directive on credit agreements relating to residential property would conflict with the exemptions contained in the Consumer Credit Directive. Accordingly, the provisions of Article 2 (1) a) of the proposal for a Directive should be amended as follows:

"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 when *the credit agreement is not covered by the exemptions listed in Article 2 (2) d) to j) and in l) of Directive 2008/48/EC."*

c. Lessee loans, the purpose of which is the renovation of the residential immovable property, shall also fall within the scope of this Directive (Article 2 (1) c)).

Pursuant to Article 2 (1) c) of the proposal for a Directive, credit agreements concluded by owners the purpose of which is the renovation of the residential immovable property are covered by the Directive. Credit agreements concluded by users (tenants, lessees, etc.) are not covered by this Directive as its scope is restricted to owners, and therefore are not classified as credit agreements relating to residential property within the meaning of this Directive. We call for these loans to be treated in the same way as identical loans taken out by owners for this purpose.

We therefore propose the following amendment to Article 2 (1) c):

*"Credit agreements concluded by the **user** the purpose of which is the renovation of the residential immovable property, which are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008."*

3. Definitions (Article 3)

a. Ancillary service (Article 3 d)

In the interests of clarity, more precise wording of the definition is required to indicate that it refers to insurance or investment services within the meaning of the relevant European directives. In Article 6, the European Commission itself refers "in particular" to insurance or investment services and only makes mention of Directive 2002/92/EC on insurance mediation and Directive 2004/39/EC on markets in financial instruments in this context. Other ancillary services are not typically accessed in a borrowing context. We therefore propose the following amendment to Article 3 d):

"'Ancillary service' means *insurance or investment services* offered to the consumer by the creditor or credit intermediary in conjunction with the credit agreement;"

b. Tied credit intermediary (Article 3 f)

Credit intermediaries operate in the national markets, not only as independent brokers. Organisations of trade representatives are also engaged in credit intermediation for residential property. In this case, the trade representative may be the representative of one firm of creditors but can also sell products supplied by the creditor's partners. In our view, it is doubtful that the definition of tied credit intermediary in Article 3 f) of the proposal for a Directive takes proper account of this situation, and we therefore propose the following wording for Article 3 f):

"'Tied credit intermediary' means any credit intermediary *who acts not on his own behalf but is contractually tied to one credit institution or group.*"

c. Staff (Article 3 j)

We are concerned that the definition of "staff" proposed in Article 3 j) could be interpreted too widely and could also be applied to members of staff who merely arrange meetings with clients concerning credit intermediation or who, for example, contact the consumer with specific questions during the processing of the credit application. As Article 6 of the proposed Directive requires the staff defined in Article 3 j) to possess an appropriate level of knowledge and competence in relation to the offering or granting of credit, the wording of Article 3 j) should be amended as follows to restrict its scope:

"Staff" means any employees of the creditor or credit intermediary having contacts with consumers and *who perform the activities covered by Article 3 d) and e) of this Directive*.

4. Competent authorities (Article 4)

Under national law, it is not always the banking supervisory authority which is responsible for the monitoring and authorisation of intermediaries' activities; in some cases, it may be the trading standards authorities. In

addition to the monitoring of these contractually tied credit intermediaries, the building societies are subject to monitoring by the banking supervisory authorities. The designation of the competent authorities in Article 4 (1), second sentence of the proposal for a Directive should therefore be amended as follows:

> "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) *or, as the authority responsible for credit intermediaries within the Member State, ensure comparable standards of supervision."*

5. Conduct of business obligations (Article 5)

The requirement in Article 5 that the creditor or the credit intermediary acts honestly, fairly and professionally in accordance with the best interests of the consumer is justified and reasonable. However, these terms are imprecise and are therefore unlikely to be justiciable.

We therefore propose that the provisions governing the conduct of business obligations be included in the recitals rather than in the main body of the Directive.

6. Standard information to be included in advertising (Article 8)

a. Advertising

Pursuant to Article 8, any advertising concerning credit agreements is permitted only if it includes other specific items of information about the product being advertised. In terms of its scope, this information is broadly identical with that contained in the European Standardised Information Sheet (ESIS). The requirements for such detailed information would ultimately preclude any further possibility of television and radio advertising of loan products, however. Admittedly, as with advertising in the print media, a footnote could be displayed or, in the case of radio advertising, read out, but as a rule, television advertising would not give viewers enough time to read the footnote, and in the case of radio, would exceed the length of time available for the broadcasting of the advertisement. It cannot be the task of European regulations to make TV and radio advertising of loan products impossible, however, particularly as the aim of this provision – namely to prevent misleading information being disseminated to target groups – is already adequately safeguarded by current competition law.

The Federation is therefore emphatically in favour of the information requirements for advertising being formulated in such a way that loan products can continue to be advertised on television and radio.

b. Disclosure of the total amount payable

Article 8 (2) h) requires the standard information to be included in advertising to state the total amount payable by the consumer. In contrast with consumer credit, however, the requirement for the standard information to specify the total amount payable does not apply to credit agreements relating to residential property, as these agreements involve sums far higher than consumer credit agreements. Nor was the provision of this information envisaged by the Commission in its Recommendation 2001/193/EC of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans.

We therefore call for Article 8 (2) h), paragraph 2 of the ESIS and the reference to the warning in Article 8 (2) i) to be amended so that the total amount payable by the consumer no longer forms part of the standard information to be included in advertising.

7. Pre-contractual information (Article 9 and Annex II)

Article 9 (2), sub-paragraph 1 contains a requirement for individual information to be provided by means of the European Standardised Information Sheet ('ESIS'). Contrary to what is envisaged in the proposed Directive as it stands, the content of the new ESIS for credit agreements relating to residential property should be closely aligned with the existing ESIS, which has already proved its worth, and should only deviate from it where there are good grounds for doing so.

In particular, the ESIS model appended to the proposed Directive includes a reference to an "illustrative repayment table". We presume that this means the specific repayment table for the consumer. Given the long durations of loans for real estate, a detailed interest and repayment table in the form envisaged here will greatly increase the size of the Information Sheets. We take the view that it is sufficient for an interest and repayment table to be provided as a separate document on a one-off basis, with the consumer having the right to obtain an interest and repayment table from the creditor at any time.

We therefore propose that No. 6 of the ESIS model (Illustrative repayment table) be deleted, and that the following be inserted in Article 9 (2), second sub-paragraph:

> *Member States shall also ensure that the creditor or, where applicable, the credit intermediary shall provide the consumer with an interest and repayment table in a timely manner prior to the consumer's submission of his binding acceptance of the contract and upon request at any time during the existence of the contractual relationship.*

8. Introduction of a "reflection period" (Article 9 (2))

Pursuant to Article 9 (2), second sub-paragraph, following the provision of pre-contractual information by means of the ESIS, the credit agreement cannot be concluded until the consumer has had sufficient time to compare the offers. This introduces a "reflection period" of unspecified duration for the consumer, which creates significant practical problems, not only for the credit institutions but first and foremost for the consumer himself. The main arguments against the introduction of this "reflection period" are as follows:

- The legislation in place in most Member States establishes a 14-day right of withdrawal from mortgage credit agreements for consumers. This provides sufficient protection for consumers, so there is no need for an additional "reflection period" after the creditor has approved the loan. Furthermore, most creditors undertake to guarantee the approved credit terms for several days, so that the consumer has sufficient opportunity to reflect and, if necessary, to compare competing offers without undue time pressure.

- Furthermore, a mandatory "reflection period" also conflicts with consumers' interests. Consumers who have found a suitable property generally need their credit application to be approved quickly, so that they can conclude the purchase contract. The Federation's members take account of consumers' needs in this respect and have made considerable efforts, especially of late, to speed up the credit approval process and to approve customers' credit applications as quickly as possible, assuming that they are creditworthy.

– The theoretical option for the consumer to dispense with the reflection period does not make the process easier for creditors. On the contrary, if anything, it is a further bureaucratic complication in the credit approval process, for in this instance, the creditor must take precautionary measures to ensure that the consumer's decision is correctly documented and constitutes authentic and valid evidence of their wishes.

We therefore call for the introduction of a "reflection period" to be dropped and for Article 9 (2), second sub-paragraph to be deleted.

9. Information requirements concerning credit intermediaries (Article 10)

As also provided for by the Insurance Mediation Directive, Article 10 of the proposal requires credit intermediaries to disclose information to consumers prior to the performance of their services, including the following:

- their status as a credit intermediary (i.e. whether they are tied or not),
- any business relationships they may have with the creditor,
- the fees (commissions), where applicable, payable by the consumer to the credit intermediary for his services (and 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),
- complaints procedures.

Article 10 (2) explicitly states that 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.

We take a positive view of the European Commission's acceptance of the demand for a distinction to be made between tied and non-tied intermediaries in respect of the disclosure of information about commissions, given that a conflict of interest in the intermediation of a credit agreement can only arise in relation to a credit intermediary (broker) who is not tied.

10. Adequate explanations (Article 11)

In Article 11, the proposal for a Directive – like the Consumer Credit Directive – requires Member States to 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. This should include an explanation of the information and terms included in the information.

We call for these provisions on the requirement for adequate explanations to be coherent with the wording of Article 5 (6) of the Consumer Credit Directive.

Divergent provisions concerning the requirement to provide explanations, according to whether the agreement is secured by a mortgage or by another form of security, are unhelpful. Such divergent

provisions would fragment the law and make its application more difficult. Furthermore, there are no specific reasons why pre-contractual information for consumer credit, on the one hand, and credit agreements relating to residential property, on the other, should be treated differently simply because one relates to a mortgage security.

We welcome the fact that a general suitability check, announced by the European Commission in the consultation documents, is not envisaged in this draft.

11. Annual percentage rate of charge (Article 12)

The provisions on the calculation of the annual percentage rate of charge in Article 12 and Annex I of the proposed Directive are based on the relevant provisions of the Consumer Credit Directive applicable to mortgage credit and will therefore lead to consistent outcomes. What is problematical, however, is the requirement for the collateral submission costs, such as costs of land register entries, to be included in the calculation of the annual percentage rate of charge. This not only creates difficulties in the calculation process, but also greatly limits the comparability of the annual percentage rate of charge of various offers. This is because the collateral submission costs crucially depend on the borrower's personal and financial circumstances (he may be extending a charge on land, for example, or using one property to secure several loans) and on the location of the property serving as collateral. Furthermore, the charges of registering a mortgage in Germany differ from those applicable in France, for example, but credit institutions will always base their annual percentage rate of charge on the costs applicable in their home country, which means that a consumer who wishes to compare cross-border offers may risk drawing the wrong conclusions from the figures provided. Article 12 therefore conflicts with the Commission's aim of promoting cross-border comparison of lending terms.

We therefore call for the wording of Article 3 k) to be amended as follows, in order to make it clear that the collateral submission costs are not included in the calculation of the annual percentage rate of charge:

> "'Total cost of the credit to the consumer' means all the costs, including interest, commissions, taxes and any other kind of fees – *excluding collateral submission costs relating either to a mortgage or another comparable security commonly used in a Member State on residential immovable property* – which the consumer is required to pay in connection with the credit agreement and which are known to the creditor; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;"

As regards the method for the calculation of the annual percentage rate of charge, we would also draw attention to the following:

The references to the calculation of the annual percentage rate of charge in Annex I of the German-language version state the annual percentage rate to **only one** decimal place. For the reasons also stated in respect of the Consumer Credit Directive (Annex I, I d), we regard the statement of the annual percentage rate of charge to **two decimal places** to be useful and necessary. A subsequent correction to the German version of the Consumer Credit Directive was made for this reason.

12. Obligation to assess the creditworthiness of the consumer and product suitability (Article 14)

The obligation for creditors to conduct a thorough assessment of the consumer's creditworthiness, possibly leading to the refusal of credit, has been standard practice in the EU Member States and hence for Federation members for a very long time, albeit with national variations on points of detail. Rules at EU level will not achieve any substantive improvements for consumers but would, however, impose considerable, and costly, practical burdens on credit institutions.

Even more worrying is the introduction of a "suitability check" under Article 14 (4); this requires creditors to identify products that may be suitable for the consumer given his needs, financial situation and personal circumstances. Transposing this type of EU provision into clear national legislation is likely to be almost impossible, as the suitability of a product ultimately depends to a large extent on the subjective views and motives of the consumer himself. It is not only unreasonable to expect credit institutions to analyse these motives; it would also shift the responsibility for the credit decision from the consumer to the lender. This would inevitably prompt the lending sector to protect itself from ensuing compensation claims by introducing relevant contractual provisions, which would not only make the lending process far more bureaucratic, quite unnecessarily; it would also make the credit institutions far more reluctant to lend to specific client groups.

The Federation is therefore firmly opposed to the introduction of a suitability check.

We also object to the provision in recital 27 that could impose an indirect obligation on creditors in future to check consumers' creditworthiness on a regular and ongoing basis over the lifetime of the loan.

13. Advice (Article 17)

We welcome the fact that the proposal explicitly differentiates between the provision of "adequate explanations" (Article 11) about a product and "advice" (Article. 17). Under Article 17 (2) a), however, creditors and credit intermediaries must 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. This wording could be understood to mean that "advice" should not culminate solely in the recommendation of a product from the creditor's/intermediary's own portfolio but would be incomplete without the inclusion of competitors' products as well. This could be required of a financial advisor but not of a provider whose customers only expect him to advise on his own product portfolio and who generally do not expect to be passed on to a competitor.

We therefore call for the wording of Article 17 (2) a) to be clarified to make it clear that creditors/credit intermediaries are not obliged to offer or intermediate competitors' products as part of their provision of advice.

14. Early repayment (Article 18)

Contrary to the Commission's original statements, Article 18 now includes provisions on early repayment of fixed interest loans. They grant the consumer a statutory or contractual right to discharge his obligations under a credit agreement prior to the expiry of that agreement (Article 18 (1)). In this instance, the creditor should be entitled to fair and objectively justified compensation (Article 18 (2), third sentence). This is, however, subject to the condition that the exercise of the right of early repayment is not made excessively difficult or onerous for the consumer (Article 18 (2), second sub-paragraph). For real estate financiers, however, this creates an unacceptable level of legal uncertainty, for only the courts will be able to decide the level at which compensation for early repayment makes the exercise of the right of early repayment excessively difficult or onerous for the consumer. Ultimately, this provision could lead in practice to a cap being imposed on the compensation for early repayment, so that in future, the risk of early termination must be considered when calculating the terms of the loan. This is not only very likely to lead to a general increase in the interest rates applicable to fixed-interest loans; it could even jeopardise the culture of fixed-interest loans which is well-established in a number of Member States.

Furthermore, Article 18 (2), third sentence states merely that 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. This wording could be understood to mean that the creditor is only entitled to processing fees associated with the termination of the credit agreement, not to compensation for the loss incurred as a result of the early repayment of the funds, which may now have to be reinvested under less favourable terms and conditions than those agreed with the original borrower. Article 18 (2), third sentence should therefore make it clear that the creditor is entitled to full compensation for the **loss** incurred as a result of early termination, including the **loss of interest**, i.e. compensation under civil law for damage resulting from the borrower's non-compliance with the terms of the contract. This must be made clear in the wording of Article 18 (2), third sentence.

We therefore call for

- the deletion of Article 18 (2), second sub-paragraph, and
- clarification in Article 18 (2), third sentence that the creditor is entitled to full compensation for the **loss** incurred as a result of early termination, including the **loss of interest**.

15. Alternative dispute settlement (Article 25)

Under Article 25 of the proposal, Member States shall ensure that appropriate and effective complaints and redress procedures are established for the out-of-court settlement of disputes between creditors / credit intermediaries and consumers.

For disputes between creditors and consumers, recognised dispute resolution mechanisms for the credit industry already exist at national level, which have proved their worth. In cases where a credit intermediary acts as the agent of a creditor, these well-established procedures for out-of-court dispute settlement still apply. We therefore do not consider that there is any requirement for separate inclusion of credit intermediaries in the existing procedures.

16. Transposition (Article 30)

Article 30 states that transposition shall take place no later than two years after this Directive's entry into force. In light of experience with the transposition of the Consumer Credit Directive last year, we would make an urgent plea for this transposition period to be extended to four years as the requisite amendment of legislation and implementation by the individual credit institutions will take a considerable length of time and require major personnel input.