



**To the Members of the  
European Federation of Building Societies**

Brussels, 8 June 2012

**Proposal for a Directive on credit agreements relating to residential property:**

**Vote in the Committee on Economic and Monetary Affairs (ECON) of the European Parliament**

Dear Member,

On 7 June 2012, the ECON Committee voted on the draft report on Credit Agreements relating to Residential Property. The vote had been postponed several times on account of the difficulty in finding a compromise between the rapporteur and the shadow rapporteurs. Under the influence of the shadow rapporteurs and the vote in the Committee on the Internal Market and Consumer Protection (IMCO), on which the EFBS had informed its members by circular of 30 January 2012, key improvements have occurred.

The results of the vote in the ECON Committee were as follows:

In principle, it can be summed up positively that the talks still being conducted until recently with the MEPs and the many EFBS proposals have contributed to the result that the original scheme of the Spanish rapporteur to create a mortgage register and mortgage key identifier, as well as the ideas on the flexibility of the mortgage credit agreement and the obligation to obtain a property valuation by an external independent appraiser, did not obtain a majority.

**Scope**

The Committee voted to extend the exemptions from the scope. So, like the Consumer Credit Directive, credit granted by employers, development credits or loans which are the outcome of a court settlement are excluded from the scope in Article 2(2). It is particularly positive from the point of view of the Bausparkassen that, according to the wording of the vote on Article 2(1)(c), the exemption for renovation loans not secured by mortgage was retained. The Member States which apply the Consumer Credit Directive for such loans receive a transitional period of five years from the entry into force of the Directive to convert to the provisions of the Mortgage Credit Directive. To accommodate the United Kingdom in particular, Member States were given the possibility to transpose partial exemptions from the Directive into national law with regard to loans for non-owner-occupied residential property.

## **Financial education**

A new inclusion was Article 4a on financial education, according to which the Member States, together with stakeholders, have to devote more attention to financial education and the creation of information brochures for property buyers.

## **General rules on the conduct of business**

In accordance with our proposal, the general rules on the conduct of business in Article 5 have been amended so that creditors and credit intermediaries do not always have to act in the best interests of the consumer, but merely have to consider the interests of the consumer. In Article 5(2b), it is now also provided that Member States must ensure that the remuneration structure for creditors' staff and for credit intermediaries can have no impact on their ability to give objective advice or an objective recommendation. This also includes the specification of concrete sales targets.

## **Minimum qualification requirements**

The ECON Committee amended the original Commission proposal to the effect that creditors' staff and intermediaries must possess relevant qualifications and knowledge about the products marketed (Article 6(1)). The details are set out in a new Annex III, which regulates in outline the content of the training requirements. The concrete specifications are to be left to the Member States. Another innovation is that according to Article 6(2b), the relevant persons are to be required to undertake further training on a regular basis to brush up their knowledge and competence.

## **Product tying**

On the intervention of the EFBS, the regulations on the prohibition of product tying in Article 8a could again be watered down. Now the tying of products to the mortgage credit agreement is prohibited. However, Member States may permit the link with a current account, insurance or a savings product if these products serve to repay the credit in whole or in part. The definition of product tying is that the tied products are not offered separately.

## **Pre-contractual information obligations and reflection period**

The EFBS also successfully advocated that the subjective period of reflection prior to concluding the contract, proposed by the Commission, should be amended. Now, according to Article 9a, the creditor must provide the consumer with the pre-contractual information sheet in good time before the conclusion of the agreement. In this way, the regulations are adjusted to the Consumer Credit Directive. An amendment was rejected, which had the massive support of the British, which would have allowed Member States the possibility to provide information sheets other than the ESIS. Following the ECON vote, there is now to be a standard pre-contractual information sheet Europe-wide.

With regard to the reflection period, Article 9a(3) now provides that the consumer must in any case have 14 days to compare offers. The Member States can then regulate whether

this period is granted as a 14-day pre-contractual period of reflection or as a 14-day withdrawal period following the conclusion of the contract. The pre-contractual period of reflection is to ensure that the bank's offer must remain valid for at least 14 days. Contrary to the original considerations corresponding to French law, the consumer can waive the 14-day period of reflection by accepting the agreement offer. Exercising the right of withdrawal, according to the ECON amendments, is no longer to be possible if the loan has been used for the acquisition of the property, the property was acquired or the credit agreement comes into being through an independent national agency under Member State law. This is the case in particular in Belgium, where the credit agreement is entered into before the notary.

### **Credit intermediaries**

In addition to the credit intermediaries' general information obligations concerning their status and for whom they are acting, as in the Insurance Mediation Directive, credit intermediaries who are not tied and brokers must provide information on remuneration paid by the creditor (Article 10).

### **Obligations to provide explanations**

The obligations to provide explanations on the pre-contractual information and linked transactions, provided for by the Commission in Article 11, were adapted to the wording of the Consumer Credit Directive in accordance with our proposal.

### **Annual percentage rate of charge**

From the point of view of the Bausparkassen, the clarification in recital 23 is to be welcomed that in addition to the notary fees, also the mortgage registration fees are not part of the total cost of credit and therefore do not have to be included in the annual percentage rate of charge. Moreover, the ECON Committee followed the amendments proposed by the Greens and has now agreed, pursuant to Article 12(4)(b) and (c), that in the case of variable interest agreements, the creditor must inform the consumer of the highest and lowest interest rates in the previous 20 years. In the case of foreign currency loans, it is necessary in addition – also on the proposal of the Greens – to indicate an interest rate which considers a possible depreciation of the national currency of 20% in relation to the currency of the loan.

### **Creditworthiness assessment**

The duty of the creditor to refuse the credit where the results of the creditworthiness assessment are negative, on the grounds of negative credit standing, was deleted in accordance with the proposals of the EFBS and in keeping with the IMCO Committee vote. In the duty of creditworthiness assessment still existing under Article 15(1), the borrower's expenses are to be considered and where appropriate databases consulted. Any increase in price of the property, however, is not to be considered in this respect.

Regarding the duty to inform the consumer of consultation of any relevant database, reference is made to the provisions of the Consumer Credit Directive.

## **Property valuation**

The original proposals on external property valuation were also watered down on the intervention of the EFBS. Article 14a now provides only that Member States must provide for the corresponding specifications with regard to property valuation and that the valuation can be carried out by appraisers of the creditor or external appraisers. This valuation must be documented and retained by the credit institution. The EBA will lay down corresponding supervisory standards in this respect.

## **Advice**

The compulsory carrying out of a market comparison proposed by the Commission if the creditor offers advisory services was also amended, following concrete proposals for amendments by the EFBS, so that Article 17 now stipulates that the consumer must be informed in advance whether or not advice is provided. Creditors and tied intermediaries then only have to recommend the most suitable product in their product range, whereas brokers and intermediaries who are not tied are required to examine a sufficiently large number of products available on the market (Article 17(3)(b) and (c)). If advice is provided, the result of this advice must be supplied to the consumer on a sustainable medium.

Member States are required to prohibit the concepts of 'advice', 'adviser', 'independent adviser', etc. if the broker or intermediary receives commission from the creditor (Article 17(4)). Through this, the first step has been taken at EU level towards creating fee-only financial advisers.

## **Variable-interest agreements and foreign currency loans**

The ECON Committee has drawn up a new article on variable-interest agreements and foreign currency loans (Article 18a), which entitles the consumer, under certain conditions, to change the currency. In the case of variable loans, new information obligations have been introduced in relation to the consumer. For example, the reference interest rate of the past 14 years must be available.

## **Early repayment**

In principle, in Article 18(1) the consumer is granted a right to make early repayment in whole or in part. In such cases, credit institutions may not impose any penalties, but are accorded a right to compensation. Pursuant to Article 18(3), Member States may restrict this right to make early repayment to agreements with fixed interest rates. The compensation of the creditor may not exceed the economic loss. The consumer must be informed in a transparent manner and before the conclusion of the agreement of the method used to calculate the compensation for early repayment or the corresponding amount of the compensation for early repayment. Member States are authorised in Article 18(4) to introduce or maintain corresponding restrictions of the compensation for early repayment.

## **Foreclosure**

The restrictions of liability to the lending value established by the creditor or the restriction of liability to the collateral, originally discussed, did not receive a majority in ECON. According to Article 18b(3)(a), the creditor must merely try, under the foreclosure, to obtain the best price for the property to be foreclosed upon.

Following this, the triologue negotiations between European Commission, European Council and European Parliament are now starting. In view of the similarity of the European Council and European Parliament texts, completion of the procedure in first reading is still to be expected this year.

Should you have any further questions, please do not hesitate to contact us.

Yours faithfully,



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