



Brussels, 26 September 2011

**EACB suggestions for amendments  
 to Commission's Proposal  
 for a Directive of the European Parliament and of the Council  
 on credit agreements relating to residential property  
 (COM(2010)142 final) 2011/0062(COD)**

N.B.  
 The EACB amendments are indicated as follows:  
 - All EACB amendments are indicated in the 3<sup>rd</sup> column  
 - If an amendment to a given provision has been also proposed in the ECON draft report, the EACB changes in 3<sup>rd</sup> column are marked against the ECON text in 2<sup>nd</sup> column  
 - If no ECON amendment has been proposed, the EACB changes in 3<sup>rd</sup> column are marked against the original Commission's proposal in 1<sup>st</sup> column.

**PREAMBLE**

**Amendment 1**

<b>Recital 9</b>	<b>Amendment 10</b>	
<b>Text proposed by the European Commission</b>	<b>Text proposed in ECON Draft Report</b>	<b>EACB Proposal for Amendment</b>
<p>(9) The objective of this Directive is to <b>ensure</b> 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.</p>	<p>(9) The objective of this Directive is to <b>promote responsible lending and borrowing in the context of a transparent, efficient and competitive internal market for loans related to residential immovable property, while ensuring</b> that all credits provided to consumers benefit from a high level of protection <b>and that financial stability is secured</b>. It should therefore apply to <b>all actors in the supply chain for credit, including property developers who transfer credits to consumers. It should apply to credits</b> secured by real estate, or credits which are used to purchase <b>or finance the construction of residential immovable</b> property in some Member States and to credits for the renovation of residential <b>immovable</b> 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 which lays down rules at Union</p>	<p>(9) The objective of this Directive is to <b>promote responsible lending and borrowing in the context of a transparent, efficient and competitive internal market for loans related to residential immovable property, while ensuring</b> that all credits provided to consumers benefit from a high level of protection <del>and that financial stability is secured</del>. It should therefore apply to <del>all actors in the supply chain for credit, including property developers who transfer credits to consumers. It should apply</del> credits secured by real estate, or credits which are used to purchase <del>or finance the construction of residential immovable</del> 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 which lays down rules at Union level concerning</p>

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	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.	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.
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*Justification*

*Issues related to the practices carried out by developers are unrelated to the objectives of this directive dedicated to the relationship between consumer and the creditor/credit intermediary. In addition, it appears that these provisions intend to address a type of lending specific to the Spanish market, according to which property developers can convert their commercial loan for development into individual residential mortgage loans on each unit, which are then offered to the purchasers of those units. Considering the national aspect of this issue and in line with the principle of subsidiarity, the EACB recommends that the changes proposed in ECON Amendment No 10 be deleted. The issue of financial stability is address by other directives and regulations (e.g. CRD IV, CRR I).*

**Amendment 2**

	Amendment 16 Recital 14a (new)	
<i>Text proposed by the European Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<b><i>(14a) It is also necessary to regulate some additional areas to reflect the specificity of loans relating 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 products other than current accounts or a requirement to take out a particular loan to purchase a property. It is also important to ensure that the residential immovable property is appropriately valued both before the conclusion of the credit agreement and in the event of default. Given the often long-term nature of the loans and the risks which can arise during the</i></b>	<del><b><i>(14a) It is also necessary to regulate some additional areas to reflect the specificity of loans relating 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 products other than current accounts or a requirement to take out a particular loan to purchase a property. It is also important to ensure that the residential immovable property is appropriately valued both before the conclusion of the credit agreement and in the event of default. Given the often long-term nature of the loans and the risks which can arise during the</i></b></del>



	<b>execution of the contract, it is appropriate to provide for a degree of flexibility during the life of the credit and to regulate the handling of arrears and defaults.</b>	<del><b>execution of the contract, it is appropriate to provide for a degree of flexibility during the life of the credit and to regulate the handling of arrears and defaults.</b></del>
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*Justification*

General prohibition of cross-selling and conditional sales of credit agreements relating to residential property with financial products (other than a current account) is not necessary or justified. The offering of products should be a part of the business strategy of the banks. In addition, cross-selling practices present advantages of economies of scope and scale, enable banks to offer their customers well-differentiated products and services, offer opportunities to provide additional benefits for customers, such as better, tailor-made products, "one-stop shopping" advantages, lower prices, and in case of mortgage credit, better risk management as they can help assuring a more efficient flow of information from the customer to the bank and a more complete oversight of the overall consumer's financial situation. In addition, consumers can be more certain that the combination of products is beneficial for them and leads to no difficulties resulting from incompatibility of component products. Finally, the existing EU legislation sufficiently addresses the issue of cross-selling and conditional-selling in the form of, for example, the Directive 2005/29/EC on unfair business-to-consumer commercial practices.

**Amendment 3**

	Amendment 17 Recital 14b (new)	
<i>Text proposed by the European Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<b>(14b) Furthermore, it is appropriate to distinguish those credit agreements relating to residential immovable property which may pose special risks arising either from the intrinsic features of the product or by being significantly different from market practice and hence unfamiliar to consumers or because of the economic environment. Those special risks should be appropriately disclosed to consumers and managed through additional prudential and supervisory measures, to ensure that those who take the special risks bear the potential costs.</b>	<del><b>(14b) Furthermore, it is appropriate to distinguish those credit agreements relating to residential immovable property which may pose special risks arising either from the intrinsic features of the product or by being significantly different from market practice and hence unfamiliar to consumers or because of the economic environment. Those special risks should be appropriately disclosed to consumers and managed through additional prudential and supervisory measures, to ensure that those who take the special risks bear the potential costs.</b></del>

*Justification*

The EACB does not believe that there are categories of credit agreements which are inherently 'dangerous'. Although the credit agreements may imply different levels of uncertainty which may be less appropriate for the financial profile of one particular category of borrower, they may perfectly respond to the needs of others and be appropriate to their circumstances. The 'advantages' and 'disadvantages' of different products are very much contingent upon the specific circumstances prevailing when borrowers enter into a given agreement. Finally, the notion of a special risk agreement is too vague. For example, it is not really clear how and by whom a



“deviation from standard market practice or the economic environment” could be determined. It should not be used as an excuse for introducing additional prudential measures.

#### Amendment 4

	Amendment 18	
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
	<p><b>(14c) In order to ensure traceability and allow appropriate supervision of loans related to residential immovable property, information is needed to understand the concentrations of risk across the market. Registers should therefore be designated across the Union to act as repositories of information about such loans and also about the use of such loans as collateral in financial instruments. A system of identifiers for loans secured on residential immovable property, to be known as the European Mortgage Key Identifier (EMKI), should also be established to assist market participants and supervisors in understanding and where necessary enforcing rights in relation to residential immovable property.</b></p>	<p><del>(14c) In order to ensure traceability and allow appropriate supervision of loans related to residential immovable property, information is needed to understand the concentrations of risk across the market. Registers should therefore be designated across the Union to act as repositories of information about such loans and also about the use of such loans as collateral in financial instruments. A system of identifiers for loans secured on residential immovable property, to be known as the European Mortgage Key Identifier (EMKI), should also be established to assist market participants and supervisors in understanding and where necessary enforcing rights in relation to residential immovable property.</del></p>

#### Justification

The added value of the introduction of numerous registers is not clear. At the same time, the additional red tape resulting from the set up and maintenance of such registers, as well as the reporting obligations for banks, should be considered.

#### Amendment 5

Recital 24	Amendment 27	
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
<p>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 <b>including, but not limited to, the consumer's income, regular expenditures, credit score, past credit history, ability to handle interest rate adjustments, and other</b></p>	<p>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, ability to handle interest rate adjustments, and other existing credit commitments. Member States</p>	<p>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, <b>which are likely to occur and which are known to the creditor at the time of the creditworthiness assessment.</b> including, but not limited to, the consumer's</p>



<p><b>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.</b></p>	<p>may issue <b>additional</b> 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 <b>in addition to the reference levels for such ratios which should be established to identify when stricter prudential or other supervisory measures are warranted.</b></p>	<p><del>income, regular expenditures, ability to handle interest rate adjustments, and other existing credit commitments. Member States may issue <b>additional</b> 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 <b>in addition to the reference levels for such ratios which should be established to identify when stricter prudential or other supervisory measures are warranted.</b></del></p>
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*Justification*

*Issuing guidance by Member States on the method and criteria to assess a consumer's creditworthiness stands against the concept of an individualised approach to creditworthiness which is at the very core of the co-operative banks' business model. The procedures developed and used by the co-operative banks have already proved themselves to be sound and proper. In addition, it would seem that financial stability/solvency issues would be better addressed in the context of Basel II and Basel III, and not in a directive focused on consumer protection. Finally, there is a question of the loans already granted but still outstanding; if consumers with such credits wanted to switch their loans granted under conditions different from those stipulated in the guidance (e.g. with a higher LTV ratio) such consumers would not be able to switch and would be locked in their current loans.*

**Amendment 6**

<p><i>Recital 25</i></p> <p><i>Text proposed by the European Commission</i></p>	<p><i>Amendment 28</i></p> <p><i>Text proposed in ECON Draft Report</i></p>	<p><i>EACB Proposal for Amendment</i></p>
<p>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.</p>	<p>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 <b>but in order to promote financial inclusion arbitrary or discriminatory decisions should be avoided.</b> A positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.</p>	<p><del>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 <b>but in order to promote financial inclusion arbitrary or discriminatory decisions should be avoided.</b></del> A positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.</p>

*Justification*

*Assessing creditworthiness is carried out by banks on an individualised basis. In some circumstances a responsible lending decision can be made despite the creditworthiness assessment*



which at face value is negative. There are factors which can be taken into account by the lender which are not strictly speaking elements of creditworthiness assessment, such as third party surety or collateral. Another example of a situation where the granting of the loan could be looked favourably upon despite negative creditworthiness assessment could be granting a loan for the purpose of finishing the property which is used as collateral, in order to be able to sell that property. A proposition that in every case where the outcome of the creditworthiness assessment is negative, the lender is under the obligation not to grant credit is against an individualised, case-by-case approach to the lending decisions. Following the same logic, positive creditworthiness assessment should not constitute a right to credit. A statement that "A positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit" is very important in order to avoid undue creditor's liability.

#### Amendment 7

<p style="text-align: center;"><i>Recital 27</i></p> <p style="text-align: center;"><i>Text proposed by the Commission</i></p>	<p style="text-align: center;"><i>Amendment 29</i></p> <p style="text-align: center;"><i>Text proposed in ECON Draft Report</i></p>	<p style="text-align: center;"><i>EACB Proposal for Amendment</i></p>
<p>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. <b><i>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 the consumer to avoid default.</i></b> 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,</p>	<p>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 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.</p>	<p>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. <del>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.</del> 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.</p>



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*Justification*

*Possible implications of the provision stating that “creditors should be able to consult the credit database over the lifetime of the loan” could be that if banks do not perform such consultation regularly they could become responsible for any default in payment on the consumer’s part. If, for whatever reason (unemployment, unexpected family incidents, such as divorce, etc), it becomes impossible for the consumer to meet his debt obligations under the credit agreement, banks could be held liable and this liability would practically oblige banks to consult the database on a daily basis, which would become overly burdensome for banks.*

**Amendment 8**

	Amendment 32 Recital 31a (new)	
<i>Text proposed by the European Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<p><b><i>(31a) In order to achieve the objectives of this Directive it is necessary to ensure that the performance of credit agreements and not just the formation of the agreement is sound. This requires a degree of flexibility, so as to ensure that the financial system serves the needs of consumers while preserving the indemnity of financial institutions. It is therefore appropriate, in line with the recommendations of the FSB, to provide flexibility which enables creditors and consumers to manage and reduce the risks to which they are exposed during the life of the loan, through a right to flexibility in payments, a right to convert a credit agreement back into the national currency and an appropriately calibrated right to repay loans early. It is also appropriate to provide for situations where either the creditor or consumer wishes to transfer the credit agreement, and to allow consumers to retain the credit agreement while providing different collateral provided such collateral is equivalent.</i></b></p>	<p><del><b><i>(31a) In order to achieve the objectives of this Directive it is necessary to ensure that the performance of credit agreements and not just the formation of the agreement is sound. This requires a degree of flexibility, so as to ensure that the financial system serves the needs of consumers while preserving the indemnity of financial institutions. It is therefore appropriate, in line with the recommendations of the FSB, to provide flexibility which enables creditors and consumers to manage and reduce the risks to which they are exposed during the life of the loan, through a right to flexibility in payments, a right to convert a credit agreement back into the national currency and an appropriately calibrated right to repay loans early. It is also appropriate to provide for situations where either the creditor or consumer wishes to transfer the credit agreement, and to allow consumers to retain the credit agreement while providing different collateral provided such collateral is equivalent.</i></b></del></p>



Justification

These measures should not become statutory rights. They should remain contractual possibilities.

**Amendment 9**

	Amendment 35 Recital 32b (new)	
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
	<p><b>(32b) The work commissioned by the G20 in response to the crisis has demonstrated that problems can arise where residential immovable property is inappropriately valued and where the role of the property in providing collateral for a loan or financial instrument is unclear. Such problems can have implications for individual consumers, financial stability and the wider economy. Measures are therefore needed to ensure that valuations are provided by competent appraisers in line with appropriate valuation standards, and to ensure that the connection between a credit agreement and the residential immovable property and any other financial instrument for which it provides collateral is registered and can be traced using a standardised EMKI.</b></p>	<p><del>(32b) The work commissioned by the G20 in response to the crisis has demonstrated that problems can arise where residential immovable property is inappropriately valued and where the role of the property in providing collateral for a loan or financial instrument is unclear. Such problems can have implications for individual consumers, financial stability and the wider economy. Measures are therefore needed to ensure that valuations are provided by competent appraisers in line with appropriate valuation standards, and to ensure that the connection between a credit agreement and the residential immovable property and any other financial instrument for which it provides collateral is registered and can be traced using a standardised EMKI.</del></p>

Justification

Provisions concerning property valuations are unrelated to the objectives of this directive dedicated to the relationship between the consumer and the creditor/credit intermediary. The added value of the introduction of EMKI register is not clear. It is worth noting that this register would not reflect the reality of some national credit markets (e.g. those mainly focused on guaranteed loans with no mortgage). At the same time, the additional red tape resulting from the set up and maintenance of such registers, as well as the reporting obligations for banks would be disproportionate to the expected benefits. The creation of EMKI would require harmonisation of mortgage registers and land registry across the EU.

**Amendment 10**

	Amendment 36 Recital 32c (new)	
Text proposed by the Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment





	<p><i>(32c) Experience has shown that standards are needed to enable the effective identification and management of financial risk arising from loans related to residential immovable property. Those standards need to provide parameters to identify where lending is high risk and ensure that measures are in place, including those arising from special risk credit agreements, to reduce or manage those risks on a market wide or firm-specific basis. Such standards need to take account of the wider economic context, including the structure of the market for residential immovable property, and so it is appropriate that they are determined by the local competent authorities and applied consistently regardless of the location where the creditor provides its services. EBA should therefore have a role in resolving any dispute between competent authorities in different Member States about the action needed to resolve problems that arise. Competent authorities also need to understand the policy and procedures in place in firms to determine whether creditors and credit intermediaries have the necessary processes in place to comply with this Directive. Given the potentially important role played by credit registers in building an internal market and in ensuring adequate assessment of creditworthiness it is also appropriate that EBA should contribute to the supervision of such registers where they operate cross-border.</i></p>	<p><del><i>(32e) Experience has shown that standards are needed to enable the effective identification and management of financial risk arising from loans related to residential immovable property. Those standards need to provide parameters to identify where lending is high risk and ensure that measures are in place, including those arising from special risk credit agreements, to reduce or manage those risks on a market wide or firm-specific basis. Such standards need to take account of the wider economic context, including the structure of the market for residential immovable property, and so it is appropriate that they are determined by the local competent authorities and applied consistently regardless of the location where the creditor provides its services. EBA should therefore have a role in resolving any dispute between competent authorities in different Member States about the action needed to resolve problems that arise. Competent authorities also need to understand the policy and procedures in place in firms to determine whether creditors and credit intermediaries have the necessary processes in place to comply with this Directive. Given the potentially important role played by credit registers in building an internal market and in ensuring adequate assessment of creditworthiness it is also appropriate that EBA should contribute to the supervision of such registers where they operate cross-border.</i></del></p>
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Justification

There should be no mix between specific prudential requirements and consumer protection in this proposed directive. Such a mix could, in particular, cause mismatches between this directive (the main objective of which is consumer protection), and the provisions of other directives and regulations which focus on prudential matters, such as the Capital Requirements Directive (CRD IV) and the proposed Capital Requirements Regulation (CRR I). Hence, the EACB objects supervisory provisions within this directive.

**Amendment 11**

Recital 39	Amendment 41	EACB Proposal for Amendment
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
<p>(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 <b>Commission should be empowered</b> to adopt <b>delegated acts</b> in accordance with Article 290 of the Treaty on the Functioning of the European Union. In particular, <b>the Commission should be empowered to adopt delegated acts</b> to specify the details concerning the professional requirements applicable to creditors' staff <b>and</b> credit intermediaries, <b>the criteria used for assessing the creditworthiness of the consumer and in ensuring that credit products are not unsuitable for the consumer, and</b> further harmonisation of key terms such as 'default' the registration criteria and data processing conditions to be applied to credit databases.</p>	<p>(39) In order to <b>ensure consistent harmonisation and</b> 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 <b>power</b> to adopt acts in accordance with Article 290 TFEU <b>should be delegated to the Commission</b>, in particular to specify the details concerning the professional requirements applicable to creditors' staff, credit intermediaries and <b>valuers</b>, further harmonisation of key terms such as 'default', the registration criteria and data processing conditions to be applied to credit databases, <b>the characteristics of the EMKI and the procedure for assigning it, common principles for valuation standards and for defining independence, and the avoidance and management of conflicts of interest in valuation of residential immovable property. 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</b></p>	<p><del>(39) In order to <b>ensure consistent harmonisation and</b> 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 <b>power</b> to adopt acts in accordance with Article 290 TFEU <b>should be delegated to the Commission</b>, in particular to specify the details concerning the professional requirements applicable to creditors' staff, credit intermediaries and <b>valuers</b>, further harmonisation of key terms such as 'default', the registration criteria and data processing conditions to be applied to credit databases, <b>the characteristics of the EMKI and the procedure for assigning it, common principles for valuation standards and for defining independence, and the avoidance and management of conflicts of interest in valuation of residential immovable property. 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</b></del></p>



	<b>simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.</b>	<b><del>Parliament and Council.</del></b>
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*Justification*

The EACB is opposed to the extensive use of delegated acts proposed in the directive. The EACB fails to see what type of developments in the markets, evolution of credit products or economic developments, such as inflation, would necessitate in the need for further specification at EU level of details concerning the professional requirements applicable to creditors' staff, credit intermediaries and valuers, further harmonisation of key terms such as 'default', and the registration criteria and data processing conditions to be applied to credit databases. If necessary, elements listed in the above provision should be subject to a review (review clause), following a proper round of consultation, impact assessment and with full involvement of relevant stakeholders. In addition, Art 290 TFEU provides that 'a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power'.

**Amendment 12**

	Amendment 43 Recital 40a (new)	
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
	<b>(40a) In order to ensure the consistent harmonisation of the creditworthiness assessment, the Commission should also be empowered to adopt regulatory technical standards to further specify assumptions about the repayment amount, net income and repayment strategy to be used in the creditworthiness assessment and the conditions for collateral to be considered as equivalent for the purposes of portability.</b>	<del><b>(40a) In order to ensure the consistent harmonisation of the creditworthiness assessment, the Commission should also be empowered to adopt regulatory technical standards to further specify assumptions about the repayment amount, net income and repayment strategy to be used in the creditworthiness assessment and the conditions for collateral to be considered as equivalent for the purposes of portability.</b></del>

*Justification*

The EACB considers the proposals as too far reaching. Prescribing those assumptions in such level of detail in pan European legislation would mean a standardisation of the mortgage credit market leaving little or no room to take a personalised approach towards consumers and impairing competition. Like in the case of delegated acts, the EACB is against the possibility of introducing new/amended provisions unilaterally by the European Commission, without proper consultation with relevant stakeholders. If nevertheless it was decided to regulate the , elements listed in the above provision, it should be done in a legislative act, at either EU or national level, following a proper round of consultation and impact assessment, or be subject to a review clause. The EACB is opposed to the provisions on portability, which should remain a contractual option rather than a statutory right.



## CHAPTER I

### Amendment 13

<i>Article 1</i>	<i>Amendment 48</i>	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
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.	<b>This</b> Directive <b>lays</b> 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 <b>for associated</b> prudential and supervisory requirements.	<del><b>This</b></del> <b>The purpose</b> of this Directive <del><b>lays is to lay</b></del> down a framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning credit agreements <b>concluded with consumers</b> relating to residential immovable property for consumers and <del><b>for associated</b></del> <b>concerning certain aspects of the</b> prudential and supervisory requirements <b>for untied credit intermediaries</b>

#### *Justification*

*It should be clear that the proposed Directive applies only to mortgage credit agreements actually **concluded with consumers** (as opposed to simply any credit agreements for residential immovable property for consumers). The objective of this Commission proposal is to regulate consumer protection elements in the mortgage granting process, and provide prudential provisions for credit intermediaries, currently not regulated at EU level. However, there should be no mix between specific prudential requirements for creditors, who are already subject to extensive directives and regulations which focus on prudential matters, such as the Capital Requirements Directive (CRD IV) and the proposed Capital Requirements Regulation (CRR I). Hence, the EACB objects supervisory provisions for creditors within this directive. Otherwise, the original text proposed in the draft Directive seems more suitable than the text proposed in the ECON Draft report.*

### Amendment 14

<i>Article 2 – paragraph 1</i>		
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
1. This Directive shall apply to the following credit agreements:		1. This Directive shall apply to the following credit agreements <b>as defined in Article 1:</b>

#### *Justification*

*It should be clear that that the proposed Directive applies only to mortgage credit agreements concluded with consumers.*

### Amendment 15

<i>Article 3 – subparagraph (f)</i>		
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
'Tied credit intermediary' means any credit intermediary who acts on behalf of and under the full responsibility of		'Tied credit intermediary' means any credit intermediary who acts on behalf of and under the full responsibility of



only one creditor or one group.		only one creditor, <b>financial institution</b> or one group.
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*Justification*

*It is frequently the case for co-operative banks that a credit intermediary may be tied to one bank (Bank 'A'; e.g. a special product provider within the co-operative banking group) and act under full responsibility of that bank, and yet, offer credit provided by a different bank (Bank 'B', e.g. a local co-operative bank, acting as a creditor). This could be possible because Bank 'A' and Bank 'B' (i.e. the creditor) belong to the same co-operative banking group which, however, does not constitute a 'group' in the meaning of Art 3(g) of the proposed Directive, because a co-operative group is not required to produce 'consolidated accounts'. Although such intermediaries are indeed tied to only one bank (Bank 'A'), they would not be covered by the definition of 'tied credit intermediary' in its present form, as in cases such as the one explained above, they would act on behalf of a creditor (Bank 'B') which is not the bank to which they are tied. The creditor would not (in the meaning of the proposed Directive) belong to the same group as the bank to which the intermediary is tied.*

**Amendment 16**

	Amendment 65 Article 3- Point r b (new)	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<b>(rb) 'Special risk credit agreements' on residential immovable property are those that, due to their intrinsic product features, deviation from standard market practice or the economic environment pose specific risks to creditors or consumers in comparison to other alternative credit agreements.</b>	<del><b>(rb) 'Special risk credit agreements' on residential immovable property are those that, due to their intrinsic product features, deviation from standard market practice or the economic environment pose specific risks to creditors or consumers in comparison to other alternative credit agreements.</b></del>

*Justification*

*The notion of a special risk agreement is too vague. For example, it is not really clear how and by whom a "deviation from standard market practice or the economic environment" could be determined. It should not be used as an excuse for introducing additional prudential measures*

**Amendment 17**

	Amendment 67 Article 3 – point r d (new)	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<b>(rd) '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.</b>	<del><b>(rd) '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.</b></del>



#### Justification

Provisions concerning property valuations are unrelated to the objectives of this directive dedicated to the relationship between consumer and the creditor/credit intermediary. While some EU markets are heavily mortgage-based, in others guaranteed home loans not secured by a mortgage prevail. Those differences should be taken into account and property valuation issues, in our view, should not be an integral part of the loan granting process.

#### Amendment 18

Text proposed by the Commission	Text proposed in ECON Draft Report	Article 3 subparagraph (t)(new) EACB Proposal for Amendment
		<b>(t) European Standardised Information Sheet ('ESIS') means the form set out in Annex II of this Directive, or as set out in Annex II of the Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements relating for consumers.</b>

#### Justification

The choice of the ESIS form<sup>1</sup>, as a basis for the pre-contractual information sheet enclosed in Annex II of the proposed Directive seems a logical choice, considering that it has already been extensively tested with consumers and assessed positively. However, it should be born in mind that the situation in different Member States is very different, and that the differences result mostly from the CCD implementation. A number of Member States apply the ESIS to all mortgage credit agreements. In other Member States special information sheets (linked to the CCD implementation) are used. Finally, there are Member States where the information sheet envisaged in the CCD (i.e. SECCI), has been applied to mortgages. It should be born in mind that in this last group of countries in particular, ESIS-based pre-contractual information would mean big changes – reorganising IT systems and the necessary consulting. Doing all this for the second time in a very short space of time (i.e. shortly after the implementation of the CCD) would be burdensome and costly, and could lead to considerable confusion on the side of both banks and consumers. In order to avoid excessive administrative burden of re-adjusting the forms currently in use as well as consumer confusion, the information sheet for mortgage credit should be modelled on the forms currently in use in the different Member States, which consumers are already familiar with.

#### Amendment 19

Text proposed by the Commission	Amendment 70 Text proposed in ECON Draft Report	EACB Proposal for Amendment

<sup>1</sup> Created by the industry in 2001 in its 'Code of Conduct on Home Loans' agreed between the banking industry, the European Commission and consumer groups and endorsed by the Commission in its Recommendation C(2001)477 of 1 March 2001



	<p><b>1a. Member States shall designate competent authorities empowered to monitor cases in which a developer has taken a credit in order to build a residential immovable property, and, before transferring the property to the consumer, requires or receives from the buyer instalments in order to repay that credit or part thereof.</b></p>	<p><del>1a. Member States shall designate competent authorities empowered to monitor cases in which a developer has taken a credit in order to build a residential immovable property, and, before transferring the property to the consumer, requires or receives from the buyer instalments in order to repay that credit or part thereof.</del></p>
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*Justification*

Provisions concerning developers should not be included in the directive dedicated to the relationship between consumer and the creditor/credit intermediary. In addition, it appears that these provisions intend to address a type of lending specific to the Spanish market, according to which property developers can convert their commercial loan for development into individual residential mortgage loans on each unit, which are then offered to the purchasers of those units. Considering the national aspect of this issue and in line with the principle of subsidiarity, the EACB recommends that these amendments be deleted.

**CHAPTER II**

**Amendment 20**

<p>Article 5 <i>Text proposed by the Commission</i></p>	<p>Amendments 73-75 <i>Text proposed in ECON Draft Report</i></p>	<p>EACB Proposal for Amendment</p>
<p>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 <b>in accordance with the best interests of the consumer.</b></p> <p>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.</p>	<p>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. <b>When offering their products or implementing the contract the creditor or credit intermediaries shall act</b> in the best interests of the consumer.</p> <p>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 <b>and the manner in which both creditors and credit intermediaries may be remunerated by the sale of ancillary services</b> do not impede compliance with the obligation to act in accordance</p>	<p>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. <del>When offering their products or implementing the contract the creditor or credit intermediaries shall act</del> in the best interests of the consumer.</p> <p>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 <del>and the manner in which both creditors and credit intermediaries may be remunerated by the sale of ancillary services</del> do not impede compliance with the obligation to act <b>honestly, fairly and professionally</b> in</p>



	<p>with the best interests of the consumer, as referred to in paragraph 1.</p> <p><b>2a. Member States shall ensure that the remuneration of creditors' staff responsible for the assessment of the creditworthiness or for the provision of advice is not linked to individual product results or sales targets.</b></p>	<p>accordance with the best interests of the consumer, as referred to in paragraph 1.</p> <p><del>2a. Member States shall ensure that the remuneration of creditors' staff responsible for the assessment of the creditworthiness or for the provision of advice is not linked to individual product results or sales targets.</del></p>
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#### Justification

While it is logical that a 'recommendation of the most suitable agreements for the consumer's needs, financial situation and personal circumstances' is a part of the 'advice' (separate service as defined in Art 17), it is not logical to include a requirement for the lender/tied credit intermediary to 'act (...) in accordance with the best interest of the consumer'. This requirement is ill-defined, impractical, disempowering towards consumers, for which there is no justification, and which would impose unlimited and incalculable liability for creditors. In addition, the obligation to act 'in the best interest of the consumer' could be perhaps logical in case of independent intermediaries, but it should be made clear that co-operative banks with their specific business model based on the ownership of their members, always act for the benefit of all their members/clients. The interest of one client should not be put before the interest of other clients, as is already reflected in Article 19 of the Directive 2004/39/EC (MiFID), which states that "when providing investment services and/or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients".

Prohibitions on a link between the assessment of creditworthiness or the provision of advice and remuneration and sales targets are only meaningful for untied credit intermediaries (brokers) who can work for and provide the products of a number of different lenders, and who may therefore be incentivised to offer inappropriate products based solely on the level of commission they receive.

#### Amendment 21

Article 6 – Paragraph 4 Text proposed by the Commission	Text Proposed in ECON Draft Report	EACB Proposal for Amendment
<p><b>Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28,</b> to specify the requirements provided in paragraph 1 and 2 of this Article, and in particular, the necessary requirements for appropriate knowledge and competence.</p>	<p><b>The Commission shall be empowered to adopt delegated acts</b> in accordance with Article 26, to specify the requirements provided in paragraph 1 and 2 of this Article, and in particular, the necessary requirements for appropriate knowledge and competence <b>appropriate to the function and the relevant market.</b></p>	<p><del>The Commission shall be empowered to adopt delegated acts</del> in accordance with Article 26, to specify the requirements provided in paragraph 1 and 2 of this Article, and in particular, the necessary requirements for appropriate knowledge and competence <del>appropriate to the function and the relevant market.</del></p>

#### Justification

The issue of education and qualifications remains in the domain of the Member States, and should not be regulated by the Commission's delegated acts. Art 290 TFEU provides that 'a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power'. In addition, in case of delegated acts there is no proper consultation of relevant stakeholders. Finally, the division of competences between the Member States under Article 4 Paragraphs 2 and 3, and the Commission under Article 4 Paragraph 4 is unclear.





## CHAPTER III

### Amendment 22

Article 8 – paragraph 2 – Subparagraph (i)		
Text proposed by the Commission	Amendment in ECON Draft Report	EACB Proposal for Amendment
<b>(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.</b>		<b>Deleted</b>

#### Justification

Advertising is normally intended merely to establish a first contact with the potential creditor. A long list of information elements to be included in the advertisement would render advertisement on radio and TV very difficult, if not impossible. An excessive warning at as an early stage as advertising is unjustified, given the true default and foreclosure rates.

### Amendment 23

	Amendment 83 Article 8 – Paragraph 2 – Subparagraph 1 – point 1 a (new)	
Text proposed by the Commission	Amendment in ECON Draft Report	EACB Proposal for Amendment
	<b>(ia) a web page or similar interface of the creditor or credit intermediary where the information referred to in this paragraph can be obtained in a clearly audible or easily legible and printable manner.</b>	<del><b>(ia) a web page or similar interface of the creditor or credit intermediary where the information referred to in this paragraph can be obtained in a clearly audible or easily legible and printable manner.</b></del>

#### Justification

It is unclear what the added value of this amendment is. With all the listed information elements available in the advertising, reference to the webpage where this information would have to be duplicated is superfluous.

### Amendment 24

	Amendment 84 Article 8 – Paragraph 2a(new)	
Text proposed by the Commission	Amendment in ECON Draft Report	EACB Proposal for Amendment



	<p><b>2a. In the case of short advertisements broadcasted on radio or TV, whose length lasts no more that 20 seconds, or published in printed newspapers or magazines with a size inferior to an eighth of a page, the complete information referred to in paragraph 2(g), (h) and (i) may be omitted as long as it includes a call to obtain further information in the webpage referred to in paragraph 2(ia).</b></p>	<p><b>2a. In the case of <del>short</del> advertisements broadcasted on radio or TV, <del>whose length lasts no more that 20 seconds,</del> or published in printed newspapers or magazines <del>with a size inferior to an eighth of a page,</del> the complete information referred to in paragraph 2(g), (h) and (i) may be omitted as long as it includes a call to obtain further information in a web page or similar interface of the creditor or credit intermediary.</b></p>
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*Justification*

The possibility to put the information on a web page should be applicable to all advertisement on radio and TV and in newspapers without restrictions.

**Amendment 25**

<p>Article 8 – Paragraph 4 Text proposed by the Commission</p>	<p>Text Proposed in ECON Draft Report</p>	<p>EACB Proposal for Amendment</p>
<p><b>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.</b></p>		<p><b>Deleted</b></p>

*Justification*

A further prescription of elements to be included in advertising should not be subject to regulation by delegated acts. In case of delegated acts there is no proper consultation of relevant stakeholders or impact assessment.

**Amendment 26**

<p>Article 9 – paragraph 1 – Subparagraph 1</p>	<p>Amendment 87</p>	
<p>Text proposed by the Commission</p>	<p>Text proposed in ECON Draft Report</p>	<p>EACB Proposal for Amendment</p>



<p><b>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.</b></p>	<p>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 <b>and, in any case, is accessible in a web page or similar interface of the creditor or credit intermediary in a clearly audible or easily legible and printable manner.</b></p>	<p><del>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 <b>and, in any case, is accessible in a web page or similar interface of the creditor or credit intermediary in a clearly audible or easily legible and printable manner.</b></del></p>
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*Justification*

*In addition to the usual three stages of providing information to consumers: specific, individualized pre-contractual information, additional pre-contractual explanations and contractual information (as outlined in the Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers), Article 9(1) of the proposed Directive also requires the provision of general information about mortgage credit. This is information duplication and Article 9(1) should be deleted. Experience shows that even the amount of information which has to be provided under the Consumer Credit Directive is often regarded – especially by consumers – as excessive. The proposed deletion would not result in any loss of information on the part of the consumer, as the borrower will still receive tailored information about the items listed in Article 9(1) as part of the pre-contractual information and additional explanations.*

**Amendment 27**

Article 9 – paragraph 1 – Subparagraph 2	Amendments 88-92	
Text proposed by the Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
<p>The general information shall include at least the following:            (a) identity and the geographical address of the creditor as well as, where applicable, the identity and geographical address of the credit intermediary involved;            (b) purposes for which the credit may be used;            (c) forms of surety;            (d) the duration of the credit agreements;            (e) descriptions of the types of credit available, with a short description of the characteristics of fixed and variable rate products, including related implications for the consumer;            (f) indication of the currency or currencies in which credits are available, including an explanation of the implications for the consumer where the credit is denominated in a foreign</p>	<p>The general information shall include at least the following:            (a) identity and the geographical address of the creditor as well as, where applicable, the identity and geographical address of the credit intermediary involved;            (b) purposes for which the credit may be used;            (c) forms of surety;            (d) the duration of the credit agreements;            (e) descriptions of the types of credit available, with a short description of the characteristics of fixed and variable rate products, including related implications for the consumer;            (f) indication of the currency or currencies in which credits are available, including an explanation of the implications for the consumer where the credit is denominated in a foreign</p>	<p><del>The general information shall include at least the following:            (a) identity and the geographical address of the creditor as well as, where applicable, the identity and geographical address of the credit intermediary involved;            (b) purposes for which the credit may be used;            (c) forms of surety;            (d) the duration of the credit agreements;            (e) descriptions of the types of credit available, with a short description of the characteristics of fixed and variable rate products, including related implications for the consumer;            (f) indication of the currency or currencies in which credits are available, including an explanation of the implications for the consumer where the credit is denominated in a foreign</del></p>



<p>currency;          (g) an indicative example of the total cost of credit for the consumer and annual percentage rate of charge;          (h) the different options available for reimbursing the credit to the creditor (including the number, frequency and amount of the regular repayment instalments);          (i) whether there is a possibility of early repayment and, where applicable, a description of the conditions attached to early repayment;          (j) whether a valuation of the property is necessary and, where applicable, by whom it should be carried out;          (k) details on how to obtain information on tax relief on credit agreement interest or other public subsidies.</p>	<p>currency;          (g) an indicative example of the total cost of credit for the consumer and annual percentage rate of charge;          (h) the different options available for reimbursing the credit to the creditor (including the number, frequency and amount of the regular repayment instalments);  <b><i>(i) a description of the conditions attached to early repayment;</i></b>  <b><i>(j) the measures required regarding the valuation of the property and any related cost to the consumer;</i></b>  <b><i>(k) details on how to obtain information on tax obligations and reliefs on credit agreement interest or other public subsidies;</i></b>  <b><i>(ka) the law applicable prior to and following conclusion of a contract;</i></b>  <b><i>(kb) a warning 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.</i></b></p>	<p>currency;  <del>(g) an indicative example of the total cost of credit for the consumer and annual percentage rate of charge;</del>  <del>(h) the different options available for reimbursing the credit to the creditor (including the number, frequency and amount of the regular repayment instalments);</del>  <del><b><i>(i) a description of the conditions attached to early repayment;</i></b></del>  <del><b><i>(j) the measures required regarding the valuation of the property and any related cost to the consumer;</i></b></del>  <del><b><i>(k) details on how to obtain information on tax obligations and reliefs on credit agreement interest or other public subsidies;</i></b></del>  <del><b><i>(ka) the law applicable prior to and following conclusion of a contract;</i></b></del>  <del><b><i>(kb) a warning 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.</i></b></del></p>
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Justification

*In addition to the usual three stages of providing information to consumers: specific, individualized pre-contractual information, additional pre-contractual explanations and contractual information (as outlined in the Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers), Article 9(1) of the proposed Directive also requires the provision of general information about mortgage credit. This is information duplication and Article 9(1) should be deleted. Experience shows that even the amount of information which has to be provided under the Consumer Credit Directive is often regarded – especially by consumers – as excessive. The proposed deletion would not result in any loss of information on the part of the consumer, as the borrower will still receive tailored information about the items listed in Article 9(1) as part of the pre-contractual information and additional explanations.*

**Amendment 28**

Article 9 – paragraph 2 – Subparagraph 2	Amendment 94	
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Text proposed by the Commission	Text proposed in ECON Draft Report	Proposal for EACB Amendment
<p>Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be accompanied by an ESIS. <b><i>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.</i></b></p>	<p>Member States shall ensure that the credit agreement cannot be concluded until the consumer has <b><i>been provided in a durable medium with an offer binding on the creditor and has a sufficient period to compare it with other offers, obtain third party advice if necessary</i></b> and assess <i>its</i> implications and take an informed decision on whether to accept <i>the</i> offer, regardless of the means of conclusion of the contract. <b><i>The period of reflection after the offer shall be no less than 14 working days and includes the time during which a right of withdrawal is granted where Member States allow the contract to be concluded before expiry of the reflection period.</i></b></p>	<p>Member States shall ensure that <b><i>when an offer binding on the creditor is provided to the consumer</i></b> <del>the credit agreement cannot be concluded until the consumer has <b><i>been provided in a durable medium with an offer binding on the creditor and has,</i></b> it shall be accompanied by an ESIS. <del><i>In such circumstances</i></del> <b><i>Member States shall ensure that the creditor and, where applicable, the credit intermediary, provides the consumer with the personalised information needed</i></b> <del>the consumer has a sufficient period time to compare it with other the offers, obtain third party advice if necessary and assess its</del> <b><i>their</i></b> implications and take an informed decision on whether to accept <del>the an offer, :</del></del></p> <ul style="list-style-type: none"> <li>- <b><i>after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 15 and</i></b></li> <li>- <b><i>before the consumer is bound by any credit agreement or offer.</i></b></li> </ul> <p><b><i>The creditor and, where applicable, the credit intermediary who has supplied the ESIS to the consumer shall be deemed to have fulfilled the requirements regarding information provision to the consumer prior to the conclusion of a distance contract as laid down in Article 3 of Directive 2002/65/EC.</i></b> <del>regardless of the means of conclusion of the contract. <b><i>The period of reflection after the offer shall be no less than 14 working days and includes the time during which a right of withdrawal is granted where Member States allow the contract to be concluded before expiry of the reflection period.</i></b></del></p>



*Justification*

*It is undisputable that the complete pre-contractual information must always be provided to the consumer before he can make a decision as to whether or not to accept the offer of the bank. The requirement to allow the consumer 'sufficient time' between receiving ESIS form and concluding the contract is however ambiguous and not necessarily beneficial for consumers, in particular if the 'sufficient time' was to be defined by reference to a specific number of days. Taking out a mortgage credit is a long-term commitment and it is not a result of snap decision on the side of consumers. Once the decision to take out mortgage credit has been taken, consumers may need quick access to funds in order to secure the purchase of a chosen property at an agreed price, without incurring any losses related to late payment or a higher interest rate on the loan. In addition, in some Member States, particularly where the application of the provisions of the Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers was extended to mortgage credit, consumers are granted a right of withdrawal from the mortgage agreement. To combine the 'sufficient time' before the conclusion of the contract, with the right of withdrawal after the conclusion of the contract would be highly impractical.*

**Amendment 29**

Article 9 – Paragraph 3		
Text proposed by the Commission	Text Proposed in ECON Draft Report	EACB Proposal for Amendment
<p><b><i>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.</i></b></p> <p><b><i>In particular, such delegated acts shall, where necessary:</i></b></p> <p><b><i>(a) amend the list of the standard information items laid down in paragraph 1 of this Article;</i></b></p> <p><b><i>(b) delete any of the information items laid down Annex II;</i></b></p> <p><b><i>(c) make additions to the list of information items laid down in Annex II;</i></b></p> <p><b><i>(d) amend the presentation of the contents of the ESIS as laid down in Annex II;</i></b></p> <p><b><i>(e) elaborate on the instructions for the completion of the ESIS as laid down in Annex II.</i></b></p>		<p><b><i>Deleted</i></b></p>

*Justification*

*Art 290 TFEU provides that 'a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power'. A prescriptive list of standard information items to be included in pre-contractual information should be considered as an essential element of the legislative act and as such should not be subject to regulation by delegated acts. It must be born in mind that any amendments to ESIS mean significant costs for*



the banks related to for example reorganising IT systems, and could be confusing for consumers if they occur too frequently. If ESIS is to become a reliable tool for comparison of offers, legal certainty must be ensured. It should also be remembered that ESIS has been developed following a lengthy process, including consumer testing. Unilateral changes introduced by the Commission, could have detrimental effects. The EACB is therefore opposed to the situation where banks are exposed to the risk of having to regularly adjusting the ESIS forms in use. The proposed directive contains a review clause (Art 31) which provides for a possibility of adjusting the ESIS following a full-fledged review of the effectiveness and appropriateness of the provisions, via a proper legislative procedure.

#### Amendment 30

Article 9 – paragraph 4	Amendment 105	
Text proposed by the Commission	Text proposed in ECON Draft Report	Proposal for EACB Amendment
<b>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.</b>	<b>deleted</b>	<b>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.</b>

#### Justification

This paragraph should not be deleted. It is imperative to leave open the possibility of adjustment of the content of advertising to suit the medium used. Moreover, Article 5 Paragraph 2 of the CCD contains a similar measure.

#### Amendment 31

Article 9 – paragraph 5	Amendment 107	
Text proposed by the Commission	Text proposed in ECON Draft Report	Proposal for EACB Amendment
Member States shall ensure that the creditor or credit intermediary, <b>upon request of the consumer</b> , 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.	Member States shall ensure that the creditor or credit intermediary provides the consumer with a <b>written</b> 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.	Member States shall ensure that the creditor or credit intermediary, <b>upon request of the consumer</b> , provides the consumer with a <b>written</b> 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

EACB supports the original Commission wording, which remains in line with the similar provision of Article 5, Paragraph 1, Subparagraph (r).



### Amendment 32

	Amendment 108 Article 9(b) (new)	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>Proposal for EACB Amendment</i>
	<p><b>Ancillary services</b></p> <p>1. Member States shall prohibit creditors or credit intermediaries from tying by making the offer of a credit agreement conditional upon the purchase of insurance or other financial products from a given provider specified by the creditor or credit intermediary except for the opening of a current account.</p> <p>2. Member States shall prohibit creditors or credit intermediaries from tying by making the offer of a credit agreement conditional upon the provision of services by appraisers, notaries, legal advisers or any other provider specified by the creditor or credit intermediary.</p>	<p><b>Ancillary services</b></p> <p><del>1. Member States shall prohibit creditors or credit intermediaries from tying by making the offer of a credit agreement conditional upon the purchase of insurance or other financial products from a given provider specified by the creditor or credit intermediary except for the opening of a current account.</del></p> <p><del>2. Member States shall prohibit creditors or credit intermediaries from tying by making the offer of a credit agreement conditional upon the provision of services by appraisers, notaries, legal advisers or any other provider specified by the creditor or credit intermediary.</del></p>

#### Justification

The existing EU legislation sufficiently addresses the issue of cross-selling and conditional-selling in the form for example of the Directive 2005/29/EC on unfair business-to-consumer commercial practices. In fact, following recent thorough analysis and rounds of consultations and studies, the European Commission did not decide to propose specific EU legislation prohibiting tying and other cross-selling practices. A thorough impact assessment of this amendment would be necessary, and on those grounds the EACB is opposed to this amendment.

### Amendment 33

<i>Article 10 – Paragraph 1 – point b</i>	Amendment 109	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>Proposal for EACB Amendment</i>





<p>(b) the register in which <b>he</b> has been included and the means for verifying <b>that he has been registered</b>;</p>	<p>(b) the <b>number of registration, the</b> register in which <b>it</b> has been included and the means for verifying <b>such a registration</b>;</p>	<p>(b) the number of registration, the register in which it has been included and the means for verifying such a registration. <b>This requirements should not apply to credit institutions as defined in Article 4 Paragraph 1 of the Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.</b></p>
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*Justification*

*The structures within the co-operative banks' groups in some Member States involve independent co-operative banks in the regions and central co-operative members as providers of group-wide special products, such as for example co-operative mortgage banks. The local co-operative banks are deemed to be 'credit intermediaries' in their relations with customers if they grant credits for which a central co-operative bank acts as a 'creditor'. As credit institutions, all co-operative banks are already subject to the Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions. The requirements to be also subject to the provisions of Chapter 9 of the proposed Directive would lead to additional administrative costs. Duplication in the area of registration, authorisation, supervision, professional requirements, etc. should be avoided.*

**Amendment 34**

<i>Article 10 – Paragraph 1 – point c</i>	<i>Amendment 110</i>	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>Proposal for EACB Amendment</i>
<p>(c) where he is acting as a tied credit intermediary he shall identify himself as such and, <b>at the consumer's request</b>, provide the names of the creditor(s) for which he is acting;</p>	<p>(c) where he is acting as a tied credit intermediary he shall identify himself as such and provide the names of the creditor(s) for which he is acting;</p>	<p>(c) where he is acting as a tied credit intermediary he shall identify himself as such and, <b>at the consumer's request</b>, provide the names of the creditor(s) for which he is acting;</p>

*Justification*

*The original Commission wording is preferred.*

**Amendment 35**

<i>Article 10 – Paragraph 2</i>	<i>Amendment 112</i>	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>Proposal for EACB Amendment</i>
<p>Credit intermediaries who are not tied shall, <b>at the consumer's request</b>, provide information on the variation in levels of commission payable by the different creditors providing the credit</p>	<p>Credit intermediaries who are not tied shall provide information on the variation in levels of commission payable by the different creditors providing the credit agreements being offered to</p>	<p>Credit intermediaries who are not tied shall, <b>at the consumer's request</b>, provide information on the variation in levels of commission payable by the different creditors providing the credit</p>



agreements being offered to the consumer. The consumer shall be informed that he has the right to <b>request</b> such information.	the consumer. The consumer shall be informed that he has the right to such information.	agreements being offered to the consumer. The consumer shall be informed that he has the right to <b>request</b> such information.
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*Justification*

*The original Commission wording is preferred. In addition, the proposed requirements concerning credit intermediaries' commissions are unclear and compliance would not always be practicable. There is no clear distinction between the requirements of Article 10 – paragraph 1 – point h, and Article 10 – Paragraph 2 of the Proposal, and there is an overlap between those two provisions. Both requirements overlap each other. In addition, it will often be impossible to provide information about the precise level of commissions as part of pre-contractual information since commission often depends on a number of very different factors which are not known at the time of offering the intermediary service.*

**Amendment 36**

<i>Article 10 – Paragraph 3</i>		
<i>Text proposed by the Commission</i>	<i>Text Proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
<b><i>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.</i></b>		<b><i>Deleted</i></b>

*Justification*

*Art 290 TFEU provides that 'a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power'. A prescriptive list of standard information items on credit intermediaries to be provided to the consumer should be considered as an essential element of the legislative act and as such should not be subject to regulation by delegated acts.*

**Amendment 37**

<i>Article 11</i>		
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
Member States shall ensure that creditors and, where applicable, credit intermediaries provide		Member States shall ensure that creditors and, where applicable, credit intermediaries provide



<p>adequate explanations to the consumer <b>on the proposed credit agreement(s) and any ancillary service(s)</b>, in order to place the consumer in a position enabling him to assess whether the proposed credit agreements <b>are</b> 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. <b>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.</b> 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.</p>		<p>adequate explanations to the consumer in order to place the consumer in a position enabling him to assess whether the proposed credit agreement <b>is</b> 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. 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.</p>
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*Justification*

*The obligation of the lenders to ‘assess the level of knowledge and experience with credit of the consumer by any means necessary (...) to determine the level of explanations to be given to the consumer and adjust such explanations accordingly’ is driven by the requirement of Art 19 of Directive 2004/39/EC on markets in financial instruments to assess client’s knowledge and experience in investment field when providing investment advice. While in the investment field it is the client (investor) who bares the risk and it is in his own interest to provide all the relevant information, this is not the case with regards to borrowers. In addition, the requirement to use ‘any means necessary’ would be completely out of proportion and is totally open-ended as to the responsibility of the lender; it also remains unclear how such an assessment could be performed by lenders (it would not be reasonable to expect that banks organise testing for their clients). The wording of Art 11 of the proposed Directive should be aligned with the wording of Art 5(6) CCD.*

**Amendment 38**

	Amendment 116	
<i>Text proposed by the</i>	<i>Text proposed in ECON Draft</i>	<i>Proposal for EACB Amendment</i>



Commission	Report	
	<b>2a. Any potential for negative amortisation shall be included in the total loan amount used in the calculation.</b>	<del><b>2a. Any potential for negative amortisation shall be included in the total loan amount used in the calculation.</b></del>

*Justification*

*This potential for negative amortisation is not known at the pre-contractual stage.*

**CHAPTER IV**

**Amendment 39**

Article 12 – Paragraph 5 Text proposed by the Commission	Text Proposed in ECON Draft Report	EACB Proposal for Amendment
<p>Powers are delegated to the Commission <b>in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to amend the formula and</b> the assumptions used to calculate the annual percentage rate of charge as set out in Annex I.</p> <p><b>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.</b></p>		<b>Deleted</b>

*Justification*

*The formula and the assumptions used to calculate the annual percentage rate of charge should not be subject to regulation by delegated acts. In case of delegated acts there is no proper consultation of relevant stakeholders. If APRC is to be a useful tool for comparison, it should be ensured that it is stable and not exposed to change at any time. In addition, regular adjustments would mean significant costs for banks. Further, Art 290 TFEU provides that 'a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power'.*

**CHAPTER V**

**Amendment 40**

Article 14 – paragraph 1 Text proposed by the European Commission	Amendment 120 Text proposed in ECON Draft Report	EACB Proposal for Amendment



<p>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, <b>based on criteria including the consumer's income, savings, debts and other financial commitments.</b> 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. <b>These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.</b></p>	<p>Member States shall ensure that, before the conclusion of the credit agreement, a thorough assessment of the consumer's creditworthiness is conducted <b>and appropriately verified</b> by the creditor <b>in order to ensure a reasonable capacity to service debt following the conclusion of the credit agreement.</b> 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. <b>Expert risk assessment shall not be replaced by quantitative parameters in automatic underwriting processes nor rely only on externally provided credit scores or on scores based only on credit history.</b></p>	<p>Member States shall ensure that, before the conclusion of the credit agreement, a thorough assessment of the consumer's creditworthiness is conducted <del>and appropriately verified</del> by the creditor <b>based on criteria such as the consumer's income, savings, debts and other financial commitments.</b> <del>in order to ensure a reasonable capacity to service debt following the conclusion of the credit agreement.</del> 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. <del>Expert risk assessment shall not be replaced by quantitative parameters in automatic underwriting processes nor rely only on externally provided credit scores or on scores based only on credit history.</del></p>
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*Justification*

*The specific criteria of creditworthiness assessment should not be prescribed in detail at EU level and individualised, personal approach to lending granting decision must be ensured. A more general regulation coupled with the general definition of creditworthiness in Art 3(o) of the proposed Directive would be a more appropriate approach. A legal obligation to assess borrowers' creditworthiness already exists at banking supervisory level. This supervisory level is fully adequate and any attempt to tackle creditworthiness within the categories of civil law would lead to an extensive, and in large part unjustified, litigation.*

*While it is not the case that creditworthiness would be assessed entirely based on automatic processes, neither of the various elements used as tools for carrying out the assessment, including credit scoring, should not be prohibited per se.*

**Amendment 41**

	<p>Amendment 121 Article 14 – Paragraph 1a(new)</p>	
<p>Text proposed by the European Commission</p>	<p>Text proposed in ECON Draft Report</p>	<p>EACB Proposal for Amendment</p>
	<p><b>1a. Member States shall</b></p>	<p><del>1a. Member States shall</del></p>



	<p>ensure that the assessment of creditworthiness shall be applied without discrimination to loans relating to residential immovable property located within their territory and shall include at least the following criteria:</p> <p>(a) the assessment shall not allow any reliance on an increase in the value of the property as a means of repaying the loan;</p> <p>(b) the assessment shall be made on the basis of the consumer's current net disposable income, taking account of social benefits, debts and other financial commitments as well as foreseeable changes due to retirement during the term of the loan; where the assessment relates to a credit agreement under which the borrower will not occupy the property and which allows the borrower to rent the property, Member States may allow creditors to take account of reasonable projected rental income in carrying out the creditworthiness assessment;</p> <p>(c) the assessment shall be based on a realistic assessment of the repayment amount which shall be sufficient to repay the debt by final maturity at the fully indexed rate assuming a fully amortising repayment schedule and of the repayment structure which shall include foreseeable changes arising from the structure of the product, an allowance for increases in adjustable rates where such increases are permitted under the credit agreement, and where applicable an allowance for the impact of negative amortization on subsequent payments.</p>	<p><del>ensure that the assessment of creditworthiness shall be applied without discrimination to loans relating to residential immovable property located within their territory and shall include at least the following criteria:</del></p> <p><del>(a) the assessment shall not allow any reliance on an increase in the value of the property as a means of repaying the loan;</del></p> <p><del>(b) the assessment shall be made on the basis of the consumer's current net disposable income, taking account of social benefits, debts and other financial commitments as well as foreseeable changes due to retirement during the term of the loan; where the assessment relates to a credit agreement under which the borrower will not occupy the property and which allows the borrower to rent the property, Member States may allow creditors to take account of reasonable projected rental income in carrying out the creditworthiness assessment;</del></p> <p><del>(c) the assessment shall be based on a realistic assessment of the repayment amount which shall be sufficient to repay the debt by final maturity at the fully indexed rate assuming a fully amortising repayment schedule and of the repayment structure which shall include foreseeable changes arising from the structure of the product, an allowance for increases in adjustable rates where such increases are permitted under the credit agreement, and where applicable an allowance for the impact of negative amortization on subsequent payments.</del></p>
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Justification

The specific criteria of creditworthiness assessment should not be imposed at EU level. A more



general regulation coupled with the general definition of creditworthiness in Art 3(o) of the proposed Directive would be a more appropriate approach. A legal obligation to assess borrowers' creditworthiness already exists at banking supervisory level. This supervisory level is fully adequate and any attempt to tackle creditworthiness within the categories of civil law would lead to an extensive, and in large part unjustified, litigation.

#### Amendment 42

	Amendment 122 Article 14 – Paragraph 1b(new)	
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
	<b>1b. Member States shall ensure that creditors establish appropriate processes to verify the information referred to in the previous paragraph. Those processes shall be reviewed at regular intervals and up-to-date records thereof shall be maintained.</b>	<del>1b. Member States shall ensure that creditors establish appropriate processes to verify the information referred to in the previous paragraph. Those processes shall be reviewed at regular intervals and up-to-date records thereof shall be maintained.</del>

#### Justification

The specific criteria of creditworthiness assessment should not be imposed at EU level. A more general regulation coupled with the general definition of creditworthiness in Art 3(o) of the proposed Directive would be a more appropriate approach. A legal obligation to assess borrowers' creditworthiness already exists at banking supervisory level. This supervisory level is fully adequate and any attempt to tackle creditworthiness within the categories of civil law would lead to an extensive, and in large part unjustified, litigation.

#### Amendment 43

Article 14 – Paragraph 2 – Subparagraph (a)	Amendment 123	
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
<b>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 assessment of the consumer's creditworthiness results in a negative prospect for his ability to <b>meet his debt obligations</b> over the lifetime of the credit agreement, the creditor refuses credit.	<del>Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to <b>meet his debt obligations</b> over the lifetime of the credit agreement, the creditor refuses credit.</del>

#### Justification

Assessing creditworthiness is not an automated process but is carried out by co-operative banks on an individualised basis. In some circumstances a responsible lending decision can be made despite the creditworthiness assessment which at face value is negative. There are factors which can be taken into account by the lender which are not strictly speaking elements of creditworthiness assessment, such as third party surety or collateral. Another example of a situation where the granting of the loan could be looked favourably upon despite negative creditworthiness assessment could be granting a loan for the purpose of finishing the property which is used as collateral, in order to be able to sell that property. A proposition that in every case where the outcome of the creditworthiness assessment is negative, the lender is under the obligation to refuse credit is against an individualised, case-by-case approach to the lending decisions. Art 14(2)(a) is an



unjustified and unnecessary intervention into the private autonomy of the contracting parties. Following the same logic, positive creditworthiness assessment should not constitute a right to credit.

#### Amendment 44

Article 14 – Paragraph 2 – Subparagraph (b)	Amendment 124	
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for 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 <b>free of</b> charge of the reasons for <b>such</b> rejection.	<del>Where the credit application is rejected, the creditor informs the consumer immediately and <b>free of</b> charge of the reasons for <b>such</b> rejection.</del>

#### Justification

The obligation for the creditor to inform the consumer of the reasons for rejection in case the loan is not granted creates a potential risk of consumers exploiting such information and tailor-making their consequent applications (i.e. adjusting their following loan applications in accordance with the received reasons for rejection presented by the previous lender). This could lead to an irresponsible borrowing behaviour where consumers receive loans under false pretences. In addition, such a requirement would remain in conflict with the freedom to contract and suggest a contrario a right to credit. Finally, in most cases, the rejection would be based on a combination of factors, including employment situation, level of indebtedness, etc., rather than for one, particular reason. In addition, rejection may be based on elements other than those related to creditworthiness assessment, such as e.g. Anti Money Laundering provisions, which banks are prohibited from communicating to consumers.

#### Amendment 45

Article 14 – Paragraph 2 – Subparagraph (d)		
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
<b>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.</b>		<b>If the credit application is rejected on the basis of consultation of a database, the creditor shall inform the consumer immediately and without charge of the result of such consultation and of the particulars of the database consulted.</b>

#### Justification

The wording aligned with the provisions of Article 9 Paragraph 2 of the Directive 48/2008/EC on credit agreements for consumers (CCD). In addition, it should be born in mind that the Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on free movement of such data already contains provisions applicable in this case.





#### Amendment 46

Article 14 – Paragraph 2 – Subparagraph (e)	Amendment 125	
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
<b>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.</b>	<b>Deleted.</b>	<b>Deleted.</b>

#### Justification

This provision is based on an incorrect assumption that a loan application could be rejected based purely on an automated decision. This in fact is not the practice of the co-operative banks, which take a more individualized approach to the lending decision, and would not refuse a loan based purely on an automated decision. Also, parameters involved in an automated decision are considered to be business secrets, and such internal decision processes should not have to be disclosed for competition reasons. In addition, Article 15 of the Data Protection Directive (95/46/EC) already prohibits all automated decisions based solely on consultation of databases. These requirements are not confined to automated lending decisions. Regardless of whether a credit agreement or some other type of contract is involved, this data protection regime establishes an EU-wide basis for handling automated decision processes.

#### Amendment 47

Article 14 – Paragraph 2 – Subparagraph (f)	Amendment 126	
Text proposed by the European Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
The consumer has the opportunity to request for the decision to be reviewed <b>manually</b> .	The consumer has the opportunity to request for the decision to be reviewed.	<del>The consumer has the opportunity to request for the decision to be reviewed.</del>

#### Justification

An obligation to review the negative decision raises concerns related to the issue of the implied right to credit, and would mean additional and unjustified red tape for banks.

#### Amendment 48

Article 14 – Paragraph 4		
Text proposed by the Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
<b>Further to assessing a consumer's creditworthiness, Member States shall ensure that</b>		<b>Deleted</b>



<p><b>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.</b></p>		
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*Justification*

The draft Directive rightly classifies 'advice' as a separate service, different from the services provided by the lender or a tied credit intermediary to the borrower in the course of 'regular', non-advised process of granting a loan. However, the distinction between those two types of services is not made clear in the proposed Directive. While it is logical that a 'recommendation of the most suitable agreements for the consumer's needs, financial situation and personal circumstances' is a part of the 'advice' (service as defined in Art 17), it is not logical to include a requirement for the lender/tied credit intermediary to 'identify products that are not unsuitable for the consumer given his needs, financial situation and personal circumstances' within the regular, non-advised loan granting process, as those belong to the separate service of 'advice'. Particularly, considering the potential liability aspects, the requirements Art 14(4) should not be part of the 'regular' loan granting process where no 'advice' is given, and therefore they cannot stand in the Directive as currently proposed by the Commission.

**Amendment 49**

Article 14 – Paragraph 5		
Text proposed by the Commission	Text Proposed in ECON Draft Report	EACB Proposal for Amendment
<p><b>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.</b></p>		<p><b>Deleted</b></p>



*Justification*

*Such details should not be prescribed at EU level. Art 290 TFEU provides that ‘a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power’. A prescriptive list of criteria to be considered in the conduct of a creditworthiness assessment and in ensuring that credit products are not unsuitable for the consumer concern the very fundamentals of this legislative act and as such should not be subject to regulation by delegated acts. Finally, under Article 14, Paragraph 1, it is the Member States that must ensure that creditors establish appropriate processes to assess the creditworthiness of the consumer. Specifying or amending such criteria by the Commission at EU level, as and when the Commission finds fit, would be superfluous and is not supported by the EACB.*

**CHAPTER VI**

**Amendment 50**

	Amendment 129 Article 16 1 a (new)	
<i>Text proposed by the European Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<p><b>1a. Member States shall ensure that consumers have the right to access the information obtained by the lender from databases. Where a consumer disputes the completeness or accuracy of any item of information contained in a database file on him and notifies the database to that effect, the database shall, free of charge, conduct a reasonable re-investigation to determine whether the disputed information is inaccurate. It shall record the status of the information as disputed or delete the item from the credit report until the re-investigation is concluded and shall then make any necessary adjustments.</b></p>	<p><del>1a. Member States shall ensure that consumers have the right to access the information obtained by the lender from databases. Where a consumer disputes the completeness or accuracy of any item of information contained in a database file on him and notifies the database to that effect, the database shall, free of charge, conduct a reasonable re-investigation to determine whether the disputed information is inaccurate. It shall record the status of the information as disputed or delete the item from the credit report until the re-investigation is concluded and shall then make any necessary adjustments.</del></p>

*Justification*

*This is superfluous because these rights are already granted by the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.*

**Amendment 51**

	Amendment 130 Article 16 – Paragraph 1 b (new)	
<i>Text proposed by the European Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<p><b>1b. Member States shall ensure that adequate</b></p>	<p><del>1b. Member States shall ensure that adequate</del></p>



	<i>compensation mechanisms are in place if an adverse decision not to grant a loan was taken by a credit institution on the basis of an inaccurate credit report provided by a credit register.</i>	<del><i>compensation mechanisms are in place if an adverse decision not to grant a loan was taken by a credit institution on the basis of an inaccurate credit report provided by a credit register.</i></del>
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*Justification*

*It should be reminded that no 'right to credit' should be introduced, and that creditors – who bare significant risks – should always maintain the freedom to choose with whom they wish to enter into a contractual agreement. In any case, it is unclear as to who would have to compensate. Credit institutions must not be held responsible for the content of credit registers and therefore should not be targeted by this provision.*

**Amendment 52**

<i>Article 16 – Paragraph 2</i>	<i>Text Proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
<i>Text proposed by the Commission</i>		
<b><i>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.</i></b>		<b><i>Deleted</i></b>

*Justification*

*The EACB is in general against the use of “delegated acts” in this directive. This is mainly because the relevant stakeholders would not be consulted in the context of the decisions taken by the European Commission, who could – in the name of necessary adjustments - introduce changes when and as it pleases, with no impact assessment. This would create a situation of significant legal uncertainty.*

**CHAPTER VII**

**Amendment 53**

<i>Article 17 – Paragraph 1</i>	<i>Amendment 132</i>	<i>EACB Proposal for Amendment</i>
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	
For the purposes of this Directive, 'advice' constitutes a separate service from the granting of a credit. Such a service can only be marketed	<b><i>Member States shall ensure that advice is provided as a separate service from the granting of a credit and that such a service can only be</i></b>	Member States shall ensure that advice is provided as a separate service from the granting of a credit and that such a service can only be



<p>as advice when the remuneration of the individual providing the service is transparent to the consumer.</p>	<p>marketed as advice when:  <b>(a) the natural or legal person providing the advice is an appropriately authorised creditor or credit intermediary;</b>  <b>(b) the adviser has the appropriate professional competence; and</b>  <b>(c) the remuneration for the service is transparent to the consumer and explicitly agreed with the consumer before the provision of the service.</b></p>	<p>marketed as advice when:  <del><b>(a) the natural or legal person providing the advice is an appropriately authorised creditor or credit intermediary;</b></del>  <del><b>(b) the adviser has the appropriate professional competence; and</b></del>  <del>(a)</del> the remuneration for the service is transparent to the consumer and <b>explicitly agreed with the consumer before the provision of the service</b>  <b>(b) the consumer is made aware of the fact that he is receiving the separate service of 'advice'.</b></p>
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*Justification*

*The proposal from the rapporteur rightly classifies 'advice' as a separate service, different from the services provided by the lender or a tied credit intermediary to the borrower in the course of 'regular', non-advised process of granting a loan. The obligations of the creditor and the grounds for potential liability of the creditor will be different in the regular, non-advised loan granting process and in the situation when the service of 'advice' is provided. It is imperative for the consumer to know if he has or not received a separate service of impartial 'advice'.*

**Amendment 54**

Article 17 – Paragraph 2	Amendments 133-134 Article 17 – paragraph 2 – point - a (new)	
Text proposed by the Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
<p>Member States shall ensure that the creditor or <b>credit</b> intermediary informs the consumer, in the context of a given transaction, whether or not advice is being or will be provided. <b>This may be done through additional pre-contractual information.</b> 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:</p> <p>(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;</p> <p>(b) obtain the necessary information regarding the consumer's personal and</p>	<p>Member States shall ensure that:</p> <p><b>(a) the creditor or tied intermediary informs the consumer, in the context of a given transaction, whether or not advice is being provided. Where the creditor is providing advice, it shall provide the consumer prior to the performance of the service with the applicable information referred to in Article 10(1); and</b></p> <p><b>(b) credit intermediaries which are not tied provide the consumer with advice. Where the conditions of paragraph 1, paragraph 2, points (a) and (b), and paragraph 2a are not met, a personalised recommendation in relation to a credit agreement shall not be made to a consumer.</b></p> <p><b>2a.</b> Where advice is provided</p>	<p>Member States shall ensure that:</p> <p><del>(a)</del> the creditor or tied credit intermediary informs the consumer, in the context of a given transaction, when advice is being or will be provided. <del>Where the creditor is providing advice, it shall provide the consumer prior to the performance of the service with the applicable information referred to in Article 10(1); and</del></p> <p><del>(b) credit intermediaries which are not tied provide the consumer with advice. Where the conditions of paragraph 1, paragraph 2, points (a) and (b), and paragraph 2a are not met, a personalised recommendation in relation to a credit agreement shall not be made to a consumer.</del></p> <p><b>This may be done through</b></p>



<p>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 that moment in time and on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.</p>	<p>to consumers, in addition to the requirements set out in Articles 5 and 6, Member States shall ensure that creditors and credit intermediaries:</p> <p><b>(- a) give their advice in the consumer's best interest and on the basis of an objective and fair analysis;</b></p> <p>(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;</p> <p>(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 that moment in time and on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.</p>	<p><b>additional pre-contractual information.</b></p> <p><del>2a.</del> Where advice is provided to consumers, in addition to the requirements set out in Articles 5 and 6, Member States shall ensure that <b>the advice providers:</b></p> <p><del>(- a) creditors and credit intermediaries give their advice on the basis of an objective and fair analysis;</del></p> <p>(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:</p> <p><b>(i) in their product range, in case of advice provided by creditors</b></p> <p><b>(ii) in the product range of creditors on behalf of which and under the full of responsibility of which they act, in case of advice provided by tied intermediaries</b></p> <p><b>(iii) available on the market, in case of advice provided by untied intermediaries</b></p> <p>(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 that moment in time <del>and on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.</del></p>
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*Justification*

*A creditor providing a service of 'advice' should not be obliged to consider, and possibly recommend, to the consumer products of his competitors. Such interpretation could potentially lead to reluctance of creditors to provide the service of 'advice' at all. Concerning the ECON proposed amendment 134, the obligation to act in consumer's best interest could lead to unlimited and incalculable liability for creditors.*



## CHAPTER VIII

### Amendment 55

<i>Chapter 8 - Title</i>	<i>Amendment 136</i>	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB proposal for Amendment</i>
<b>Early repayment</b>	<b>Sound performance of credit agreements</b>	<b>Early repayment</b>

#### *Justification*

*The EACB fully supports the decision of the European Commission to focus this directive on consumer protection and prudential requirements for currently unregulated credit intermediaries. Any such significant extension of the scope would require prior complete impact assessment. In addition, most of the provisions envisaged in new Articles 18 a-g should in our opinion remain contractual options rather than statutory rights.*

### Amendment 56

<i>Article 18 – Paragraph 1</i>	<i>Amendment 136</i>	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB proposal for Amendment</i>
Member States shall ensure that the consumer has a <b>statutory or contractual</b> 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.	Member States shall ensure that the consumer has a statutory 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 loan cost, such a reduction consisting of the interest and the costs for the remaining duration of the contract.	<del>Member States shall ensure that the consumer has a statutory right to</del> <b>The consumer shall be entitled</b> 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. <b>Member States may provide that the exercise of this right may be limited to certain justified circumstances, which 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. In particular, Member States may ensure that early repayment is precluded in respect of credit agreement being part of the cover funds of mortgages funds and similar instruments. In any event, if the early repayment falls within a period for which the borrowing rate is fixed,</b>



		<b><i>exercise of the right may be made subject to the existence of a special interest on the part of the consumer.</i></b>
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*Justification*

*It must be ensured that the right of early repayment does not interfere with the product design of mortgages and does not impair their diversity. An unconditional right for the consumer to repay early poses a risk of limiting product design and in the end, consumer choice. In particular the type of the borrowing rate and specific funding structures of mortgages should be accounted for in effort to preserve the product diversity (e.g. unconditional early repayment without the right for the lender to full compensation for all costs and losses would lead to the significant increase of the prices of fixed rate mortgages, and even their complete elimination from the market). In any case, the consumer should have the option to waive the right of early repayment under the condition that he is well informed about the effects of that waiver and unconditionally declares in a written form that he accepts the consequences.*

**Amendment 57**

<i>Article 18 – Paragraph 2 – Subparagraph 1</i>	<i>Amendment 137</i>	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
<p><b><i>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.</i></b></p> <p><b><i>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.</i></b></p>	<p>Member States <b><i>shall ensure</i></b> that <b><i>creditors shall not impose any penalty on a consumer who exercises</i></b> the right referred to in paragraph 1 <b><i>and shall maintain</i></b> the <b><i>indemnity</i></b> of the creditor <b><i>while ensuring efficiency in</i></b> the <b><i>markets</i></b>.</p>	<p><b><i>The</i></b> creditor shall be entitled to fair <b><i>and full</i></b> compensation for potential costs, <b><i>interest rate loss and other losses and foregone profits</i></b> linked to early repayment of the credit.</p>

*Justification*

*The right to a compensation for the creditor in case of early repayment must be secured in all circumstances. Lenders should be entitled to be fully reimbursed for all the losses and foregone profits. Limited compensation would oblige lenders to mutualise their risk, i.e. to divide potential losses amongst all mortgage borrowers. The compensation should be calculated on a wide calculation basis (comprising funding costs) without legally enforceable caps on interest rates and on the variation of interest rates. The provisions of the proposed Directive should be subject to*





maximum harmonisation. Finally, the right of early repayment should be considered in the context of specific refinancing conditions available for the lender and taking account of the type of interest rate (fixed or variable) of a given product.

#### Amendment 58

Article 18 – Paragraph 2 – Subparagraph 2	Amendment 138	
Text proposed by the Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
<p><b>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.</b></p>	<p><b>Member States shall ensure that the following provisions are complied with:</b></p> <p><b>(a) where the credit agreement is funded by callable instruments negotiated in regulated markets, the consumer is entitled to repay the credit agreement at a value determined by market conditions for the callable instrument;</b></p> <p><b>(b) where the credit agreement relates to a loan with a fixed interest rate for part or all of the term of the agreement and is funded by long-term means, the consumer is be entitled to repay the credit agreement:</b></p> <p><b>(i) free of charge after expiry of the fixed interest rate period; or</b></p> <p><b>(ii) before expiry of the fixed interest rate period, in cases where the consumer has a special interest, upon payment of compensation to the creditor for potential costs directly linked to early repayment of the credit;</b></p> <p><b>(c) in credit agreements not referred to in points (a) or (b), the consumer is entitled to repay the credit agreement within a period which is no longer than three months after giving notice to the creditor of his desire to do so.</b></p> <p><b>In the context of point (b)(ii), the existence of a consumer's special interest shall be recognised at least in situations involving involuntary loss of employment, need for mobility, serious illness or death.</b></p> <p><b>In the context of point (c),</b></p>	<p><del><b>Member States shall ensure that the following provisions are complied with:</b></del></p> <p><del><b>(a) where the credit agreement is funded by callable instruments negotiated in regulated markets, the consumer is entitled to repay the credit agreement at a value determined by market conditions for the callable instrument;</b></del></p> <p><del><b>(b) where the credit agreement relates to a loan with a fixed interest rate for part or all of the term of the agreement and is funded by long-term means, the consumer is be entitled to repay the credit agreement:</b></del></p> <p><del><b>(i) free of charge after expiry of the fixed interest rate period; or</b></del></p> <p><del><b>(ii) before expiry of the fixed interest rate period, in cases where the consumer has a special interest, upon payment of compensation to the creditor for potential costs directly linked to early repayment of the credit;</b></del></p> <p><del><b>(c) in credit agreements not referred to in points (a) or (b), the consumer is entitled to repay the credit agreement within a period which is no longer than three months after giving notice to the creditor of his desire to do so.</b></del></p> <p><del><b>In the context of point (b)(ii), the existence of a consumer's special interest shall be recognised at least in situations involving involuntary loss of employment, need for mobility, serious illness or death.</b></del></p> <p><del><b>In the context of point (c),</b></del></p>



	<i>Member States may maintain a statutory or contractual compensation for early repayment may exist but shall not be higher than 1 % of the outstanding debt.</i>	<del><i>Member States may maintain a statutory or contractual compensation for early repayment may exist but shall not be higher than 1 % of the outstanding debt.</i></del>
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*Justification*

*The banks should not be obliged to disclose their funding conditions. This is a part of their business strategy. The phrases 'excessively difficult' and 'onerous' used in Art 18(2) par 2 are imprecise and as such the EACB proposes to delete them.*

**Amendment 59**

	<i>Amendment 139 Article 18a (new)</i>	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<p><b>Portability</b></p> <p>1. Member States shall ensure that lenders allow borrowers to keep a credit agreement when moving house provided that the value of the new property is sufficient to serve as the collateral required by the credit agreement and when the conditions required to consider collaterals as equivalents referred to in paragraph 2 have been fulfilled.</p> <p>2. Member States shall adopt the measures appropriate to ensure that where under national law a credit agreement related to a residential immovable property located in another Member State is considered as equivalent to a credit agreement related to a residential immovable property on its territory for the purposes of being pooled in financial instruments traded in secondary markets, they shall also be considered equivalent for the purpose of paragraph 1.</p> <p>3. In order to ensure consistent harmonisation of the right of the portability, EBA shall draft regulatory technical standards to further specify the conditions required to</p>	<p><del><b>Portability</b></del></p> <p><del>1. Member States shall ensure that lenders allow borrowers to keep a credit agreement when moving house provided that the value of the new property is sufficient to serve as the collateral required by the credit agreement and when the conditions required to consider collaterals as equivalents referred to in paragraph 2 have been fulfilled.</del></p> <p><del>2. Member States shall adopt the measures appropriate to ensure that where under national law a credit agreement related to a residential immovable property located in another Member State is considered as equivalent to a credit agreement related to a residential immovable property on its territory for the purposes of being pooled in financial instruments traded in secondary markets, they shall also be considered equivalent for the purpose of paragraph 1.</del></p> <p><del>3. In order to ensure consistent harmonisation of the right of the portability, EBA shall draft regulatory technical standards to further specify the conditions required to</del></p>



	<p>consider collateral as equivalent in accordance with the first paragraph of this Article. EBA shall submit those draft regulatory technical standards to the Commission by...<input type="checkbox"/>.</p> <p>4. Power is delegated to the Commission to adopt the draft regulatory technical standards referred to in the first subparagraph in accordance with articles 10 to 14 of Regulation (EU) No 1093/2010.</p> <p><input type="checkbox"/> OJ please insert the date: 6 months after the entry into force of this Directive.</p>	<p><del>consider collateral as equivalent in accordance with the first paragraph of this Article.</del> <del>EBA shall submit those draft regulatory technical standards to the Commission by...<input type="checkbox"/>.</del></p> <p><del>4. Power is delegated to the Commission to adopt the draft regulatory technical standards referred to in the first subparagraph in accordance with articles 10 to 14 of Regulation (EU) No 1093/2010.</del></p> <p><del><input type="checkbox"/> OJ please insert the date: 6 months after the entry into force of this Directive.</del></p>
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Justification

It would be very difficult for a creditor to establish whether the 'new' immovable property is equivalent to the 'old' one (the current collateral of the credit). This would be particularly challenging, if the bank is not active in the area, where the 'new' immovable property is located. It is worth stressing that co-operative banks are local banks and they are not active on the whole territory of the country. This becomes even more problematic for cross-border business. In foreign countries banks have no internal procedures for enforcement and the national enforcement procedures in the different countries are very divergent. Such arrangements should remain a contractual possibility, but not a statutory right which as it would require a preliminary harmonisation of valuation procedures. In any case, if the right of portability is introduced, the creditor should be entitled to obtain fair and objectively justified compensation for potential costs, interest rate loss and other losses and foregone profits linked to the exercise of the right of portability.

Amendment 60

	Amendment 140 Article 18 b (new)	
Text proposed by the Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
	<p><b>Conversion of foreign currency loans</b></p> <p>1. Member States shall ensure that where a credit agreement relates to a loan in a foreign currency, the consumer shall have the right to convert the loan into the currency of the Member State within a reasonable period.</p> <p>2. Member States shall provide that the creditor should be entitled to obtain fair and objectively justified compensation for potential costs directly linked to the exercise of the right but shall not allow creditors to</p>	<p><del>Conversion of foreign currency loans</del></p> <p><del>1. Member States shall ensure that where a credit agreement relates to a loan in a foreign currency, the consumer shall have the right to convert the loan into the currency of the Member State within a reasonable period.</del></p> <p><del>2. Member States shall provide that the creditor should be entitled to obtain fair and objectively justified compensation for potential costs directly linked to the exercise of the right but shall not allow creditors to</del></p>



	<i>impose a penalty arising from the exercise of the right.</i>	<del><i>impose a penalty arising from the exercise of the right.</i></del>
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*Justification*

*The above rule would lead to a one-sided transmission of the foreign currency risk to the bank. Such arrangements should remain a contractual possibility, not a statutory right. If the right of conversion of foreign currency loans is to be introduced, banks should have the possibility to charge the borrower with an appropriate compensation for their efforts related to the exercise of that right by the borrower.*

**Amendment 61**

	Amendment 141 Article 18 c (new)	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<b><i>Payment flexibility</i></b> <b><i>Member States shall ensure that creditors allow consumers to make payments which exceed the amount required by the amortisation structure of the loan contained in the credit agreement without penalty and thereby have the right to redeem in the future the payments scheduled according the amortization structure up to the value by which they have previously exceeded the required amount.</i></b>	<del><b><i>Payment flexibility</i></b></del> <del><b><i>Member States shall ensure that creditors allow consumers to make payments which exceed the amount required by the amortisation structure of the loan contained in the credit agreement without penalty and thereby have the right to redeem in the future the payments scheduled according the amortization structure up to the value by which they have previously exceeded the required amount.</i></b></del>

*Justification*

*An introduction of the right of payment flexibility would significantly limit the freedom to contract and would lead to higher interest rates. The creditor should retain the right to refuse the borrower to change the amortization structure, unless such a possibility is included in the credit contract with the borrower. In any case, if the right of payment flexibility is introduced, the creditor should be entitled to obtain fair and objectively justified compensation for potential costs, interest rate loss and other losses and foregone profits linked to the exercise of this right by the consumer.*

**Amendment 62**

	Amendment 142 Article 18 d (new)	
<i>Text proposed by the Commission</i>	<i>Text proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<b><i>Reverse agreements</i></b>	<del><b><i>Reverse agreements</i></b></del>



	<p><i>Member States shall ensure that, in order to cover risks of aging or retirement, the parties to a credit agreement may agree to convert the credit agreement into a reverse mortgage or other credit agreement under which a sum of money is advanced or paid periodically to the consumer to allow access to equity in the residential immovable property and which will eventually be repaid from the sale of the residential immovable property.</i></p>	<p><del><i>Member States shall ensure that, in order to cover risks of aging or retirement, the parties to a credit agreement may agree to convert the credit agreement into a reverse mortgage or other credit agreement under which a sum of money is advanced or paid periodically to the consumer to allow access to equity in the residential immovable property and which will eventually be repaid from the sale of the residential immovable property.</i></del></p>
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*Justification*

*Under Article 2, Paragraph 2, Subparagraph a, 'credit agreements which will eventually be repaid from the sale proceeds of an immovable property' are excluded from the scope of this Directive. There should be no obligation introduced for banks to offer "reverse mortgage" contracts.*

**Amendment 63**

	<p><i>Amendment 143 Article 18 e (new)</i></p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Text proposed in ECON Draft Report</i></p>	<p><i>EACB Proposal for Amendment</i></p>
	<p><b>Switching of creditor</b>  <b>1. Member States shall ensure that creditors may transfer credit agreements or portfolios of credit agreement to other financial institutions without the consent of the consumer as long as the loan conditions are not altered to the disadvantage of the consumer. This paragraph shall be without prejudice to Article 122a of Directive 2006/48/EC. Member States shall ensure that mortgages portfolios are transferable to a new lender without registration of a new mortgage deed for each loan in the transferred portfolio.</b>  <b>2. Member States shall ensure that consumers also have the right to transfer a credit agreement to a new creditor which is prepared to accept the transfer and which makes a binding offer to the consumer provided</b></p>	<p><del><b>Switching of creditor</b>  <b>1. Member States shall ensure that creditors may transfer credit agreements or portfolios of credit agreement to other financial institutions without the consent of the consumer as long as the loan conditions are not altered to the disadvantage of the consumer. This paragraph shall be without prejudice to Article 122a of Directive 2006/48/EC. Member States shall ensure that mortgages portfolios are transferable to a new lender without registration of a new mortgage deed for each loan in the transferred portfolio.</b>  <b>2. Member States shall ensure that consumers also have the right to transfer a credit agreement to a new creditor which is prepared to accept the transfer and which makes a binding offer to the consumer provided</b></del></p>



	<p><i>that:</i></p> <p><i>(a) the binding offer significantly improves the economic conditions for the consumer either by an improvement of at least 100 basis points in the interest rate or by an extension or reduction of more than a third in the length of the repayment period for the outstanding debt;</i></p> <p><i>(b) the creditor refuses to make a binding offer before the expiry of the offer made by the new creditor which at least matches the terms of the binding offer made by the new creditor; and</i></p> <p><i>(c) the creditor receives adequate compensation where appropriate according to national law. Member States shall ensure in such cases that the compensation does not constitute a penalisation of the consumer and that once a credit agreement has been in force for five years the compensation shall not be higher than 1 % of the outstanding debt.</i></p>	<p><del><i>that:</i></del></p> <p><del><i>(a) the binding offer significantly improves the economic conditions for the consumer either by an improvement of at least 100 basis points in the interest rate or by an extension or reduction of more than a third in the length of the repayment period for the outstanding debt;</i></del></p> <p><del><i>(b) the creditor refuses to make a binding offer before the expiry of the offer made by the new creditor which at least matches the terms of the binding offer made by the new creditor; and</i></del></p> <p><del><i>(c) the creditor receives adequate compensation where appropriate according to national law. Member States shall ensure in such cases that the compensation does not constitute a penalisation of the consumer and that once a credit agreement has been in force for five years the compensation shall not be higher than 1 % of the outstanding debt.</i></del></p>
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*Justification*

*This provision is too long and complex to be introduced in an EU Directive. Switching of a creditor should be maintained as a contractual provision, rather than a statutory right. If the right of switching of creditor is introduced in this Directive, it is imperative that the creditor is entitled to obtain fair and objectively justified compensation for potential costs, interest rate loss and other losses and foregone profits linked to the exercise of the right of switching, without outright limitations or caps.*

**Amendment 64**

	<p>Amendment 144 Article 18 f (new) –Paragraph 2</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Text proposed in ECON Draft Report</i></p>	<p><i>EACB Proposal for Amendment</i></p>
	<p><b><i>Member States shall prohibit developers from tying the sale of a projected or existing property by making it conditional upon the transfer to the consumer of a credit agreement which would be within the scope of Article 2(1) if it were transferred to the consumer.</i></b></p>	<p><del><b><i>Member States shall prohibit developers from tying the sale of a projected or existing property by making it conditional upon the transfer to the consumer of a credit agreement which would be within the scope of Article 2(1) if it were transferred to the consumer.</i></b></del></p>



Justification

The above provision on this directive is not necessary or justified. The existing EU legislation sufficiently addresses the issue of cross-selling and conditional-selling by means of the Directive 2005/29/EC on unfair business-to-consumer commercial practices. In addition, it appears that these provisions intend to address a type of lending specific to the Spanish market, according to which property developers can convert their commercial loan for development into individual residential mortgage loans on each unit, which are then offered to the purchasers of those units. Considering the national aspect of this issue and in line with the principle of subsidiarity, the EACB recommends that these amendments be deleted.

**Amendment 65**

	Amendment 145 Article 18 g (new)	
Text proposed by the Commission	Text proposed in ECON Draft Report	EACB Proposal for Amendment
	<p><b>Arrears and foreclosure</b></p> <p>1. Member States shall ensure that creditors exercise reasonable forbearance and make diligent efforts to reach a negotiated solution before initiating foreclosure proceedings in relation to credit agreements.</p> <p>2. Member States may maintain or introduce requirements in relation to the process to be followed or the options which must be pursued prior to initiating foreclosure proceedings in relation to a property situated in their territory. In cases where the borrower has repaid a substantial part or the majority of the loan over a long period such options should include temporarily changing the contractual agreement between the creditor and the consumer.</p> <p>3. Member States shall forbid penalties for default which are additional to the repayment of the outstanding portion of the loan where such default is the result of circumstances beyond the control of the borrower or where the penalty is not proportionate or is calculated taking into account the non-defaulted part of the loan.</p> <p>4. Member States shall allow that the return of the collateral is sufficient to repay the loan at least</p>	<p><del><b>Arrears and foreclosure</b></del></p> <p><del>1. Member States shall ensure that creditors exercise reasonable forbearance and make diligent efforts to reach a negotiated solution before initiating foreclosure proceedings in relation to credit agreements.</del></p> <p><del>2. Member States may maintain or introduce requirements in relation to the process to be followed or the options which must be pursued prior to initiating foreclosure proceedings in relation to a property situated in their territory. In cases where the borrower has repaid a substantial part or the majority of the loan over a long period such options should include temporarily changing the contractual agreement between the creditor and the consumer.</del></p> <p><del>3. Member States shall forbid penalties for default which are additional to the repayment of the outstanding portion of the loan where such default is the result of circumstances beyond the control of the borrower or where the penalty is not proportionate or is calculated taking into account the non-defaulted part of the loan.</del></p> <p><del>4. Member States shall allow that the return of the collateral is sufficient to repay the loan at least</del></p>



	<p>where such a clause was expressly agreed by the parties to the credit agreement.</p> <p>5. Member States shall ensure that where foreclosure proceedings are initiated the lender shall credit to the consumer as the value of the collateral a value at least as great as the most recent valuation carried out in conformity with the minimum requirements for the recognition of real estate collateral established in Annex VIII, part 2, point 8 of Directive 2006/48/EC.</p> <p>6. Where residential mortgage lenders have full recourse to a consumer's assets after foreclosure proceedings are completed and outstanding debt remains, Member States shall ensure that seizure of wages, retirement pensions or equivalent distributions are limited so as to preserve a minimum income sufficient to maintain an adequate standard of living.</p>	<p><del>where such a clause was expressly agreed by the parties to the credit agreement.</del></p> <p><del>5. Member States shall ensure that where foreclosure proceedings are initiated the lender shall credit to the consumer as the value of the collateral a value at least as great as the most recent valuation carried out in conformity with the minimum requirements for the recognition of real estate collateral established in Annex VIII, part 2, point 8 of Directive 2006/48/EC.</del></p> <p><del>6. Where residential mortgage lenders have full recourse to a consumer's assets after foreclosure proceedings are completed and outstanding debt remains, Member States shall ensure that seizure of wages, retirement pensions or equivalent distributions are limited so as to preserve a minimum income sufficient to maintain an adequate standard of living.</del></p>
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*Justification*

Each co-operative bank tries to find solutions, together with the borrower, to avoid foreclosure proceedings, if it is possible. However, introducing strict requirements in relation to the process to be followed or the options which must be pursued prior to initiating foreclosure proceedings could potentially lead to unnecessary prolongation of the process and in the end to even higher costs for the borrower. In addition, foreclosure procedures have consequences in the context of prudential provisions (e.g. securitisation with equity capital). As stated before, the EACB does not consider that prudential aspects for creditors should be covered in this directive.

**CHAPTER VIII a (NEW)**

**Amendment 66**

	Chapter 8a – Title (new)	
Text proposed by the Commission	Text proposed in ECON Draft Report	EACB proposal for Amendment
	<b>Transparent and reliable markets</b>	<del>Transparent and reliable markets</del>

*Justification*

There should be no mix between specific prudential requirements and consumer protection in this proposed directive. Such a mix could, in particular, cause mismatches between this directive (the main objective of which is consumer protection), and the provisions of other directives and regulations which focus on prudential matters, such as the Capital Requirements Directive (CRD IV) and the proposed Capital Requirements Regulation (CRR I).





### Amendment 67

	<i>Amendments 147-149 Articles 18 h-j (new)</i>	
<i>Text proposed by the Commission</i>	<i>Text Proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<p><b>Article 18h</b> <b>European Mortgage Key Identifier</b> (...)</p> <p><b>Article 18i</b> <b>Registers of credit agreements related to residential immovable property</b> (...)</p> <p><b>Article 18j</b> <b>Register of financial products related to credit agreements related to residential immovable property</b> (...)</p>	<p><del><b>Article 18h</b></del> <del><b>European Mortgage Key Identifier</b></del> <del>(...)</del></p> <p><del><b>Article 18i</b></del> <del><b>Registers of credit agreements related to residential immovable property</b></del> <del>(...)</del></p> <p><del><b>Article 18j</b></del> <del><b>Register of financial products related to credit agreements related to residential immovable property</b></del> <del>(...)</del></p>

#### *Justification*

*The added value of the introduction of numerous registers is not clear. At the same time, the additional red tape resulting from the set up and maintenance of such registers, as well as the reporting obligations for banks.*

### Amendment 68

	<i>Amendment 150 Articles 18 k (new)</i>	
<i>Text proposed by the Commission</i>	<i>Text Proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
	<p>Article 18k Valuation of residential immovable property</p> <p>1. Member States shall ensure that appraisers carrying out valuations of residential immovable property which are used to value the collateral in credit agreements are carried out by appraisers who are professionally competent.</p> <p>2. Member States shall ensure that a public register is established and regularly updated of appraisers who are deemed professionally competent.</p> <p>3. Member States shall ensure that appraisers who carry out valuations used by a creditor to value the collateral are sufficiently independent of the creditor, the borrower and, where applicable, the credit intermediary, to provide an objective and impartial</p>	



	<p>valuation.</p> <p>4. In order to ensure consistent harmonisation, the Commission should be empowered to adopt delegated acts in accordance with Article 26 in order to specify minimum valuation standards, minimum standards regarding independence and minimum professional standards for appraisers.</p> <p>5. Member States may specify further criteria which shall be used to determine the professional competence of appraisers. Such criteria shall not include a requirement for the appraiser to be established in their territory.</p>	
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*Justification*

*Provisions concerning property valuations are unrelated to the objectives of this directive dedicated to the relationship between consumer and the creditor/credit intermediary. While some EU markets are heavily mortgage-based, in others guaranteed home loans not secured by a mortgage prevail. Those differences should be taken into account and property valuation issues, in our view, should not be an integral part of the loan granting process. Further, it must be stressed that where the principles of responsible mortgage lending and borrowing are observed, there is no need for the above provisions at all. It is in both parties' - the bank's as the consumer's - interest that evaluation of the collateral is realistic and reasonable. Finally, to create such registers, it would require a great deal of unnecessary administrative costs.*

**Amendment 69**

	Amendment 152 Article 19 (new)	
Text proposed by the Commission	Text Proposed in ECON Draft Report	EACB Proposal for Amendment
	<p><b>General prudential requirements</b></p> <p>1. Member States shall ensure that the local competent authorities formulate and publish standards applicable to loans related to residential immovable property in order to enable the effective identification and management of financial risk taking into account the specific features of their markets. Those standards shall contain at least :</p> <p>(a) a reference level for a prudent ratio of loan to value (LTV);</p> <p>(b) guidelines for the assessment of loan to income (LTI), debt to income (DTI) and loan to assets (LTA) ratios of the</p>	<p><del><b>General prudential requirements</b></del></p> <p><del>1. Member States shall ensure that the local competent authorities formulate and publish standards applicable to loans related to residential immovable property in order to enable the effective identification and management of financial risk taking into account the specific features of their markets. Those standards shall contain at least :</del></p> <p><del>(a) a reference level for a prudent ratio of loan to value (LTV);</del></p> <p><del>(b) guidelines for the assessment of loan to income (LTI), debt to income (DTI) and loan to assets (LTA) ratios of the</del></p>



	<p><b>borrower;</b>  <b>(c) reference levels for a prudent proportion of the loan book of an institution or in a market in relation to the ratios specified in points (a) and (b), taking into account individual, cumulative risks and the evolution of the market.</b>  <b>2. Member States shall ensure that local competent authorities have the necessary powers to monitor creditors' behaviour and require them to take progressive and proportionate measures in cases where the proportions referred to in point (c) are exceeded in order to manage the risks identified.</b>  <b>Such binding measures may include specific reporting obligations, use of mortgage insurance or covered products, dynamic provisions, additional contributions to the deposit guarantee scheme, the imposition of firm limits on the loan to value ratio of new loans relating to residential immovable property located within all or a part of their territory made by a single creditor, a group of creditors, or all creditors.</b></p>	<p><del><b>borrower;</b>  <b>(e) reference levels for a prudent proportion of the loan book of an institution or in a market in relation to the ratios specified in points (a) and (b), taking into account individual, cumulative risks and the evolution of the market.</b>  <b>2. Member States shall ensure that local competent authorities have the necessary powers to monitor creditors' behaviour and require them to take progressive and proportionate measures in cases where the proportions referred to in point (e) are exceeded in order to manage the risks identified.</b>  <b>Such binding measures may include specific reporting obligations, use of mortgage insurance or covered products, dynamic provisions, additional contributions to the deposit guarantee scheme, the imposition of firm limits on the loan to value ratio of new loans relating to residential immovable property located within all or a part of their territory made by a single creditor, a group of creditors, or all creditors.</b></del></p>
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*Justification*

*There should be no mix between specific prudential requirements and consumer protection in this proposed directive. Such a mix could, in particular, cause mismatches between this directive (the main objective of which is consumer protection), and the provisions of other directives and regulations which focus on prudential matters, such as the Capital Requirements Directive (CRD IV) and the proposed Capital Requirements Regulation (CRR I). Especially requirements concerning different ratios (e.g. Loan-to-Value-Ratio) are likely to be in conflict with those contained in the CRD IV and CRR I (e.g. Articles 120 and 121 of the CRR I). In addition, it should be stressed that the ratios should not be used by the authorities to limit the credit granting by financial institutions, as for those purposes the authorities have other, more general supervisory measures, e. g. the securitization of credits with equity capital etc. The proposed directive already provides for an obligation to assess consumer's creditworthiness, and ratios such as LTV or LTI are already part of the credit granting decision. Within the framework of their risk policy, banks need to be given the freedom to handle these ratios in a flexible manner and to determine the respective thresholds on their own. Fixing these ratios to a certain level would mean interference with the lender's business strategy and risk management. Hence, particular in the field of mortgage loans, the EACB objects supervisory provisions with regard to these ratios for the lending business.*



**Amendment 70**

	Amendment 153 Article 19a (new)	
Text proposed by the Commission	Text Proposed in ECON Draft Report	EACB Proposal for Amendment
	<p><b>Special prudential requirements</b></p> <p>1. Member States shall ensure that the local competent authorities formulate and publish binding standards for different categories of credit agreements which constitute special risk credit agreements.</p> <p>2. Those binding standards shall include at least:</p> <p>(a) additional information and risk warnings to be included in pre-contractual information relating to special risk products;</p> <p>(b) special prudential measures as described in Article -19(2).</p> <p>3. Member States shall ensure that the following credit agreements are always deemed to be special risk credit agreements:</p> <p>(a) credit agreements where the loan is granted in a foreign currency;</p> <p>(b) credit agreements which allow for significant variation in interest payments during the term of the agreement;</p> <p>(c) credit agreements where it is agreed between the parties that the return of the collateral will be sufficient to repay the loan.</p> <p>4. Member States shall ensure that local competent authorities have powers to specify additional features which shall be deemed to constitute special risk credit agreements within their territory.</p>	<p><del>Special prudential requirements</del></p> <p><del>1. Member States shall ensure that the local competent authorities formulate and publish binding standards for different categories of credit agreements which constitute special risk credit agreements.</del></p> <p><del>2. Those binding standards shall include at least:</del></p> <p><del>(a) additional information and risk warnings to be included in pre-contractual information relating to special risk products;</del></p> <p><del>(b) special prudential measures as described in Article -19(2).</del></p> <p><del>3. Member States shall ensure that the following credit agreements are always deemed to be special risk credit agreements:</del></p> <p><del>(a) credit agreements where the loan is granted in a foreign currency;</del></p> <p><del>(b) credit agreements which allow for significant variation in interest payments during the term of the agreement;</del></p> <p><del>(c) credit agreements where it is agreed between the parties that the return of the collateral will be sufficient to repay the loan.</del></p> <p><del>4. Member States shall ensure that local competent authorities have powers to specify additional features which shall be deemed to constitute special risk credit agreements within their territory.</del></p>

*Justification*

*This notion of special risk credit is too vague and might be a pretext to introduce prudential measures. The risk of gold plating should be avoided. Binding standards for different categories of credit agreements could potentially impede innovation. The EACB does not believe that there are categories of credit agreements which are inherently 'dangerous'. Although the credit agreements may imply different levels of uncertainty which may be less appropriate for the financial profile of*



one particular category of borrower, they may perfectly respond to the needs of others and be appropriate to their circumstances. The 'advantages' and 'disadvantages' of different products are very much contingent upon the specific circumstances prevailing when borrowers enter into a given agreement.

#### Amendment 71

	Amendment 154 Article -19b	
Text proposed by the Commission	Text Proposed in ECON Draft Report	EACB Proposal for Amendment
	<p><b>Enforcement of standards</b></p> <p>1. The home competent authorities shall be responsible for the application of the standards and measures formulated in accordance with Articles -19 and --19a to firms and subsidiaries established in their territory. The home competent authorities shall apply the requirements of the local competent authority in relation to Articles -19 and --19a to credit agreements relating to residential immovable property in the territory of the local competent authorities.</p> <p>2. The relevant competent authority shall notify EBA of the binding measures adopted according to Articles -19 and -19a which shall in turn notify the ESRB in accordance with its obligations under Article 32 of Regulation (EU) No 1093/2010. In cases where a competent authority has imposed special measures on a creditor pursuant to Article -19, the relevant competent authority shall also require the firm to disclose this information to its shareholders.</p> <p>3. In cases where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State, the procedures set out in Article 19 of Regulation (EU) No 1093/2010 shall apply.</p> <p>4. EBA may establish guidelines or recommendations in</p>	<p><del><b>Enforcement of standards</b></del></p> <p><del>1. The home competent authorities shall be responsible for the application of the standards and measures formulated in accordance with Articles -19 and --19a to firms and subsidiaries established in their territory. The home competent authorities shall apply the requirements of the local competent authority in relation to Articles -19 and --19a to credit agreements relating to residential immovable property in the territory of the local competent authorities.</del></p> <p><del>2. The relevant competent authority shall notify EBA of the binding measures adopted according to Articles -19 and -19a which shall in turn notify the ESRB in accordance with its obligations under Article 32 of Regulation (EU) No 1093/2010. In cases where a competent authority has imposed special measures on a creditor pursuant to Article -19, the relevant competent authority shall also require the firm to disclose this information to its shareholders.</del></p> <p><del>3. In cases where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State, the procedures set out in Article 19 of Regulation (EU) No 1093/2010 shall apply.</del></p> <p><del>4. EBA may establish guidelines or recommendations in</del></p>



	<p><b>accordance with Article 16 of Regulation No 1093/2010, related to the general and special prudential requirements or to specify procedures for the reporting to EBA and to the European Systemic Risk Board of developments with implications for systemic risk as defined in point (c) of Article 2 of Regulation (EU) No 1092/2010. In the case of systemic risk EBA may adopt equivalent measures in relation to cross-border situations to those taken by local authorities.</b></p>	<p><del>accordance with Article 16 of Regulation No 1093/2010, related to the general and special prudential requirements or to specify procedures for the reporting to EBA and to the European Systemic Risk Board of developments with implications for systemic risk as defined in point (e) of Article 2 of Regulation (EU) No 1092/2010. In the case of systemic risk EBA may adopt equivalent measures in relation to cross-border situations to those taken by local authorities.</del></p>
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*Justification*

Prudential measures should not be dealt in this directive focused on consumer's protection. See EACB comments to ECON amendment 152.

**Amendment 72**

	<p>Amendment 155 Article -19c</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Text Proposed in ECON Draft Report</i></p>	<p><i>EACB Proposal for Amendment</i></p>
	<p><b>Corporate governance</b>  <b>1. Creditors and credit intermediaries shall have in place explicit, documented policies and procedures on activities related to credit agreements regulated under this Directive.</b>  <b>2. The Board or equivalent body shall include in the Annual Report a mention of the existence of such policies and procedures.</b></p>	<p><del><b>Corporate governance</b>  <b>1. Creditors and credit intermediaries shall have in place explicit, documented policies and procedures on activities related to credit agreements regulated under this Directive.</b>  <b>2. The Board or equivalent body shall include in the Annual Report a mention of the existence of such policies and procedures.</b></del></p>

*Justification*

This measure on corporate governance should not be dealt in a directive focused on consumer's protection.

**Amendment 73**

	<p>Amendment 157 Article -19e</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Text Proposed in ECON Draft Report</i></p>	<p><i>EACB Proposal for Amendment</i></p>
	<p><b>Stress-testing</b>  <b>1. Member States shall ensure that the creditor carries out stress tests on the impact of increases in interest rates on the risk</b></p>	<p><del><b>Stress-testing</b>  <b>1. Member States shall ensure that the creditor carries out stress tests on the impact of increases in interest rates on the risk</b></del></p>



	<p><b>profile of credit agreements throughout the life adjustable rate credit agreements.</b>  <b>Such stress testing shall consider at least a baseline scenario of 1 % increase of interest rate, be compared to historical evolution of interest rates for a period equivalent to the duration of the credit agreement, be coherent with the expectations of monetary authorities and in no case allow for negative expectations on the evolution of interest rates.</b></p>	<p><del><b>profile of credit agreements throughout the life adjustable rate credit agreements.</b></del>  <del><b>Such stress testing shall consider at least a baseline scenario of 1 % increase of interest rate, be compared to historical evolution of interest rates for a period equivalent to the duration of the credit agreement, be coherent with the expectations of monetary authorities and in no case allow for negative expectations on the evolution of interest rates.</b></del></p>
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*Justification*

*Prudential measures should not be dealt in this directive focused on consumer's protection.*

**Amendment 74**

<i>Text proposed by the Commission</i>	<i>Text Proposed in ECON Draft Report</i>	<i>Article 22a (new) EACB Proposal for Amendment</i>
		<p><b>Requirements laid down in Articles 19-22 should not apply to credit institutions as defined in Article 4 Paragraph 1 of the Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.</b></p>

*Justification*

*The structures within the co-operative banks' groups in some Member States involve independent co-operative banks in the regions and central co-operative members as providers of group-wide special products, such as for example co-operative mortgage banks. The local co-operative banks are deemed to be 'credit intermediaries' in their relations with customers if they grant credits for which a central co-operative bank acts as a 'creditor'. As credit institutions, all co-operative banks are already subject to the Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions. The requirements to be also subject to the provisions of Chapter 9 of the proposed Directive would lead to additional administrative costs. Duplication in the area of registration, authorisation, supervision, professional requirements, etc. should be avoided.*

**Amendment 75**

<i>Articles 26 - 28 Text proposed by the Commission</i>	<i>Text Proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
<p><b>Article 26</b>  <b>Exercise of the delegation</b>  <b>1. The powers to adopt delegated acts referred to</b></p>		<p><b>Deleted</b></p>



*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.*

#### **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 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.*

#### **Article 28**

**Objections to delegated acts**

*1. The European Parliament and the Council may object*





<p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>		
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*Justification*

*In case of delegated acts there is no proper consultation of relevant stakeholders. In addition, Art 290 TFEU provides that ‘a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power’. However, the issues listed in Art 26 and 27 of the proposed Directive include such key elements as pre-contractual information, APRC or creditworthiness assessment. It is therefore difficult to see how those elements, which are the very fundamentals of the proposed Directive, could be considered as non-essential.*

**Amendment 76**

Article 29 <i>Text proposed by the Commission</i>	<i>Text Proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
Imperative nature of this Directive 1. Member States shall ensure that consumers may not waive the rights conferred on them		<b><i>Harmonisation and imperative nature of this Directive</i></b> <b><i>1. Insofar as this directive contains harmonised</i></b>



<p>by the provisions of national law implementing or corresponding to this Directive.</p> <p>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 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.</p> <p>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.</p>		<p><b>provisions, Member States cannot maintain or introduce into their national law provisions diverging from those laid down in this directive.</b></p> <p>2. Member States shall ensure that consumers may not waive the rights conferred on them by the provisions of national law implementing or corresponding to this Directive.</p> <p>3. 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 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.</p> <p>4. 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.</p>
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*Justification*

*The approach of targeted maximum harmonisation should be employed in the proposed Directive, as it is necessary to prevent national legislators from gold-plating and to guarantee a level playing field for all market participants. Targets of maximum harmonisation should be chosen according to the analysis of whether the non-application of the maximum harmonisation principle to a given provision would lead to diverging interpretations resulting in market distortions.*

**Amendment 77**

<i>Article 30 – Paragraph 1 Text proposed by the Commission</i>	<i>Text Proposed in ECON Draft Report</i>	<i>EACB Proposal for Amendment</i>
<p>Member States shall adopt and publish, by [2 years after entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</p> <p>They shall apply those provisions from [2 years after</p>		<p>Member States shall adopt and publish, by [2 years after entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</p> <p>They shall apply those provisions from [3 years after</p>



<p>entry into force]. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>		<p>entry into force]. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>
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*Justification*

*It is impossible for the banks to start to make any modifications before the final national laws are adopted and published. In order to make the necessary modifications to the IT-systems and to the terms and conditions, a 1-year transition period would seem necessary after the 2-year transposition time.*

*For further information or questions on this paper please contact:*

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