



Brussels, 24 October 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)**

**1. KEY EACB OBSERVATIONS ON COMMISSION'S PROPOSED DIRECTIVE**

- The EACB is concerned and opposed to the extensive powers vested in the Commission to adopt delegated acts, which in our view would create a risk of legal uncertainty
- It is necessary that the future Directive diverges from the Directive 2008/48/EC on credit agreements for consumers (Consumer Credit Directive, CCD) only where modifications are really necessary
- The EACB considers that the approach of targeted maximum harmonisation should be employed in the proposed Directive, in order to guarantee a level playing field for all market participants and to prevent national legislators from gold-plating.
- The scope of the proposed Directive should be clearly limited to consumer agreements only
- The pre-contractual information sheet for mortgage credit should be modeled as much as possible on the forms currently in use in the different Member States, which consumers are already familiar with. Any departures from the forms currently in use should be limited to where absolutely necessary
- Concerning adequate explanations, the EACB opposes the obligation for creditors to assess the level of knowledge and experience of a consumer with credit, and proposes to align this requirement with the provision on adequate explanations envisaged in the Consumer Credit Directive
- The EACB supports a high-level approach to the regulation of creditworthiness assessment and opposes detailed prescription, at EU level, of factors on which creditworthiness assessment should be based. In particular, the EACB is opposed to the introduction of the lender's obligation to deny credit in case of negative creditworthiness, and the obligation to inform the consumer of the reasons of rejection
- The EACB is opposed to shifting of the responsibility for taking out a loan from the borrower onto the lender, and to the requirement for the creditor to identify products which are 'not unsuitable' for the individual needs of the consumer
- The EACB calls for a clearer distinction of lender's obligations in case of 'advised' and 'non-advised' loan granting process
- Should the right for consumers for early repayment be introduced at EU level, the lender's right to fair and adequate compensation should also be secured

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EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19

[www.eurocoopbanks.coop](http://www.eurocoopbanks.coop) • e-mail : [secretariat@eurocoopbanks.coop](mailto:secretariat@eurocoopbanks.coop)



## 2. KEY EACB OBSERVATIONS ON IMCO DRAFT OPINION OF 14 SEPTEMBER 2011

### 2.1. General comments on IMCO draft opinion

The IMCO draft opinion is globally satisfying and thus the EACB welcomes most of the amendment proposed therein. In particular, the EACB considers that it is logical that the CARRP Directive should be aligned as much as possible with the CCD.

The EACB strongly supports the following amendments proposed by the Rapporteur in his draft opinion:

- **Amendment 7 (Recital 14)**
- **Amendment 8 (Recital 15)**
- **Amendment 15 (Recital 31)**
- **Amendment 17 (Recital 39)**
- **Amendment 19 (Recital 41)**
- **Amendment 22 (Article 2 – Paragraph 1):** It should be clear that that the proposed Directive applies only to mortgage credit agreements concluded with consumers.
- **Amendment 40 (Art 5 Paragraph 1):** 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'* always when granting/intermediating credit. Such a requirement would be ill-defined, disempowering towards consumers, unjustified, and which would impose unlimited and incalculable liability for creditors. 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"*.
- **Amendments 42 (Article 6 – Paragraph 4); 61 (Article 10 – Paragraph 3); and 74 (Article 14 – Paragraph 5):** The EACB is opposed to the extensive use of delegated acts proposed in the directive and welcomes the amendments proposed by the Rapporteur to narrow down the scope of their use. However, the EACB would call for complete removal of the use of delegated acts in this Directive, as they harm the legal certainty. 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.
- **Amendment 49 (Article 8 - Paragraph 2 (i)):** 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. In particular, an excessive warning at as an early stage as advertising is unjustified, given the true default and foreclosure rates.



- **Amendment 63 (Article 11):** 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 clearly 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 EACB fully agrees that the wording of Art 11 of the proposed Directive should be aligned with the wording of Art 5(6) CCD.**Amendment 69 (Article 14 – Paragraph 2 – Subparagraph (b)):** 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 70 (Article 14 – Paragraph 2 – Subparagraph (d)):** The EACB fully supports the alignment of this provision 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 73 (Article 14 – Paragraph 4):** 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 75 (Article 15 – Paragraph 1)**
- **Amendment 76 (Article 15 – Paragraph 2)**
- **Amendment 77 (Article 16 – Paragraph 2):** The EACB does not support the use of delegated acts in this proposal (see EACB justification in context of IMCO amendments 56, 66 and 86)



- **Amendment 83 (Article 24 – Paragraph 2)**
- **Amendment 89 (Article 29 – Title)**
- **Amendment 90 (Article 29 – Paragraph 1):** 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, and the future CARRP Directive should be aligned with the CCD to the furthest extent possible.
- **Amendment 92 (Article 30a (new))**

**1.2. Detailed comments & further amendments proposed by EACB**

The EACB has developed detailed comments on further CARRP draft Directive provisions and selected amendments as proposed by the IMCO Rapporteur in his draft opinion dated 14 September 2011, which are enclosed hereunder.

**PREAMBLE**

**Amendment 1**

<i>Recital 17</i>	<i>Amendment 9</i>	<i>EACB Proposal for Amendment</i>
<i>Text proposed by the European Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
<p>(17) Creditors and credit intermediaries frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific provisions on the advertising of credit agreements relating to residential immovable property and a list of items to be included in advertisements and marketing materials directed at consumers are necessary to enable them to compare different offers. Such provisions take into account the specificities of credit agreements relating to residential immovable property, <b>for instance, the fact that if the loan repayments are not met, there is a risk of the consumer losing the property.</b> Member States should remain free to <b>introduce or maintain</b></p>	<p>(17) Creditors and credit intermediaries frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific <b>final</b> provisions on the advertising of credit agreements relating to residential immovable property <b>and credit agreements secured by mortgages</b>, and a list of items to be included in advertisements and marketing materials directed at consumers <b>where such advertising specifies interest rates and costs</b>, are necessary to enable them to compare different offers. <b>For the rest</b>, Member States should remain free to <b>provide for information</b> requirements in their national laws. Such provisions <b>should</b> take into account the specificities of credit agreements relating to residential immovable</p>	<p>(17) Creditors and credit intermediaries frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific <b>final</b> provisions on the advertising of credit agreements relating to residential immovable property <b>and credit agreements secured by mortgages</b>, and a list of items to be included in advertisements and marketing materials directed at consumers <b>where such advertising specifies interest rates and costs</b>, are necessary to enable them to compare different offers. <del>For the rest</del>, Member States should remain free to <del>provide for information</del> requirements in their national laws. <del>Such provisions should take into account the specificities of credit agreements relating to residential immovable</del></p>



<b>disclosure</b> requirements in their national laws <b>regarding advertising which does not contain information on the cost of credit.</b>	property.	<del>property.</del>
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*Justification*

The EACB opposes the possibility of Member States to provide for further other information requirements in advertising in their national laws.

**Amendment 2**

<i>Recital 24</i>		
<i>Text proposed by the European Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
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 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>		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>

*Justification*

Firstly, the issuing of 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 must be ensured that the creditor should base his decision only on factors which are known to him at the time of performing the assessment of consumer's creditworthiness (and which at that time are reasonably considered as likely to occur). Secondly, 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. There is also 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 3**



<i>Recital 25</i>	<i>Amendment 12</i>	
<i>Text proposed by the European Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
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.	A negative creditworthiness assessment should <b>mean that the credit will only be granted in exceptional circumstances.</b> 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.	<del>A negative creditworthiness assessment should mean that the credit will only be granted in exceptional circumstances.</del> 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.

#### *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 4**

<i>Recital 26</i>	<i>Amendment 13</i>	
<i>Text proposed by the European Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
(26) Consumers should provide all available relevant information on their financial situation and personal circumstances to the creditor or intermediary <b>in order to facilitate</b> the creditworthiness assessment. <b>The consumer should not, however, be penalised where he is not in a position to provide certain information or assessments of the future evolution of his financial situation.</b> In situations where consumers knowingly provide incomplete or inaccurate information, Member States should be able to determine the appropriate	(26) Consumers should provide all available relevant information on their financial situation and personal circumstances to <b>enable</b> the creditor or intermediary <b>to carry out</b> the creditworthiness assessment, <b>since failure to do so will result in refusal of the credit they seek to obtain.</b> In situations where consumers knowingly provide incomplete or inaccurate information, Member States should be able to determine the appropriate penalties.	(26) Consumers should provide all available relevant information on their financial situation and personal circumstances to <b>enable</b> the creditor or intermediary <b>to carry out</b> the creditworthiness assessment, <del>since failure to do so will result in refusal of the credit they seek to obtain.</del> In situations where consumers knowingly provide incomplete or inaccurate information, Member States should be able to determine the appropriate penalties.



penalties.

*Justification*

*It is unclear how, at the stage of granting the loan, the creditor would be able to establish that the consumer failed to provide all available relevant information on his financial situation and personal circumstances. Creditors should not be held responsible for granting credit on the basis of incomplete information if he cannot be aware that the borrower withheld some relevant information.*

**Amendment 5**

<i>Recital 27</i>		
<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
<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. <b><i>Creditors should also be able to consult the credit database over the lifetime of the loan in order to identify and assess the potential for default. In the event that such a potential is evident or objectively demonstrated, the creditor should contact the consumer to discuss the different options to avoid the possibility of default, such as a rescheduling of the loan. In any event, the creditor should not consider withdrawing the credit without having first explored all possible alternatives with 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. 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>



erase or block the personal data concerning them processed therein where it is inaccurate or has been unlawfully processed.		
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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 6**

<i>Recital 29</i>	<i>Amendment 14</i>	
<i>Text proposed by the European Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
(29) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, of the <b>name</b> of the database consulted and of any other elements required by Directive 95/46/EC <b>so as to enable the consumer to exercise his right to access and, where necessary, rectify, erase or block personal data concerning him and processed therein.</b> Where a decision to reject an application for credit is based on an automated decision or on systematic methods such as credit scoring systems, the creditor should <b>inform</b> the consumer thereof and <b>explain the logic involved in the decision and of the arrangements enabling the consumer to request the automated decision</b> to be reviewed manually. However, the creditor should not be required to give such information when to do so would be prohibited by other Union legislation such as legislation on money laundering or the financing of terrorism. Neither should such information be provided where to do so would be contrary to the objectives of public policy	(29) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, of the <b>particulars</b> of the database consulted and of any other elements required by Directive 95/46/EC. Where a decision to reject an application for credit is based on an automated decision or on systematic methods such as credit scoring systems, the creditor should <b>notify</b> the consumer thereof and <b>inform him that such automated results can also</b> be reviewed manually, <b>though this will not create an obligation for the creditor.</b> However, the creditor should not be required to give such information when to do so would be prohibited by other Union legislation such as legislation on money laundering or the financing of terrorism. Neither should such information be provided where to do so would be contrary to the objectives of public policy or public security such as the prevention, investigation, detection or prosecution of criminal offences.	<b>(29) 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. The information shall be provided unless the provision of such information is prohibited by other Community legislation or is contrary to objectives of public policy or public security. This shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.</b>



or public security such as the prevention, investigation, detection or prosecution of criminal offences.		
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*Justification*

*An incorrect assumption is made 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.*

*In addition, Article 15 of the Data Protection Directive (95/46/EC) already prohibits all automated decisions based solely on consultation of databases stating that "Member States shall grant the right to every person not to be subject to a decision which produces legal effects concerning him or significantly affects him and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him, such as (...), creditworthiness, (...) etc". 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.*

*Concerning applications rejected based on data obtained through the consultation of a database, the EACB supports the alignment of this provision with the CCD Art 9.*

**Amendment 7**

<i>Recital 40</i>	<i>Amendment 18</i>	<i>EACB Proposal for Amendment</i>
<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
(40) In order to take account of developments in the markets for credit relating to residential immovable property, including the range of products available, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to amend <b>the content of the standard information items to be included in advertising</b> , the content and format of the European Standardised Information Sheet (ESIS), <b>the content of the information disclosures by credit intermediaries</b> , the formula and the assumptions used to calculate the annual percentage rate of charge <b>and the criteria to be taken into account for the assessment of the consumer's creditworthiness</b> .	(40) In order to take account of developments in the markets for credit relating to residential immovable property, including the range of products available, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to amend the content and format of the European Standardised Information Sheet (ESIS), <b>and to amend</b> the formula and the assumptions used to calculate the annual percentage rate of charge.	<del>(40) In order to take account of developments in the markets for credit relating to residential immovable property, including the range of products available, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to amend the content and format of the European Standardised Information Sheet (ESIS), and to amend the formula and the assumptions used to calculate the annual percentage rate of charge.</del>

*Justification*

*The EACB is opposed to the extensive use of delegated acts proposed in the directive and welcomes the amendments proposed by the Rapporteur to narrow down the scope of their use. However, the EACB would call for a complete removal of the use of delegated acts in this Directive, as they harm the legal certainty. The EACB fails to see what type of developments in the markets would necessitate in the need for further specification solely by the European Commission. 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. 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 8

<i>Recital 43</i>	<i>Amendment 20</i>	<i>EACB Proposal for Amendment</i>
<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
(43) The European Parliament and the Council should have <b>two</b> months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by <b>one month</b> with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.	(43) The European Parliament and the Council should have <b>three months</b> from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by <b>two months</b> with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.	<del>(43) The European Parliament and the Council should have <b>three months</b> from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by <b>two months</b> with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.</del>

#### *Justification*

The EACB is opposed to the extensive use of delegated acts proposed in the directive and welcomes the amendments proposed by the Rapporteur to narrow down the scope of their use. However, the EACB would call for complete removal of the use of delegated acts in this Directive, as they harm the legal certainty. The EACB fails to see what type of developments in the markets would necessitate in the need for further specification solely by the European Commission. 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. 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 I

### Amendment 9

<i>Article 1</i>	<i>Amendment 21</i>	<i>EACB Proposal for Amendment</i>
<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO 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 <b>concerning credit agreements relating to residential immovable property for consumers</b> and concerning certain aspects of the prudential and supervisory requirements for credit intermediaries and creditors.	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 and concerning certain aspects of the prudential and supervisory requirements for credit intermediaries and creditors <b>where they relate to consumer credit agreements secured by a mortgage or used to finance residential immovable</b>	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 <del>and concerning certain aspects of the prudential and supervisory requirements for credit intermediaries and creditors</del> <b>where they relate to consumer credit agreements secured by a mortgage or used to finance residential immovable</b>



	<b>property.</b>	<del>property</del> concerning credit agreements <b>concluded with consumers</b> relating to residential immovable property for consumers and concerning certain aspects of the prudential and supervisory requirements for <b>untied</b> credit intermediaries <del>and creditors</del> .
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*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 is no justification for introduction in this Directive of 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). Also, 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. Hence, the EACB objects supervisory provisions for creditors and tied intermediaries within this directive.

**Amendment 10**

	Amendment 25 Article 2 Paragraph 2 (b) (new)	
Text proposed by the Commission	Text proposed in IMCO Draft Report	EACB Proposal for Amendment
	<b>ba) Credit agreements for a total amount of credit exceeding EUR 2 million;</b>	ba) Credit agreements for a total amount of credit exceeding EUR 1 million;

*Justification*

*A ceiling of one million euro would be more appropriate.*

**Amendment 11**

	Amendment 33 Article 2 Paragraph 2 (i) (new)	Article 2 Paragraph 3 (new)
Text proposed by the Commission	Text proposed in IMCO Draft Report	EACB Proposal for Amendment
	<b>bi) Credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest or on other</b>	<b>Member States may decide that this Directive shall not apply to:</b> <b>a)</b> Credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest



	<b>terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.</b>	rates than those prevailing on the market or free of interest or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.
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*Justification*

*The situation in Member States varies following different scope of implementation of the Consumer Credit Directive (which in some countries was extended to mortgage credit and in others it was not). In this context, the EACB is of the opinion that including or excluding of such loans from the scope of the CARRP Directive should be left to the discretion of Member States.*

**Amendment 12**

<i>Article 3 – subparagraph (f)</i>		
<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO 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 only one creditor or one group.		'Tied credit intermediary' means any credit intermediary who acts on behalf of and under the full responsibility of only one creditor, <b>financial institution</b> or one group.

*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 13**

		<i>Article 3 subparagraph (t)(new)</i>
<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
		<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.

## CHAPTER II

### Amendment 14

Article 5 Paragraph 2 Text proposed by the Commission	Amendment 41 Text proposed in IMCO Draft Report	EACB Proposal for Amendment
2. Member States shall ensure that the manner in which creditors remunerate their staff and the relevant credit intermediaries and the manner in which credit intermediaries remunerate their staff do not impede compliance with the obligation <b>to act in accordance with the best interests of the consumer</b> , as referred to in paragraph 1.	2. Member States shall ensure that the manner in which creditors remunerate their staff and the relevant credit intermediaries and the manner in which credit intermediaries remunerate their staff do not impede compliance with the obligation referred to in paragraph 1.	2. Member States shall ensure that <del>the manner in which creditors remunerate their staff and the relevant</del> <b>the remuneration of untied</b> credit intermediaries and the manner in which <b>those</b> credit intermediaries remunerate their staff do not impede compliance with the obligation referred to in paragraph 1.

#### Justification

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 15

	Amendment 43 Article 8 Paragraph 1 Subparagraph 1a (new)	
Text proposed by the Commission	Text Proposed in IMCO Draft Report	EACB Proposal for Amendment
	<b>This obligation shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning</b>	<del>This obligation shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning</del>

<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



	<i>credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph.</i>	<del><i>credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph.</i></del>
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*Justification*

The EACB is opposed the possibility of Member States to provide for information requirements in advertising in their national laws.

**CHAPTER III**

**Amendment 16**

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

*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 and the EACB opposes the use of such acts in the future CARRP Directive. 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.

**Amendment 17**

Article 9 – paragraph 1 – Subparagraph 1 Text proposed by the Commission	Amendment 51 Text proposed in IMCO Draft Report	EACB Proposal for Amendment
<b><i>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.</i></b>	Member States shall ensure that general information about credit agreements is made available by creditors or, where applicable, credit intermediaries at all times <b><i>on paper, on another</i></b> durable medium or in electronic form.	<del>Member States shall ensure that general information about credit agreements is made available by creditors or, where applicable, credit intermediaries at all times <b><i>on paper, on another</i></b> durable medium or in electronic form.</del>



*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 18**

<i>Article 9 – paragraph 1 – Subparagraph 2</i>	<i>Amendment 52</i>	
<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
<p>The general information shall include at least the following:</p> <p>(a) identity and the geographical address of the creditor as well as, where applicable, the identity and geographical address of the credit intermediary involved;</p> <p>(b) purposes for which the credit may be used;</p> <p>(c) forms of surety;</p> <p>(d) the duration of the credit agreements;</p> <p>(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;</p> <p>(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 currency;</p> <p>(g) an indicative example of the total cost of credit for the consumer and annual percentage rate of charge;</p> <p>(h) the different options available for reimbursing the credit to the creditor (including the number, frequency and amount of the regular repayment instalments);</p> <p>(i) whether there is a possibility of early repayment and, where applicable, a description of the conditions attached to early repayment;</p>	<p>The general information shall include at least the following:</p> <p>(a) identity and the geographical address of the creditor as well as, where applicable, the identity and geographical address of the credit intermediary involved;</p> <p>(b) purposes for which the credit may be used;</p> <p>(c) forms of surety;</p> <p>(d) the duration of the credit agreements;</p> <p>(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;</p> <p>(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 currency;</p> <p><i>g) an indicative <b>representative</b> example of the total cost of credit for the consumer and annual percentage rate of charge;</i></p> <p>(h) the different options available for reimbursing the credit to the creditor (including the number, frequency and amount of the regular repayment instalments);</p> <p>(i) whether there is a possibility of early repayment and, where applicable, a description of the conditions</p>	<p><del>The general information shall include at least the following:</del></p> <p><del>(a) identity and the geographical address of the creditor as well as, where applicable, the identity and geographical address of the credit intermediary involved;</del></p> <p><del>(b) purposes for which the credit may be used;</del></p> <p><del>(c) forms of surety;</del></p> <p><del>(d) the duration of the credit agreements;</del></p> <p><del>(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;</del></p> <p><del>(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 currency;</del></p> <p><del><i>g) an indicative <b>representative</b> example of the total cost of credit for the consumer and annual percentage rate of charge;</i></del></p> <p><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></p> <p><del>(i) whether there is a possibility of early repayment and, where applicable, a description of the conditions</del></p>



(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.	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.	<del>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.</del>
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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 19**

Article 9 – paragraph 2 Text proposed by the Commission	Amendment 55 Text proposed in IMCO Draft Report	Proposal for EACB Amendment
<p><b>2. Member States shall ensure that</b> the creditor and, where applicable, the credit intermediary, <b>without undue delay</b> after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 14, <b>provides</b> the consumer with the personalised information needed to compare <b>the credits available on the market, assess their implications and take an informed decision on whether to conclude a credit agreement.</b> Such information, on paper or on another durable medium, shall be provided by means of the European Standardised Information Sheet ('ESIS'), as set out in Annex II.</p> <p><b>Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be accompanied by an ESIS. In such circumstances, Member States shall ensure that the credit agreement cannot be concluded until the consumer has had</b></p>	<p><b>2. In good time before the consumer is bound by a credit agreement or offer,</b> the creditor and, where applicable, the credit intermediary <b>shall,</b> after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 14, <b>provide</b> the consumer <b>on the basis of the credit conditions offered by the creditor, and where appropriate of the preferences expressed and details supplied by the consumer,</b> with the personalised information needed to compare <b>various offers and take a reasoned decision on whether he wishes to conclude a credit agreement.</b> Such information, on paper or on another durable medium, shall be provided by means of the European Standardised Information Sheet ('ESIS'), as set out in Annex II.</p> <p>The creditor and, where applicable, the credit intermediary shall be deemed to have fulfilled the</p>	<p><b>2. In good time before the consumer is bound by a credit agreement or offer,</b> the creditor and, where applicable, the credit intermediary <b>shall,</b> after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 14, <b>provide</b> the consumer <b>on the basis of the credit conditions offered by the creditor, and where appropriate of the preferences expressed and details supplied by the consumer,</b> with the personalised information needed to compare <b>various offers and take a reasoned decision on whether he wishes to conclude a credit agreement.</b> Such information, on paper or on another durable medium, shall be provided by means of the European Standardised Information Sheet ('ESIS'), <del>as set out in Annex II as defined in Article 3(t).</del></p> <p>The creditor and, where applicable, the credit intermediary shall be deemed</p>



<p><b>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.</b></p> <p>The creditor and, where applicable, the credit intermediary shall be deemed to have fulfilled the requirements on information provision to the consumer prior to the conclusion of a distance contract as set out in Article 3 of Directive 2002/65/EC where they have supplied the ESIS.</p> <p><b>Any</b> additional information which the creditor or where applicable, the credit intermediary, may provide to the consumer shall be given in a separate document which may be annexed to the ESIS.</p>	<p>requirements on information provision to the consumer prior to the conclusion of a distance contract as set out in Article 3 of Directive 2002/65/EC where they have supplied the ESIS.</p> <p><b>The Member States may provide that the consumer is to be supplied with additional information. This, together with any</b> additional information which the creditor or where applicable, the credit intermediary, may provide <b>voluntarily</b> to the consumer, shall be given in a separate document which may be annexed to the ESIS.</p>	<p>to have fulfilled the requirements on information provision to the consumer prior to the conclusion of a distance contract as set out in Article 3 of Directive 2002/65/EC where they have supplied the ESIS.</p> <p><del>The Member States may provide that the consumer is to be supplied with additional information. This, together with a</del> Any additional information which the creditor or where applicable, the credit intermediary, may provide <b>voluntarily</b> to the consumer, shall be given in a separate document which may be annexed to the ESIS.</p>
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#### Justification

*The choice of the ESIS form<sup>2</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.*

*The EACB fully supports the deletion of reference to 'sufficient time' as proposed by the Rapporteur. 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 (CCD) 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.*

<sup>2</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



*EACB is opposed to the introduction of provisions providing Member States with the discretion to decide whether additional information should be provided to the consumer.*

#### **Amendment 20**

<i>Article 9 – Paragraph 3 – Subparagraph 1</i>	<i>Amendment 56</i>	
<i>Text proposed by the Commission</i>	<i>Text Proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
Powers are delegated to the Commission in accordance with Article 26 <b>and subject to the conditions of Articles 27 and 28</b> , 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.	Powers are delegated to the Commission in accordance with Article 26 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.	<del>Powers are delegated to the Commission in accordance with Article 26 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.</del>

#### *Justification*

*The EACB is opposed to the extensive use of delegated acts proposed in the directive and welcomes the amendments proposed by the Rapporteur to narrow down the scope of their use. However, the EACB would call for complete removal of the use of delegated acts in this Directive, as they harm the legal certainty. The EACB fails to see what type of developments in the markets would necessitate in the need for further specification solely by the European Commission. 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. 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 21**

<i>Article 10 – Paragraph 1 – point b</i>		
<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>Proposal for EACB Amendment</i>
(b) the register in which he has been included and the means for verifying that he has been registered;		(b) the register in which he has been included and the means for verifying that he has been registered. <b><i>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.</i></b>

#### *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.

## CHAPTER IV

### Amendment 22

Article 12 – Paragraph 5 Text proposed by the Commission	Amendment 66 Text Proposed in IMCO Draft Report	EACB Proposal for Amendment
<p>5. Powers are delegated to the Commission in accordance with Article 26 <b>and subject to the conditions of Articles 27 and 28</b>, to amend the formula <b>and the assumptions</b> used to calculate the annual percentage rate of charge as set out in Annex I.</p> <p>The Commission shall, when adopting such delegated acts, amend, where necessary, the formula <b>or assumptions</b> laid down in Annex I, <b>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>	<p>5. Powers are delegated to the Commission in accordance with Article 26 to amend the formula used to calculate the annual percentage rate of charge as set out in Annex I.</p> <p>The Commission shall, when adopting such delegated acts, amend, where necessary, the formula laid down in Annex I.</p>	<p><del>5. Powers are delegated to the Commission in accordance with Article 26 to amend the formula used to calculate the annual percentage rate of charge as set out in Annex I.</del></p> <p><del>The Commission shall, when adopting such delegated acts, amend, where necessary, the formula laid down in Annex I.</del></p>

#### Justification

The EACB is opposed to the extensive use of delegated acts proposed in the directive and welcomes the amendments proposed by the Rapporteur to narrow down the scope of their use. However, the EACB would call for complete removal of the use of delegated acts in this Directive, as they harm the legal certainty. The EACB fails to see what type of developments in the markets would necessitate in the need for further specification solely by the European Commission. 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. 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 particular, 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. Finally, regular adjustments would mean significant costs for banks.

## CHAPTER V

### Amendment 23



Article 14 – paragraph 1	Amendment 67	
<i>Text proposed by the European Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
<p>1. Member States shall ensure that, before the conclusion of the credit agreement, <b>a thorough assessment of the consumer's creditworthiness is conducted by the creditor, based on criteria including the consumer's income, savings, debts and other financial commitments. That assessment shall be carried out on the basis of the necessary information, obtained by the creditor or, where applicable, credit intermediary from the consumer and from relevant internal or external sources and shall respect the requirements with regard to necessity and proportionality set out in Article 6 of Directive 95/46/EC.</b> Member States shall ensure that creditors establish appropriate processes to assess the creditworthiness of the consumer. These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.</p>	<p>1. Member States shall ensure that, before the conclusion of the credit agreement, <b>the creditor assesses the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.</b> Member States shall ensure that creditors establish appropriate processes to assess the creditworthiness of the consumer. These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.</p>	<p>1. Member States shall ensure that, before the conclusion of the credit agreement, <b>the creditor assesses the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.</b> Member States shall ensure that creditors establish appropriate processes to assess the creditworthiness of the consumer. <del>These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.</del></p>

#### Justification

The EACB in general supports the IMCO Rapporteur amendment. 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.

Following the same logic, the EACB is opposed to formal recording and reviews of the processes applied to assess creditworthiness assessment, which could suggest their standardisation, and as such would impair flexibility and individualised approach to assessing creditworthiness.

#### Amendment 24

Article 14 – Paragraph 2 – Subparagraph (a)	Amendment 68	
<i>Text proposed by the European Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
<p>a) Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to <b>repay the credit over the lifetime of the credit agreement, the creditor refuses credit.</b></p>	<p>a) Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to <b>meet his contractual obligations under the credit agreement, the creditor, if he nevertheless grants the</b></p>	<p><del>A negative creditworthiness assessment should mean that the credit will only be granted in exceptional circumstances.</del> Such a negative outcome may derive from a wide range of reasons, including but not limited to the</p>



	<b>credit, documentary evidence to show that he has done so and to support this decision.</b>	<b>supplies</b> <del>consultation of a database or a negative credit score.</del> A positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.
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*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 25**

<i>Article 14 – Paragraph 2 – Subparagraph (e)</i>	<i>Amendment 71</i>	
<i>Text proposed by the European Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
e) Without prejudice to the general right of access contained in Article 12 of the Directive 95/46/EC, where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the creditor informs the consumer immediately and without charge and <b>that the creditor explains the logic involved in the automated decision to the consumer.</b>	e) Without prejudice to the general right of access contained in Article 12 of the Directive 95/46/EC, where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the creditor informs the consumer immediately and without charge.	<del>e) Without prejudice to the general right of access contained in Article 12 of the Directive 95/46/EC, where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the creditor informs the consumer immediately and without charge.</del>

*Justification*

*The EACB supports the deletion of a requirement for creditors to explain the logic involved in the automated decision to the consumer, as 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 fact, the entire provision should be in the view of the EACB deleted because it 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. In addition, Article 15 of the Data Protection Directive (95/46/EC) already prohibits all automated decisions based solely on consultation of databases stating that “Member States shall grant the right to every person not to be subject to a decision which produces legal effects concerning him or significantly affects him and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him, such as (...), creditworthiness, (...) etc”. 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 26

Article 14 – Paragraph 2 – Subparagraph (f)	Amendment 72	
Text proposed by the European Commission	Text proposed in IMCO Draft Report	EACB Proposal for Amendment
f) The consumer <b>has the opportunity to request for the decision to be reviewed manually.</b>	f) The consumer <b>is made aware that there is the possibility of a manual review of the refusal of his credit application; this does not constitute an obligation on the creditor to carry out such review.</b>	<del>f) The consumer <b>is made aware that there is the possibility of a manual review of the refusal of his credit application; this does not constitute an obligation on the creditor to carry out such review.</b></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. The EACB welcomes therefore the clarification proposed by the Rapporteur that this does not constitute an obligation on the creditor to carry out such review. However, we would call for the complete deletion of Subparagraph (f) as superfluous.

## CHAPTER VII

### Amendment 27

Article 17 – Paragraph 1	Amendment 78	
Text proposed by the Commission	Text proposed in IMCO Draft Report	EACB Proposal for Amendment
For the purposes of this Directive, 'advice' constitutes a separate service from the granting of a credit. <b>Such a service can only be marketed as advice when the remuneration of the individual providing the service is transparent to the consumer.</b>	1. For the purposes of this Directive, 'advice' constitutes a separate service from the granting of a credit. <b>A separate charge for advice can only be made if the consumer has been informed of the requirement to pay a charge and of method used for its calculation.</b>	1. For the purposes of this Directive, 'advice' constitutes a separate service from the granting of a credit. <b>Such a service can only be marketed as advice when:</b> <b>(a) the remuneration for the service is transparent to the consumer and</b> <b>(b) the consumer is made aware of the fact that he is receiving the separate service of 'advice'.</b>

### Justification

'Advice' is rightly classified 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/will receive a separate service of impartial 'advice'.

### Amendment 28

Article 17 – Paragraph 2	Amendment 79	
Text proposed by the Commission	Text proposed in IMCO Draft Report	EACB Proposal for Amendment
Member States shall ensure that the creditor or credit intermediary informs the		Member States shall ensure that the creditor or credit intermediary informs the



<p>consumer, in the context of a given transaction, whether or not advice is being or will be provided. This may be done through additional pre-contractual information.</p> <p>Where advice is provided to consumers, in addition to the requirements set out in Articles 5 and 6, Member States shall ensure <b>that creditors and credit intermediaries:</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>a) consider a sufficiently large number of credit agreements available so as to enable the recommendation of the most suitable credit agreements for the consumer's needs, financial situation and personal circumstances, <b>and where appropriate inform the consumer if they are considering only their own range of products;</b></p>	<p>consumer, in the context of a given transaction, when advice is being or will be provided. This may be done through additional pre-contractual information.</p> <p>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>(a) consider a sufficiently large number of credit agreements: <del>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:</del></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.*

**CHAPTER VIII**

**Amendment 29**

Article 18 – Paragraph 1		
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<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB proposal for Amendment</i>
<p>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.</p>		<p><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, exercise of the right may be made subject to the existence of a special interest on the part of the consumer.</b></p>

*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 30**

<i>Article 18 – Paragraph 2</i>	<i>Amendment 80</i>	
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<i>Text proposed by the Commission</i>	<i>Text proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
<p>Member States may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, or restrictions with regard to the circumstances under which the right may be exercised. Member States may also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In any event, if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a special interest on the part of the consumer.</p> <p>Where a Member State lays down such conditions, <b>these shall not make</b> the exercise of the right referred to in paragraph 1 excessively difficult or onerous <b>for the consumer</b>.</p>	<p>Member States may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, or restrictions with regard to the circumstances under which the right may be exercised. Member States may also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs, <b>including loss of interest</b>, 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.</p> <p>Where a Member State lays down such conditions, the exercise of the <b>consumer's</b> right referred to in paragraph 1 <b>shall not be made</b> excessively difficult or onerous <b>by conditions going beyond the parameters set out above</b>.</p>	<p><del>Member States may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, or restrictions with regard to the circumstances under which the right may be exercised. Member States may also provide that</del> <b>The</b> creditor shall be entitled to fair <b>and full</b> compensation for potential costs, <b>interest rate loss and other losses and foregone profits</b> 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.</p> <p><del>Where a Member State lays down such conditions, the exercise of the</del> <b>consumer's</b> right referred to in paragraph 1 <del>shall not be made</del> excessively difficult or onerous <del>by conditions going beyond the parameters set out above</del>.</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.*

*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.*

<i>Text proposed by the Commission</i>	<i>Text Proposed in IMCO 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>
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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 31**

<p>Article 26 Text proposed by the Commission</p>	<p>Amendment 86 Text proposed in IMCO Draft Report</p>	<p>EACB Proposal for Amendment</p>
<p>1. The <b>powers</b> to adopt delegated acts <b>referred to in Articles 6(4), 8(4), 9(3), 10(3), 14(5) and 16(2)</b> shall be conferred on the Commission <b>for an indeterminate period of time following the entry into force of this Directive.</b>  <b>2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</b>  <b>3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27 and 28.</b></p>	<p>1. The <b>power</b> to adopt delegated acts <b>shall be conferred on the Commission subject to the conditions laid down in this Article.</b>  <b>2. The power to adopt delegated acts referred to in Article 9(3)(d) and (e) and Article 12(5) shall be conferred on the Commission for an indeterminate period of time from...*.</b>  <b>3. The delegation of powers referred to in Article 9 (3)(d) and (e) and Article 12 (5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision to revoke in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts</b></p>	<p><del>1. The <b>power</b> to adopt delegated acts <b>shall be conferred on the Commission subject to the conditions laid down in this Article.</b></del>  <del>2. <b>The power to adopt delegated acts referred to in Article 9(3)(d) and (e) and Article 12(5) shall be conferred on the Commission for an indeterminate period of time from...*.</b></del>  <del>3. <b>The delegation of powers referred to in Article 9 (3)(d) and (e) and Article 12 (5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision to revoke in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts</b></del></p>



	<p><i>already in force.</i></p> <p><b>3a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</b></p> <p><b>3b. A delegated act adopted pursuant to Article 9(3) (d) and (e) and Article 12(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. At the initiative of the European Parliament or the Council that period shall be extended by two months.</b></p> <hr/> <p><b>* The date of entry into force of this Directive.</b></p>	<p><del><i>already in force.</i></del></p> <p><del><b>3a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</b></del></p> <p><del><b>3b. A delegated act adopted pursuant to Article 9(3) (d) and (e) and Article 12(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. At the initiative of the European Parliament or the Council that period shall be extended by two months.</b></del></p> <hr/> <p><del><b>* The date of entry into force of this Directive.</b></del></p>
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*Justification*

The EACB is opposed to the extensive use of delegated acts proposed in the directive and welcomes the amendments proposed by the Rapporteur to narrow down the scope of their use. However, the EACB would call for complete removal of the use of delegated acts in this Directive, as they harm the legal certainty. The EACB fails to see what type of developments in the markets would necessitate in the need for further specification solely by the European Commission. 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. 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 32**

<i>Article 30 – Paragraph 1</i> <i>Text proposed by the Commission</i>	<i>Text Proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
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		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



<p>and this Directive. They shall apply those provisions from [<b>2</b> years after 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>and this Directive. They shall apply those provisions from [<b>3</b> years after 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.*

**Amendment 33**

<i>Annex II - Part A – ESIS model - Point 8</i>	<i>Amendment 95</i>	
<i>Text proposed by the Commission</i>	<i>Text Proposed in IMCO Draft Report</i>	<i>EACB Proposal for Amendment</i>
<p>8. Early repayment (Where applicable) You do not have the possibility to repay this loan early.  (Where applicable) You have the possibility to repay this loan early, either fully or partially.  (Where applicable) [Conditions] [Procedure]  (Where applicable) <b>Exit charge:</b>  (Where applicable) Should you decide to repay this loan early, please contact us to ascertain the exact level of the <b>exit charge</b> at that moment.</p>	<p>8. Early repayment (Where applicable) You do not have the possibility to repay this loan early.  (Where applicable) You have the possibility to repay this loan early, either fully or partially.  (Where applicable) [Conditions] [Procedure]  (Where applicable) <b>Compensation:</b>  (Where applicable) Should you decide to repay this loan early, please contact us to ascertain the exact level of the <b>compensation for costs incurred and loss of interest</b> at that moment.</p>	<p>. Early repayment (Where applicable) You do not have the possibility to repay this loan early.  (Where applicable) You have the possibility to repay this loan early, either fully or partially.  (Where applicable) [Conditions] [Procedure]  (Where applicable) <b>Compensation:</b>  (Where applicable) Should you decide to repay this loan early, please contact us to ascertain the exact level of the <b>compensation for potential costs, interest rate loss and other losses and foregone profits</b> at that moment.</p>

*Justification*

*To align with the amendment concerning Article 18 Paragraph 2.*

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

Marieke van Berkel, Head of Unit  
 Tel: +32 (2) 286 9847, Email: [m.vanberkel@eurocoopbanks.coop](mailto:m.vanberkel@eurocoopbanks.coop)  
 Katarzyna Kobylińska, Adviser  
 Tel: +32 (2) 289 6855, Email: [k.kobylińska@eurocoopbanks.coop](mailto:k.kobylińska@eurocoopbanks.coop)