



## EACB Comments on the Economic and Monetary Affairs Committee of the European Parliament draft amendments to the European Commission Proposal for a Directive on Consumer Rights

Brussels, 7 September 2010

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

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## Introduction

The EACB wishes to comment on the Draft Opinion of 10 May 2010 and Draft Amendments of 11 June 2010 made by the Economic and Monetary Affairs Committee of the European Parliament regarding the European Commission (EC) Proposal for a Directive on Consumer Rights<sup>1</sup> (the Proposal).

## General comments on the EC proposal

The EACB supports the objectives of the EC Proposal (i) to improve the functioning of the Internal Market for businesses and consumers by introducing a more coherent legal framework, and (ii) to ensure a high level of consumer protection. These objectives go hand-in-hand with one another, as it is only if the certainty and consistency of the legal framework is ensured will consumers have the confidence to avail of the advantages of the Internal Market. Having observed the developments around the Proposal at the European Parliament and the Council since October 2008, concerning in particular the scope of the Proposal and the level of harmonisation, the EACB has doubts that the Proposal will introduce the desired consistency and clarity of the legal framework of consumer rights. To address this concern, **the EACB requests the exclusion of financial services from the scope of the Proposal, with the only exception being the 'black' and 'grey' lists of unfair contract terms.**

We base our position on the following arguments.

There is already an extensive body of existing EU, sector specific legislation and industry measures in place regulating the provision of financial services to consumers, as well as a number of relevant upcoming initiatives. Without attempting to present an exhaustive list of those measures, the following examples can be highlighted:

- Consumer Credit Directive (2008/48/EC);
- Payment Systems Directive (2007/64/EC);
- Directive on Distance Marketing of Financial Services (2002/65/EC);
- Markets in Financial Instruments Directive (2004/39/EC);
- Prospectus Directive (2003/71/EC);
- Money Laundering Directive (2005/60/EC);
- Self-regulatory EBIC Code of Conduct on Home Loans;
- Upcoming EU legislation on Responsible Mortgage Lending and Borrowing;
- Packaged Retail Investment Products initiatives under development;
- Etc.

The EACB considers that with such an extensive body of vertical legislation, regulatory gaps are marginal and overlaps likely. In fact, the proposed directive on consumer rights would apply to banking services only as regards off-premises concluded contracts related to consumer credit below EUR 200, consumer credit above EUR 75,000, and mortgage credit. However, the validity of regulation in those areas can be questioned.

As for mortgage credit and home loans, information requirements are already regulated by an industry initiative, the Code of Conduct on Home Loans and its European Standardised Information Sheet (ESIS) form, which was subject to consumer testing and received an overall positive assessment mark<sup>2</sup>. The European Commission has now

<sup>1</sup> COM (2008) 614 final

<sup>2</sup> [http://ec.europa.eu/internal\\_market/finservices-retail/docs/credit/esis\\_report\\_en.pdf](http://ec.europa.eu/internal_market/finservices-retail/docs/credit/esis_report_en.pdf)



confirmed that the ESIS will be used as one of the basis for EU legislation regulating responsible mortgage lending and borrowing, which will also cover the aspect of information to consumers. The EACB wishes to emphasise that the proposal's intended simplification of the legal framework for businesses and consumers cannot be achieved through double regulation.

As for consumer credit below the minimum threshold of EUR 200, the EACB considers that it should not be subject to the same level of regulation. The minimum threshold was introduced in the CCD to avoid an unnecessary amount of new bureaucracy and administrative burden, and to ensure that additional costs related to the provision of information do not disproportionately outweigh the potential financial gains. To include such loans within the scope of the new directive would not lead to the desired 'filling in regulatory gaps', since the legislator purposely left these 'petty loans' outside of the scope of the CCD. Further, Art 7 of the Unfair Commercial Practices Directive already provides for protection of consumers taking out such loans.

The only exception to the general exclusion of financial services from the scope of the proposal which the EACB considers fit are the 'black' and 'grey' lists of unfair contract terms, enclosed in Annex II and Annex III of the proposal. With the view of ensuring legal certainty and consistency of the legal framework, the EACB strongly supports maximum harmonisation of those terms. The situation whereby in one Member State a particular term is included in a 'black list', in another Member State in a 'grey list', and yet in another Member States it is not included in any of the lists at all, would create barriers for traders, and confusion for consumers.

### Detailed comments on ECON draft amendments

The EACB calls for the exclusion of financial services from the scope of the directive on consumer rights, with the exception of unfair contract terms. **The EACB therefore strongly supports the proposed amendment No 18<sup>3</sup>** (see table enclosed for further details). However, should financial services remain under the scope of the proposal, the EACB would support targeted maximum harmonisation of the definitions, right of withdrawal and standardised withdrawal form, as well as unfair contract terms.

Enclosed is a table containing our more detailed comments regarding the draft ECON Committee amendments of 11 June 2010 (2008/0196 (COD)). **Please note that these comments should be considered as secondary and relevant only in case of the inclusion of financial services in the scope of the directive, which the EACB strongly opposes.**

Encl.: Detailed EACB comments on the ECON draft amendments to the proposal for a directive on consumer rights

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<sup>3</sup> Of the Draft Amendments of 11 June 2010 made by the Economic and Monetary Affairs Committee of the European Parliament



Article	Original text of EC proposal	Proposed ECON amendment	EACB Comment on the proposed ECON amendment	Overall mark
<b>Amendment 3, Sari Essayah</b>				
Recital 2	(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive. <b>This Directive should accordingly lay down standard rules for the common aspects and move away from the minimum harmonisation approach in the former Directives under which Member States could maintain or adopt stricter national rules.</b>	(2) Those Directives have been reviewed in the light of experience with a view to simplifying and updating the applicable rules, removing inconsistencies and closing unwanted gaps in the rules. That review has shown that it is appropriate to replace those four Directives by this single Directive.	As the EACB considers that financial services should be excluded from the scope the directive, except for unfair contract terms, we in general do not consider it necessary to comment on the level of harmonisation of other provisions. However, should financial services not be excluded from the provisions on off-premises contracts, the EACB would strongly support maximum harmonisation of definitions, right of withdrawal and standardized withdrawal form, in addition to unfair contract terms, which in our view is necessary to ensure the desired consistency of the legal framework.	—
<b>Amendment 4, Antolín Sánchez Presedo</b>				
Recital 8	(8) Full harmonisation of some key regulatory aspects will considerably increase legal certainty for both consumers and business. Both consumers and business will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Community. The effect will be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. These barriers can only be eliminated by establishing uniform rules at Community level. Furthermore consumers will enjoy a high common level of protection across the Community.	(8) <b>Unless otherwise specified and in accordance with Article 169 of the Treaty on the Functioning of the European Union, the measures laid out in the present directive should not prevent Member States from maintaining or introducing measures providing for a higher level of consumer protection. However, full harmonisation of some key regulatory aspects is justified to ensure a consistent framework of consumer protection across the European Union and to considerably increase legal certainty for both consumers and business in cross border transactions. In these cases, both</b> consumers and business will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Community. The effect <b>should be that</b>	See comments on proposed amendment no 3.	—



		consumers enjoy a high common level of protection across the European Union, contribute to eliminate the barriers stemming from the inadequate fragmentation of the rules and to complete the internal market in this area.		
<b>Amendment 5, Antolín Sánchez Presedo</b>				
Recital 11	(11) The existing Community legislation on consumer financial services contains numerous rules on consumer protection. For this reason the provisions of this Directive cover contracts relating to financial services only insofar as this is necessary to fill the regulatory gaps.	(11) Whilst the existing Community legislation on consumer financial services contains numerous rules on consumer protection, consumers in the field of financial services should profit of the measures provided in the present directive insofar as this is necessary to fill the regulatory gaps. <b>These measures should also apply horizontally where a higher level of consumer protection that the one provided in the special financial national or EU legislation is granted.</b>	The EACB considers that financial services should be excluded from the scope of the directive, except for unfair contract terms. The rule <i>lex specialis derogate legi generali</i> should be observed. The horizontal application of the proposal wherever a higher level of protection is granted by it would only lead to further confusion and lack of clarity of the legal framework. In the Commission 'non-paper' presented on 29 September 2009, it is clearly stated that the proposal should be treated as <i>lex generalis</i> compared to sector specific Community legislation (in case of banking, it is e.g. PSD <sup>4</sup> , CCD <sup>5</sup> , DMFSD <sup>6</sup> , MiFID <sup>7</sup> , etc). Therefore, in case of conflict, the specific information requirements in the sector specific legislation should take precedence. Should this amendment be upheld, the legislator should specify which measures within the special financial legislation offer a lower level of protection to consumers than the proposal directive on consumer rights.	—
<b>Amendment 10, Antolín Sánchez Presedo</b>				
Recital 11 a (new)		(11a) The Union should aim to achieve a <b>European Charter of Consumer Rights in the field of financial services</b> . The Charter should	Such a Charter seems to be unrealistic and would only present an additional layer in the regulatory framework. Many of the issues proposed for the	—

<sup>4</sup> Payment Systems Directive (Directive 2007/64/EC)

<sup>5</sup> Consumer Credit Directive (Directive 2008/48/EC)

<sup>6</sup> Directive on distance marketing of financial services (Directive 2002/65/EC)

<sup>7</sup> Markets In Financial Instruments Directive (Directive 2004/39/EC)



		<p>bring together and simplify all existing provisions, specify rights such as access to information, control of own financial records, adequate advice and consumer education, promote financial inclusion, incorporate best practices from Member States, facilitate collective redress and encourage stakeholder's participation. Additionally, an annual report should evaluate the fulfilment across the Union of the measures provided for in the Charter.</p>	<p>Charter are already regulated, and many of them by new legislation, the impact of which is yet to be assessed. For example:</p> <ul style="list-style-type: none"> <li>- access to information: CCD, DMFS, PSD, MiFID, Prospectus Directive, UCITS, PRIPs (upcoming), legislation on responsible mortgage lending and borrowing (upcoming)</li> <li>- advice (MiFID),</li> <li>- consumer education – in the domain of Member States. Additionally, co-operative banks are actively engaged in raising the levels of financial literacy.</li> <li>- financial inclusion – this issue is currently under consideration by the EC. Additionally, there are already numerous national solutions and co-operative banks are actively engaged in this issue as well.</li> <li>- collective redress – the EC is currently considering the best way forward and is planning a further stakeholder consultation on collective redress, along with a possible White Paper on damages actions.</li> </ul> <p>It would be more appropriate to await the outcome of the new pieces of legislation as well as the upcoming legislative initiatives, in order to assess whether such a Charter would bring any added-value. The EACB considers therefore that Recital 11a, as proposed in this amendment, should not be inserted.</p>	
<b>Amendment 6, Olle Schmidt</b>				
Recital 11	(11) The existing Community legislation on consumer financial services contains numerous rules on consumer protection. For this reason the provisions of this Directive cover contracts relating to financial services <b>only insofar as this is necessary to fill the regulatory gaps.</b>	(11) The existing Community legislation on consumer financial services contains numerous rules on consumer protection. The provisions of this Directive should cover <b>credit agreements involving amounts less than EUR 200 or more than EUR 75 000, not included in Directive 2008/48/EC.</b>	(1) The EC is currently reviewing several aspects of mortgage lending, and will propose EU legislation on responsible mortgage lending and borrowing (mortgage and home loans), which will cover aspects such as pre-contractual information. In addition, by now 14 Member States have decided to extend the application of the CCD to mortgage	—



			credit. (2) Consumer credit below the minimum threshold of EUR 200 should not be subject to the same level of regulation. The minimum threshold was introduced in the CCD to avoid an unnecessary amount of new bureaucracy and administrative burden, and to ensure that additional costs related to the provision of information do not disproportionately outweigh the potential financial gains. <b>Reference to regulatory gaps is more appropriate and more adaptable to the existing vertical legislation; double regulation should be avoided.</b>	
<b>Amendment 8, Olle Schmidt</b>				
Recital 11 a (new)		(11a) In order to enable consumers to make their decisions in full knowledge of the facts, they should receive <b>adequate information</b> , which the consumer may take away and consider, prior to the conclusion of the <b>credit agreement</b> , on the conditions and cost of the credit and on their obligations.	See comments on proposed amendment no 6.	—
<b>Amendment 9, Olle Schmidt</b>				
Recital 11 b (new)		(11b) In the future, when reviewing existing legislation on financial services, the Commission should take a horizontal approach regarding financial services for consumers.	Financial services should be excluded from the scope of the proposed directive, except for unfair contract terms.	—
<b>Amendment 7, Sirpa Pietikäinen</b>				
Recital 11 a (new)		(11a) New financial products that fall below the EUR 200 lower limit, set out in the existing legislation, should be taken into account when renewing the current financial legislation or in further development of the consumer rights directive in relating to consumer information and unfair business practices.	See comments on proposed amendment no 6 & 9.	—
<b>Amendment 13, Olle Schmidt</b>				



Recital 57 a (new)		(57a) The Commission should ensure the availability of out-of-court complaints and a collective redress mechanism for European consumers. This would increase consumer confidence and facilitate the possibility for consumers to handle complaints of a less serious nature and involving smaller amounts.	Consumers can already address their less serious complaints (involving smaller amounts of up to EUR 2,000) through the European Small Claims Procedure, which provides for a standard claim form. Also, ECC-Net facilitates the out-of-court resolution of cross-border consumer complaints. The EC is in the process of analysing the need for a collective redress system in the EU, the conclusions of which are still to be determined. No reference should be made in the Proposal to a mechanism that does not yet exist nor is certain to exist.	—
<b>Amendment 14, Olle Schmidt</b>				
Recital 60 a (new)		(60a) To ensure a high level of consumer protection and fair conditions of trade as well as a level playing field for entrepreneurs across the single market, the Commission should investigate and develop the use of independent methods of alternative dispute resolution, such as the Nordic ombudsman model, at the Union level and in all Member States.	The EC has only recently announced plans for a Green Paper on alternative dispute resolution (ADR). It seems inappropriate for any new legislation to already express a preference for a particular model before the EC draws any conclusions.	—
<b>Amendment 16, Antolín Sánchez Presedo</b>				
Article 2 – paragraph 1 – point 2	(2) 'trader' means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;	(2) 'trader' means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader; <b>in the case of financial services, the special requirements provided for in the EU sectoral financial legislation should be regarded;</b>	The EACB considers that financial services should be excluded from the scope of the directive, except for unfair contract terms. Specific sector regulation should always be observed, and consistency of legislation is supported by the EACB.	+
<b>Amendment 17, Antolín Sánchez Presedo</b>				
Article 3 – paragraph 2	2. This Directive shall only apply to financial services as regards certain off-premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as	2. This Directive shall apply to financial services without prejudice to national or EU special financial legislation providing for a higher level of consumer protection.	<b>This amendment would mean that in case where sectoral legislation already covering certain financial services provides lower level of protection to consumers than envisaged by the proposal directive, the directive on</b>	—



	provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation.		<b>consumer rights would apply instead of the sector specific legislation. This remains in conflict with the fundamental rule <i>lex specialis derogat legi generali</i>, and as such this amendment cannot be supported by the EACB.</b>	
<b>Amendment 18, Ashley Fox</b>				
	2. This Directive shall only apply to financial services as regards certain <b>off-premises contracts</b> as provided for by Articles 8 to 20, <b>unfair contract terms</b> as provided for by Articles 30 to 39 and <b>general provisions</b> as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation.	2. This Directive shall only apply to financial services as regards certain <b>unfair contract terms</b> as provided for by Articles 30 to 39 and <b>general provisions</b> as provided for by Articles 40 to 46, read in conjunction with Article 4 on full harmonisation.	The EACB fully supports this amendment, as it would result in the requested exclusion of financial services from the scope of the directive, except for the unfair contract terms. See also comments on proposed amendment no 3 & 4, as well as the cover note accompanying this table.	<b>+</b>
<b>Amendment 19, Pascal Canfin</b>				
	2. This Directive shall only apply to financial services as regards certain off-premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on <b>full harmonisation</b> .	2. This Directive shall only apply to financial services as regards certain off-premises contracts as provided for by Articles 8 to 20, unfair contract terms as provided for by Articles 30 to 39 and general provisions as provided for by Articles 40 to 46, read in conjunction with Article 4 on <b>minimum harmonisation</b> .	Financial services should be excluded from the scope of the Directive, except for the unfair contract terms and 'black' and 'grey' lists. The EACB would support maximum harmonisation of unfair contract terms and the associated lists. In case of the undesirable, wider inclusion of financial services within the scope, the EACB would support full harmonisation of definitions, right of withdrawal and standardised withdrawal form as well.	<b>-</b>
<b>Amendment 22, Pascal Canfin</b>				
Article 4	Full harmonisation	Minimum harmonisation	The EACB is in favour of targeted maximum harmonisation. See comments on proposed amendment no 19.	<b>-</b>
<b>Amendment 23, Ashley Fox &amp; Amendment 24, Sirpa Pietikäinen &amp; Amendment 25, Pascal Canfin</b>				
	Member States <b>may not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive</b> , including more or less stringent provisions to ensure a different level of consumer protection.	1. <b>Unless indicated differently in this Directive, Member States may adopt or maintain in force more stringent provisions</b> , compatible with the Treaty in the field covered by this Directive, to ensure a higher level of consumer protection.	The EACB is in favour of targeted maximum harmonisation. See comments on proposed amendment no 19 & 22.	



		<p>2. Where Member States maintain or introduce more stringent provisions to ensure a higher level of consumer protection in the field harmonised by this directive, these provisions must be compatible with the Treaty and <b>must be notified to the Commission. The Commission shall make that information public on a website or in another easily accessible way.</b></p> <p>3. The rights resulting from this Directive shall be exercised without prejudice to other rights which the consumer may invoke under the national rules governing contractual or non-contractual liability.</p>		—
<b>Amendment 26, Antolín Sánchez Presedo</b>				
	Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection.	<b>Unless otherwise specified</b> and in accordance with Article 169 of the Treaty on the Functioning of the European Union, <b>the measures laid out in the present directive shall not prevent Member States from maintaining or introducing measures providing for a higher level of consumer protection.</b>	See comments on proposed amendment no 19, 22 & 23.	
<b>Amendment 27, Sari Essayah</b>				
	Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection.	Member States <b>may maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, if they are more stringent</b> provisions to ensure a higher level of consumer protection.		
<b>Amendment 29, Olle Schmidt</b>				
Article 5 – paragraph 1 – point c a		(ca) the total cost of the credit to the consumer, comprising all the costs and including (i) the <b>borrowing rate</b> , fixed or variable or both, together with particulars of <b>any charges included</b> in the total cost of the credit to the consumer; (ii) the <b>total amount of credit</b> ; (iii)	All of these requirements are already covered by the Consumer Credit Directive, Annex II. Therefore, this information already needs to be provided to consumers in case of loans above EUR 200 and below EUR 75 000. The same is true for home loans under ESIS, which will be incorporated in the EC	—



(new)		the <b>annual percentage rate of charge</b> , and (iv) <b>the duration of the credit agreement</b> ;	proposal for legislation on responsible mortgage lending and borrowing, envisaged for this autumn. Additionally, whilst Art. 3(2) sets out the provisions of the proposal which apply to financial services, there is a lack of clarity as to the extent of the application of Articles 5 to 7 on general information requirements. It appears from Art. 3(2) that these Articles do not apply to financial services, yet Art. 9(a) refers to the information requirements contained in Articles 5 and 7. Art. 10(1) in turn refers to the information requirements in Art. 9. Furthermore, Art. 6 is linked to Art. 5, the provisions of which appear to apply to financial services by virtue of the cross reference in Art. 9(a). The EACB had already requested clarification on this article and is disappointed that the proposed amendment only contributes to further confusion.	
<b>Amendment 34, Ashley Fox</b>				
Article 8 – par 1 a (new)		Member States may not maintain or introduce, in their national law, provisions diverging from those laid down in this Chapter, except as provided for in Articles 9, 11(3), 13(1a), 19 and 20.	Member States should not have the option of introducing provisions diverging from the directive, especially with respect to areas for which maximum harmonisation as a way of ensuring legal certainty. Those areas include information requirements, right of withdrawal and scope of the directive, and as such this amendment does not have our support.	–
<b>Amendment 38, Ashley Fox</b>				
Article 12 par 2, sub-par 3	In the case of a distance contract for the provision of services, the withdrawal period shall begin from the day of the conclusion of the contract.	deleted	In general terms, this amendment would bring the provisions of the proposal directive more in line with Art. 6 of DMFSD and Art. 14 (1) of CCD, bringing more desired consistency in the legal framework.	+
<b>Amendment 39, Ashley Fox</b>				
Article 12 – par 4	4. The Member States shall not prohibit the parties from performing their obligations under the contract during the withdrawal period.	deleted	The EACB welcomed the provision of Art. 12(4) as it prevented a negative “freeze” effect, when for the duration of the withdrawal period traders are forbidden to receive money from the consumer or	–



			even to ask him to authorise the transfer of money.	
<b>Amendment 40, Ashley Fox</b>				
Article 13	<b>If the trader has not provided the consumer with the information on the right of withdrawal in breach of Articles 9(b), 10(1) and 11(4), the withdrawal period shall expire three months after the trader has fully performed his other contractual obligations.</b>	If the trader has not provided the consumer with the information on the right of withdrawal in breach of Articles 5(1)(g) and 10(1), the withdrawal period shall expire <b>1 year</b> after the time specified in Article 12(2).	The EACB considers that financial services should be excluded from the scope of the directive, except for unfair contract terms. The EACB would advise against the extension of the period as it would introduce too much uncertainty for too long a period of time.	—
<b>Amendment 41, Ashley Fox</b>				
Article 13 paragraph 1 a (new)		Member States can maintain national provisions allowing for a longer withdrawal period or provisions which do not set off the withdrawal period as long as the information referred to in paragraph 1 has not been provided.	The EACB considers that financial services should be excluded from the scope of the directive, except for unfair contract terms. The EACB considers that maximum harmonisation of the withdrawal period is necessary to address the fragmentation in the existing legal framework, which was one of the objectives of this proposal.	—
<b>Amendment 45, Ashley Fox</b>				
Article 17 – paragraph 2	2. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods. He shall not be liable for diminished value where the trader has failed to provide notice of the withdrawal right in accordance with Article 9(b). <b>For service contracts subject to a right of withdrawal, the consumer shall bear no cost for services performed, in full or in part, during the withdrawal period.</b>	2. The consumer is not required to pay for: (a) any diminution in the value of anything received under the contract caused by inspection and testing; (b) any destruction, or loss of, or damage to, anything received under the contract, provided that the consumer used reasonable care to prevent such destruction, loss or damage. <b>For services contracts, the consumer is liable for any accredited costs incurred up to the point of withdrawal only when he expressly requested the early performance of the contract.</b>	The Distance Marketing of Financial Services Directive (Art. 7(1)) provides that a consumer may be required to pay a proportionate amount for the service actually provided by the supplier in accordance with the contract. The EACB considers that Art. 17(2) in its original wording would constitute an undue burden on providers of financial services. Such costs would ultimately be reflected in price increases and therefore borne by consumers. Although the proposed amendment should be considered as a positive development, the EACB would like to see a more decided approach, in line with the DMFSD.	+
<b>Amendment 47, Pascal Canfin</b>				
Article 19 a (new)		With regard to Articles 8 to 19, unless indicated differently in this Directive, Member States may adopt or maintain in force more stringent provisions compatible with the Treaty in the field covered by this Directive, to ensure a higher level	The EACB considers that financial services should be excluded from the scope of the directive, except for unfair contract terms. The EACB supports maximum harmonisation of the right of withdrawal.	—



		of consumer protection.		
<b>Amendment 48, Pascal Canfin</b>				
Article 20 – paragraph 2	2. Articles 8 to 19 shall not apply to off-premises contracts relating to: (a) insurance, (b) financial services whose price depends on fluctuations in the financial market outside the trader's control, which may occur during the withdrawal period, as defined in Article 6(2)(a) of Directive 2002/65/EC and (c) credit which falls within the scope of Directive 2008/48/EC. (c) credit which falls within the scope of Directive 2008/48/EC	Deleted	Consumer credit is already regulated by the Consumer Credit Directive, which is still in the process of transposition in 11 Member States. No further regulation covering consumer credit between EUR 200 and EUR 75,000 should be introduced before the impact of the CCD is assessed. Insurance should be excluded from the scope of the provisions of the directive, other than unfair contract terms.	—
<b>Amendment 49, Ashley Fox</b>				
Article 20 – paragraph 3 a (new)		3a. Member States may choose not to apply Articles 8 to 19 to off premises contracts up to a specified amount. The amount may not exceed EUR 60.	It always should be ensured that additional costs related to the provision of information do not disproportionately outweigh the potential financial gains, particularly in case of contracts involving very small amounts. However, the threshold could be EUR 200 to correspond with the CCD and it should be subject to maximum harmonisation.	—
<b>Amendment 63, Olle Schmidt</b>				
Article 31 – paragraph 3 – subparagraph 1 a (new)		In order to ensure full transparency, the consumer shall be provided with information concerning the borrowing rate, fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer, the total amount of credit, the annual percentage rate of charge and the duration of the credit agreement, both at a pre-contractual stage and when the credit agreement is concluded.	The EACB considers that financial services should be excluded from the scope of the directive, except for unfair contract terms. All of these requirements are already covered by the Consumer Credit Directive, Annex II. Therefore, this information already has to be provided to consumers in case of loans above EUR 200 and below EUR 75 000. The same is true for home loans and mortgages under ESIS (and in 14 Member States where the CCD scope was extended - also under the CCD). Similar information is also likely to be covered by the future EC legislation on responsible lending and borrowing.	—
<b>Amendment 64, Pascal Canfin</b>				



Article 34	Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.	Member States shall ensure that contract terms, as set out in the list in Annex II, are considered unfair in all circumstances. That list of contract terms shall apply in all Member States. <b>Member States may adopt or maintain additional contract terms in addition to those included in that list.</b>	The proposed amendment leads to less legal certainty. This provision could lead to a situation where the same term is in the back list in one country, in the grey list in another, and not in any list in yet another country. The EACB therefore strongly supports maximum harmonisation of the grey and black lists of unfair contract terms.	—
<b>Amendment 65, Pascal Canfin</b>				
Article 35	Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. That list of contract terms shall apply in all Member States and may only be amended in accordance with Articles 39(2) and 40.	Member States shall ensure that contract terms, as set out in the list in point 1 of Annex III, are considered unfair, unless the trader has proved that such contract terms are fair in accordance with Article 32. That list of contract terms shall apply in all Member States. <b>Member States may adopt or maintain additional contract terms in addition to those included in that list.</b>		