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ADDENDUM TO THE "I" ITEM NOTE

from:	General Secretariat
to:	Coreper (part 2)
Subject:	Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property (Mortgage Credit Directive-MCD) - General Approach = Statements

Statement by the Commission

The Directive on credit agreements relating to residential property aims improving the functioning of the internal market concerning credit agreements for consumers relating to immovable property, promoting financial stability while ensuring a high level of consumer protection. To this end, the Commission's proposal is based on a maximum harmonisation, with only a limited number of exceptions in specific and clearly identified cases.

The proposed Presidency compromise for Article 33 represents a significant departure from the Commission's original proposal. It provides for a minimum level of harmonisation. This jeopardises the objective of the Directive. This, and the difficulty to read Article 33 in combination with the unchanged Articles and their corresponding recitals which specify in detail what flexibility is afforded to Member States, also creates a serious legal uncertainty.

As a consequence, and without prejudice to the right of the Commission to reserve its position on all elements of the Presidency compromise, the Commission considers that Article 33 should be deleted.

Statement by Austria

Like other Member States, Austria – when implementing Directive 2008/48/EC on credit agreements for consumers (CCD) – extended the scope of its new law on credit agreements for consumers to also apply to mortgage credit agreements. Austria is not in favour of the MCD compromise text because the requirements for pre-contractual information, which has to be provided on a mandatory form, and the obligation to assess the creditworthiness of the consumer contained in the MCD differ from those in the CCD. These deviations, which are not justified by the particularities of mortgage credit agreements, would cause considerable additional costs for creditors and would be counterproductive as to a consistent legal situation (and thus equally for consumer understanding). Moreover, in the area of pre-contractual matters (information and creditworthiness assessment) and with respect to concrete individual cases, it will frequently be unclear whether the credit is to be collateralised by a mortgage or not, and therefore whether this case would fall within the scope of the CCD or of the MCD. Different regulations/rules in the two Directives would result in great uncertainty as to which Directive to apply in a concrete case. Above all the regulations concerning data protection and transparency of costs do not seem sufficient.

Statement by the Czech Republic

The Czech Republic, aware of the importance and the need of the proposed directive, hereby declares its conditional acceptance of the current MCD proposal text.

The condition, under which the Czech Republic would accept the text, is the commitment of the Presidency to further improve the text of the proposal during the trialogue as regards the cooperation of the supervisory bodies.

According to our view there is a remaining issue in involving EBA (and excluding the cooperation of the consumer protection oversight bodies within the frame of the Regulation 2006/2004) in disputes where oversight bodies that are not EBA members are engaged. Moreover, EBA is often spelled as regards the oversight of credit intermediaries, which may be, however, in many cases out of reach of EBA members while being subject to oversight by other consumer protection oversight bodies.

For example, in the Czech Republic, most credit intermediaries are subject to oversight of the Czech Trade Inspection Authority – a consumer protection body, which is not an EBA member. We are aware of the fact that this is the case in other countries as well. We simply cannot see how a non-EBA oversight body would cooperate with another non-EBA oversight body through EBA, if there is a clear frame for cooperation of such consumer protection oversight bodies in Regulation No. 2006/2004 and we do not deem the EBA involvement provisions in this Directive as a sufficient legal ground to involve non-EBA members in EBA actions. The provision contained in Article 4(4)(ii) seems, as explained above, very insufficient, because it provides for the cooperation only in one way – it should also provide that EBA-member bodies have a legal duty to cooperate with non-EBA bodies.

Therefore, the Czech Republic would invite the Presidency to open the discussion on involvement of EBA in the matters covered by the MCD proposal, and to redraft Articles 4, 24 and 27 in that regard and to reinsert Articles 28 and 36 dealing with Regulation No. 2006/2004, as we demanded for the last several months. The reference to Regulation No. 2006/2004 would ease the cooperation of consumer protection supervisory bodies and taking common actions, e.g. SWEEP.

Statement by Latvia and Luxembourg

Latvia and Luxembourg were not able to vote in favour of this Directive because its content was significantly watered down as compared to the Commission's initial proposal. The initial proposal aimed to create an efficient and competitive internal market for mortgage credit for consumers, creditors and credit intermediaries. Proposal sought to ensure both a well-functioning single market

and a high level of consumer protection through a high level of harmonisation, which would have substantially reduced differences between national laws that act as barriers in the internal market¹. Even though the initial proposal did not contain the mutual recognition principle, it formed a good basis for discussion. The text adopted today is a missed opportunity to achieve these two objectives, which were to be mutually reinforcing.

The lack of far-reaching harmonisation and mutual recognition, together with the large room for manoeuvre for Member States, will lead to serious legal uncertainty for the parties concerned. It is also contrary to the declared objectives of creating a fully integrated single market for mortgage credit and of ensuring a high and harmonised level of consumer protection. Both professionals and consumers stand to lose as a result of this text which has no added value. For businesses and consumers to take full advantage of their opportunities in the European Union, borders and barriers have to be lifted -and not to be reinforced.

Apart from having no clearly defined objective, the text as adopted is highly complex and at odds with the principles of "better regulation". It obliges Member States to change their rules without offering any benefits in return for businesses or consumers.

¹ Barriers are identified in the White Paper on the integration of EU mortgage markets, COM (2007) 807, 18.12.2007