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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a Directive of the European Parliament and of the Council on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (**first reading**)
- Adoption of the legislative act (**LA + S**)
= Statements

Statement by Bulgaria

Bulgaria will not object to the approval of the MCD compromise text. Nevertheless Bulgaria points out its remaining concerns regarding the amendment of Regulation 1093/2010/EU and Directive 2013/36/EU by a sectoral directive.

We are of the opinion that introducing material changes in a Union regulation by a Union directive does not serve as a good legislative example and is not in line with the generally accepted principles of legislative drafting. We recall that the Regulation 1093/2010/EU constitutes one of the major elements in the EU supervisory architecture and it strikes a balance between the views and interests of the different Member States. Therefore, any subsequent amendments thereof should be subject to a discussion on the respective level.

Furthermore, we are concerned about the proposed changes in Directive 2013/36/EC, since the transposition process of the Directive 2013/36/EC in Bulgaria is already on a very advanced stage and any subsequent amendments in the Directive 2013/36/EC would lead to disruptions in the legislative process and in the finalisation of transposition measures.

Statement by Austria

Austria still has concerns about 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. 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. The MCD compromise text contains deviations from the CCD, which are not justified by the particularities of mortgage credit agreements, but 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 (at pre-contractual stage) 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. As regards the APRC-calculation, we have problems with the restrictive interpretation of time intervals which would lead to the exclusion of day intervals from the scope of yearly fractions. This interpretation is currently incompatible with the methodologies used by many lending institutions across Europe. Any changes to the time intervals currently applied by lending institutions would impose a considerable and disproportionate administrative and financial burden with no obvious benefit for consumers.

Statement by Estonia

Estonia strongly supports the single European market and its further integration. Thus it is necessary to harmonise the differing legislations and rules to ensure a level playing field throughout the EU.

We must underline that several countries including Estonia have already enlarged the scope of consumer credit directive 2008/48/EU (CCD) for mortgage credits. However Estonia also believes that harmonising the principles of responsible mortgage lending and borrowing can enhance the mortgage credit market by improving reliability and confidence and ensuring a high and uniform standard of consumer protection at the European level. Therefore we agree with the objectives of the proposal of MCD and support the EU Commission initiative. Estonia also accepted and was satisfied with European Council general approach on 30th May 2012 concerning proposal of credit agreements relating to residential property directive. The later amendments to the original proposal deviate too far from the approach we agreed to at the Council level. The impact assessment of the amendments is lacking and their appropriateness to cover all of these provisions through the mortgage credit directive proposal is questionable. We are especially worried about the changes which are not directly related to mortgage credit and therefore do not fulfil objectives of the original proposal. We have reiterated our positions to the Presidency several times both orally and in writing, however there have been no improvement in the texts.

Proposed compromise solutions should contribute to endorsing responsible lending, but on the other hand it should provide the Member States with the flexibility needed to avoid negative consequences to consumers. Although Estonia is not against the MCD package as a whole, we must stress that we have serious doubts regarding the current compromise text.

Statement by Czech Republic

The Czech Republic, though aware of the importance and the need of the proposed directive, hereby declares its refusal of the current text of the proposal for Directive on Credit Agreements for Consumers Relating to Residential Immovable Property (further referred to as „MCD“).

Already in May 2012, the Czech Republic declared its only conditional acceptance of the MCD text provided that during the trialogues the text would be improved as regards the cooperation of the supervisory bodies.

According to our view there was and there still 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), namely in disputes where oversight bodies that are not EBA members are engaged. The agreed solution comprising of the duty of all non-EBA supervisory bodies to be subordinate to EBA (including binding mediation by EBA) is not simply acceptable, especially once there is a clear frame for cooperation of such consumer protection oversight bodies in Regulation No. 2006/2004.

Moreover, there are other important issues which support our disapproval of the text. These are:

1. the duty to impose caps on sanctions in the case of borrower's default (Arrears and Foreclosure Article 28 para 3); we are of the opinion that regulation of sanctions in case of borrower's default is a matter of private law and as such should be at the full discretion of a Member State;
2. the reinclusion of the word “residential”;
3. the inclusion of a legally binding text on Financial Education in Article 6; this directive is not a proper place to stipulate for financial education;
4. obligatory provision on Foreign Currency Loans, CZ supports discretionary provision;
5. the obligatory reflection period of 7 days which, regarding the lengthy and stressful process of obtaining a mortgage credit under time pressure from the side of the property seller, does not seem to be reasonable and will not be used by consumers.

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 marketⁱ. 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.

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