

# Credit agreements: residential immovable property

2011/0062(COD) - 31/03/2011 - Legislative proposal

**PURPOSE:** to create an internal market in mortgage credit with a high level of consumer protection and to promote financial stability by ensuring that mortgage credit markets operate in a responsible manner.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** the size of the EU mortgage market is significant: in 2008, outstanding residential mortgage lending in the EU27 amounted to almost **EUR 6 trillion**, or about 50% of EU GDP. The EU mortgage market is also of vital importance for the millions of European citizens currently repaying a mortgage and for would-be home owners. Rising household debt levels exist throughout Europe.

A range of factors drive the decision to grant a particular mortgage credit, the borrower's eventual choice of mortgage product and the borrower's ability to repay the loan. These include the economic climate, information asymmetries and conflicts of interest, regulatory gaps and inconsistencies, as well as other factors such as the borrower's financial literacy and mortgage financing structures. While these other factors clearly play a role, the fact remains that irresponsible behaviour by certain market actors contributed to a housing bubble and was one of the key features of the financial crisis.

The **financial crisis** has had a substantial impact on EU citizens. Many consumers have lost confidence in the financial sector and certain lending practices that used to prevail are now having a direct impact. Figures show that citizens are having increasing difficulties in meeting their debts. As borrowers have found their loans increasingly unaffordable, defaults and foreclosures have risen. **Addressing irresponsible lending and borrowing** is therefore an important element in financial reform efforts.

For several years, the Commission has engaged in a comprehensive review of EU residential mortgages markets to ensure the efficient functioning of the single market.

In 2007, the Commission adopted a [White Paper](#) on the integration of EU mortgage credit markets. In view of the problems brought to light in the financial crisis and in the context of efforts to ensure an efficient and competitive single market, the [Commission](#) undertook to come forward with measures on responsible lending and borrowing, including a reliable framework on credit intermediation.

**IMPACT ASSESSMENT:** the Commission carried out an impact assessment which identified a series of problems in EU mortgage markets associated with irresponsible lending and borrowing at the pre-contractual stage and the potential scope for irresponsible behaviour by credit intermediaries and non-credit institutions. At the pre-contractual stage, the following problems were identified: non-comparable, unbalanced, incomplete and unclear advertising materials; insufficient, untimely, complex, non-comparable and unclear precontractual information; inappropriate advice; and inadequate suitability and creditworthiness assessments. Other problems highlighted include ineffective, inconsistent, or non-existent registration, authorisation and supervision regimes for credit intermediaries and non-credit institutions providing mortgage credit.

**Different options:** the impact assessment considers a range of policy options for each problem area including no intervention, principles-based rules, and more detailed or specific rules at EU level. It also assesses the most appropriate instrument for measures, considering self-regulation, a Directive, a Regulation, a Communication and a Recommendation.

The impact assessment concludes that a **package of preferred policy options is necessary** to ensure responsible lending and borrowing throughout the EU and that the preferred instrument is a Directive. The preferred policy options will also entail costs for creditors and credit intermediaries. However, these costs will be limited by several factors including the fact that a number of the preferred policy options are already implemented in several Member States, that many of the preferred policy options are already common practice amongst large parts of industry and that substantial synergies are expected between the different policy options. The estimated total benefits of the package of measures are in the range of EUR 1 272–1 931 million. The expected total one-off and ongoing costs are in the range of EUR 383-621 million and of EUR 268-330 million respectively.

LEGAL BASIS: Article 114 of the Treaty on the functioning of the EU (TFEU).

CONTENT: the aim of the proposed Directive is to create a responsible, efficient, healthy and competitive pan-European market that works to the benefit of consumers. It should also promote customer mobility, cross-border activity of creditors and intermediaries, and create a level playing field for all actors involved.

The proposed Directive:

- requires Member States to designate specific **competent authorities** to implement the Directive;
- stipulates important **conditions for both creditors and credit intermediaries** in order to ensure a high degree of professionalism in the provision of mortgage credit, such as an obligation to act in the best interests of the consumer and requirements with regard to having appropriate knowledge and competence;
- introduces general principles for **marketing and advertising communications** and set out the form and content of information to be included in advertising. The standard information concerns key features of the credit and, when the credit is secured by a mortgage, a warning as to the consequences for the consumer in the event of non-observance of his commitments linked to the credit agreement;
- creates an obligation for creditors and credit intermediaries to make **general information** available on the range of credit products at all times. It further introduces an obligation for creditors and, where applicable, credit intermediaries to provide personalised information to the consumer on the basis of a European Standardised Information Sheet;
- requires credit intermediaries to disclose information to consumers concerning their **identity, status, and relationship with the creditor**, prior to the performance of their services in order to increase transparency of possible conflicts of interest;
- introduces an obligation for creditors and credit intermediaries to give explanations on the proposed credit agreement(s) to the consumer at the **pre-contractual stage**, determined by the level of the consumer's knowledge and experience with credit;
- requires, for mortgage credit products, the use of the definition of the annual percentage rate of charge (**APRC**) used in Directive 2008/48/EC. Details of the APRC calculation method are given in Annex I and provisions for amending the methodology are laid down in order to be able to take market developments into account;
- provides for information to be delivered to the consumer in the event of **changes to the borrowing rate**;
- requires the creditor to **assess the consumer's ability to repay the credit**, taking into account the consumer's personal circumstances and based on sufficient information. It also introduces a duty for the creditor to refuse to grant the credit where the results of the creditworthiness assessment are negative;
- introduces the **requirement for 'responsible borrowing'**, namely that the borrower must provide all necessary and correct information to enable the creditworthiness assessment to be carried out;
- introduces provisions to ensure that creditors are able to access information from relevant **databases** on a non-discriminatory basis;
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establishes standards to ensure that, where **advice** is given, it is clear to the borrower that advice is being provided, without introducing any obligation to provide advice;

- requires Member States to ensure that consumers have a **right to repay their credit before the expiry of the credit agreement**, giving freedom to Member States to set conditions on the exercise of that right, provided that such conditions are not excessively onerous;
- establish the principles for a **regulatory and supervisory framework for credit intermediaries**. This framework provides for the authorisation and registration of credit intermediaries, subject to compliance with certain requirements on entry into the business and on an ongoing basis, and for the establishment of a passport regime. The requirements apply to all credit intermediaries, whether they are tied or not in order to ensure a high degree of professionalism in the industry;
- stipulates that non-credit institutions must be subject to **adequate authorisation, registration and supervision**;
- requires Member States to ensure that appropriate administrative measures or **sanctions** can be taken in the case of non-compliance with the Directive;
- requires Member States to establish **out-of-court redress bodies** for the resolution of disputes between creditors and consumers and between credit intermediaries and consumers.

BUDGETARY IMPLICATION: leaving aside the normal administrative costs linked to ensuring compliance with EU legislation, there will be no budgetary impact.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union, in order to take account of developments in the markets for credit relating to residential immovable property or in the evolution of credit products as well as economic developments, such as inflation.