



EUROPEAN COMMISSION

Brussels, 24.1.2012
C/2012/ 448 final

Dear President,

I would like to thank you for the Opinion of the German Bundesrat on the Proposal for a Directive of the European Parliament and Council on credit agreements relating to residential property {COM (2011) 142 final} and apologise for the delay in replying .

The Commission welcomes the support of the Bundesrat for the objectives of this proposal. Your opinion is a very useful contribution to the ongoing discussions.

Before replying in detail to the specific remarks of the Bundesrat, it is important to clarify that the Commission is aware of a number of divergences between the German and English versions of the text, including in the article on early repayment. A corrigendum has been published relating to the wording of the early repayment article. In any case, such issues should be resolved prior to any text entering into force, inter alia due to the inter-institutional process.

Regarding the specific issues raised by the Bundesrat, the Commission would like to provide the following clarifications:

Scope of the proposal (§ 12-16)

The Commission takes note of the request for the exclusion of loans with a general interest purpose. The Commission is currently not aware of any evidence that shows that consumers who conclude these types of loans should not be provided with similar rights as those who are granted other types of mortgage credits. In particular, the Commission believes that it is equally important for the consumer to be provided with adequate information on the loan and to be able to repay its financial commitments, regardless of the nature of the credit. This issue will however certainly be the subject of further discussion.

Definitions and Annex I (§ 17 and 37)

The Commission thanks the Bundesrat for the useful information in relation to the calculation of the APRC. The Commission however believes that it is vital, particularly for the understanding of consumers that the calculation of the APRC is undertaken in the same way for mortgage credit as for consumer credit. This issue will however certainly be the subject of further discussion.

*M. Horst SEEHOFER
President
Bundesrates
Leipziger Straße 3 - 4
D-10117 BERLIN*

Article 5 (§ 18)

The Commission takes note of the request to delete the reference to the "best interests of the consumer". The Commission would however like to underline that one of the objectives of this provision was to ensure that consumers taking out a mortgage were afforded at least the same level of protection as those purchasing other financial products, notably those regulated under Directive 2004/39/EC (MiFID).

Article 8-10 and Annex II (§ 7, 19-21, 38) (§ 7, 19-21, 38)

The Commission welcomes the support of the Bundesrat for ensuring that consumers are provided with key financial information as well as the efforts to promote comparability and thus competition in the single market. The Commission also agrees with the Bundesrat about the need to avoid overregulation and unnecessary costs.

In order to ensure that consumers receive the information that they need to make a decision on a mortgage credit, when preparing the proposal for a Directive, the standardised information sheet (Annex II) was subject to substantial testing with consumers in all EU Member States and in all EU languages. As a result, the German version of the text was tested in both Germany and Austria and incorporates the feedback received from consumers.

In order to minimise the costs of implementation, the Commission has sought to ensure the greatest degree of consistency possible with the already existing provisions on general and personalised information (ESIS) in the European Code of Conduct on Home Loans, which the large majority of German Banks follow. For example, the provisions in Article 9(1) have largely been based on existing provisions in the European Code of Conduct.

In terms of consistency with Directive 2008/48/EC and against the background of the substantial consumer testing and preparatory work undertaken by the Commission, it is believed that any divergences between the information requirements under Directive 2008/48/EC and COM(2011)142 are therefore justified due to the different characteristics and objectives of consumer credit and mortgage credit.

Right of withdrawal (§ 22)

The Commission takes note of the Bundesrat's request for the introduction of a harmonised right of withdrawal. The Commission refrained from introducing such a right in the proposal in order to allow differences in Member States contractual law systems to be taken into account.

Article 14

The Commission believes that ensuring that lenders do not provide loans to consumers who are unable to afford them is an essential element in responsible lending. This issue will certainly be the subject of further discussion.

In relation to the manual review under Article 14(2)(f), we recognise the concerns raised by the Bundesrat. However, these concerns need to be balanced against the fact that in many cases, credit decisions are the result of statistical or scoring models, which may reject a credit based on misleading or inaccurate information. A manual review would mean that the lender has to review all the information provided by the consumer and decide if the right decision has been taken or not. It should not in any way provide an

obligation for the lender to provide that credit or the consumer any right to obtain that credit.

Article 17 (§ 27)

The Bundesrat raises important issues for consideration. In particular, the suggestion of the Bundesrat that the person providing advice can only claim a fee if the consumer has been informed of the fee could certainly be considered during further negotiations.

Article 18 (§ 28-32)

The Commission believes, as stated in the 2007 White Paper on the Integration of EU Mortgage Markets, that the issue of early repayment is an important one in terms of creating a single market for mortgage credit. The Commission believes that measures to introduce a degree of harmonisation in EU mortgage markets could contribute to increasing that figure and facilitating the development of a single market for creditors and consumers.

As regards the situation in Germany, the Commission is fully aware of the structure of the German mortgage market and the manner in which mortgages are funded. We are also very conscious of the arguments presented about long-term fixed-rate mortgages and their corresponding funding arrangements.

Against this background, the proposal clarifies that while in principle, consumers should be able to repay their loans early, the conditions, including the level of compensation, should be determined nationally, in order to take into account different business models. As the contribution of the Bundesrat states, such an approach already exists in Germany.

Articles 19-23 (§ 33)

The Commission notes the position of the Bundesrat that the proposal should cover all credit intermediaries and not be limited to mortgage credit intermediaries. The proposal for a Directive on credit agreements relating to residential property is limited to credit agreements falling within the scope of the proposal. Consumer credit agreements are therefore outside the scope of this proposal.

Article 24 (§ 34)

In relation to the type of sanctions applicable to consumers, obtaining credit through deceptive means would be subject to national fraud measures. Member States would however be free to determine the nature and size of penalties applicable to consumers. Furthermore, it was not the intention of the Commission to introduce a provision leading to a disclosure of all consumers penalised for providing incomplete or incorrect information. Clarifications of these provisions will undoubtedly be the subject of further discussions.

Delegated powers (§ 35-36)

The Commission takes note of the Bundesrat's concerns about the use of delegated acts. The provisions proposed by the Commission are fully in line with the Treaty. Furthermore, they will, most likely, be amended during negotiations to reflect recent intra-institutional agreements on the use of delegated acts. This issue will certainly be the subject of further discussion.

In conclusion, the Commission welcomes the general support for an initiative in this area as well as the constructive comments provided by the Bundesrat and will carefully consider the remarks provided during further discussions on the draft proposal.

Yours faithfully,

*Maroš Šefčovič
Vice-President*