

# International trends in the regulation of mortgage markets



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**Washington DC**  
**June 27, 2017**



Verband der Privaten  
Bausparkassen e.V.

# Association of Private Bausparkassen

Association of Private  
Bausparkassen e.V., Berlin

- credit sector association
- established 1948
- represents the interests of
  - 12 Bausparkassen and
  - 30 million customers



Verband der Privaten  
Bausparkassen e.V.

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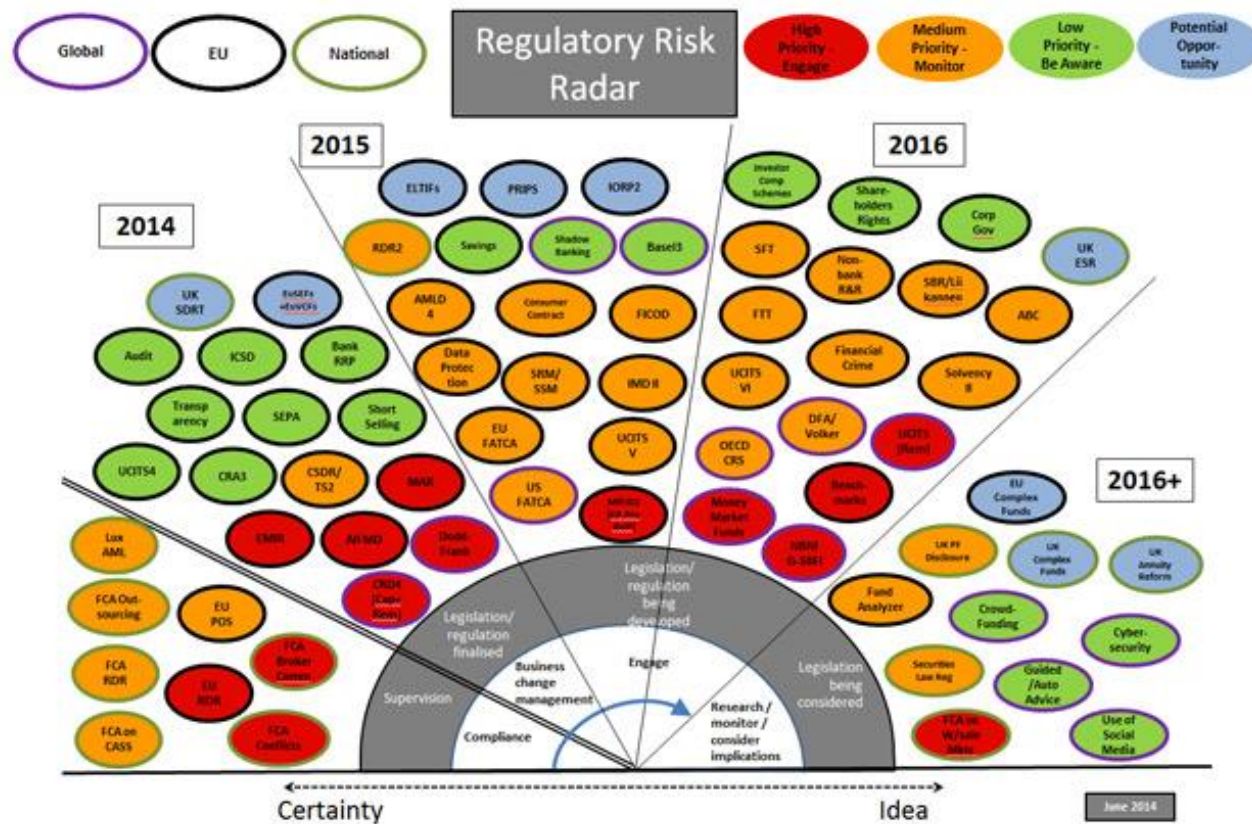


Deutscher Ring  
Wir erledigen das.



# Agenda

- long way to regulate
- regulatory tsunami around the globe
- content of the Mortgage Credit Directive, new set of rules for housing loans in Europe



**AGENDA**

Gesetzesinitiativen, mit abgeschlossenem Gesetzgebungsverfahren

**JULI 2010**

| BANKEN UND VERSICHERUNGEN                                                                                              | FINANZMÄRKTE                                                                                                                                             | VERBRAUCHER                                                                                   |
|------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| <b>RICHTLINIE CRD3 : NEUE REGELN ZUR VERGÜTUNG UND ZUM HANDELSBUCH *</b>                                               |                                                                                                                                                          |                                                                                               |
|                                                                                                                        |                                                                                                                                                          | <b>REVISION DER RICHTLINIE ÜBER EINLAGENSICHERUNGSSYSTEME *</b>                               |
|                                                                                                                        |                                                                                                                                                          | <b>REVISION DER RICHTLINIE ÜBER SYSTEME FÜR DIE ENTSCHÄDIGUNG DER ANLEGER</b>                 |
| <b>EUROPÄISCHE AUFSICHTSBEHÖRDEN FÜR BANKEN, WERTPAPIERMÄRKTE UND VERSICHERUNGEN UND BETRIEBLICHE ALTERSVERSORGE *</b> |                                                                                                                                                          |                                                                                               |
|                                                                                                                        | <b>VERORDNUNG ÜBER OTC-DERIVATIVE, ZENTRALE GEGENPARTEIEN UND TRANSAKTIONSREGISTER *</b>                                                                 |                                                                                               |
|                                                                                                                        | <b>VERORDNUNG ÜBER LEERVERKÄUFE UND BESTIMMTE ASPEKTE VON CREDIT DEFAULT SWAPS *</b>                                                                     |                                                                                               |
|                                                                                                                        | <b>HEDGEFONDS UND PRIVATE EQUITY - RICHTLINIE ZU MANAGERN ALTERNATIVER INVESTMENTFONDS *</b>                                                             |                                                                                               |
|                                                                                                                        | <b>REFORM DER RATING-AGENTUREN (TEIL 2) *</b>                                                                                                            | <b>SEPA VERORDNUNG (EINHEITLICHER EURO ZAHLUNGSVERKEHRSRAUM)</b>                              |
|                                                                                                                        |                                                                                                                                                          | <b>RICHTLINIE ÜBER WOHNIMMOBILIENKREDITVERTRÄGE</b>                                           |
|                                                                                                                        |                                                                                                                                                          | <b>EMPFEHLUNG ÜBER ZUGANG ZU EINEM KONTO MIT GRUNDLEGENDE ZAHLUNGSFUNKTIONEN - BASISKONTO</b> |
| <b>VORSCHLÄGE BIS ENDE 2011</b>                                                                                        |                                                                                                                                                          |                                                                                               |
|                                                                                                                        | <b>FINANZMÄRKTE</b>                                                                                                                                      | <b>VERBRAUCHER</b>                                                                            |
|                                                                                                                        | <b>REVISION DER RICHTLINIE ÜBER WERTPAPIERDIENSTLEISTUNGEN / RICHTLINIE ÜBER MÄRKTE UND FINANZINSTRUMENTE; REVISION DER MARKTMISBRAUCHS-RICHTLINIE *</b> |                                                                                               |
|                                                                                                                        | <b>OGAW-RICHTLINIEN UND DER TRANSPARENZRICHTLINIE</b>                                                                                                    |                                                                                               |
|                                                                                                                        | <b>REFORM DER RATING AGENTUREN (TEIL 3) *</b>                                                                                                            |                                                                                               |
|                                                                                                                        | <b>VORSCHLAG FÜR EINEN NEUEN RAHMEN FÜR DAS KRISENMANAGEMENT IM FINANZSEKTOR *</b>                                                                       |                                                                                               |
|                                                                                                                        | <b>REFORM DES ABSCHLUSSPRÜFUNGS-SEKTORS</b>                                                                                                              |                                                                                               |
|                                                                                                                        | <b>VORSCHLAG ZU EINEM NEUEN RECHTSRAHMEN FÜR RISIKOKAPITAL</b>                                                                                           |                                                                                               |
|                                                                                                                        | <b>VORSCHLAG ÜBER ZENTRALE VERWAHRERSTELLEN FÜR WERTPAPIERE</b>                                                                                          |                                                                                               |
| <b>AB JANUAR 2012</b>                                                                                                  |                                                                                                                                                          |                                                                                               |
| <b>DURCHFÜHRUNGSMASSNAHMEN FÜR SOLVABILITÄT II</b>                                                                     | <b>RICHTLINIE ÜBER ANLAGEPRODUKTE FÜR KLEINANLEGER (PRIIPS)</b>                                                                                          |                                                                                               |
| <b>REVISION DER VERSICHERUNGSVERMITTLUNGS-RICHTLINIE</b>                                                               | <b>REVISION DER OGAW-RICHTLINIE (EINLEGER, VERGÜTUNG)</b>                                                                                                |                                                                                               |



Former EU Commissioner for the Internal Market Michel Barnier proposed 40 different legislative measures to regulate banking sector

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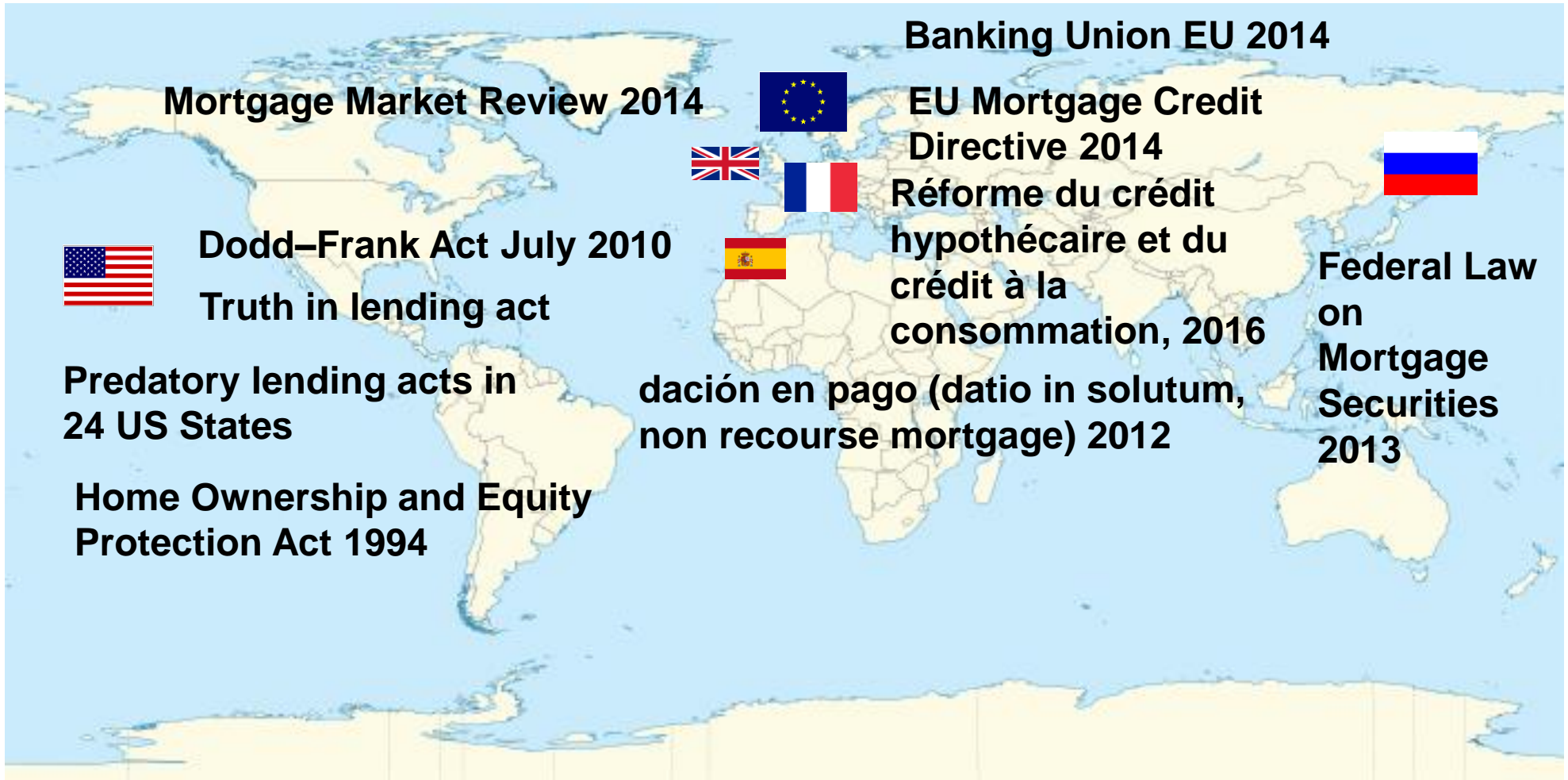
**How much should we tame  
financial markets?**

Use your vote in the European Parliament Election on **4 June.**

[www.elections2009.eu](http://www.elections2009.eu)

4 June 2009  
**European  
Elections**  
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# Regulatory reforms



# Content of the EU Mortgage Credit Directive

**Directives** are European Union laws targeted to **Member States** to **implement** them into national law



## Purpose:

- creation of an Internal Market
- removing barriers
- enhancing consumer protection



**European Union =**  
27 States and  
480 million citizens and consumers

# Content of the Mortgage Credit Directive

## Directive 2014/17/EU

### Consumer protection rules

for contracts which are secured with a mortgage (right in property) or loans to acquire real estate property

consumer credits are covered by the Consumer Consumer Credit Directive (2008/48/EU)

some loans are excluded such as

- loans granted by an employer,
- credits as an outcome of a court settlement (Art. 3 II.)

Art. 3 I. a also excludes unsecured renovation loans

Member States discretion not to apply these rules on

- „buy-to-let loans“
- credits granted to a restricted public under a statutory provision with a general interest purpose





# Content of the Mortgage Credit Directive

## General Conduct of Business Obligations

general conduct of business rules (Art. 7) have been changed;

- now creditor and intermediary do not ***always have to act in the best interest*** of consumer but ***taking due account of rights and interest*** of the consumer
- Art. 6 III b also regulates that Member States ensure that the manner in which creditors remunerate their staff and intermediaries do not impede compliance with the above mentioned obligation,
- remuneration practice should not prejudice the ability to provide objective recommendations or include individual product results or sales targets
- no contingency provision anymore for intermediaries who provide advice! (Art. 6 IV)



# Content of the Mortgage Credit Directive

## Financial literacy/education

- a new Art. 6 now regulates financial literacy/education
- a leftover from the previous „responsible borrowing and lending“ ideas,
- Member States now ensure that all stakeholders are involved in the design and development of clear, informative documents for first time buyers



# Content of the Mortgage Credit Directive

## Product tying and bundling

### General prohibition of tying , Art. 12 I

#### Definition of Tying:

“offering of one or more ancillary services with the credit agreement in a package where the credit agreement is **not** made available to the consumer separately”

#### Definition of Bundling:

“offering of one or more ancillary services with the credit agreement in a package where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services”

- according to Art. 12 I „Tying“ should be prohibited in general !
- but Member States may permit tying practices with payment account or savings product if it is a fully integrated part of the credit or whose only purpose is to accumulate capital to repay or service the credit, or hold a relevant insurance policy



# Content of the Mortgage Credit Directive

## Pre contractual Information requirements:

- standard information requirements for advertisement
- general information duties
- pre-contractual information obligation handing over the standardised information sheet (ESIS) and reflection period/ withdrawal period
- duty to explain
- standards for advice, possibility introduce mandatory advice



**keyfacts**® about our mortgage services

This document was produced on the basis of the information that you have provided so far and on the current financial market conditions. The information below remains valid until [validity date]. After that date, it may change in line with market conditions.

|                                                                        |                                               |
|------------------------------------------------------------------------|-----------------------------------------------|
| 1. Lender                                                              | Department, Yorkshire House, Yorkshire Drive, |
| [Name]                                                                 |                                               |
| [Geographical address]                                                 |                                               |
| [Telephone number]                                                     |                                               |
| [E-mail address]                                                       |                                               |
| [Web address]                                                          |                                               |
| Supervisory authority: [Name and Web address of supervisory authority] |                                               |
| Contact person: [Full contact details of contact person]               |                                               |
| 2. Main features of the loan                                           |                                               |
| Amount and currency of the loan granted: [value] [currency]            |                                               |
| (Where applicable) *This loan is not in [national currency]            |                                               |
| Duration of the loan: [duration]                                       |                                               |
| [Type of loan]                                                         |                                               |
| [Type of applicable interest rate]                                     |                                               |
| Total amount to be reimbursed:                                         |                                               |
| (Maximum available loan amount relative to the value of the property): |                                               |
| (Where applicable) [Security]                                          |                                               |
| 3. Interest rate                                                       |                                               |

r it to the Financial Ombudsman Service.  
 sation Scheme (FSCS)?  
 on the scheme if we cannot meet our obligations.  
 am.  
 000.  
 ible from the FSCS.

# Content of the Mortgage Credit Directive

## Standard informationen for the advertisement

- if credit advertisement with indication of an interest rate or any figure relating to the costs of the credit, then Member State is obliged to ensure the use of standard informationen (Art. 11)
- otherwise only image advertisement possible, like...



# Content of the Mortgage Credit Directive

## **If advertisement with credit conditions,**

specify in a clear, concise and prominent way

- the identity of the creditor or, where applicable, the credit intermediary or appointed representative
- where applicable, that the credit agreement will be secured by a mortgage or another comparable security commonly used in a Member State on residential immovable property or by a right related to residential immovable property
- the borrowing rate, indicating whether this is fixed or variable or a combination of both, together with particulars of any charges included in the total cost of the credit to the consumer
- the total amount of credit
- the APRC which shall be included in the advertisement at least as prominently as any interest rate

# Content of the Directive

## ...continuation concerning advertisement with credit conditions

- where applicable, the duration of the credit agreement
- where applicable, the amount of the instalments
- where applicable, the total amount payable by the consumer
- where applicable, the number of instalments
- where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the consumer
- specified by means of a **representative example**

almost impossible, which was the reason for it!



# Content of the Directive

## General information (Art. 13)

clear and comprehensible general information about credit agreements is made available by creditors or by tied credit intermediaries at all times on paper or on another durable medium or in electronic form.

### Minimum requirements for this information:

- identity and geographical address of the issuer of the information
- purpose for which the credit may be used
- forms of security
- possible duration of the credit agreements
- types of available borrowing rate, indicating whether fixed or variable or both with a descriptions of it and its implications for the consumer
- where foreign currency loans are available, an indication of foreign currency or currencies, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency
- representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC
- indication of possible further costs, not included in the total cost of the credit to the consumer
- options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments
- clear statement if credit agreement does not guarantee repayment of the total amount of credit
- conditions directly relating to early repayment
- whether a valuation of the property is necessary and if at what cost
- clarification on possible ancillary services and its costs
- general and specific warnings



See definitions of underlined terms and guidelines on pages 2–3.  
**DO NOT SIGN THIS IF YOU DON'T UNDERSTAND IT!**

Don't choose an interest-rate deal solely for the cheapest initial monthly payments. Consider what the mortgage is actually going to cost you over the longer term and whether it is the most suitable for you.

**Remember**

Take time to assess the risks and choose a mortgage deal that's right for you.

**YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON YOUR MORTGAGE.**

The above mortgage detail is for information purposes only as does not constitute financial advice under the Financial Services and Markets Act 2000.



**Key points**

Don't be tempted to overstate your income to get a very large loan because you could end up with a mortgage you can't afford and could lose your home; you'll also be committing fraud and could get a criminal record.

**Please make sure you are able to pay back your mortgage when your income falls**

# Content of the Mortgage Credit Directive

## Pre-contractual information duties and reflection period

- creditor now has to hand over the standardised pre-contractual information sheet „in good times“ to the consumer before the consumer is legally bound (Art. 14 I a), similar to the Consumer Credit Directive, without undue delay
- due to UK lobbying, Member States can use other equivalent information sheets, which have been used before 20.03.2014 until 21.03.2019 (Art. 14 V)
- now similar to the **Standard European Consumer Credit Information (SECCI)**, European consumers will get now the **European Standardised Information Sheet (ESIS)** for mortgage credits



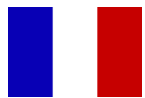
# Content of the Mortgage Credit Directive

## Reflection period (Art. 14 VI)

“Member States shall

- specify a time period of at least seven days during which the consumer will have sufficient time to compare offers, assess their implications and make an informed decision and
- specify that this time period referred shall be either a reflection period before the conclusion of the credit agreement or a period for exercising a right of withdrawal after the conclusion of the credit agreement or a combination of the two”.

How long is sufficient time?



French CodeCons: 10 days  
reflection period after the binding offer by  
the bank, no waiver



German Civil Code: right of withdrawal  
14 days after the loan contract (closing)

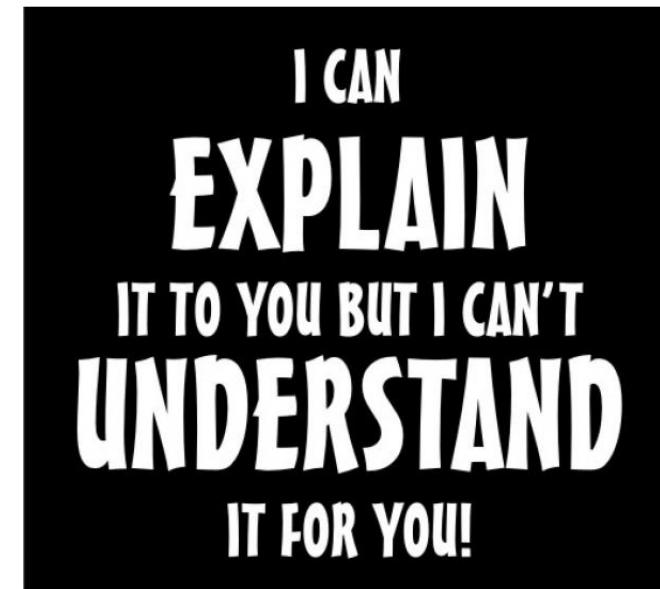


# Content of the Mortgage Credit Directive

## Duty to explain

rules concerning the duty to explain the pre-contractual information and ancillary services in Art. 16 have been adjusted to the wording of the Consumer Credit Directive

*...“provide adequate explanations on the proposed credit agreement and its ancillary services in order to place the consumer in a position enabling him to assess whether this credit and service are adopted to his needs and financial situation.”*



# Content of the Mortgage Credit Directive

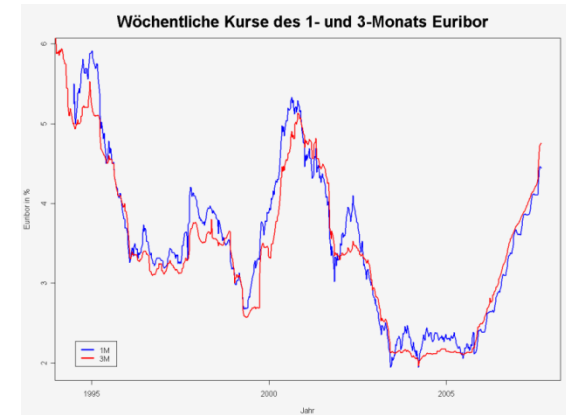
## Advice

- no general duty to advice in Art. 22 anymore
- but, creditor/intermediary must explicitly inform
- consumer in the context of the given transaction whether advisory services are provided or not
- if advice is offered, then duty to to provide following information on paper or durable medium:
  - Recommendation based on own product range or market comparison
  - Whether a fee is charged, the level of the calculation of these fees
- recommendation of the product need to be given to the consumers on paper or durable medium

# Content of the Mortgage Credit Directive

## Annual Percentage rate of charge (APRC)

- substantial changes concerning the APRC für variable and FX loans due the influence of the Greens in the Parliament
- in case of variable rate credit indexes or reference rates used to calculate the borrowing rate need to be are clear, accessible, objective and verifiable by the parties to the credit agreement (Art. 24)
- creditors need to provide historical records of indexes for calculating the borrowing rates
- FX loans: new right to convert the credit amount into alternative currencies, limits to exchange exchange risks, warning obligation if fluctuation in exchange rate of 20 %



# Content of the Mortgage Credit Directive

## Calculation of the APRC (Art. 17, Art. 4 No. 13, 15)

- include the total cost of the credit to the consumer,
- except cost in relation to the purchase of the property, s at land register (Rec. 50) ,
- notary costs are exempted
- additional second APRC according to Art. 17 VI for variable variable rate credit (all rates fixed less than for 5 years)

$$\sum_{k=1}^m C_k (1+X)^{-t_k} = \sum_{l=1}^{m'} D_l (1+X)^{-s_l}$$

- if APRC wrongly calculated



the claims for the interest of the creditor will be reduced to the nominal rate



aim of the EU = comparison of mortgage loan offers

# Content of the Mortgage Credit Directive



## Credit worthiness assessment

- duty to assess credit worthiness
- not a necessarily a contractual obligation towards the consumer (Rec. 58), even though European Court of Justice (ECJ C-565/12) decided otherwise for Art. 8 CCD
- expenses of the borrower have to be considered, database also can be checked
- price increase of the financed real estate should generally not be considered within the credit worthiness assesment
- consumer need to be warned before, not to provide false information (Art. 20)



# Content of the Mortgage Credit Directive

## Property valuation

- previous ideas about an external property valuation have been weakened
- Art. 19 regulates now that Member States should ensure that sound valuation practices are applied in accordance with international standards and that appraisers are supervised
- real estate valuation can be done by external or internal appraisers
- real estate valuation need to be documented and stored by lender



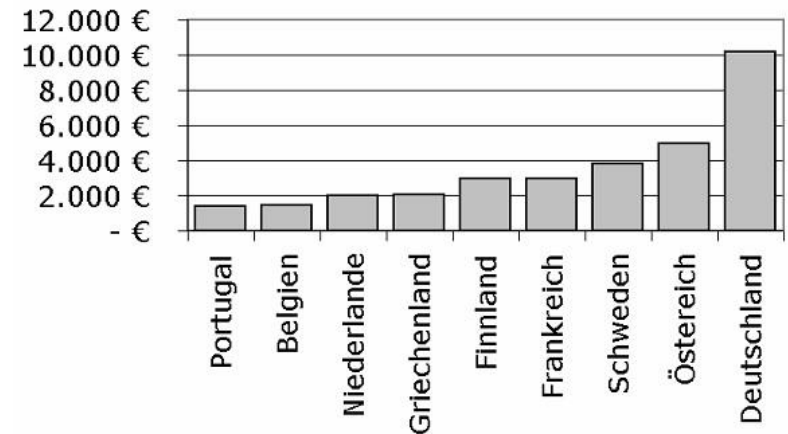
Idea behind: US Dodd-Frank Act (Art. 1471);  
but in the US applicable only for „high risk mortgages“



# Content of the Directive

## Early repayment (Art. 25)

- Consumer has now a right to early repay the loan fully or partially (Art. 25 I)
- Creditor are not allowed to charge penalties for these cases
- But are entitled to fair and objective compensation
- Member States can may provide for fixed interest rate agreements for a legitimate interest (Art. 25 V)
- **New:** creditors are obliged to provide the consumer at his request, information (Art. 25 IV) concerning the amount of the early repayment fee and assumptions for calculating the prepayment fee



Institut für Finanzdienstleistungen e.V.  
„Vergleichende Übersicht zur  
Vorfälligkeitsentschädigung für die  
vorzeitige Beendigung von  
Hypothekarkrediten in acht  
europäischen Staaten“ (2004)



# Content of the Directive

## Foreclosure

- the previously discussed liability limit within the foreclosure procedure to the property valuation done by the bank did not obtain a majority,
- creditor now has to take reasonable steps to obtain the best price for the foreclosed property,
- charges to compensate damages for default to be paid by the consumer need to be proportionate to the costs incurred by the creditor (Art. 28)
- foreclosure only as *ultima ratio*
- EBA opinions:

Opinion on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties from 13. June 2013



# Content of the Mortgage Credit Directive

## New set of rules for credit intermediaries

- standards for credit intermediaries due to their status (tied vs. untied /broker)
- so far no uniform rules for credit intermediaries
- conflict of interest (fees/bonus/commission)
- disclosure of broker fees
- registration and supervision
- minimum professional standards for credit intermediaries (indemnity insurance or comparable guarantee, professional requirements or experience, good reputation, etc.)
- minimum requirements for employees and management of the creditor



**DON'T GET IN WITH A LOAN SHARK...IT WILL COST YOU AN ARM AND A LEG**

Have you or anyone you know:

- Been offered a cash loan without paperwork?
- Been threatened when you couldn't pay?
- Had your benefit or bank card taken from you?
- Had a loan which keeps growing even though you are making payments?

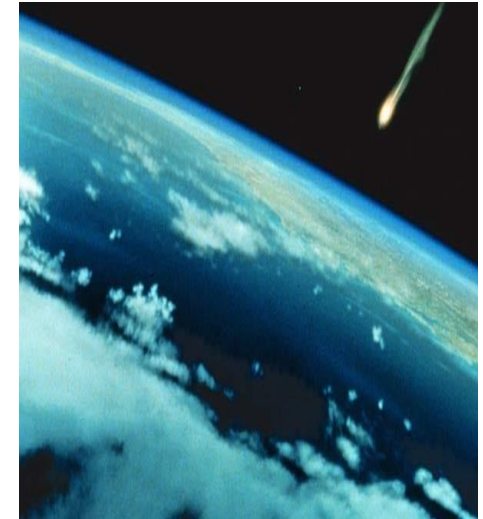
If you can answer yes to the above you may have been bitten by a Loan Shark.

For confidential help and advice contact  
the Illegal Money Lending Team  
**0300 555 2222**  
(local call rate, including inclusive minutes from mobiles)  
email: [stoploansharks@birmingham.gov.uk](mailto:stoploansharks@birmingham.gov.uk)  
Text: loan (space) shark (space) + your message to 60003.

DEPARTMENT FOR BUSINESS  
ENTERPRISE & REGULATORY REFORM

# Impact for lenders and consumers

- **Changes in internal procedures**
  - external appraisers and valuation procedures
  - educational requirements for staff and intermediaries
  - explanation, possible advice standards and new information requirements
- **Certain product restrictions are possible**
  - restriction on bundling/tying (Cross selling)
  - early repayment right influence product design, price and refinancing structure



# Thank you for your attention !



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