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**EFBS position paper on EBA/CP/2018/02 – Consultation Paper on the application of the existing Joint Committee Guidelines on complaints-handling to authorities competent for supervising the new institutions under MCD and/or PSD2**

The European Federation of Building Societies (EFBS) is an association of credit and other institutions promoting and supporting the financing of home ownership. Its purpose is to encourage the idea of acquiring home ownership in a Europe that is converging both politically and economically.

The members of the EFBS are specialised credit institutions established in seven Member States (DE, AT, RO, SI, HR, CZ and HU). The business of the Bausparkassen is regulated by specific national Bausparkassen Acts. In compliance with the strict legal provisions, the Bausparkassen offer contractual savings schemes to their customers and grant them loans which must be secured by mortgage. They are not allowed to practise other forms of banking business. They may invest their excess liquidity only in particularly secure investment products, such as government bonds of EU Member States. Bausparkassen are subject to specific supervision by the national authorities. In the context of Bausparen the interest rates on savings and loans are fixed in advance and are usually lower than the market interest rate. In most Member States, Bausparkassen must obtain specific approval from the supervisory authority before offering a new tariff or a new product on the market. As part of this product testing, Bausparkassen must prove the sustainability of their products and tariffs.

We welcome the opportunity to reply below to some of the questions raised in the consultation paper.

**Q1. Do you agree on the application of the JC Guidelines to credit intermediaries and non-credit institution creditors under MCD? If not, please provide your reasoning.**

In our opinion, the application of the JC Guidelines to authorities competent for supervising credit intermediaries under the MCD (Directive 2014/17/EU) is completely overdrawn.

Credit intermediaries as defined in Article 4 (5) in the MCD are conducting their business on behalf of the creditor. Namely, credit intermediaries do not carry out the same activity as credit institutions, they carry out the activity for credit institutions. As a rule, in civil law jurisdictions, the behaviour of one's own tied agent is attributed to the creditor. Further, the creditor is already bound by the complaints-handling procedures and is part of an arbitration procedure, or an ADR scheme. In this case, it is sufficient if the intermediary refers to the ADR scheme his credit institution adheres to. In our opinion, it is therefore not necessary to have in place a "separate" complaints procedures for

credit intermediaries as consumers are already provided with that kind of protection under Article 14 and 15 of the MCD.

**Q4. Do you agree with the view of the EBA that the JC Guidelines should apply to RAISPs, non-credit institution creditors and credit intermediaries that are natural persons? If not, please provide your reasoning.**

The implementation of the JC Guidelines entails high administrative costs. The EBA itself states that in many cases natural persons do not have the capacity to meet the requirements of the Guidelines. After all, the guidelines are tailored to larger, work-sharing organizations rather than sole trader businesses. It would therefore be disproportionate if natural persons, as lending agents, had to implement the guidelines as well as larger companies. Instead, we urgently request the EBA to exempt credit intermediaries that are natural persons from the application of the Guidelines.

**Q5. Do you agree with the view proposed by the EBA that proportionality should be applied in a general way to the activities of RAISPs, non-credit institution creditors and credit intermediaries and that they should not be exempted from any of the requirements of the Guidelines? If not, please provide your reasoning.**

It is essential that the principle of proportionality applies when implementing the Guidelines. In the interests of legal clarity and legal certainty, the principle should be explicitly enshrined in the Guidelines. EIOPA has laid down this principle in the introduction (paragraph 5) of its Guidelines on complaints-handling insurance intermediaries.

In particular, the principle allows national supervisory authorities, when implementing the Guidelines, to consider not only whether the credit intermediary is a natural or legal person, but also for example, whether he is involved as tied agent in the complaint processing of the creditor and thus does not need its own guidelines for complaint handling.

Yours sincerely,



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