



THE IMPACT OF THE MORTGAGE CREDIT DIRECTIVE
2014/17 IN GREECE

BARCELONA WORKSHOP, 20-21 OCTOBER 2016

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LAWYER

WORKING PAPER
2/2017

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Part I. General overview of consumer credits secured by immovables in Greece – Stocktaking of residential construction financing in Greece and special issues

A. Trends in housing construction and its financing in Greece

In Greece, at least until the outbreak of the sovereign debt crisis in 2010, there was a clear tendency to own one's home. This tendency has been deeply rooted in Greek mentality for decades, centuries even: Building (or, especially after the Second World War, acquiring) one's own home was always regarded as one of the prime life goals and Greek families are standardly concerned not only with the acquisition of a family home, but also about being in position to provide to or assist their adult children with the acquisition of their own privately-owned homes.¹

Immediately following the Second World War one of the main ways, apart from own funding, to finance the construction of new housing was the so-called "land-for-construction exchange" system (*αντιπαροχή*).² This system flourished especially in the major urban centres to which Greeks gathered en masse in search of better living and

¹ According to the Hellenic Statistical Authority, the percentage of Greek households living in their own home during the latest census of 2011 remains high with 73.2% (see Summary Report on Greek Census 2011 (in Greek),

http://www.statistics.gr/documents/20181/1210503/A1602_SAM05_DT_DC_00_2011_01_F_GR.pdf/d2f588d2-d490-417b-a3b8-b6acb1cbad29, last accessed on 15 January 2017). This percentage is slightly above the EU-28 average, which, as of 2014, lies at 70,1%, with Greece occupying roughly the middle range among the Member States

(http://ec.europa.eu/eurostat/statistics-explained/index.php/Housing_statistics#Tenure_status), last accessed on 15 January 2017; see also 'Home ownership and housing quality in Greece and the EU countries' (in Greek), 31 August 2016,

<https://www.taxheaven.gr/news/news/view/id/30636/hl/2014/17> (last accessed on 15 January 2017)).

Over the course of the last 35 years, this trend in respect of privately-owned Greek households has remained relatively steady, fluctuating from 70.3% in 1981 to 75.7% in 1991 to 73.6% in 2001 and reaching as high as 80% in 2005 (data available (in Greek) on the website of the Hellenic Statistical Authority (www.statistics.gr); see also Dimitris Develegkos, 'Owned housing protected Greek households through the "rough patch" ' (in Greek), 13 September 2014, <http://www.capital.gr/story/2107846> (last accessed on 15 January 2017);.

² The "land-for-construction exchange" system is essentially a contract for construction of a specific work (*σύμβαση έργου*) under arts. 681 et seq. of the Greek Civil Code (*Αστικός Κώδικας*, henceforth: **AK**). As with all contracts for work (not to be confused with employment contracts), the contracts in question maintain their synallagmatic nature as prescribed by the AK: the contractor must construct the building and the owner of the land as orderer must pay the agreed contractual price. The particularity of the "land-for-construction exchange" system consists in the fact that the contractor does not receive a monetary fee, but title in several flats in the building that he constructs. This first became possible with the law 3741/1929 „on the ownership by floors”, Government Gazette of the Hellenic Republic Issue (henceforth: **GGI**) A' 4/ 4/9 January 1929, which provided for the first time that apartments and floors of a single building may constitute separately owned properties.

working conditions after the end of World War II and the Greek Civil War that immediately followed and lasted until 1949. The “land-for-construction exchange” system had been made possible under law already in the late 20s, but the period from the 1950s onwards marked its wide-spread use. Under this system, land owners (especially those whose houses had been severely damaged or destroyed during the wars) who could not afford to build on their land would conclude an agreement with a works contractor, under which the contractor undertook to erect a new construction (most often a block of flats); the land owner would keep a part of the flats thus constructed (20%-30% during the 60s and the 70s, up to 40% during the 80s, nowadays around 50% or even 60%), while the contractor would acquire ownership of the rest as the agreed reward for the work rendered.

Although the land-for-construction exchange system never went out of use, bank housing credits, almost standardly connected with a mortgage on the land concerned from a certain sum upwards, started becoming the norm already in the 70s, but with increasing frequency since the late 80s onwards. The phenomenon was further encouraged after Greece joined the Eurozone, which led to a substantial fall in interest rates, and brought about in Greece a building boom further encouraged by various factors, such as the Athens Olympics of 2004 and an – often aggressive – advertising policy by most Greek commercial banks. The boom of the building market in Greece continued almost uninterrupted until the outbreak of the sovereign debt crisis in 2010. The housing credit market was further boosted by legislative measures such as the state subvention of interest rates for housing credits and the treatment of interest payments on such credits as tax deductible, insofar as they are connected to the acquisition of the so-called “primary dwelling”, i.e. the owner’s principal residential premise.

Since the outbreak of the Greek sovereign debt crisis and the severe economic stagnation that followed, it has been anticipated that especially the new land tax measures, as well as the diminishing (as compared with the past) legal protection of indebted home owners and the waning willingness of Greek banks to grant new housing loans are currently shaping a new trend in Greece, according to which many people will begin preferring home rentals instead of privately-owned dwellings.³ However, this shifting trends still remain to be confirmed, since the situation is still in progress and very volatile, while the Greeks’ commitment to owning their dwelling appears to resist the crisis so far.

³ See, e.g., Vaso Kalama, Housing crisis in Greece: past and present, housing reserves and processes of access, National Technical University Master Thesis in Architecture (unpublished), January 2013, available at <https://akea2011.com/2013/05/29/krisikatikiasstinellada/> (last accessed on 15 January 2017), with further references.

B. Impact of the Greek sovereign debt crisis

The financial crisis has seen a substantial decline in the Greek building industry, which has been literally struggling since 2010. This has in its turn affected the market of consumer credits secured by immovables: the Greek banks are no longer as willing to provide (or even capable of providing) housing credits, even if such credit is to be secured by a land mortgage. The main reason for such reluctance lies essentially in the fact that execution proceedings by means of land auction are no longer always successful and, therefore, land mortgages are no longer as reliable as they used to be. Moreover, a number of Greek governments have taken a series of protectionist measures, both before the crisis and especially after its outbreak, with a view to securing the housing needs of the financially weaker social groups.

Regarding the housing credit market, in particular, the Greek Institute for Land Market Appraisal organized a conference in March 2014, in the course of which two analysts of the Bank of Greece offered certain revealing findings.⁴ In particular, it was reported that approx. € 100 billion or 42% of the credits provided by the Greek banking institutions in Greece were granted to consumers; of those loans the great majority (around 70%) were provided for housing needs (acquisition or renovation of residential property). The total sum of residential bank credits showed an abrupt decline of approx. € 10 billion following the outbreak of the Greek sovereign debt crisis in mid-2010. This decline was somehow halted in the course of 2013, so that, as of January 2014, the outstanding residential loans were, in terms of volume, roughly equivalent to those of 2007, namely a time when the construction industry and the real estate market in Greece were in full bloom. A review of the total lending volume (in Euro) in conjunction with its yearly rate of change is very enlightening: from December 2005, when the residential loan volume featured an increase of 33.5%, during the still ongoing post-Olympic Games building boom, it gradually dropped to -0.3% in 2010 and continued diminishing by a yearly rate of roughly -3.3% each year afterwards. In other words, after 2010 Greek households have shown themselves reluctant to invest in real property, a tendency coupled with the strong reservations of the banks regarding the granting of new credits and the resulting lack of liquidity in the market. During 2013 only 17% of the acquisitions of new property were backed by bank loans, as opposed to 82% in the beginning of 2009, and the average value of a bank credit sum as a percentage of the value of the real property acquired through such credit had plummeted from 70% in the beginning of 2009 to roughly 35% in 2013. Another interesting piece of information is the increase in the percentage of residential loans in

⁴ For the main points, see N. Koliou & K. Akantziliotou, The housing credit market and related developments (presentation in Greek), 15 March 2014, http://www.bankofgreece.gr/BoGDocuments/BoG_ELIE_Mar_2014_gr.pdf (last accessed on 15 January 2017).

payment arrears: from 3.4% in 2006 they had reached 10% in 2010; ever since and until late 2013 they were increasing by 5% each year, reaching 42% in early 2016.⁵ Therefore, it becomes obvious that the Directive 2014/17⁶ comes at a time when consumer credits based on real property have suffered a major setback and it could help revive this once flourishing and currently struggling market.

C. Protectionist measures

The most important among the protectionist measures mentioned above was the prohibition of levying execution measures on the primary dwelling: Art. 9 para. 2 of the law 3869/2010⁷ in its original version (also known as “Katselis Act” after the name of the then Minister for Finance Ms. Louka Katselis) provided that immovables serving as the primary dwelling of a debtor may be exempted from foreclosure, upon the debtor’s petition to the court, provided that their value does not exceed the tax-exempt objective market value for the acquisition of a primary dwelling plus 50% (such value beginning at the time at € 200,000 and progressing gradually, depending on whether the acquirer was single, married with children (and how many) or a person with special abilities). Obviously this law removed a large number of immovables from the group of a debtors’ assets that could be used for satisfying any creditor, including banks providing housing credits (the law provided explicitly that the primary dwelling may be excluded regardless of whether it is encumbered with a security right *in rem* or not), and it proved to be a particularly contentious issue between all Greek governments ever since, on the one hand, and the European Union and the IMF, on the other, when negotiating the terms of the various financial aid packages aiming to solve the Greek debt crisis (it is no coincidence that this particular provision has been amended four times to date since its promulgation). With the latest amendment of art. 10 of the law 3869/2010 in late 2015, which entered into force on 1 January 2016, the prohibition of levying execution measures on the primary dwelling was restricted as a result of the latest financial aid memorandum agreed on by the current Greek government with its lenders in the summer of 2015: The relevant possibility shall be available only until 31 December 2018 and it is henceforth subject to strict requirements with regard to the debtor’s actual income, the objective market value of the real property in question (the relevant regulation is intricate, but at the end of the

⁵ See Thanasis Koukakis, ‘Red loans: Which ones are for sale, counter motives for bad payers’ (in Greek), CNN Greece, 10 April 2016, <http://www.cnn.gr/premium/story/28255/o-xartis-ton-kokkinon-daneion> (last accessed on 15 January 2017). The author also notes that the overall credits in arrears rose from 5% in 2010 to 53% in 2016.

⁶ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 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, OJ L 60, 28.2.2014, p. 34–85 (henceforth: the **Directive**).

⁷ GGI A’ 130/3 August 2010.

day it provides that the value of primary dwellings to be protected may not exceed € 180,000 for debtors willing to agree to a court-administered debt repayment plan or € 120,000 for debtors already subject to such plan who find themselves anew in payment difficulties; both sums are subject to further adjustments for families with children) and the question whether the debtor qualifies as a “cooperating loan taker” in the sense of the Greek Banks Deontology Code. The first forced auctions of primary dwellings have started taking place in the autumn of 2016 amidst general social unrest.

D. The issue of of “red loans” and plans for their treatment

Another important issue to take into account is the currently still ongoing negotiation with Greece’s creditors and legislative measures in Greece with regard to allowing the assignment of the so-called “red loans”, namely loans in payment arrears of over 90 days (with regard to Greece, in particular, in view and as a result of the debt support arrangements with the country’s creditors, over 6 months), a large portion of which are housing loans, to non-banking institutions (essentially to debt management funds).

The assignment of red loans to non-banking institutions was practically forbidden in Greece with regard to housing credits until the promulgation of law 4354/2015,⁸ which for the first time provided the legal framework for the formation and operation of companies for the management and/or acquisition of claims by banking institutions from loans and other credit arrangements in payment arrears.⁹ The final legislative measures on the types and categories of red loans that may be transferred to debt management funds is currently (as of late 2016) still being negotiated, both within Greece and between the Greek government and the lenders. The lenders of the Greek government have requested a number of legislative measures that will allow banks and their executives to write-off red loans or proceed to “haircuts” thereof. Along the same lines, the Executive Committee of the Bank of Greece issued on 5 September 2016 an act¹⁰ setting new and more precise supervisory procedures and respective

⁸ GGI A’ 176/16 December 2015.

⁹ Red loans in Greece raised from a mere 3,12% of all loans in 2008 to an astonishing 53% in 2016. As of April 2016, € 108 billion out of € 203 billion in bank loans are in payment arrears; housing loans amount to € 67 billion, of which loans in value of € 28 billion are in payment arrears and 43% of the latter, or loans in value of € 12 billion, pertain to housing loans for the acquisition of a primary dwelling. This data refers to housing loans; however, it must be noted that in many cases the owners of SME have borrowed money by encumbering with mortgages their personal land property. See Thanasis Koukakis, ‘Red loans: The hurdles in the negotiations with the institutions’ (in Greek), CNN Greece, 8 April 2016, <http://www.cnn.gr/premium/story/28097/kokkina-daneia-ta-empodia-sti-diapragmateysi-me-toys-thesmoys> (last accessed on 15 January 2017).

¹⁰ Act 102/30 August 2016 of the Executive Committee of the Bank of Greece ‘Framework of supervisory duties regarding the management of credits in arrears and non-repayable credits’, GGI B’ 2779/5 September 2016. See, also, the meeting protocol nr. 195/29 July 2016 of the Committee for Credit and Insurance Matters of the Bank of Greece on the amendment of the Greek Banking Deontology Code (in Greek; available at

duties for the Greek banks with respect to the monitoring of loans in payment arrears.¹¹ The Bank of Greece is expected to grant operating licenses to at least five debt management companies by late 2016/early 2017 and a number of legislative measures to be taken by February 2017 aim at facilitating the secondary market for red loans.¹²

E. Housing loans in Swiss francs

An additional problem arose for approximately 65,000 to 70,000 Greek households that from 2006 to 2009 had taken housing loans denominated in Swiss francs or, more rarely, including a CHF-based interest clause; such loans had been aggressively advertised in Greece at the time due to the weak Swiss franc exchange rates and the low LIBOR interest rates during the period in question. Greek borrowers already found themselves at a disadvantage when the EUR-CHF exchange rate was locked at € 1.20 in September 2011; following the liberation of the EUR-CHF exchange rate in early 2015, those households had to face a substantial increase of the outstanding loan amounts which could no longer be countered by the established monthly payments (it is estimated that the loans taken, initially at a value of approx. € 7 billion, increased to € 9 billion). Consequently, many of those borrowers found themselves in repayment difficulties. It is estimated that, as of June 2016, 1 in 3 loans in Swiss francs were in payment arrears and 50% of the rest had been subsumed to payment arrangements involving extension of the repayment time, reduction of the monthly payment rates or restriction to interest payments only, “freezing” of 50% of the outstanding loan amount for periods ranging from 3 to 5 years, etc. The extent of the problem even led the affected borrowers to form an association and many among them have started filing law suits requesting the banks to adjust the loan amounts to the EUR-CHF exchange rate of the date when the loan was concluded.¹³

http://www.bankofgreece.gr/BoGDocuments/%CE%95%CE%A0%CE%91%CE%98%20195_1.pdf; last accessed on 15 January 2017).

¹¹ For more information on the treatment of “red loans” in Greece, see Part III below.

¹² Anastasia Papaioannou, ‘Laws on red loans being revised’ (in Greek), EURO2day, 26 November 2016, <http://www.euro2day.gr/news/economy/article/1468813/xanadiavazontai-oi-nomoi-gia-ta-kokkina-daneia.html> (last accessed on 15 January 2017).

¹³ For an account of the loans in Swiss franc and the problems caused in Greece, see ‘Switzerland took markets by surprise’ (in Greek), Kathimerini, 16 January 2015, <http://www.kathimerini.gr/799544/article/oikonomia/die8nhs-oikonomia/h-elvetia-aifnidiase-tis-agores> (last accessed on 15 January 2017); also ‘Banks reduce monthly repayments for loans in Swiss franc’ (in Greek), Kathimerini, 24 January 2015, <http://www.kathimerini.gr/800704/article/oikonomia/ellhnikh-oikonomia/oi-trapezes-meiwnoyn-doseis-sta-daneia-me-elvetiko-fragko> (last accessed on 15 January 2017); ‘Terms for loans in Swiss franc revised’ (in Greek), Ethnos, 5 June 2016, http://www.ethnos.gr/oikonomia/arthro/ksanagrafoun_tous_orous_sta_daneia_se_elbetiko_fragko-64387423/ (last accessed on 15 January 2017).

This issue has reached in the meantime the European Parliament, where a Greek MP submitted a relevant question on 28 May 2016 in the light of recent Greek case law on the matter (for which see immediately below). Mr. Valdis Dombrovskis, the current European Commissioner for the Euro and Social Dialogue and Vice-President of the European Commission, replied on 5 August 2016 and, in a rather Delphic manner, stated that all European citizens are allowed to resort to the national authorities and courts, if they consider their rights to have been violated; at the same time he insinuated that the problem in question may be treated in the context of the European legislation on unfair terms in consumer contracts, as well as on unfair commercial practices.¹⁴

Moreover, the Hellenic Consumers' Ombudsman¹⁵, an independent administrative authority in Greece with consultative competences in consumer protection issues, issued an expert opinion on the issue of housing loans in Swiss francs on 17 September 2015: The Consumers' Ombudsman begins from the premise that Greek banks are subject to a certain duty of care towards their clients, as a result of which they should have sufficiently informed them about the exchange rate risk at the time when loans in Swiss francs were granted. The duty in questions is derived both from specific banking and consumer protection laws and regulations and general principles and clauses of the AK (e.g. art. 288 AK on good faith). Provided that the respective bank has not fulfilled its duty of informing the client in a sufficient and appropriate manner prior to the conclusion of the credit agreement, the Consumers' Ombudsman affirms the bank's liability in damages (both contractual and tortious); the proposed solution consists of fixing the EUR/CHF exchange rate at 1.40 for the purpose of calculating the monthly payments by the loan taker, whereas the difference between this and the actual exchange rate should be borne by the bank.¹⁶

¹⁴ See Parliamentary Question by Greek EMP Notis Marias E-004309-16 on 'Measures pursuant to the case-law of Greek courts to protect Greeks who contracted mortgages in Swiss francs in previous years', 30 May 2016

(<http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2016-004309&language=EN>; last accessed on 15 January 2017); European Parliament, Answer given by Vice-President Dombrovskis on behalf of the Commission (5 August 2016)

(<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-004309&language=EN>; last accessed on 15 January 2017).

¹⁵ The Hellenic Consumers' Ombudsman is a Greek Independent administrative authority, which was set up with the law 3297/2004 (GGI A' 259/23 December 2004) in accordance with the Green Paper on alternative dispute resolution in civil and commercial law (COM(2002) 196 final) of the European Union. Its main functions consist in the extra-judicial resolution of consumer disputes, as well as its advisory role to the Hellenic Republic with regard to matters falling within its prerogatives (see http://www.synigoroskatanaloti.gr/stk_Mission.html; last accessed on 15 January 2017).

¹⁶ Expert opinion available (in Greek) at <http://www.synigoroskatanaloti.gr/docs/reports/2015-09-17.Proposal-CHF.pdf> (last accessed on 15 January 2017).

An impressive number of rulings – taking into account the relatively short time since the problem arose – have been issued on that matter, both in ordinary proceedings and as interim injunctions.¹⁷ It is worth noting some of the most recent ones that appear to have had a substantial impact:

- With its ruling 3789/2015 dated 24 May 2016,¹⁸ the Multi-Member Court of First Instance (henceforth: **MCFI**) of Athens granted an action for nullity of the entire loan agreement on the basis that the borrowers had not been properly informed about the exchange rate risk through the applicable GTC of the lending bank and that such omission was so crucial that, had they known about it in advance, they would not have concluded the entire loan agreement.
- In a more recent ruling from May 2016 by the same court,¹⁹ the court granted a class action under law 2251/1994 (Consumer Protection) brought by the General Consumer Confederation of Greece and the Consumer Associations of Crete and Aitolokarnania. The court once again stroke down the GTC clauses of the relevant loan agreements on the basis that the relevant contractual term in question was not transparent enough, because the banks had not made it sufficiently clear to the borrowers that they were assuming an investment risk; the GTC was also deemed to be illegal and abusive (and hence null and void), since the banks created the impression to the loan takers that the exchange rate would not fluctuate to such extreme extent.
- According to a similar court ruling by the MCFI of Piraeus,²⁰ the signing and receipt of draft agreements and letters, including the pre-drafted letter informing the loan taker about the exchange rate risk, were not deemed to properly fulfil the legal requirements on the pre-contractual information duties by the borrowing banks. The court also ruled that the contractual term imposing repayment either in Swiss francs or in Euros on the basis of the EUR/CHF exchange rate of the date when each payment takes place must be overturned as abusive and, by application of the principle of good faith and in accordance with established transactional morals under the grCC, the payments must be calculated on the basis of the EUR/CHF exchange rate of the date when the loan was granted and paid out to the borrower.

¹⁷ For an account of the case law until early April 2016, see Aimilia Efthymiou, Commentary to MCFI Athens 3789/2015, *Chroniká Idiotikou Dikéou* (Greek law journal, henceforth: **ChrlDD**) 2016, 193 et seq. Apart from the four rulings presented in this paper, see also the website of the Association of Borrowers in Swiss Francs, dated 24 May 2016, in which several other court rulings are cited and/or available in full text: <http://www.daneia-chf.gr/dikastika-nea/articles/apofasei-dikastirion.html> (last accessed on 15 January 2017). The same website also contains a number of expert opinions and other legal publications on the issue of the housing loans in Swiss franc in Greece.

¹⁸ Published in the Isocrates Legal Database of the Athens Bar Association (henceforth: **Isocrates**).

¹⁹ MCFI Athens 334/2016, published in Isocrates.

²⁰ MCFI Piraeus 619/2016, published in Isocrates.

Those developments in case law have led the Greek government, according to journalist sources, to begin examining a possible legislative solution to the problem along the lines of imposing the view sustained by the courts, namely that the applicable exchange rate for the repayment of the loans should be that of the date of conclusion of the respective loan agreements.²¹ However, the legal teams of the Greek banks have stated that they shall await the relevant rulings by the Court of Appeals and, if it comes to that, the Greek Supreme Court (*Áρειος Πάγος*).²² Moreover, it is noteworthy that in one of the more recent ruling of the MCFI of Athens in relation to loans in Swiss marks,²³ the court rejected the notion that the relevant GTC of the lending bank was abusive and it also refused to apply art. 388 AK (unforeseeable change of circumstances).²⁴ Therefore, the matter still remains open both on the case-law and on the legislative level.

F. Backdrop of the transposition of Directive 2017/14

The developments and legislative measures described above provide the general backdrop against which the Directive is currently in the course of being transposed into the Greek legal system. As a general rule, land mortgages in Greece have mostly been granted in connection with the acquisition of land or repairs and renovation works on immovable property. However, in recent years the deteriorating financial environment has led to residential properties being used as collateral in order to secure business financing and working capital by SMEs²⁵ or as collateral for tax debts or other debts to the state.²⁶ The increase in the number of housing loans in arrears (and, more generally, of bank credits) has been ascribed by some commentators to the original Katselis Law, which, although meant to alleviate the weaker social groups,

²¹ Thanasis Koukakis, 'The Gordian knot of loans in Swiss franc to be disentangled' (in Greek), CNN Greece, 11 June 2016, <http://www.cnn.gr/money/story/35363/pros-lysi-o-gordios-desmos-ton-daneion-se-elvetiko-fragko> (last accessed on 15 January 2017).

²² See Ethnos, 5 June 2016, Fn. 13 above. Cf. Efthymiou, ChrlD 2016, 196, who notes that the courts should not resort to blanket solutions, but examine each case on its merits, especially with a view to each borrower's level of sophistication and the question whether such borrower indeed sustained damage or not.

²³ MCFI Athens 1101/2016, published in Isocrates.

²⁴ Art. 388 AK provides that a court may alter the conditions of a contractual agreement or even entirely nullify it, if an unpredictable and extraordinary change of circumstances occurs and renders the contractual obligations disproportionately disadvantageous for one party, provided that such change could not have been reasonably foreseen and anticipated at the time when the contract was concluded.

²⁵ See Thanasis Koukakis, 'Red loans' in Fn. 9 above.

²⁶ See, e.g., 'Land mortgage for tax debts arising out of parental grants' (in Greek), Ethnos, 30 January 2014, http://www.ethnos.gr/oikonomia/arthro/ypothiki_akinitou_gia_xrei_se_gonikes_paroxes-63955928/ (last accessed on 15 January 2017).

ended up being resorted to in an abusive manner by otherwise solvent debtors who sought to benefit from its provisions.²⁷

In any case, the current bleak landscape in Greece should most probably be ascribed for the greatest part to the lending practices since accession of Greece to the Eurozone, which at least in part were irresponsible and aggressive. In addition, the repeated massive income cuts that the average Greek consumer has sustained since 2010, coupled with the liquidity problems that the Greek banking system faced, often led to loan takers not being able to service their housing loans, although at the outset they were in position to do so and their financial outlook also justified the lending granted.

Part II. The impact of Directive 2014/17

A. The transposition process

The ministerial committee which would process the legislative proposal for the transposition of the Directive into the Greek legal system was appointed by ministerial decree in early January 2015, shortly before the first parliamentary elections of 2015 that brought about a resounding political change in Greece and the rise of the leftist SYRIZA party to the governmental ranks for the very first time. The turbulent events of the first semester of 2015, the focus of the government on prioritising and implementing the measures of the Memorandum of Understanding between the European Commission, acting on behalf of the ESM, and the Hellenic Republic and the Bank of Greece of 19 August 2015 and the new elections held in September of the same year were some of the factors that led to substantial delays with regard to the promulgation of the transposing law for the Directive, although its subject matter actually overlaps in part with the prerogatives set by the 2015 Memorandum.

The draft legislative proposal for the transposition of the Directive (henceforth: the **First Draft**) was introduced to the Greek parliament for discussion in March 2016. The process of public consultation on the First Draft began on 28 April 2016 and was completed on 24 May 2016. An updated draft was presented for discussion on 11 November 2016 (henceforth: the **Final Draft**) and was voted on by the Greek Parliament on 23 November 2016. The law 4338/2016 on the transposition of the Directive (henceforth: the **Transposing Law**) was published in the Government Gazette on 28 November 2016 and entered into force on the same day.²⁸

²⁷ See Thanasis Koukakis, 'Red loans' in Fn. 9 above.

²⁸ Act 4338/2016, GGI A' 220/28 November 2016. The legislative materials for the promulgation of the Transposing Law are available (in Greek) on the Website of the Hellenic Parliament (*see*

In the course of the public consultation the number of comments submitted was rather meagre (among other reasons, because the great majority of the articles of the First Draft were not open to public comments). The great majority of observations submitted, as expected, were in reference to the aforementioned issue of housing loans denominated in Swiss franc: The borrowers under such loans were particularly concerned with the question whether the new law transposing the Directive would also capture their cases, although those almost standardly predated the date of entry into force of the Transposing Law, as envisaged at the time. The First Draft provided that the relevant law, once passed by the parliament, would retroact to 21 March 2016 (i.e. the transposition deadline); however, this provision was later amended and the Transposing Law entered into force as of the date of its publication in the Government Gazette (except as otherwise provided in it); with regard to loans in foreign currency, the Transposing Law does not provide for any exceptions. On the other hand, the First Draft did provide in Art. 40 para. 1 that it would not apply to credit agreements validly concluded prior to 21 March 2016, but this provision was removed from the Final Draft and the Transposing Law itself. It is unclear whether this change was meant to appease the borrowers' movement or not; in any case, the Transposing Law does not cover pre-existent credit agreements or, at the very least, it is not directly applicable to those. Apart from the potential retroactive effect of the Transposing Law, the commentators that participated in the public consultation also made a few suggestions for minor adjustments, such as the duty of the bank to duly inform the borrower of a loan denominated in foreign currency once the exchange rate of the respective foreign currency fluctuates over 10% (instead of 20%, which nonetheless prevailed in the final text).²⁹

In terms of its content, the Transposing Law practically reiterates the wording of the Directive with certain exceptions, e.g. in respect of the credit service providers covered (for more details, *see* Part B. 2. below). The Greek legislator generally sought to adapt the Transposing Law wherever the Directive offered the relevant leeway or left issues to be definitively decided by the national parliaments (e.g. with regard to the instances in which the lending bank may set restrictions on or impose conditions for the early repayment of the credit or, in case of credits in foreign currency, the options available to consumers in case of extreme fluctuations in currency exchange rates).

In general terms and irrespective of the question whether the Directive adequately addresses the problems of its subject matter, the Transposing Law sufficiently transposes the Directive into the Greek legal system, at least for the future: As

http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=94b329ff-1b45-46dc-a0d1-a6bb00fa4553; last accessed on 15 January 2017).

²⁹ For the public consultation and the relevant comments on the legislative proposal by article, *see* <http://www.opengov.gr/minfin/?p=6727> (last accessed on 15 January 2017).

indicated above under I., certain of the pathogenies of the Greek housing credit market that the Directive and the Transposing Law aim at tackling currently have a substantial impact on Greek economy, but the Transposing Law is not meant to have retroactive effect in order to cover those, as well. When the First Draft was presented to the public in the spring of 2016, the general reaction to it was that it sets stricter rules for banks and it provides more clarity with regard to the terms and conditions under which housing bank loans are to be provided, as well as the general framework under which credit institutions can offer the credit products in question.³⁰ The same view was reflected in the announcement of the Hellenic Consumers' Ombudsman on 17 November 2016 during the final deliberations ahead of the voting session on the Transposing Law in the Greek Parliament³¹: In spite of certain misgivings in the sense that the relevant regulation "came too late", the Ombudsman praised the imposition of more specific and detailed duties of pre-contractual information on credit institutions granting housing loans, as well as the increased formal qualifications henceforth required for their employees. It is true that the relevant issues were hitherto examined and treated in the light of general consumer protection law;³² it is also true that certain of the duties provided in the Directive (and the Transposing Law) can be said to be already included in and prescribed by the general principle of good faith under Greek law (art. 281 grCC) or the Deontology Codex of the Greek banks, to which the Transposing Law makes explicit reference in the context of handling payment arrears. However, treating the relevant issues through legal institutions more or less remote from the subject matter in question could deliver at best ambiguous results and, in the worst case scenario, allow – on the basis of minor technicalities – practices now forbidden by the Directive. Therefore, the general feeling is that the Directive sets down much-needed detailed rules for those issues which, even if partially addressed by other fields of law, remained ambiguous and controversial and had sparked ongoing litigation.

³⁰ See, e.g., Ch. Chasapis, 'The Directive 2014/17/EU on credit agreements with consumers for real property to be used for residential purposes: A summary presentation' (in Greek), *Dikaio Epiheiríseon kai Etairión* (Greek law journal, henceforth: *DEE*) 2015, 334; 'New rules for consumer credit agreements for housing' (in Greek), LawSpot (Greek law blog), 5 May 2016, <https://www.lawspot.gr/nomikaneia/neoi-kanones-stis-symvaseis-pistosis-gia-katanalotes-gia-akinita-poy-proorizontai-gia> (last accessed on 15 January 2017); 'New terms for banks and consumers in housing credit agreements' (in Greek), Capital (online financial journal), 5 May 2016 <http://www.capital.gr/auto/3123351/neoi-oroi-gia-trapezes-kai-katanalotes-stis-sumbaseis-pistoseon-gia-akinita> (last accessed on 15 January 2017).

³¹ See 'Statement by the Hellenic Consumers' Ombudsman Mr. Lefteris Zagoritis on housing credits' (in Greek), 17 November 2016, <http://www.synigoroskatanaloti.gr/docs/press/2016-11-16.ΔΤ-Επιτροπή-Οικονομικών.pdf> (last accessed on 15 January 2017).

³² Cf. the statement of Mr. Dobrovskis cited in Fn. 14 above.

B. The Transposing Law in detail and its relation to the Directive

a. General remarks

The subject matter of most rules contained in the Transposing Law has not been entirely unknown to banking practice in Greece and the Transposing Law makes a systematic effort to integrate the Directive into the existing administrative structures and mechanisms, as well as the law in force (e.g. no new authorities or agencies are established for the purpose of ensuring the financial education of consumers, but the relevant duties are assumed by the Secretariat General for Commerce and Consumer Protection in conjunction with the Bank of Greece, the Hellenic Consumers' Ombudsman, the bank associations, the consumers associations, the Ombudsman for Banking Investment Services, etc.; all of those are already established bodies of public administration or independent administrative state authorities). However, many of the duties introduced by the Directive and the Transposing Law were until now either optional market practice without the status of a legal rule; or they had been examined and doctrinally developed by the courts in the context of broader fields of law/rules of more general application, especially consumer protection (general terms and conditions, unfair market practices, pre-contractual and other obligations towards the consumer, etc.); or they were laid down as or reflected in forms of "soft law", such as the Deontology Code of Banks.³³

b. Definitions

The Transposing Law generally follows the definitions scheme of the Directive with a couple of notable exceptions or variations (art. 3 Transposing Law, art. 4 Directive):

- To begin with, the definition of "creditors" (according to the Greek text "credit institutions (*πιστωτικά ιδρύματα*)") includes, for the avoidance of doubt, companies for the management of bank claims in payment arrears arising of

³³ The Deontology Code of Banks was provided in art. 1 para. 2 of the law 4224/2013 on the Governmental Council for the Management of Private Debt, the Hellenic Investment Fund for the Exploitation of State Property and other urgent measures (GGI A' 288/31 December 2013). It is not a law in the proper sense of an act of parliament with formal binding power in its own right, but rather a set of principles, timelines and processes that all banks are required to follow in respect of private debts in payment arrears. Any binding power that the Deontology Code has is essentially indirect, derived from the references made by other laws to it, calling for its applicability in specific circumstances. The Bank of Greece has the main responsibility for the drafting, updates and implementation control of the Deontology Code; the latest amendment was published in August 2016 (GGI B'2376/2 August 2016) and it aimed at reinforcing the position of bank debtors in arrears, enhancing the transparency and efficiency of the negotiation mechanisms between banks and their debtors and providing more flexible solutions that actually render realistic the eventual repayment of the debts in arrears. For a concise account of the content and scope of the Deontology Code, see Vassilis Georgas, 'What is the Deontology Code for red loans and whom does it concern', Capital, 26 August 2014, <http://www.capital.gr/story/2094026> (last accessed on 15 January 2017).

loans or other credit agreements, in the sense of art. 1 para. 1 (a) of the law 4354/2015, as amended. The *travaux préparatoires* of the Transposing Law clarify that such entities are subject to the Transposing Law only to the extent that they acquire claims falling within its scope and only to those of its provisions that are applicable after a loan has been granted and/or during its extra-judicial settlement.³⁴

- Moreover, the Transposing Law provides for a narrower definition of tied credit intermediaries, restricting those to persons acting on behalf of only one creditor or only one group and leaving out art. 4 nr. (5) case (c) of the Directive (“*a number of creditors or groups which does not represent the majority of the market*”). This exception was adopted due to the lack of depth of the Greek credit market and the fact that the supervision of tied credit intermediaries shall be indirect, i.e. it shall be carried out by the credit institutions to which they are tied. This legislative choice relies upon the faculty accorded by art. 2 para. 1 Directive (“*Level of harmonisation*”) to the national legislators to provide more stringent rules than those contained in the Directive.³⁵
- Finally, the Transposing Law does not provide any rules on appointed representatives. The Legislative Report remains silent as to why it was decided not to regulate appointed representatives. Given the reasons for restricting the definition of tied credit intermediaries, it may be inferred that similar reasons apply with regard to appointed representatives. Moreover, it could be argued that the Greek legislator may be aiming at maintaining some degree of control over the numbers and capacities of persons active in the Greek market for land-based credits, especially in view of the impact that the financial crisis has had upon the Greek financial services market as a whole, including consumer services.

c. Competent authorities

Under art. 4 Transposing Law (art. 5 Directive), the competent authorities for the implementation of the law shall be the Ministry of Finance, Development and Tourism for arts. 5 (Financial education of consumers), 9 (General provisions applicable to advertising and marketing), 10 (Standard information to be included in advertising), 21 para. 7 (Provision of advisory services by certified consumer associations) and 37 (Dispute resolution mechanisms) of the Transposing Law; the prerogatives in question include certain core consumer-law issues of the Directive, for which the Ministry has the general oversight through the Secretariat General for Commerce and Consumer

³⁴ See Hellenic Parliament, Legislative Report on the Final Draft Law transposing the Directive 2017/14/EU (4 November 2016), p. 3 (henceforth: the **Legislative Report**). For some information on the law 4354/2015, see Part III. B. below.

³⁵ Legislative Report, p. 3.

Protection. For all other provisions the relevant competence is accorded to the Bank of Greece.

On 31 May 2016, the Greek Ministry of Finance submitted a question to the European Central Bank requesting an expert opinion on whether the prerogatives accorded under the Transposing Law to the Bank of Greece are appropriate and suitable for a national Central Bank. The ECB noted in its answer, dated 28 June 2016, that it did not examine the substance of the transposition of the Directive into the Greek legal system, though only the institutional nature of the new duties of the Bank of Greece (especially the licensing and supervision of the credit intermediaries services market) and their compatibility with the role that the Bank of Greece already fulfils as member of the Eurosystem. The ECB found no issues with the new duties in question, provided that the Bank of Greece has sufficient resources to carry out those and takes appropriate precautionary measures to shield itself against potential conflicts of interest between its new prerogatives in the field of consumer protection and the duties that it traditionally exerts with regard to supervision and financial stability.³⁶

d. Conduct of business, staff knowledge requirements

The rules on the conduct of business obligations when providing credit to consumers, the knowledge and competence requirements for staff and the obligation to provide information free of charge to consumers (arts. 7-9 Directive, 6-8 Transposing Law) have been transposed into the Greek legal system almost word for word. The Transposing Law (art. 6 para. 5) also empowers the Bank of Greece to issue rules that further specify the provisions of the law, including the possibility to forbid specific remuneration schemes or certain forms of financial benefits or its capacity to impose duties of cooperation and information on credit institutes with a view to securing the proper application of the Transposing Law.

The provisions on the qualifications of the staff advising the public on the credit products are currently a hotly debated topic in Greece, especially in view of the Swiss franc housing loans mentioned above, since many borrowers allege that they were not properly informed by the respective bank employees about the true nature and the actual risks of credit products in foreign currency. Greek banks have been trying for years to avert such allegations and the related liability issues by organizing special training programmes for their employees engaging in investment advisory services. The Transposing Law provides a more detailed framework for the content and

³⁶ Opinion of the European Central Bank of 28 June 2016 on credit agreements for consumers relating to residential immovable property (CON/2016/34), https://www.ecb.europa.eu/ecb/legal/pdf/en_con_2016_34_f_sign.pdf (last accessed on 15 January 2017).

prerequisites of such employee education programmes in the specific context of consumer credits with land collateral (and possibly beyond that).

e. Pre-contractual information and practices; APRC

The Transposing Law also follows closely the wording of the Directive in respect of arts. 9-15 (arts. 10-16 of the Directive) on pre-contractual information and best practices by the banks.

A notable exception concerns tying and bundling practices. The Greek legislator opted for a more restrictive regulation of the allowed exceptions to the general prohibition on tying than the Directive: Of the exceptions mentioned in art. 12 para. 2 Directive only tying the credit granted to a bank account is allowed under art. 11 para. 1 Transposing Law.

The reflection period under art. 14 of the Directive is set by the Greek legislator to 10 calendar days, whereby the consumer may not bindingly accept the offer before 5 calendar days since provision of the ESIS and a binding credit agreement offer have passed.

Regarding the calculation of the APRC (art. 17 Directive, art. 16 Transposing Law), the two texts are once again almost identical. The Transposing Law contains a somewhat more elaborate wording clarifying that the duty to inform the consumer of the impact of borrowing rate variations also applies to cases where the rate is fixed for an initial period, but at the same time it upholds the non-applicability of this provision to credit agreements with a fixed interest rate for an initial period of at least five years. In spite of the difference in wording between the Transposing Law and the Directive, the result is the same: the duty to inform the consumer about the effects of fluctuations in borrowing rates applies to credit agreements with an initial fixed interest rate period, as well, but only if such period is shorter than five years. In general terms, Greek banks have been providing information to consumers for years on the applicable APRCs for several forms of bank credit agreements (e.g. on credit card statements), in accordance with European rules on the matter.

f. Creditworthiness assessment, database access and advisory services

The rules on creditworthiness assessment (arts. 18-20 Directive, art. 17-19 Transposing Law), database access (art. 21 Directive, art. 20 Transposing Law) and advisory services (art. 22 Directive, art. 21 Transposing Law) are largely the same between the Directive and the Transposing Law, as well.

The property valuation is to be carried out in accordance with reliable assessment standards, as provided in para. Γ7 of the law 4152/2013.³⁷ According to the law, the reliability of such standards depends on their compliance with internationally acknowledged standards, such as those set by the International Organisation for Standardization, the European Group of Valuers' Associations or the Royal Institution of Chartered Surveyors.³⁸

Regarding the use of the terms “advice” and “advisor”, the Greek legislator seeks, as allowed under the Directive, to restrict the use of “independent advice” and “independent advisor”.³⁹ The reason for this restriction lies in the effort to avoid that the average consumer perceives advisory services provided by credit institutes or tied credit intermediaries to be independent in the proper sense. To that effect, the Transposing Law requires, in accordance with the Directive, that both criteria proposed therein for the “independent” denominations (consideration of a sufficiently large number of credit agreements available in the market; non-remuneration by one or more credit institutions) are at hand; however, it also goes a step further and omits the exception under which advisors remunerated by a majority of the credit institutions in the market may still be considered independent (as provided in the Directive). At the same time, the Transposing Law, making use of the relevant faculty provided under the Directive, allows the provision of investment advisory services (with regard to debt management) by consumer associations certified in accordance with art. 10 of the law 2251/1994 (Consumer Protection), as amended.⁴⁰

g. Loans in foreign currency

The chapter on foreign currency loans is, as mentioned above, one of the most hotly debated parts of the Transposing Law. The latter generally follows the pattern set by the Directive (arts. 22-23 Transposing Law, arts. 23-24 Directive): The framework prescribed by the Directive is transposed as the creditor's duty to (a) either provide in the agreement for the borrower's right to convert the loan in domestic currency if the exchange rate fluctuates by more than 20% or (b) ensure that the credit agreement is accompanied throughout its term by adequate financing hedging against the foreign currency risk. The Transposing Law places all three conversion options (i.e. conversion of the loan to the currency of the consumer's (i) main source of income, or (ii) residence at the time of conclusion of the credit agreement, or (iii) current residence

³⁷ GGI A' 107/9 May 2013. This law belongs to the large (and meanwhile relatively difficult to keep proper track of) set of implementation acts voted by the Greek parliament in order to comply with the various requirements and terms of the financial aid packages to Greece.

³⁸ Legislative Report, p. 11.

³⁹ Legislative Report, p. 13.

⁴⁰ Ibid. The relevant prerogative of the Greek consumer associations may only be exercised within Greece and it does not extend to the entire European Union.

at the time of conversion) at the borrower's disposal, but at the same time it makes the possibility of conversion altogether subject to whether the creditor will opt for the right of conversion or for sufficient hedging, as per the above. Therefore, it appears that borrower protection under the Transposing Law is slightly more restricted than under the Directive.

It was already mentioned above that in Greece an Association of Borrowers in Swiss Francs has formed and it is currently lobbying and exercising pressure on all fronts for a political solution to the problem.⁴¹ Given that the Directive explicitly prohibits the retroactive effect of the rules on foreign currency loans (art. 23 para. 5) and the Transposing Law tacitly complied with this prohibition, it is questionable whether the issue of the past loans in foreign currency can indeed be solved by the transposition of the Directive in Greece.⁴²

h. Sound execution of credit agreement

The Transposing Law allows early repayment (art. 24 Transposing Law; art. 25 Directive) and does not provide for any conditions or differentiations as those contemplated in art. 25 para. 2 Directive. The Transposing Law provides for a right of the creditor to receive fair compensation only in those cases where the borrower makes use of his right to early repayment within a period for which a stable interest rate applies to the credit agreement; the relevant claim is capped at the sum of interest that the borrower would have to pay from the time when he makes use of the early repayment option until the end of the agreed period during which the credit agreement is subject to a stable interest rate.⁴³ Annex III to the Transposing Law provides the details on the calculation of the creditor's claim for damages.

The other provisions of the Directive on the sound execution of credit agreements (arts. 26-28) are reflected in the Transposing Law (arts. 25-27). In respect of the need to create flexible and reliable markets (art. 26 Transposing Law), the Transposing Law does not specifically mention any measures to ensure that the creditor may enforce on its own any security on the credit agreement, nor any specific provisions on the

⁴¹ See the website of the Association for more information, at <http://www.daneaia-chf.gr> (in Greek; last accessed on 15 January 2017).

⁴² See Part II. A. above: On the one hand, the deletion of the relevant provision included in the First Draft (i.e. non-applicability to credit agreements validly concluded prior to 21 March 2016) could be construed as a mild surrender to the demands of the borrowers in Swiss franc; on the other hand, the letter of the law on its temporal and objective scope is rather clear and hardly leaves any room for direct application of the Transposing Law on pre-existing loans. The question of a possible analogous application or an effort at a *praeter legem* (or even *contra legem*) interpretation will have to be taken up by the courts. See also Part IV below.

⁴³ This rule is in line with the ministerial decree Z1-798/2008 and a string of definitive court rulings that had declared general terms and conditions on the early repayment of housing loans to be abusive and, as such, invalid. Legislative Report, p. 15.

statistical monitoring of residential property market, although it can be inferred that the general provisions of Greek civil procedural law (e.g. the provision of art. 72 of the Greek Code of Civil Procedure (in Greek *Κώδικας Πολιτικής Δικονομίας*, henceforth: **KPoID**), which allows a creditor to bring a derivative suit (*πλαγιαστική αγωγή*) in respect of its debtor's rights and claims, when the latter fails to exercise those), the law of mortgages and insurance law, as well as the legal framework and practices of the Hellenic Statistic Agency apply here and essentially achieve similar effects to those sought by the Directive.

With regard to the price, at which an immovable may be auctioned off, and according to the KPoID, immovables on which execution is levied are appraised by a certified expert that the seizing bailiff appoint and such appraisal must be based on their commercial value,⁴⁴ as assessed in accordance with European or international renowned assessment standards and in strict observance of the Deontology Code for Certified Assessors issued by the Ministry of Finance⁴⁵ (art. 995 KPoID in conjunction with the Presidential Decree 59/2016⁴⁶). The price for first offer in auction proceedings may not be lower than 2/3 of the immovable value thus assessed, whereby the debtor may request the court to correct such price, if it is deemed to be too low (art. 954 KPoID).

As far as further restrictions on the right to enforce are concerned, certain protectionist measures and their impact were mentioned above in Part I. Art. 27 para. 1 Transposing Law makes reference to the Bank Deontology Code⁴⁷ and requires creditors to make use of any available means of extra-judicial dispute resolution before resorting to enforcement measures against borrowers in arrears; moreover, the charges imposed on such borrowers may not exceed, apart from the sum necessary to compensate the creditor's true expenses incurred due to the default, the interest rate for default payments, as this is periodically determined by the Bank of Greece. Art. 27 para. 3 Transposing Law provides that the return or transfer to the creditor of the security or proceeds from the sale of the security may be sufficient to repay the credit (*datio in solutum* or non-recourse loans), provided that the parties have explicitly agreed to that.

⁴⁴ It is useful to note in this respect that commercial values have fallen dramatically in Greece in the past few years, so that a fine balance needs to be found between the need to protect the debtor and the real possibility to levy successful execution on real property (and thus also protect the creditor's rights).

⁴⁵ Ministerial Decree 19928/292/10 May 2013, GGI B' 1147/13 May 2013.

⁴⁶ GGI A' 95/27 May 2016.

⁴⁷ See Fn. 33 above.

**i. Establishment and supervision of credit intermediaries/non-credit institutions
– Co-operation between member states**

The Transposing Law also follows closely the Directive in respect of the requirements for establishment and supervision of credit intermediaries, with the exception, as stated above, of appointed representatives, which are not provided under the Transposing Law (arts. 29-34 Directive, arts. 28-32 Transposing Law). Regarding the applicable standards for professional indemnity insurance, the Transposing Law makes reference to the Commission Delegated Regulation 1125/2014/EU of 19 September 2014⁴⁸ supplementing the Directive. The register of credit intermediaries is required under the Transposing Law to include all information stated in the Directive (also the optional ones, such as all persons exercising a client-facing function). The First Draft dedicated a special provision (First Draft art. 30) to art. 29 para. 7 Directive clarifying that the Bank of Greece shall closely monitor on a continuing basis the compliance of credit intermediaries with the licensing requirements set out in the Directive and the Transposing Law. This provision was removed from the Final Draft and the Transposing Law, apparently because the supervision of credit intermediaries is sufficiently addressed in art. 32 Transposing Law (along the same lines as in art. 34 Directive).

Regarding the admission and supervision of non-credit institutions (art. 35 Directive, art. 33 Transposing Law), the Transposing Law refers to the existing legal framework in force in Greece, namely the law 4261/2014,⁴⁹ as amended, which transposed the directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms into the Greek legal system.

The Transposing Law also closely follows the Directive in respect of the co-operation between the competent authorities of different member states (arts. 36-37 Directive, arts. 34-35 Transposing Law), designating the Bank of Greece as the competent authority for Greece. Throughout the Transposing Law there are several references to the role of the Bank of Greece in the implementation of the Directive and the Transposing Law itself, including the applicability of the Act of the Governor of the Bank of Greece Nr. 2501/2002,⁵⁰ as amended, to the duty of the creditors to provide updated information to the borrowers about changes in the interest rate (art. 26 Transposing Law). This is another indication of the Greek legislator's effort to integrate smoothly the Directive into the law currently in force in Greece and the established legal practice.

⁴⁸ OJ L 305, 24 October 2014, 1 et seq.

⁴⁹ GGI A' 107/5 May 2014.

⁵⁰ Governor of the Bank of Greece, Act Nr. 2501/31 October 2002 'Information of persons conducting business with credit institutions about the terms of their transactions', GGI A' 277/18 November 2002, available (in Greek) at the website of the Bank of Greece <http://www.bankofgreece.gr/Pages/el/Bank/LegalF/Acts.aspx> (last accessed on 15 January 2017).

j. Sanctions/Final provisions

As far as sanctions are concerned, art. 36 Transposing Law (art. 38 Directive) essentially leaves the relevant prerogative to the competent authorities for the implementation of the law, as defined in art. 4 Transposing Law. Art. 37 Transposing Law (art. 39 Directive) provides the pertinent resolution mechanisms under Greek law, which consist of the recognized alternative dispute resolution entities registered in the pertinent register of the Secretariat General for Commerce and Consumer Protection;⁵¹ art. 38 also specifies that, with regard to cross-border disputes, the legal framework currently in force applies.⁵² We may break down the regulation of the Transposing Law on sanctions as follows:

- The Ministry for Finance, Development and Tourism and the Bank of Greece are entitled to impose sanctions, essentially administrative in nature (including fines), on the parties violating the provisions of the law. Such administrative provisions are to be published in accordance with art. 60 of the law 4261/2014.
- Art. 36 para. 2 Transposing Law in particular provides that, if arts. 9 (General provisions applicable to advertising and marketing) and 10 (Standard information to be included in advertising) are violated, art. 13A of the law 2251/1994 (Consumer protection) applies: this provides for a series of measures ranging from a simple notice and request to comply with the law to fines up to € 1 million and a provisional suspension of operations for a period of three months up to one year.
- In case of violation of the provision of art. 37 Transposing Law (dispute resolution mechanisms), the Minister may issue a notice of compliance accompanied by a fine up to € 1,000, if the institute does not comply within the period set in the aforementioned notice.⁵³
- The Bank of Greece may impose sanctions within the framework set by its Charter and the provisions of law 4261/2014 (see arts. 56 et seq., which transpose the relevant rules of the directive 2013/36/EU),⁵⁴ in particular art. 59

⁵¹ As those are provided and regulated in Art. 18 of the Ministerial Decree of the Ministry of Finance 70330οικ./30 June 2015 (GGI B' 1421/9 July 2015) on the transposition of the Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), as well as on additional national measures for the implementation of Regulation (EU) 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

⁵² Art. 15 of the Ministerial Decree of the Ministry of Finance 70330οικ./30 June 2015, Fn. 51 above, which requests the national ADR entities to co-operate with each other in case of cross-border disputes.

⁵³ Art. 37 cites in this respect art. 19 of the Ministerial Decree of the Ministry of Finance 70330οικ./30 June 2015, Fn. 51 above.

⁵⁴ Legislative Report, p. 23.

para. 2 law 4261/2014, which provides for the cumulative or alternative imposition of the following sanctions and measures: (a) public announcement detailing the violation at hand; (b) order to the violating person to cease the illegal course of action and not repeat it in the future; (c) revocation of the license of accredit institution; (d) provisional ban on the members of the board or other responsible persons from exercising their functions; (e) fines up to 10% of the violating institution's total annual net turnover, in case of juridical persons, or up to EUR five million, in case of natural persons; (f) monetary fines up to twice the sum of profits made or losses averted by means of the violation, where those can be determined. The sanctions thus imposed may also be published in full detail or on anonymity basis or the publication may become postponed, depending on the nature and severity of the violation, taking into account the potential harm on the financial markets or the possibility of disproportionate damage to the parties involved (art. 37 para. 3 Transposing Law in conjunction with art. 60 law 4261/2014).

It becomes clear that the sanctions envisaged by the Transposing Law are mostly administrative in nature and generally address compliance of the creditors and credit intermediaries with its rules rather than addressing the real issue of any credit agreements that were concluded in violation of such rules. Even the Bank Deontology Code, to which the Transposing Law often makes reference, is mostly concerned with alternative dispute resolution mechanisms and possible ways of encouraging a borrower to meet his or her duties under an existing credit agreement rather than touching upon the core of the legal validity of the credit agreement itself.⁵⁵

The Transposing Law further specifies that the provisions of the law shall be mandatory to the consumers' benefit, so that a consumer may not waive those (art. 38 Transposing Law; art. 41 Directive); it provides transitional rules for the licensing of credit intermediaries already active in the market (art. 39 Transposing Law; art. 43 Directive) and it designates the date of its publication in the Government Gazette as

⁵⁵ Regarding in particular the implementation of art. 28 para. 1 Transposing Law (Licensing of credit intermediaries), the Legislative Report to the First Draft (17 March 2016) specified that the Bank of Greece applies *inter alia* art. 1 para. 4 of the law 4224/2013 (see Fn. 33 above), per which it supervises the implementation of the Bank Deontology Code by requesting, among other things, creditors to take appropriate measures for the application of the Code and by imposing sanctions for systematic violations of the Code or for Code implementation systems that feature weaknesses. This clarification was omitted from the Legislative Report to the Final Draft, but the latter also introduced an additional provision in art. 39 para. 2 Transposing Law, per which the Transposing Law leaves the applicability of the Bank Deontology Code unaffected. Although the clarification in the original Legislative Report and the new provision of the Final Draft do not have the same scope in their entirety, the latter allows to infer that the Bank Deontology Code finds application on the subject matter of the Transposing Law.

the date of entry into force of the law (unless otherwise therein provided; art. 62 Transposing Law); the Transposing Law was published was 28 November 2016.⁵⁶

Part III. Problems that Directive 2014/17 does not solve

From a Greek perspective, the two main issues of housing credits that the Directive does not address are the issue of past foreign currency loans and the conditions under which housing loans (whether in default or not) may be assigned for management or entirely transferred to distress funds or otherwise dealt with in the secondary market.

A. Loans in foreign currency

The acuteness of the foreign currency loans in Greece was described in some detail in Part I above. In spite of the intense lobbying orchestrated by the Association of Borrowers in Swiss Francs, the Association did not achieve its goal of having the solutions provided under the Directive promulgated with a retroactive effect. Nonetheless one cannot deny the guidance role that the Directive and the Transposing Law can and should play in the general context and court practice of consumer protection in Greece⁵⁷ (e.g. with regard to determining whether the borrower received sufficient information prior to concluding the credit agreement, since the relevant information duties under the Directive are not entirely unknown under general consumer protection law).

As mentioned above, the Final Draft and the Transposing Law no longer contained the explicit prohibitions on retroactivity in respect of loans in foreign currency included in the First Draft (and the Directive), even though the law explicitly applies for the future. It still remains to be seen how Greek courts will apply the law and what course they will select: Both the letter of the law and its historical interpretation leave hardly any room for its direct application on agreements predating it. However, the same may not be said with regard to other legal arguments, especially an analogous application that could rely upon e.g. a right of conversion to the borrower's local currency on the basis of the general clause of good faith (art. 281 AK) or the constitutional principle of equality, which in this case could be construed as prescribing the equal treatment of old and new borrowers in foreign currency.

⁵⁶ The First Draft restricted the applicability of the law to future credit agreements only, excluding any agreements concluded prior to 21 March 2016, i.e. the designated date of entry into force at the time (art. 40 para. 1 First Draft); this explicit prohibition was removed from the Final Draft and the Transposing Law. See the short discussion thereof under Part Part II. The impact of Directive 2014/17 above.

⁵⁷ For some thoughts on the interplay between general consumer protection law and the Directive, see Part IV below.

B. The treatment of claims in payment arrears

A second issue which appears to be of more general interest concerns the terms and conditions under which bank consumer credits may be assigned to non-banking distress funds (either for management or for the purpose of a complete transfer). The so-called “red loans” (which may not be only housing credits) have created substantial upheaval in Greece during the past year and the government has found itself in a difficult position trying to balance its social agenda and the requirements of Greece’s creditors.

As mentioned above under Part I, the assignment of housing credits was practically forbidden in Greece until the promulgation of law 4354/2015, as amended. Initially loans in arrears that are secured by a mortgage on a principal dwelling of a value up to € 140,000, as well as loans secured by guarantee of the Hellenic Republic for sensitive social groups (e.g. loans to earthquake victims) were excluded from assignment to distress funds, but eventually the Greek government was forced to give in (in the context of the negotiations with its creditors) and accept the inclusion of those loans, as well (excluding only the complete transfer of loans secured by mortgage on a principal dwelling up to € 140,000 to distress funds until 31 December 2017).

Numerous foreign funds have expressed a keen interest in participating in the relevant market now opening in Greece (such as KKR, Aktua, Hipoges, Kaican, GR Servicers, EOS, Sankaty Advisors, B2 Holding, Pepper, APS, Arrow Global, Kruk, Lindorff, Lapithus, Hudson Advisor, APartners Capital, Hatfield & Hatfield, Mountstreet). Alpha Bank and Eurobank have taken active steps in this direction in the Greek market and they are in the process of setting up companies for the management of loans in arrears. Alpha Bank, in particular, has joined forces with Aktua in order to set up a special-purpose vehicle for the management and restructuring of a portfolio of consumer, housing and small business loans in the total amount of € 11 billion. As far as housing loans are concerned, it is expected that the so-called Spanish model will be followed, which relies upon a network of realtors that will be in charge of the liquidation of the debtor’s real property in co-operation with the debtor himself.⁵⁸

Unsurprisingly, the Greek banks are eager to relieve themselves of the “red loans” and they are supporting this model of active liabilities management, since they regard it to be beneficial both for them and the debtors who are otherwise incapable of repaying

⁵⁸ For more information on the issue of the external management of loans in arrears (or even normally serviced loans), see, e.g., Eugenia Tzortzi, ‘How the red loan market is to operate’ (in Greek), Kathimerini, 5 June 2016, <http://www.kathimerini.gr/862464/article/oikonomia/ellhnikh-oikonomia/pws-8a-leitoyrghsei-h-agera-kokkinwn-daneiwn> (last accessed on 15 January 2017); Michael Kouvaris, ‘The Katselis law, the funds and the “black loans” ’, Capital, 21 June 2016, <http://www.capital.gr/story/3134803> (last accessed on 15 January 2017).

their debts. As expected, the borrowers do not share this view. The ongoing negotiation with the European institutions and the IMF on this issue are reflected in the divided political landscape within Greece and the political and social discourse has far-reaching repercussions mixed with confound views ranging from economic reasoning to populism and demagoguery.

The opening up of the market of “red loans” has certain undeniable advantages, since it creates conditions for a more efficient handling of those loans than their internal management by the banks themselves. This efficiency helps e.g. locate the so-called “abusive” borrowers more easily to the benefit of good-faith borrowers and it could perhaps lead to a “revival” of the Greek real estate (and overall) market, which is currently struggling. However, many borrowers are concerned about the terms under which the distress funds will seek repayment of the assigned loan claims and they suggest that such funds may not be amenable to solutions that the lending bank would consider. Furthermore, it is debatable whether loans not in arrears should also be open to such assignment, as the law 4354/2015 allows. Therefore, the assignment of bank consumer loans, including housing loans, especially the treatment of borrowers once the debt is no longer held by the bank, raises some interesting consumer-protection related issues that perhaps could and should be addressed on the European level. As mentioned above, the Transposing Law made an effort at such a solution by including a provision (art. 3 nr. 2) that it applies to the distress funds regulated under law 4354/2015, to the extent that those manage housing credits falling within its scope.

Part IV. Personal conclusions

In the author’s view, the most important effect of the Directive and the Transposing Law is the specification and clarification of bank practices in conjunction with consumer protection which had been left to the normative power of the market and the incidental control of consumer-protection issues brought before the courts. The practices regulated in the Directive were not unknown prior to its promulgation and they are becoming increasingly usual in practice over the course of the last few years, under the influence of rules of best practices and an increasingly tight bank supervision and expanding consumer protection. The detailed provisions of the Directive, which have been followed for the most part by the Greek legislator, as well, substantially enhance consumer protection on a two-fold level: On the one hand, they enhance prevention by setting up a pro-active supervision mechanism, according far-reaching control prerogatives to the national Authorities and imposing concrete standards of conduct on banks. On the other hand, they also address judicial and administrative protection through a set of rules that, apart from their specific field of application, may

also serve an important guiding function in regard of the related consumer-protection issues; it should be expected that the Directive could become relevant for other types of consumer transaction, as well, beyond the concrete scope of the Directive.⁵⁹

Admittedly, the Directive settles mostly for administrative sanctions, which as such and regarded isolated do not seem to offer much protection to the borrower directly. The EU legislator apparently opted consciously for this legislative technique in view of the specific character of credit agreements and the differences in the degree of market development and the respective market conditions in each Member State.⁶⁰ The main rationale behind this choice is apparently the wish to avoid difficulties in respect of its integration in the national legal systems of the member states and the framework in force of European consumer protection.⁶¹ The Directive comes to regulate a specific subject matter and clarify certain dark areas of existing sets of rules which have in part already addressed – to differing degrees of success – conflicts arisen in the context of bank consumer transactions related to residential property. Such transactions are already subject to the general contract and property law of the member states, the European consumer protection law as transposed in each member state with its national variations and the respective banking laws and regulations. At first glance, this complexity seems to be calling for harmonisation on the European level. However, it must be kept in mind that the harmonisation in question has already been undertaken and is in progress in respect of various aspects of the fields of law stated above; moreover, the EU seems to be concerned with the differences among the member states that would render a more ambitious harmonisation programme hard to implement or even hinder it.

Over the course of implementation of the Directive in the national legal systems it is certainly worth exploring whether the guiding role of the Directive, as described above, should give way, in case of violation of its provisions, to concrete legal consequences in the relationship between the creditor and the borrower directly, as well (e.g. by providing that the credit agreement becomes void or must be mutually or judicially adjusted upon the occurrence of concrete, easily ascertainable triggers, such as when the creditor has not properly carried out a creditworthiness assessment or the creditor's employees in charge of housing credits do not fulfil the standards of training

⁵⁹ The guiding function of the Directive is acknowledged also in its Preamble, where it is stated that its rules could be extended by the member states to protect consumers in relation to credit agreements in connection with other types of immovable property (nr. 13); but *cf.* nr. 17, where caution is advised regarding the applicability of the Directive to credit agreements different in nature than those contemplated under the Directive.

⁶⁰ *Cf.* Preamble to the Directive, nr. 7.

⁶¹ See Preamble to the Directive, nr. 9, 19.

and knowledge set by the Directive).⁶² Such evaluations and, to the extent necessary, adjustments would be very useful in the process of securing the smooth and effective implementation of the Directive. In any case, in view of the degree that they could interfere with the existing internal substantive and procedural systems of each member state, they seem to require a tangible, empirical connection to practical considerations, precise delineation and rather an approach along the lines of tackling the issues as they arise and taking due consideration of the possibilities that each national law may already be offering in respect of the relevant issues.

As far as Greece is concerned, apart from the EU legislation already transposed and implemented in respect of the related fields, the general clauses of the AK on good faith, good morals and the social and economic objective of rights granted under law (art. 281 AK), contract interpretation and implementation in accordance with good faith and transaction morals (arts. 173, 200, 288 AK) and frustration of the contractual purpose (art. 388 AK) provide a set of rules that can have far-reaching effects on the credit agreements addressed by the Directive, on the level of the relationship between borrower and creditor. It will certainly be interesting to see how the existing clauses will interplay with the new law, especially since the standards of conduct prescribed in the Transposing Law can very well serve as the concretisation criteria necessary when applying those general provisions to specific sets of circumstances. Therefore, the option of the EU legislator to weigh in more on the prudential and supervisory effects of the envisaged legislation seems to be justified, at least in principle, provided that in the course of its implementation both the EU and the national authorities will remain vigilant and ready to intervene and smooth out open issues (as well as new problems) that cannot be resolved by the new legal framework and its interplay with the national law of the member states.



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⁶² Such possibility seems to be explicitly encouraged by the Directive in its Preamble, according to which the member states may maintain or introduce national provisions affecting *inter alia* the validity of the underlying credit agreements (nr. 9).