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from:	General Secretariat
to:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property (Mortgage Credit Directive-MCD) - Text provisionally agreed with the European parliament

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Delegations will find attached the text of the above-mentioned Directive, as provisionally agreed with the European Parliament.

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on credit agreements for consumers relating to residential immovable property  
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee, *[Footnote]*,

Having regard to the opinion of the Committee of the Regions,*[Footnote]*,

Having regard to the opinion of the European Central Bank,*[Footnote: OJ C 240 18.08.2011, p. 3]*,

*[..]*

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In March 2003, the Commission launched a process to identify and assess the impact of barriers to the internal market for credit agreements relating to residential immovable property. In 2007, it adopted a White Paper on the integration of EU mortgage credit markets<sup>1</sup>. The White Paper announced the Commission's intention to assess the impact of, among other things, the policy options for pre-contractual information, credit databases, creditworthiness, the annual percentage rate of charge and advice on credit agreements. The Commission also established an Expert Group on Credit Histories to assist the Commission in preparing measures to improve the accessibility, comparability and completeness of credit data. Studies on the role and operations of credit intermediaries and non-credit institutions providing credit agreements relating to residential immovable property were also launched.
  
- (2) In accordance with the Treaty on the Functioning of the European Union ('TFEU'), the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The development of a more transparent and efficient credit market within that area is vital to promote the development of cross-border activity and create an internal market [...] for credit agreements relating to residential immovable property. There are substantial differences in the laws of the various Member States with regard to the conduct of business in the granting of credit agreements relating to residential immovable property and in the regulation and supervision of credit intermediaries and non-credit institutions providing credit agreements relating to residential immovable property. Such differences create obstacles that restrict the level of cross-border activity on the supply and demand sides, thus reducing competition and choice in the market, raising the cost of lending for providers and even preventing them from doing business.

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<sup>1</sup> COM(2007) 807, 18.12.2007.

- (3) The financial crisis has shown that irresponsible behaviour by market participants can undermine the foundations of the financial system, leading to a lack of confidence among all parties, in particular consumers, and potentially severe social and economic consequences. Many consumers have lost confidence in the financial sector and borrowers have found their loans increasingly unaffordable, [...] resulting in defaults and forced sales rising. As a result, the G20 has commissioned work from the Financial Stability Board to establish principles on sound underwriting standards in relation to residential immovable property. Although some of the greatest problems in the financial crisis occurred outside the Union, consumers in the Union hold significant levels of debt, much of which is concentrated in loans related to residential immovable property. It is therefore appropriate to ensure that the Union's regulatory framework in this area is robust, consistent with international principles and makes appropriate use of the range of tools available, which may include the use of loan-to-value, loan-to-income, debt-to-income or similar ratios, minimum levels below which no mortgage would be deemed acceptable or other compensatory measures for the situations where the underlying risks are higher to consumers or where needed to prevent house-hold over-indebtedness. In view of the problems brought to light in the financial crisis [...] and with a view to ensuring an efficient and competitive internal market which contributes to financial stability, the Commission has proposed, in its Communication of 4 March 2009 entitled 'Driving European recovery' measures with regard to credit agreements relating to residential immovable property, including a reliable framework on credit intermediation, in the context of delivering responsible and reliable markets for the future and restoring consumer confidence<sup>2</sup>. The Commission reaffirmed its commitment to an efficient and competitive internal market in its Communication of 13 April 2011 entitled 'Single Market Act: Twelve levers to boost growth and strengthen confidence'<sup>1</sup>.

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<sup>2</sup> *Driving European Recovery*, COM(2009) 114, 4.3.2009.

- (4) A series of problems have been identified in [...] mortgage markets within the Union relating to irresponsible lending and borrowing [...] and the potential scope for irresponsible behaviour by market participants including credit intermediaries and non-credit institutions [...]. Some problems concerned loans denominated in a foreign currency which consumers had taken out in that currency to take advantage of the interest rate offered but without having adequate information about or understanding of the currency risk involved. [...] Those problems are driven by market and regulatory failures as well as other factors such as the general economic climate and low levels of financial literacy. Other problems include ineffective, inconsistent, or non-existent [...] regimes for credit intermediaries and non-credit institutions providing credit for residential immovable property. The problems identified have potentially significant macroeconomic spill-over effects, can lead to consumer detriment, act as economic or legal barriers to cross-border activity and create an unlevel playing field between actors.
- (5) In order to facilitate the emergence of a smoothly functioning internal market with a high level of consumer protection in the area of credit agreements relating to immovable property and to ensure that consumers looking for such agreements are able to do so confident in the knowledge that the institutions they interact with act in a professional and responsible manner, an appropriately harmonised [...] Union legal framework needs to be established in a number of areas, taking into account differences in credit agreements arising in particular from differences in national and regional immovable property markets.
- (5a) This Directive should therefore develop a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to immovable property, while promoting sustainable lending and borrowing and financial inclusion and hence providing a high degree of consumer protection.

- (5b) In order to create a genuine internal market with a high and equivalent level of consumer protection, this Directive lays down provisions subject to maximum harmonisation in relation to the provision of pre-contractual information through the ESIS standardised format and the calculation of the annual percentage rate of charge. . However, taking into account the specificity of credit agreements relating to immovable property and differences in market developments and conditions in Member States, concerning in particular market structure and market participants, categories of products available and procedures involved in the credit granting process, Member States should be allowed to maintain or introduce more stringent provisions than those laid down in this Directive in those areas not clearly specified as being subject to maximum harmonisation. Such a targeted approach is needed in order not to adversely affect the provision of credit agreements relating to immovable property. Member States should for example be allowed to retain or adopt more stringent provisions with regard to knowledge and competence requirements for staff and instructions to complete the ESIS .
- (6) This Directive should improve conditions for the establishment and functioning of the internal market through the approximation of Member States' laws and the establishment of quality standards for certain services, notably with regard to the distribution and provision of credit through creditors and credit intermediaries and the promotion of good practices. The establishment of quality standards for services for the provision of credit necessarily involves the introduction of certain provisions regarding admission, supervision and prudential requirements.

- (7) For those areas not covered by this Directive, Member States should be free to maintain or introduce national legislation. In particular, Member States should be able to maintain or introduce national provisions in areas such as contract law relating to the validity of credit agreements, property law, land registration, contractual information and, to the extent that they are not regulated in this Directive, post-contractual issues. In relation to the supply and formalisation of a credit agreement, Member States may provide that the appraiser or appraisal company and/or notaries may be chosen by mutual agreement of the parties. Given the differences between the processes for the purchase or sale of immovable residential property in the Member States, there is scope for creditors or credit intermediaries to seek to receive payments in advance from consumers on the understanding that such payments could help to secure the conclusion of a credit agreement or the purchase or sale of a property, and for such practices to be misused in particular where consumers are unfamiliar with the requirements and usual practice in that Member State. It is therefore appropriate to allow Member States to impose restrictions on such payments.
- (7a) This Directive should apply irrespective of whether the creditor or credit intermediary is a legal person or a natural person. However, this Directive should not affect the right of Member States to limit, in conformity with Union law, the role of creditor or credit intermediary under this Directive to legal persons only or to certain legal persons.
- (8) Since consumers and enterprises are not in the same position, they do not need the same level of protection. While it is important to guarantee the rights of consumers [...] by means of provisions that cannot be derogated from by contract, it is reasonable to let enterprises and organisations engage in other agreements. [...]
- (8a) The definition of consumer should cover natural persons who are acting outside their trade, business or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade, business or profession and the trade, business or professional purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.

- (8b) While this Directive regulates credit agreements which solely or predominantly relate to residential immovable property, it does not prevent Member States from extending the measures taken in this Directive to protect consumers in relation to credit agreements related to other forms of immovable property, or from otherwise regulating such credit agreements.
- (8c) [...] The definitions contained in this Directive determine the scope of harmonisation. The obligations on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. For instance, the obligations on Member States to implement the provisions of this Directive are limited to credit agreements concluded with consumers, meaning with natural persons who, in transactions covered by this Directive, are acting outside their trade, business or profession. Similarly, Member States are obliged to implement the provisions of this Directive regulating the activity of persons acting as credit intermediary as defined in the Directive. However, this Directive should be without prejudice to the application by Member States in accordance with Union law, of the provisions of this Directive to areas not covered by its scope. In addition, the definitions contained in this Directive are without prejudice of the possibility for Member States to adopt sub-definitions under national law for specific purposes, provided that they are still compliant with the definitions set out in this Directive. An illustration is that Member States should be allowed to determine under national law sub-categories of credit intermediaries that are not identified in this Directive, where such sub-categories are necessary at national level for instance to differentiate the level of competence and knowledge requirements to be fulfilled by the different credit intermediaries.
- (9) The objective of this Directive is to ensure that credit agreements relating to immovable property provided to consumers benefit from a high level of protection. It should therefore apply to credits secured by real estate regardless of the purpose of the credit, refinancing agreements or other credit agreements that would help an owner or part owner continue to retain rights in property or land and credits which are used to purchase a property in some Member States including those loans that do not require the reimbursement of the capital or, unless Member States have an adequate alternative framework in place, those whose purpose is to provide temporary financing between the sale of one immovable property and the purchase of another and to secured credits for the renovation of residential property.

- (10) This Directive should not apply to certain credit agreements [...] where the creditor contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the sale of an immovable property and whose primary objective is to facilitate consumption, such as equity release products or other equivalent specialised products. Such credit agreements have specific characteristics which are beyond the scope of this Directive. An assessment of the borrower's creditworthiness, for example, is irrelevant since the payments are made from the creditor to the borrower rather than the other way round. Such a transaction would also require, amongst other things, substantially different pre-contractual information. Furthermore, other products, such as home reversions, which have comparable functions to reverse mortgages or lifetime mortgages do not involve the provision of credit and so would remain outside the scope of this Directive.

This Directive should also not cover other explicitly listed types of niche credit agreements, that are different in their nature and risks involved from standard mortgage credits and therefore require a tailored approach, notably credit agreements which are the outcome of a settlement reached in court or before another statutory authority; certain types of credit agreements where the credit is granted by an employer to his employees under certain circumstances, as already provided in Article 2(2)g of Directive 2008/48/EC; It is also appropriate to allow Member States to exclude certain credit agreements, such as those which are granted to a restricted public on advantageous terms or provided by credit unions, provided an adequate alternative regulatory framework is in place to ensure that policy objectives relating to financial stability and the single market can be met without impeding financial inclusion and access to credit. Credit agreements where the property is not to be occupied as a house, apartment or another place of residence by the consumer or a family member and is occupied as a house, apartment or another place of residence on a basis of a rental agreement, have risks and features that are different from standard credit agreements and therefore may require a more adapted framework. Member States should therefore be able to exclude such credit agreements from the Directive where an appropriate national framework is in place for them.

- (11) For reasons of legal certainty, the Union legal framework in the area of credit agreements relating to residential immovable property should be consistent with and complementary to other Union acts, particularly in the areas of consumer protection and prudential supervision. Certain essential definitions including the definition of 'consumer', and 'durable medium' as well as key concepts used in standard information to designate the financial characteristics of the credit, including 'total amount payable by the consumer' and 'borrowing rate' should be in line with those in Directive 2008/48/EC so that the same terminology refers to the same type of facts irrespective of whether the credit is a consumer credit or a credit relating to residential immovable property. Member States should therefore ensure in the transposition of this Directive that there is consistency of application and interpretation in relation to those essential definitions and key concepts.
- (12) In order to ensure a consistent framework for consumers in the area of credit as well as to minimise the administrative burden for creditors and credit intermediaries, the core framework of this Directive should follow the structure of Directive 2008/48/EC where possible, notably the notions that information included in advertising concerning credit agreements relating to residential immovable property [...] be provided to the consumer by means of a representative example, that detailed pre-contractual information be given to him by means of a standardised information sheet, that the consumer receives adequate explanations before [...] concluding the credit agreement, a common basis be established for calculating the APRC excluding notary fees, and that creditors [...] assess the consumer's creditworthiness before [...] providing a loan. Similarly, non-discriminatory access for creditors to relevant credit databases should also be ensured in order to achieve a level playing field with the provisions as guaranteed by Directive 2008/48/EC. Similarly to Directive 2008/48/EC, this Directive should ensure the appropriate admission process and supervision of all creditors providing credit agreements relating to [...] immovable property and should introduce requirements for the establishment of, and access to, out-of-court dispute resolution mechanisms.

(13) This Directive should supplement Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC which requires that in distance sales a consumer be informed of the existence or absence of a right of withdrawal and foresees a right of withdrawal. However, while Directive 2002/65/EC foresees the possibility for the supplier to communicate pre-contractual information after the conclusion of the contract, this would be inappropriate for contracts for credit agreements relating to residential immovable property given the significance of the financial commitment for the consumer.

(14) At the same time, it is important to take into consideration the specificities of credit agreements relating to residential immovable property, which justify a differentiated approach. Given the nature and the possible consequences of a credit agreement relating to residential immovable property for the consumer, advertising materials and personalised pre-contractual information should include adequate specific risk warnings, for instance about the potential impact of exchange rate fluctuations on what the consumer has to repay and, where assessed as appropriate by the Member States, the nature and implications of taking out a security.

Following what already existed as a voluntary approach by the industry concerning home loans, general pre-contractual information should be made available at all times in addition to the personalised pre-contractual information. Furthermore, a differentiated approach is [...] justified in order to take into consideration the lessons learnt from the financial crisis in order to ensure that loan origination takes place in a sound manner. In this respect, the provisions on the creditworthiness assessment should be strengthened in comparison to consumer credit, more precise information should be provided by credit intermediaries on their status and relationship with the creditors in order to disclose potential conflicts of interest, and all actors involved in the origination of credit agreements relating to [...] immovable property should be adequately authorised, registered and supervised.

- (14a) It is also necessary to regulate some additional areas to reflect the specificity of loans related to residential immovable property. Given the significance of the transaction it is necessary to ensure that consumers have sufficient time of at least 7 days to consider the implications. Member States should have flexibility to provide this sufficient time either as a period of reflection before the credit agreement is concluded, a period of withdrawal after the credit agreement or a combination of the two. It is appropriate that Member States should have the flexibility to make the reflection period binding on the consumer for a period not exceeding 10 days but that in other cases consumers who wish to proceed during the reflection period are able to do so and that in the interests of legal certainty in the context of property transactions Member States should be able to provide that the reflection period or right of withdrawal should cease where the consumer undertakes any action which under national law results in the creation or transfer of a property right connected to or using funds obtained in the credit agreement or, where applicable, transfers the funds to a third party.
- (14b) Given the particular characteristics of credit agreements related to residential immovable property it is common practice for creditors to offer to consumers a set of products or services which can be purchased together with the credit agreement. Therefore, given the significance of such agreements for consumers, it is appropriate to lay down specific rules on tying practices. Combining a credit agreement with one or more other financial services or products in packages is a means for creditors to diversify their offer and to compete against each other, provided that the components of the package can also be bought separately. While combination of credit agreements with one or more other financial services or products in packages can benefit consumers, it may also negatively affect consumers' mobility and their ability to make informed choices, unless the components of the package can be bought separately. It is important to prevent practices such as tying of certain products which may induce consumers to enter into credit agreements which are not in their best interest, without however restricting product bundling which can be beneficial to consumers. Member States should however continue monitoring retail financial services markets closely to ensure that bundling practices do not distort consumer choice and competition on the market.

- (14c) As a general rule, tying practices should not be allowed unless the financial service or product offered together with the credit agreement could not be offered separately as it is a fully integrated part of the credit, for example in the case of secured overdraft. In other instances, it may however be justified for creditors to offer or sell a credit agreement in a package with a payment account, savings account, investment product or pension product, for instance where the capital in the account is used to repay the credit or is a prerequisite to pool resources to obtain the credit, or in situations where, for instance, an investment product or a private pension product serves as additional collateral to secure the credit. While it is justified for creditors to be able to require the consumer to have a relevant insurance policy in order to guarantee repayment of the credit or insure the value of the collateral, the consumer should have the opportunity to choose his own insurance provider, provided that his insurance policy has an equivalent level of guarantee as the insurance policy proposed or offered by the creditor. Moreover Member States should be free to standardise, wholly or in part, the cover provided by insurance contracts in order to facilitate consumers who wish to shop around.
- (14d) It is also important to ensure that the residential immovable property is appropriately valued before the conclusion of the credit agreement and, in particular where the valuation affects the residual obligation of the consumer, on default. It is therefore appropriate to require Member States to ensure that reliable valuation standards are in place. In order to be considered reliable, valuation standards should take into account internationally recognised valuation standards, in particular those developed by the International Valuation Standards Committee, the European Group of Valuers' Associations or the Royal Institution of Chartered Surveyors. This should be without prejudice to existing Union legislation.

These high level principles require lenders, amongst others, to adopt and adhere to adequate internal risk management and collateral management processes, which include sound appraisal processes, to adopt appraisal standards and methods that lead to realistic and substantiated property appraisals to ensure that all appraisal reports are prepared with appropriate professional skill and diligence and that appraisers meet certain qualification requirements and to maintain adequate appraisal documentation for collateral that is comprehensive and plausible. In this regard it is also desirable to ensure appropriate monitoring of residential immovable property markets and for the mechanisms in such provisions to be in line with [insert reference to CRDIV]. The provisions of this Article can be complied with for example through legislation or self regulation.

- (14e) Given the significant consequences for creditors, consumers and potentially financial stability of foreclosure, it is appropriate to encourage creditors to deal proactively with emerging credit risk at an early stage and that the necessary measures are in place to ensure that creditors exercise reasonable forbearance and make reasonable attempts to resolve the situation through other means before foreclosure proceedings are initiated. Where possible solutions should be found which take account of the practical circumstances and reasonable need for living expenses of the consumer. Where after foreclosure proceedings outstanding debt remains, Member States should ensure the protection of minimum living conditions and put in place measures to facilitate repayment while avoiding long term over-indebtedness. At least where the price obtained for the property affects the amount owed by the consumer, Member States should encourage creditors to take reasonable steps to obtain the best efforts price for the foreclosed property in the context of market conditions. Member States should not prevent the parties to a credit agreement from expressly agreeing that the return of the collateral is sufficient to repay the loan. Member States should be able to allow creditors to impose additional charges in the event of default so as to discourage consumers from defaulting for strategic reasons provided such charges are capped.

(15) Intermediaries often engage in more activities [...] than just credit intermediation, in particular insurance intermediation or investment services provision. This Directive should therefore also ensure a degree of coherence with Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation and Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. In particular, credit institutions authorised in accordance with Directive 2006/48/EC and other financial institutions subject to an equivalent admission regime under national law should not require a separate admission to operate as a credit intermediary in order to simplify the process of establishing as a credit intermediary and operating cross-border.

The full and unconditional responsibility placed on creditors and credit intermediaries for the activities of tied credit intermediaries or appointed representatives should only extend to activities within the scope of this Directive unless Member States choose to extend that responsibility to other areas.

(15a) In order to increase the ability of consumers to make informed decisions for themselves about borrowing and managing debt responsibly, Member States should promote measures to support the education of consumers in relation to responsible borrowing and debt management in particular relating to mortgage credit agreements. It is particularly important to provide guidance for consumers taking out mortgage credit for the first time. In this regard the Commission should identify examples of best practices to facilitate the further development of measures to enhance consumers' financial awareness.

(15b) Because of the significant risks attached to borrowing in a foreign currency it is necessary to provide for measures to ensure that consumers are aware of the risk they are taking on and that the consumer has the possibility to limit their exposure to currency risk during the lifetime of the loan. The risk could be limited either through giving the consumer the right to convert the currency of the loan, or through other arrangements. Such other arrangements could, for example, include caps or, where these are sufficient to limit the exchange rate risk, warnings.

- 16) The applicable legal framework should give consumers the confidence that creditors, credit intermediaries and appointed representatives take account of the interests of the consumer, taking into account the information available to the creditor, credit intermediary and appointed representative at that moment in time and based on reasonable assumptions about risks to the consumer's situation over the term of the proposed credit agreement. For example it could also imply among other things that creditors should not market the credit so that the marketing significantly impairs or is likely to impair the consumer's ability to carefully consider the taking of the loan; or that the creditor should not use the granting of the credit as a main method of marketing when marketing goods, services or immovable property to consumers. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry, appropriate management of conflicts of interest including those arising from remuneration and to require advice to be given in the best interests of the consumer.
- (16a) It is appropriate to ensure that the relevant staff of creditors, credit intermediaries and appointed representatives possess an adequate level of knowledge and competence in order to ensure a high level of professionalism. This Directive should, therefore, require relevant knowledge and competence to be proven at the level of the institution, based on the minimum knowledge and competence requirements set out in this Directive. Member States should be free to introduce or maintain such requirements applicable to individual natural persons. Member States may allow creditors, credit intermediaries and appointed representatives to differentiate between the levels of minimum knowledge requirements according to the involvement in carrying out particular services or processes. In this context staff includes outsourced personnel, working for and within the creditor, credit intermediary or appointed representatives as well as their employees. For the purpose of this Directive, staff directly engaged in activities under this Directive should include both front- and back-office staff, including management, who fulfil an important role in the credit agreement process. Persons fulfilling support functions which are unrelated to the credit agreement process (eg HR, IT personnel) should not be considered as staff under this Directive.

- (16b) Where a creditor or credit intermediary provides its services within the territory of another Member State under the freedom to provide services, the home Member State should be responsible for establishing the minimum knowledge and competence requirements applicable to the staff. However host Member States who deem it necessary, should be able to establish their own competence requirements in certain specified areas applicable to creditors and credit intermediaries that provide services within the territory of that Member State under the freedom to provide services.
- (16c) Given the importance of ensuring that knowledge and competence requirements are applied and complied with in practice, Member States should require competent authorities to supervise creditors, credit intermediaries and appointed representatives and empower them to obtain such evidence as they need to reliably assess compliance.
- (16d) The way creditors, credit intermediaries and appointed representatives remunerate their staff should constitute one of the key aspects of ensuring consumer confidence in the financial sector. This Directive provides rules for staff remuneration, with the aim of limiting mis-selling practices and of ensuring that the way staff are remunerated does not impede compliance with the obligation to take account of the interests of the consumer. In particular, creditors, credit intermediaries and appointed representatives should not design their remuneration policies in a way that would incentivise their staff to conclude a given number or type of credit agreements or to offer particular ancillary services to consumers with no explicit consideration of their interests and needs. In this context, Member States may find it necessary to decide that a particular practice, for example, tied intermediaries collecting fees, is against the interests of a consumer. Member States may also specify that the remuneration received by staff should not be dependent on the rate or the type of credit agreement concluded with the consumer.

- (16e) This Directive provides for harmonised rules as regards the fields of knowledge and competence that creditors', credit intermediaries' and appointed representatives' staff should possess in relation to the manufacture, offering, granting and intermediation of a credit agreement. This Directive does not provide for specific arrangements directly related to the recognition of professional qualifications obtained by an individual in one Member State in order to meet the knowledge and competence requirements in another Member State. Directive 2005/36/EC on the recognition of professional qualifications should therefore continue to apply concerning the conditions for recognition and the compensation measures that a host Member State may require from an individual whose qualification has not been issued within its jurisdiction.
- (17) Creditors and credit intermediaries frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific provisions on the advertising of credit agreements and a list of items to be included in advertisements and marketing materials directed at consumers where such advertising specifies interest rates or costs of credit, are necessary to enable them to compare different offers. Member States should remain free to introduce or maintain disclosure requirements in their national laws regarding advertising which does not indicate an interest rate or contain any figures relating to the cost of credit. Any such requirements should take into account the specificities of credit agreements relating to residential immovable property. In any case, it should be ensured in accordance with Directive 2005/29 that advertising of credit agreements should not create a misleading impression of the product.

- (18) Advertising tends to focus on one or several products in particular, while consumers should be able to make their decisions in full knowledge of the range of credit products on offer. In that respect, general information plays an important role in educating the consumer in relation to the broad range of products and services available [...] and the key features thereof. Consumers should therefore be able at all times to access general information on credit products available. Where this requirement is not applicable to non-tied credit intermediaries, this should be without prejudice to their obligation to provide consumers with personalised pre-contractual information.
- (19) In order to ensure a level playing field and in order for the consumer's decision to be based on the details of the credit products on offer rather than on the distribution channel through which such credit products are accessed, consumers should receive information on the credit regardless of whether they are dealing directly with a creditor or a credit intermediary.
- (20) Consumers should further receive personalised information in good time prior to the conclusion of the credit agreement in order to enable them to compare and reflect on the characteristics of credit products. In accordance with the Commission Recommendation 2001/193/EC on pre-contractual information to be given to consumers by lenders offering home loans<sup>3</sup>, the Commission committed itself to monitoring compliance with the Voluntary Code, which contains the European Standardised Information Sheet (ESIS) which provides information, personalised for the borrower, on the credit agreement being provided. Evidence collected by the Commission highlighted the need to revise the content and presentation of the ESIS to ensure that it is clear, understandable and contains all information found to be relevant for consumers. The content and layout of the ESIS should incorporate the necessary improvements identified during consumer testing in all Member States. The structure of the sheet, in particular, the order of the information items, should be revised, the wording should be more user-friendly, while sections, such as 'nominal rate' and 'annual percentage rate of charge', should be merged and new sections, such as 'flexible features', should be added.

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<sup>3</sup> *OJ L 69, 10.3.2001, p. 25.*

An illustrative repayment table should be provided to consumer as part of the ESIS where the loan is a deferred interest loan, where the repayment of principal is deferred for an initial period or where the borrowing rate is fixed for the duration of the credit agreement; Member States should be able to provide that such an illustrative repayment table in the ESIS is not compulsory for other credit agreements.

- (20a) Consumer research has underlined the importance of using simple and understandable language in disclosures provided to consumers. For this reason, the terms used in the European Standardised Information Sheet are not necessarily the same as the legal terms defined in this Directive. For example, ‘creditor’ is replaced by ‘lender’ and ‘consumer’ is replaced by ‘borrower’.
- (20b) The information requirements on credit agreements contained in the ESIS should be without prejudice to Union or national information requirements for other products or services that might be offered with the credit agreement, as conditions for obtaining the credit agreement related to immovable property, or offered so as to obtain that agreement at a lower interest rate, such as fire or life insurance or investment products. Member States should be free to maintain or introduce national legislation where no harmonised provisions exist, for instance information requirements on the level of usury rates at the pre-contractual stage or information which might be useful for the purposes of financial education or for out-of-court settlements. Any additional information should, however, be given in a separate document which may be annexed to the ESIS. Member States should be able, in their national languages, to use different vocabulary in the ESIS, without changing its contents and the order in which information is provided, when this is needed in order to employ a language which might be better understandable for consumers.

- (20c) In order to ensure that the ESIS provides the consumer with all relevant information to make an informed choice, the creditor should follow the instructions set out in this Directive when completing the ESIS. Member States may elaborate or further specify the instructions for completing the ESIS on the basis of the instructions set out in this Directive. For instance, Member States may further specify the information to be given in order to describe the 'type of borrowing rate' in order to take into account the specificities of the national products and market. However, such further specifications should not be contrary to the instructions contained in this Directive nor imply any change in the text of the ESIS model, which should be reproduced as such by the creditor. Member States may also specify further warnings on credit agreements, adapted to their national market and practices, where such warnings are not already specifically included in the ESIS. Member States may provide that the creditor should be bound by the information provided for in the ESIS, provided that the creditor decides to grant the credit.
- (20d) Consumer should receive information by means of the ESIS without undue delay after he has delivered the necessary information on his needs, financial situation and preferences and in good time before the consumer is bound by any credit agreement or offer, in order to enable him to compare and reflect on the characteristics of credit products and obtain third party advice if necessary. In particular when a binding offer is made to the consumer, it should be accompanied by the ESIS, unless it has already been delivered to the consumer and the characteristics of the offer are consistent with the information previously provided. However Member States may provide for the obligatory provision of the ESIS both before the provision of any binding offer and together with the binding offer, where an ESIS containing the same information has not previously been given. While the ESIS should be personalised and reflect the preferences expressed by the consumer, the provision of such personalised information does not imply an obligation to provide advice. Credit agreements should only be concluded where the consumer has had sufficient time to compare offers, assess their implications, obtain third party advice if necessary and taken an informed decision on whether to accept an offer.

- (20e) Where the consumer has a secured credit agreement for the purchase of property or land and the duration of the security is longer than that of the credit agreement, and where the consumer can decide to withdraw the repaid capital again subject to signature of a new credit agreement, a new ESIS disclosing the new APRC and based on the specific characteristics of the new credit agreement should be provided to the consumer before the signature of the new credit agreement.
- (20f) At least where no right of withdrawal exists, a credit intermediary or appointed representative should provide the consumer with a copy of the draft credit agreement, at the time of the provision of an offer binding on the creditor. In other cases the consumer should at least be offered a copy of the draft credit agreement at the time a binding offer is made.
- (21) In order to ensure the fullest possible transparency and to prevent abuses arising from possible conflicts of interest when consumers use the services of credit intermediaries, the latter should be subject to certain information disclosure obligations prior to the performance of their services. Such disclosures should include information on their identity and links with creditors, for instance whether they are considering products from a broad range of creditors or only from a more limited number of creditors. The existence of any commission or other inducement payable to the credit intermediary by the creditor or by third parties in relation to the credit agreement should be disclosed to consumers before the performance of any credit intermediation services and consumers should be informed at this stage either of the amount of such payments, where this is known, or of the fact that the amount will be disclosed at a later pre-contractual stage in the ESIS and of their right to be given information on the level of such payments at this stage. Consumers should also be informed of any payments they should make to credit intermediaries (fees) in relation to its services. Without prejudice to competition law, Member States should be free to introduce or maintain provisions prohibiting the payment of fees by consumers to some or all categories of credit intermediary.

- (22) A consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Creditors, and where the transaction is through a credit intermediary, credit intermediaries should provide such assistance in relation to the credit products which they offer to the consumer by explaining the relevant information including in particular the essential characteristics of the products proposed to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. Creditors and, where applicable, credit intermediaries should adapt the way such explanations are given to the circumstances in which the credit is offered and the consumer's need for assistance, taking into account the consumer's knowledge and experience of credit and the nature of individual credit products. Such explanations should not in itself constitute a personal recommendation.
- (23) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Union, it is necessary to uniformly ensure the comparability of information relating to annual percentage rates of charge throughout the Union.
- (23a) The total cost of the credit to the consumer should comprise all the costs that the consumer has to pay in connection with the credit agreement and which are known to the creditor. It should therefore include interest, commissions, taxes, fees for credit intermediaries the costs of property valuation for a mortgage and any other fees, [...] except for notarial fees required to obtain the credit, e.g. life insurance, or to obtain it on the terms and conditions marketed, e.g. fire insurance. The provisions of this directive concerning ancillary products and services (eg. concerning the costs of opening and maintaining a bank account) should be without prejudice to Directive 2005/29/EC on unfair business-to-consumer commercial practices and Directive 93/13/EC on unfair terms in consumer contracts. The total cost of the credit to the consumer should exclude costs that the consumer pays in relation to the purchase of the immovable property or land, such as associated taxes and notarial costs or the costs of land registration.

The creditor's actual knowledge of the costs should be assessed objectively, taking into account the requirements of professional diligence. In this respect, the creditor should be presumed to have knowledge of the costs of the ancillary services which he offers to the consumer himself, or on behalf of a third party, unless the price thereof depends on the specific characteristics or situation of the consumer.

- (23b) If estimated information is used, the consumer should be made aware of this and that the information is expected to be representative of the type of agreement or practices under consideration. The additional assumptions for the calculation of the APRC aim to ensure that the annual percentage rate of charge is calculated in a consistent way and to ensure comparability. Additional assumptions are necessary for specific types of credit agreement, such as where the amount, duration or cost of the credit are uncertain or vary depending on how the agreement is operated. Where the provisions in themselves do not suffice to calculate the annual percentage rate of charge, the creditor should use the additional assumptions provided in the Annex. However, given that the calculation of the APRC will depend on the terms of the individual credit agreement, only those assumptions necessary and relevant to a given credit should be used.
- (23c) In order to further ensure a high degree of comparability of the APRC between offers from different creditors, the intervals between dates used in the calculation should not be expressed in days where they can be expressed as a whole number of years, months or weeks. Implicit in this context is that if certain time intervals are used in the APRC formula, those intervals shall also be used to ascertain the amounts of interest and other charges used in the formula. For this reason, creditors shall use the method of measurement of time intervals described in Annex I to obtain the figures for the payment of charges. However, this is only applicable for the purposes of calculation of the APRC and does not impact on the amounts actually charged by the creditor under the credit agreement. Where those numbers are different it may be necessary to explain them to the consumer in order to avoid misleading the consumer. This also implies that in the absence of non-interest charges and assuming an identical method of calculation the APRC will be equal to the effective borrowing rate of the credit.

- (23d) As the annual percentage rate of charge can at the advertising stage be indicated only through an example, such an example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration. When determining the representative example, the prevalence of certain types of credit agreement in a specific market should be taken into account. It may be preferable for each creditor to base the representative example on an amount of credit which is representative of that creditor's own product range and expected customer base, as these may vary considerably among creditors. As regards the annual percentage rate of charge disclosed in the ESIS, the preferences of and information provided by the consumer should where possible be taken into account and the creditor or credit intermediary should make it clear whether the information provided is illustrative or reflects the preferences and information given. In any case, the representative examples should not be contrary to the requirements of Directive 2005/29/EC. It is also important that in the ESIS it is made clear to the consumer where applicable that the APRC is based on assumptions and could change so that consumers can take this into account when comparing products. It is also important that the APRC should take account of all drawdowns under the credit agreement, whether paid directly to the consumer or to a third party on the consumer's behalf. In order to accommodate product innovation, provision should be made for delegated acts which could be used to amend the remarks or update the assumptions used in the APRC calculation.
- (23e) In order to ensure consistency between the calculation of the annual percentage rate of charge for different types of credit, the assumptions used for calculating similar forms of credit agreement should be generally consistent. In this respect, assumptions from Commission Directive 2011/90/EU of 14 November 2011 amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions for the calculation of the annual percentage rate of charge<sup>4</sup>, modifying the assumptions for calculating the annual percentage rate of charge should be incorporated. While not all assumptions will necessarily apply to credit agreements available now, product innovation in this sector is active and so it is necessary to have the assumptions in place.

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<sup>4</sup> OJ L 296, 15.11.2011, p.35.

Furthermore, for the purpose of calculating the annual percentage rate of charge, the identification of the most common drawdown mechanism should be based on reasonable expectations of the drawdown mechanism most frequently used by consumers for the type of product offered by that specific creditor. For existing products, the expectation should be based on the previous twelve months

- (24) It is essential that the consumer's ability and propensity to repay the credit is assessed and verified before a credit agreement is concluded. This assessment of creditworthiness should take into consideration all necessary and relevant factors that could influence a consumer's ability to repay the credit over its lifetime. In particular, the consumer's ability to service and fully repay the loan should include consideration of future payments or payment increases needed due to negative amortisation or deferred payments of principal or interest and should be considered in the light of other regular expenditure, debts and other financial commitments as well as income, savings and assets. Reasonable allowance should also be made for future events during the term of the proposed credit agreement such as a reduction in income where the loan term lasts into retirement or, where applicable, an increase in the interest rate or negative change to the exchange rate. While the value of the property is an important element in ascertaining the amount of the credit that may be granted to a consumer under a secured credit agreement the assessment of creditworthiness should focus on the consumer's ability to meet their obligations under the credit agreement. Consequently, the possibility that the value of the property could exceed the credit amount or could increase in the future should not generally be a sufficient condition to grant the credit in question. Nevertheless, where the purpose of a credit agreement is to construct or renovate an existing immovable property, the creditor should be able to consider this possibility. Member States may issue additional guidance on [...] these or additional criteria and on methods [...] to assess a consumer's creditworthiness, for example by setting limits on loan-to-value or loan-to-income ratios and should be encouraged to implement the Financial Stability Board's Principles for Sound Residential Mortgage Underwriting Practices. Specific provisions may be necessary [...] for the different elements that may be taken into consideration in the creditworthiness assessment of certain types of credit agreements.

For example, for credit agreements to purchase a property which explicitly state that the property is not to be occupied as a house, apartment or another place of residence by the consumer or a family member (buy-to-let agreements), Member States may decide to specify that future rental income is taken into account when assessing the consumer's ability to repay the loan. In those Member States where such a specification is not set out by national provisions, creditors may also decide to include a prudent assessment of future rental income. The assessment of creditworthiness should not imply the transfer of responsibility to the creditor for any subsequent non-compliance by the consumer with his obligations under the credit agreement.

- (25) The creditor's decision as to whether to grant the credit should be consistent with the outcome of the assessment of creditworthiness. For example, the capacity for the creditor to transfer part of the credit risk to a third party should not drive him to ignore the conclusions of the creditworthiness assessment by making a credit agreement available to a consumer who is likely not to be able to repay it. Member States may transpose this principle by requiring supervisors to take relevant actions as part of the supervisory review process and to monitor the compliance of creditors' creditworthiness assessment procedures. However, a positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.
- (26) In line with the recommendations of the Financial Stability Board, the assessment of creditworthiness should be based on information on the financial and economic situation, including income and expenses, of the consumer. This information can be obtained from various sources including from the consumer, and the creditor should appropriately verify such information before granting the loan. In this respect consumers should provide information in order to facilitate the creditworthiness assessment, since failure to do so is likely to result in refusal of the credit they seek to obtain unless the information can be obtained from elsewhere.

Without prejudice to private contract law, Member States should ensure that creditors cannot terminate a credit agreement because they realized, after the signature of the credit agreement, that the assessment of creditworthiness was incorrectly conducted due to incomplete information at the time of the creditworthiness assessment. However, this should be without prejudice to the possibility for Member States to allow creditors to terminate the credit agreement where it can be found that the consumer deliberately provided inaccurate or falsified information at the time of the creditworthiness assessment or intentionally did not provide information that would have led to a negative creditworthiness assessment or where there are other valid reasons compatible with Union law. While it would not be appropriate to apply sanctions to consumers for not being in a position to provide certain information or assessments or for deciding to discontinue the application process for getting a loan, Member States should be able to provide for sanctions where consumers knowingly provide incomplete or incorrect information in order to obtain a positive creditworthiness assessment, in particular where the complete and correct information would have resulted in a negative creditworthiness assessment and the consumer is subsequently unable to fulfil the conditions of the agreement.

- (27) Consultation of a credit database is a useful element in the assessment of creditworthiness. Some Member States require creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database. [...] Creditors should also be able to consult the credit database over the lifetime of the loan solely in order to identify and assess the potential for default. Such access should be subject to appropriate safeguards to ensure that it is used for the early identification and resolution of credit risk in the interest of the consumer and not to inform commercial negotiations. Pursuant to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>5</sup>, consumers should be informed by creditors of the consultation of the credit database prior to its consultation, and should have the right to access the information held on them in such a credit database in order to, where necessary, rectify, erase or block the personal data concerning them processed therein where it is inaccurate or has been unlawfully processed.

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<sup>5</sup> OJ L 281, 23.11.1995, p. 31.

- (28) To prevent any distortion of competition among creditors, it should be ensured that all creditors, including credit institutions or non-credit institutions providing credit agreements relating to residential immovable property, have access to all public and private credit databases concerning consumers under non-discriminatory conditions. Such conditions should not therefore include a requirement for creditors to be established as a credit institution. Access conditions, such as the costs of [...] accessing the database or requirements to provide information to the database on the basis of reciprocity should continue to apply. Member States are free to determine whether, within their jurisdictions, credit intermediaries may also have access to such databases.
- (29) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, [...] and provide the name of the database consulted and of any other elements required by Directive 95/46/EC so as to enable the consumer to exercise his right to access and, where [...] justified, rectify, erase or block personal data concerning him and processed therein. Where a decision to reject an application for credit [...] results from a negative creditworthiness assessment, the creditor should inform the consumer of the rejection without undue delay. Member States should be free to decide whether they require creditors to provide further explanations on the reasons of the rejection. However, the creditor should not be required to give such information when to do so would be prohibited by other Union legislation such as legislation on money laundering or the financing of terrorism. [...] Such information should not be provided where to do so would be contrary to the objectives of public policy or public security such as the prevention, investigation, detection or prosecution of criminal offences.
- (30) This Directive addresses the use of personal data in the context of the assessment of a consumer's creditworthiness. In order to ensure the protection of personal data, Directive 95/46/EC applies to the data processing activities carried out within the context of such assessments.

- (31) Providing advice in the form of a personalised recommendation is a distinct activity which may but need not be combined with other aspects of granting or intermediating credit. Therefore, in order to be in a position to understand the nature of the services provided to them, consumers should be made aware of [...] whether [...] advisory services are being or can be provided and when they are not and of what constitute advisory services. Given the importance which consumers attach to the use of the terms “advice” and “advisors”, it is appropriate that Member States should be allowed to prohibit the use of the those terms, or similar terms, when advisory services are being provided to consumers. It is also appropriate to ensure that Member States impose safeguards where advice is described as independent to ensure that the range of products considered and remuneration arrangements are commensurate with consumers’ expectations of such advice.
- (31a) Those providing advisory services should comply with [...] certain standards in order to ensure that the consumer is presented with [...] products suitable for his needs and circumstances. Advisory services should be based on a fair and sufficiently wide-ranging analysis of the products offered, where the advisory services are provided by creditors and tied credit intermediaries, or, where the advisory services are provided by credit intermediaries that are not tied, of products available on the market. Those providing advisory services should be able to specialise in certain 'niche' products such as bridging finance, provided they consider a range of products within that particular 'niche' and 'their specialisation in those 'niche' products is made clear to the consumer. In any case creditors and credit intermediaries should disclose to the consumer whether they are advising only on their own product range or a wide range from across the market to ensure that the consumer understands the basis for a recommendation.
- (31b) Advisory services should be based on a proper understanding of the consumer's financial situation, preferences and objectives based on the necessary up-to-date information and reasonable assumptions about risks to the consumer's circumstances during the lifetime of the loan. Member States may clarify how the suitability of a given product should be assessed in the context of the provision of advisory services.

(32) A consumer's ability to repay the credit prior to the expiry of the credit agreement may play an important role in promoting competition in the single market and the free movement of EU citizens as well as helping to provide the flexibility during the lifetime of the credit agreement needed to promote financial stability in line with the recommendations of the Financial Stability Board . However, substantial differences exist between the national principles and conditions under which consumers have the ability to repay their credit and the conditions under which such early repayment can take place. Whilst recognising the diversity in mortgage funding mechanisms and the range of products available, certain standards with regard to early repayment of credit are essential at Union level in order to ensure that consumers have the possibility to discharge their obligations before the date agreed in the credit agreement and the confidence to shop around for the best products to meet their needs. Member States should therefore ensure, whether through legislation or other means such as contractual clauses, that consumers have a right to early repayment. Nevertheless, Member States should be able to define the conditions for the exercise of such a right. These conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate or restrictions with regard to the circumstances under which the right may be exercised. Where the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a legitimate interest on the part of the consumer specified by the Member State. Such legitimate interest may for example occur in case of divorce or unemployment. The conditions set by Member States may also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In cases where Member States provide that the creditor is entitled to compensation such compensation should be a fair and objectively justified compensation for potential costs directly linked to early repayment of the credit in accordance with the national rules on compensation. The compensation shall not exceed the financial loss of the creditor.

- (32a) It is also important to ensure that sufficient transparency exists to provide clarity for consumers on the nature of the commitments made in the interests of preserving financial stability and on where there is flexibility during the term of the credit agreement. Consumers should also be provided with information concerning the borrowing rate during the contractual relationship as well as at the pre-contractual stage. Member States may maintain or introduce restrictions or prohibitions on unilateral changes to the borrowing rate by the creditor. Member States may also provide that where the borrowing rate changes the consumer is entitled to receive an updated amortisation table.
- (33) Although credit intermediaries play a central role in the distribution of credit agreements relating to residential immovable property in the Union, substantial differences remain between national provisions on the conduct of business and supervision of credit intermediaries which create barriers to the taking-up and pursuit of the activities of credit intermediaries in the internal market. The inability of credit intermediaries to operate freely throughout the Union hinders the proper functioning of the single market in credit agreements relating to residential immovable property. While recognising the diversity in the types of actor involved in credit intermediation, certain standards at Union level are essential in order to ensure a high level of professionalism and service.
- (34) Before being able to carry out their activities, credit intermediaries should be subject to an admission process by which they would be authorised and/or registered [...] by the competent authority of their home Member State and subject to ongoing supervision to ensure that they meet strict professional requirements at least in relation to their competence, good repute and professional indemnity cover. Such requirements should apply at least at the level of the institution; however, Member States may clarify whether such requirements for admission apply to individual employees of the credit intermediary. The home Member State may provide for additional requirements, for instance that the credit intermediary's shareholders are of good repute or that a tied credit intermediary can only be tied to one creditor, where these are proportionate and compatible with other Union law.

Relevant information about admitted credit intermediaries should also be entered in a public register. Tied credit intermediaries who work exclusively with one creditor under its full and unconditional responsibility should be admitted by the competent authority but this may be done under the auspices of the creditor on whose behalf they act. Member States should have the right to maintain or to impose restrictions regarding the legal form of certain credit intermediaries, whether they are allowed to act exclusively as legal persons or individuals. Member States should also be free to decide whether all credit intermediaries are entered into one register or whether different registers are required depending on whether the credit intermediary is tied or acts as independent credit intermediary. Furthermore Member States should be free to maintain or to impose restrictions on the possibility to charge any fees on consumers by the credit intermediaries tied to one or more creditors.

- (34a) In some Member States credit intermediaries may decide to use the services of appointed representatives to perform activities on their behalf. Member States should have the possibility to apply the specific regime laid down by this Directive for appointed representatives. However, Member States should also be free not to introduce such a regime or to allow other entities to perform a role which is comparable to that of appointed representatives, provided that these entities are subject to the same regime as credit intermediaries. The rules on appointed representatives set out in this Directive do not oblige Member States to allow appointed representatives to operate in their jurisdiction unless such appointed representatives are considered credit intermediaries under this Directive.
- (34b) In order to ensure that the effective supervision of credit intermediaries by competent authorities, a credit intermediary which is a legal person should be approved in the Member State in which it has its registered office. A credit intermediary which is not a legal person should be approved in the Member State in which it has its head office. In addition, Member States should require that a credit intermediary's head office must always be situated in its home Member State and that it actually operates there.

- (35) The requirements for admission should allow credit intermediaries to operate in other Member States in accordance with the principles of freedom of establishment and freedom to provide services, provided that an appropriate notification procedure has been followed between the competent authorities. Even in cases where Member States decide to admit all individual staff within the credit intermediary, the notification of the intention to provide services should be on the basis of the credit intermediary rather than the individual employee. However, while this Directive provides a framework for all approved credit intermediaries, including credit intermediaries tied to only one creditor, to operate throughout the Union, this Directive does not provide such a framework for appointed representatives. In such instances, appointed representatives wishing to operate in another Member State would have to comply with the requirements for the approval of credit intermediaries set out in this Directive.
- (35a) In some Member States, credit intermediaries can carry out their activities in respect of credit agreements offered by non-credit institutions and credit institutions. As a principle approved credit intermediaries should be allowed to operate in the entire territory of the Union. However such admission by the competent authorities of the home Member States should not allow them to provide their services in relation to credit agreements offered by non-credit institution to a consumer in a Member State where such non-credit institutions are not allowed to operate.
- (35b) Member States may provide that persons carrying out credit intermediation activities only on an incidental basis in the course of professional activity, such as lawyers or notaries, should not be subject to the admission procedure set out in this Directive provided that such professional activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of credit intermediation services. Such an exemption from the approval procedure laid down in this Directive should however mean that such persons cannot benefit from the passport regime provided in this Directive.

Natural or legal persons who merely introduce or refer a consumer to a creditor or credit intermediary on an incidental basis in the course of their professional activity, for instance by indicating the existence of a particular creditor or credit intermediary to the consumer or a type of product with this particular creditor or credit intermediary to the consumer without further advertising or engaging in the presentation, offering, preparatory work or conclusion of the credit agreement, should not be regarded as credit intermediaries for the purposes of this Directive. Neither should borrowers who merely transfer a credit agreement to a consumer through a process of subrogation without carrying out any other credit intermediation activity be regarded as credit intermediaries for the purposes of this Directive.

- (36) In order to ensure a level playing field between creditors and promote financial stability, and pending further harmonisation, Member States should ensure that appropriate measures are in place for the admission and supervision of non-credit institutions providing credit agreements relating to residential immovable property. In accordance with the principle of proportionality, this Directive [...] should not lay down detailed conditions for the admission or supervision of creditors providing such credit agreements and that are not credit institutions as defined in Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions [...] (recast); the number of such institutions operating in the Union at present is limited as is their market share and the number of Member States in which they are active, particularly since the financial crisis. Nor should the introduction of a 'passport' for such institutions be provided for in this Directive for the same reason.
- (37) Member States should lay down rules on [...] sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of [...] sanctions remains within the discretion of Member States, the [...] sanctions provided for should be effective, proportionate and dissuasive.

- (38) Consumers should have access to out-of-court complaint and redress procedures for the settlement of disputes arising from the rights and obligations set out in this Directive between providers of credit agreements relating to residential immovable property and consumers as well as between credit intermediaries and consumers. Member States should ensure that participation in such alternative dispute resolution procedures is not optional for creditors and credit intermediaries. To ensure the smooth functioning of alternative dispute resolution procedures in cases of cross-border activity, Member States should require and encourage the bodies responsible for resolving out of court complaints and redress cooperate. In this context, Member States' out-of-court complaint and redress bodies should be encouraged to participate in FIN-NET, a financial dispute resolution network of national out-of-court schemes that are responsible for handling disputes between consumers and financial services providers.
- (39) In order to ensure consistent harmonisation and to take account of developments in the markets for credit agreements or in the evolution of credit products or in economic conditions, and in order to further specify certain requirements in this Directive, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of [insert list of powers delegated once agreed in Articles] [insert reference to technical standards if applicable]. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

[...]

[...]

- (42) In order to facilitate the ability of credit intermediaries to provide their services on a cross-border basis, for the purposes of cooperation, information exchange and dispute resolution between competent authorities, the competent authorities responsible for the admission of credit intermediaries should be those acting under the auspices of the European Supervisory Authority (European Banking Authority) ('EBA'), as set out in Article 4(2) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) or other national authorities provided that they cooperate with the authorities acting under the auspices of the EBA in order to carry out their duties under this Directive.
- (42a) Member States should designate competent authorities empowered to ensure enforcement of this Directive and ensure that they are granted investigation and enforcement powers and adequate resources necessary for the performance of their duties. Competent authorities could act for certain aspects of this Directive by application to courts competent to grant a legal decision, including, where appropriate, by appeal. This could enable Member States, in particular where provisions of this Directive were transposed into civil law, to leave the enforcement of these provisions to the abovementioned bodies and the courts. Member States should be able to designate different competent authorities in order to enforce the wide ranging obligations laid down in this Directive. For instance, for some provisions, Member States could designate competent authorities responsible for the enforcement of consumer protection, while for others, they could decide to designate prudential supervisors. The ability to designate different competent authorities should not affect the obligations for ongoing supervision and cooperation between the competent authorities, as foreseen in this Directive.
- (43) The European Parliament and the Council should have [...] three months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by [...] three months with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.

- (44) The efficient functioning of this Directive will need to be reviewed, as will progress on the establishment of an internal market with a high level of consumer protection for credit agreements relating to residential immovable property. The Commission should therefore review the Directive five years after the deadline for its transposition. The review should include, among other things, an assessment of compliance with and the impact of this Directive, an assessment of whether the scope of the Directive remains appropriate, an analysis of the [...] provision of credit agreements by non-credit institutions [...] and an assessment on the need for further measures, including a passport for such non-credit institutions and examination of the necessity to introduce further rights and obligations with regard to the post-contractual stage of credit agreements.
- (45) Action by Member States alone is likely to result in different sets of rules, which may undermine or create new obstacles to the functioning of the internal market. Since an efficient and competitive internal market in credit agreements relating to residential immovable property with a high level of consumer protection cannot be sufficiently achieved by Member States and can therefore by reason of the effectiveness of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union ('TEU'). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (45a) Member States may decide to transpose certain aspects covered by this Directive in national law by prudential law, for example the creditworthiness assessment of the consumer, while others are transposed by fraud, civil, penal or criminal law, for example the obligations relating to responsible borrower.

(46) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(46a) The European Data Protection Supervisor delivered its opinion on 25 July 2011<sup>6</sup>.

HAVE ADOPTED THIS DIRECTIVE:

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<sup>6</sup> *OJ C 377, 23.12.2011, p. 5*

# Chapter 1

## Subject matter, scope, definitions and competent authorities

### *Article 1*

#### *Subject matter*

This Directive lays down a common framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning [...] agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property, including an obligation to carry out a creditworthiness assessment before granting a loan, as a basis for the development of effective underwriting standards in relation to residential property in the Member States, and for certain prudential and supervisory requirements, including for the establishment and supervision of credit intermediaries, appointed representatives and non-credit institutions.

### *Article 1a*

#### *Level of Harmonisation*

- (a) This Directive shall not preclude Member States from retaining or adopting more stringent provisions in order to protect consumers, provided that such provisions are consistent with their obligations under Union law and this Directive.
- (b) Notwithstanding paragraph 1, Member States shall not maintain or introduce in their national law provisions diverging from those laid down in Article [9a/11 para 1a] and Annex II Part A, Article 12/14 paras 1, 2, 3, 4, 5, 7 and 8 and Annex 1 of this Directive with regard to a common, consistent Union standard for the calculation of the annual percentage rate of charge and standard pre-contractual information through a standardised European Information sheet.

## *Article 2*

### *Scope*

1. This Directive shall apply to [...]:
  - (a) Credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property;
  - (b) Credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building;
2. Member States which before (...) have implemented an information sheet that meets at least the same information requirements as those set out in Annex II may continue to use it for the purposes of Article 9a on pre-contractual information for a period of five years after (...)<sup>7</sup>.
3. This Directive shall not apply to:
  - (a) Credit agreements where the creditor:
    - i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and
    - ii) will not seek repayment of the credit until the occurrence of one or more specified life events of the consumer, as defined by Member States, unless a breach of contractual obligations that allows the creditor to terminate the credit agreement occurs (equity release);

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<sup>7</sup> [OJ please insert the date of entry into force of the Directive]

- (b) credit agreements where the credit is granted by an employer to his employees as a secondary activity where such a credit agreement is offered free of interest or at annual percentage rates of charge lower than those prevailing on the market and not offered to the public generally;
- (c) credit agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the loan;
- (d) credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month; [CCD Art 2(e)]
- (e) Credit agreements which are the outcome of a settlement reached in court or before another statutory authority.
- (f) Credit agreements which relate to the deferred payment, free of charge, of an existing debt and which do not fall within the scope of paragraph 1 point (a);

4. Member States may:

- (a) waive the provisions of Article EP 8/Council 9 [advertising], Article EP9a/Council 11 [pre-contractual information] and Annex II [ESIS] to the credit agreements for consumers, secured by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property, the purpose of which is not to acquire or retain the right to residential immovable property, provided that the Member States apply to such credit agreements Article 4, Article 5, Annex II and III of Directive 2008/48/EC;

- (b) waive the provisions of this Directive for credit agreements to purchase a property where the credit agreement provides, that the property cannot at any moment be occupied as a house, apartment or another place of residence by the consumer or a family member and is to be occupied as a house, apartment or another place of residence on the basis of a rental agreement;
  - (c) waive the provisions of this Directive for credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, free of interest or at lower interest rates than those prevailing on the market or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market;
  - (d) waive the provisions of this Directive for bridging loans as defined in Article 3(rc);
  - (e) waive the provisions of this Directive for credit agreements where the creditor is an organisation within the scope of Article 2(5) of Directive 2008/48/EC.
5. Member States which use the option referred to in paragraph 5(d) or 5(f) shall ensure the application of adequate alternative arrangements to ensure consumers receive timely information on the main features, risks and costs of such credit agreements at the pre-contractual stage and that advertising of such credit agreements is fair, clear and not misleading.
- 5a. Member States which use the option referred to in paragraph 5(c) shall ensure the application of an appropriate framework at a national level for this type of lending.

*Article 3*  
*Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (a) 'Consumer' means a consumer as defined in Article 3(a) of Directive 2008/48/EC.
- (b) 'Creditor' means a natural or legal person who grants or promises to grant credit falling within [...] the *scope* of Article 2 in the course of his trade, business or profession.
- (c) 'Credit agreement' means an agreement whereby a creditor [...] grants or promises to grant, to a consumer, a credit within the *scope* of Article 2 in the form of a deferred payment, loan or other similar financial accommodation.
- (d) 'Ancillary service' means a [...] service offered to the consumer [...] in conjunction with the credit agreement.
- (e) 'Credit intermediary' means a natural or legal person who is not acting as a creditor or notary and not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary, and who, in the course of his trade, business or profession, for [...] remuneration, which may take a pecuniary form or any other agreed form of financial consideration:
  - (i) presents or offers credit agreements [...] to consumers;
  - (ii) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements [...] other than as referred to in point (i); or
  - (iii) concludes credit agreements [...] with consumers on behalf of the creditor.

- (f) 'Tied credit intermediary' means any credit intermediary who acts on behalf of and under the full and unconditional responsibility of:
- (i) only one creditor; or
  - (ii) only one group of creditors, or
  - (iii) a number of creditors or groups which does not represent the majority of the market.
- (fa) 'Appointed representative' means a natural or legal person who performs activities referred to in point (e) that is acting on behalf of and under the full and unconditional responsibility of only one credit intermediary.
- (g) 'Group' means [...] a group of creditors which are [...] to be consolidated for the purposes of drawing up consolidated accounts, as defined in the seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts.
- (h) 'Credit institution' means credit institution as defined in Article 4(1) of Directive 2006/48/EC.
- (i) 'Non-credit institution' means any [...] *creditor that* is not a credit institution.
- (j) 'Staff' means:
- (i) any natural person working for the creditor, or credit intermediary who is directly engaged in the activities covered by this Directive or who has contacts with consumers in the course of activities covered by this Directive;

- (ii) any natural person working for an appointed representative who has contacts with consumers in the course of activities covered by this Directive;
  - (iii) any natural person directly managing and/or supervising the natural persons referred to in (i) and (ii).
- (ja) 'Total amount of credit' means the total amount of credit as defined in Article 3(l) of Directive 2008/48/EC.
- (k) 'Total cost of the credit to the consumer' means the total cost of the credit to the consumer as defined in Article 3(g) of Directive 2008/48/EC including the cost of valuation of property where such valuation is necessary to obtain the credit but excluding registration fees for land . It shall exclude any charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement.
- (l) 'Total amount payable by the consumer' means the total amount payable by the consumer as defined in point (h) of Article 3 of Directive 2008/48/EC.
- (m) 'Annual percentage rate of charge' means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in Article 12(2) and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the consumer.
- (n) 'Borrowing rate' means the borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC.

- (o) 'Creditworthiness assessment' means the evaluation of [...] the prospect for the debt obligation resulting from the credit agreement to be met.
- (p) 'Durable medium' means durable medium as defined in point (m) of Article 3 of Directive 2008/48/EC.
- (q) 'Home Member State' means:
- (i) where the creditor or credit intermediary is a natural person, the Member State in which his [...] *head office* is situated [...];
  - (ii) where the creditor or credit intermediary is a legal person, the Member State in which its registered office is situated or, if under national law it has no registered office, the Member State in which its head office is situated.
- (r) 'Host Member State' means the Member State, other than the home Member State, in which the creditor or credit intermediary has a branch or provides services.
- (ra) 'Advisory services' means the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements and constitutes a separate activity from the granting of a credit and from the services specified in point (e).
- (rb) 'Competent authority' means an authority designated as competent by a Member State in accordance with Article 4.
- (rc) 'Bridging loan' means a credit agreement either of no fixed duration or which is due to be repaid within 12 months, used by the consumer as a temporary financing solution while transitioning to another financial arrangement for the property.

- (rd) ‘Contingent liability or guarantee’ means a credit agreement which acts as a guarantee to another separate but ancillary transaction, and where the capital secured against an immovable property is only drawn down if a contingent event or events specified in the contract occurs.
- (re) ‘Shared equity credit agreement’ means a credit agreement where the capital repayable is based on a contractually set percentage of the value of the immovable property at the time of the capital repayment or repayments.
- (rf) ‘Tying practice’ means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.
- (rg) ‘Bundling practice’ means the offering or the selling of a credit agreement in a package with other distinct financial products or services 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.
- (rh) ‘Foreign currency loan’ means a loan which is:
- (i) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the loan is to be repaid; or
  - (ii) denominated in a currency other than that of the Member State in which the consumer is resident.

*Article 4*  
*Competent authorities*

1. Member States shall designate the national competent authorities empowered to ensure the application and enforcement of this Directive and shall ensure that they are granted [...] investigating and enforcement powers and adequate resources necessary for the efficient and effective performance of their duties.

The authorities referred to in subparagraph 1 shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be creditors, credit intermediaries or appointed representatives.

- 1a. Member States shall ensure that [...] competent authorities, all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. No confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form, without prejudice to cases covered by criminal law or provisions of this Directive [...]. This shall not however prevent the competent authorities from exchanging or transmitting confidential information in accordance with this Directive and with national and Union law.
- 1b. Member States shall ensure that the authorities designated as competent for ensuring the application and enforcement of Articles 6/7, 21, 22, 23, 24, 25 of this Directive are:
  - (i) competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), and/or

- (ii) authorities other than the national authorities listed in point (i) provided that national legislation or administrative regulations require those authorities to cooperate with the authorities referred to in point (i) whenever necessary in order to carry out their duties under this Directive including for the purposes of co-operating with the EBA as required under this Directive.
- 1c. Member States shall inform the Commission and EBA of the designation of the competent authorities and any changes thereto, indicating any division of the respective duties between different competent authorities. The first such notification shall be made as soon as possible and at the latest within 2 years after the entry into force of this directive.
- 1d. The competent authorities may exercise their powers in conformity with national law either:
  - (a) directly under their own authority or under the supervision of the judicial authorities;  
or
  - (b) by application to courts competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful, except for Articles 6/7, 21, 22, 23, 24 and 25.

Insofar as competent authorities exercise their powers by application to the courts in accordance with paragraph 1d(b), those courts shall be competent to grant the necessary decisions.

- 2. Where there is more than one competent authority on its territory, a Member State shall ensure that their respective duties are clearly defined and that those authorities collaborate closely so that they can discharge their respective duties effectively.

- 2a. The Commission shall publish a list of the competent authorities referred to in paragraph 1 in the official journal of the European Union at least once a year, and update it continuously on its website.

## Chapter 1a

### Financial education

#### *Article 4a*

#### *Financial education of consumers*

1. Member States shall promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements. Clear and general information on the credit granting process is necessary to guide consumer especially those who take out a mortgage credit for the first time, as well as information regarding the guidance consumer organisations and national authorities may provide to consumers.
2. The Commission shall publish an assessment of the financial education available to consumers in the Member States and identify examples of best practices to increase financial awareness which could be further developed.

## Chapter 2

### Conditions applicable to creditors, credit intermediaries and appointed representatives

#### *Article 5*

#### *Conduct of business obligations when providing credit to consumers*

1. Member States shall require that when a) manufacturing, b) granting, c) intermediating or d) providing advisory services on credit and, where appropriate, ancillary services to consumers or when executing a credit agreement, the creditor, credit intermediary or appointed representative acts honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers. In relation to b), c) or d) the activities shall be based on information about the consumer's circumstances and any specific requirement made known by a consumer and on reasonable assumptions about risks to the consumer's situation over the term of the credit agreement. In relation to d) the activity shall in addition be based on the information required under Article 17(2a)(a).
2. Member States shall ensure that the manner in which creditors remunerate their staff [...] and credit intermediaries and the manner in which credit intermediaries remunerate their staff and appointed representatives do not impede compliance with the obligation [...] referred to in paragraph 1.
- 2a. Member States shall ensure that, when establishing and applying remuneration policies for staff responsible for the assessment of creditworthiness, creditors comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the credit institution;
- (b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the credit institution, and incorporates measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of applications accepted.

2b. Member States shall ensure that where creditors, credit intermediaries or appointed representatives provide advisory services the remuneration structure of the staff involved does not prejudice their ability to act in the consumer's best interest and in particular is not contingent on sales targets. In order to achieve this goal, Member States may additionally ban commissions paid by the creditor to the credit intermediary.

*Article 5a*

*Obligation to provide information free of charge to consumers*

Member States shall ensure that when information is provided to consumers in compliance with the requirements set out in this Directive, such information shall be provided without charge to the consumer.

## *Article 6*

### *Knowledge and competence requirements for staff*

1. Member States shall ensure that creditors, credit intermediaries and appointed representatives require their staff to possess and to keep up-to-date an appropriate level of knowledge and competence in relation to the manufacture, the offering or granting of credit agreements, the provision of credit intermediation as defined in Article 3(e) or of advisory services. Where the conclusion of a credit agreement includes an ancillary service related to it, [...] appropriate knowledge and competence in relation to that ancillary service shall be required.
  
2. Except in the circumstances envisaged in paragraph 2a, home Member States shall establish minimum knowledge and competence [...] requirements for creditors', credit intermediaries' and appointed representatives' staff in accordance with the principles set out in Annex III.
  
- 2a. Where a creditor or credit intermediary provides its services within the territory of one or more other Member States:
  - (i) through a branch, the host Member State shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff of a branch;
  
  - (ii) under the freedom to provide services, the home Member State shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff in accordance with Annex III, However host Member States may establish the minimum knowledge and competence requirements for those requirements referred to in Annex III paragraph 1(b), 1(c), 1(e) and 1(f).

3. Member States shall ensure that compliance with the requirements of paragraph 1 are supervised by the competent authorities, and that the competent authorities have powers to require creditors, credit intermediaries and appointed representatives to provide such evidence as the competent authority deems necessary to enable such supervision.
- 3a. For the effective supervision of creditors and credit intermediaries providing their services within the territory of another Member State(s) under the freedom to provide services, the competent authorities of the host and the home Member States shall cooperate closely for the effective supervision and enforcement of the minimum knowledge and competence requirements of the host Member State. For this purpose they may delegate tasks and responsibilities to each other.

## Chapter 3

### Information and practices preliminary to the conclusion of the credit agreement

#### *Article 7*

##### *General provisions applicable to advertising and marketing*

Member States shall require that any advertising and marketing communications concerning credit agreements [...] are fair, clear and not misleading [...]. In particular, wording that may create false expectations for a consumer regarding the availability or the cost of a credit shall be prohibited. This Article shall be without prejudice to Directive 2005/29/EC.

#### *Article 8*

##### *Standard information to be included in advertising*

1. Member States shall ensure that any advertising concerning credit agreements [...] which indicates an interest rate or any figures relating to the cost of the credit to the consumer shall include the standard information in accordance with this Article.

Member States may provide that the first subparagraph shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph. This provision is without prejudice to Directive 2005/29/EC.

2. The standard information shall specify in a clear, concise and prominent way [...]:
- (a) the identity of the creditor or, where applicable, the credit intermediary or appointed representative;
  - (b) where applicable, that the credit agreement would 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;
  - (c) the borrowing rate, indicating whether this is fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer;
  - (d) the total amount of credit;
  - (e) the annual percentage rate of charge; the annual percentage rate of charge shall be included into the advertisement at least as prominently as any other interest rate;
  - (f) where applicable, the duration of the credit agreement;
  - (g) where applicable, the amount of the instalments;
  - (h) if applicable, the total amount payable by the consumer;
  - (i) [...] if applicable, [...] the number [...] of instalments;
  - (ia) where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the consumer.

- 2a. The information listed in paragraph 2 other than that in point (a) or (b) shall be specified by means of a representative example and shall adhere to that representative example throughout. Member States shall adopt criteria for defining a representative example.
3. Where the conclusion of a contract regarding an ancillary service [...], in particular insurance, is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed, and the cost of that service cannot be determined in advance, the obligation to enter into that contract shall also be stated in a clear, concise and prominent way, together with the annual percentage rate of charge.
4. [...] The information referred to paragraphs 2 and 3 shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising and marketing.
- 4a. Member States may require the inclusion of a concise and proportionate warning concerning specific risks associated with credit agreements.
5. This Article shall be without prejudice to Directive 2005/29/EC.

*Article 8a*

*Tying and bundling practices*

1. Member States shall allow bundling practices but shall prohibit tying practices.
2. Notwithstanding paragraph 1, Member States may provide that creditors may request the consumer or a family member or close relation of the consumer to:

- (a) open or maintain a payment or a savings account, where the only purpose of such payment or savings account is to accumulate capital to repay, service, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default;
  - (b) open or maintain an investment product or a private pension product, where the investment product or the private pension product which primarily offers the investor an income in retirement serves also to provide additional security for the creditor in the event of default or to accumulate capital to repay, service or to pool resources to obtain the credit;
  - (c) conclude a separate credit agreement in conjunction with a shared-equity credit agreement to obtain the credit.
3. Notwithstanding paragraph 1, Member States may also allow tying practices when the creditor can demonstrate to its competent authority that the tied products or categories of product offered, on similar terms and conditions to each other, which are not made available separately result in a clear benefit to the consumers taking due account of the availability and the prices of the relevant products offered on the market. This shall only apply to products which will be marketed after the day of the entering into force of this Directive.
4. Member States may allow creditors to require the consumer to hold a relevant insurance policy related to the credit agreement. In such cases Member States shall ensure that the creditor accepts the insurance policy from a supplier different to his preferred supplier where such policy has a level of guarantee equivalent to the one the creditor has proposed.

*Article 9*  
*General information*

1. Member States shall ensure that clear and comprehensible general information about credit agreements is made available by creditors or, where applicable, by tied credit intermediaries or their appointed representatives at all times on paper or on another durable medium or in electronic form. Member States may also provide that general information is made available by non-tied credit intermediaries.

Such general information shall include at least the following:

- (a) the identity and the geographical address [...] of the issuer of the information [...];
- (b) purposes for which the credit may be used;
- (c) the forms of security, including the possibility for it to be located in a different Member State;
- (d) the possible duration of the credit agreements;
- (e) [...] types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;
- (f) [...] where credits are available in a foreign currency or currencies, an indication of the foreign currency or currencies, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;
- (g) representative [...] example of the total amount of credit, the total cost of credit for the consumer, the total amount payable by the consumer and annual percentage rate of charge;

- (ga) an indication of possible further costs, not included in the total cost of a credit, to be paid in connection with a credit agreement;
- (h) the range of different options available for reimbursing the credit to the creditor (including the number, frequency and amount of the regular repayment instalments);
- (ha) where applicable a clear and concise statement that such credit agreements do not guarantee repayment of the total amount of credit under the credit agreement.
- (i) [...] a description of the conditions directly relating to early repayment;
- (j) whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the consumer;
- (k) indication of ancillary services the consumer is obliged to acquire in order to obtain the credit or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor;
- (ka) a general warning concerning possible consequences of non-compliance with the commitments linked to the credit agreement;
- (kb) Member States may oblige the creditors to include other types of warnings which are relevant in a Member State.

2. Member States which impose requirements under point (kb) of the first paragraph or under paragraph 5 of Article 8/9 shall notify those requirements to the Commission without delay.

*Article 9a*  
*Pre-contractual information*

1. Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, provides the consumer [...] with the personalised information needed to compare the credits available on the market, assess their implications and take an informed decision on whether to conclude a credit agreement:
  - (a) without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article [EP 15/Council 16]; and
  - (b) in good time before the consumer is bound by any credit agreement or offer.
- 1a. Such obligatory information, on paper or on another durable medium, shall be provided by means of the European Standardised Information Sheet ('ESIS'), as set out in Annex II.
- 1b. Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be provided on paper or on another durable medium [...] and accompanied by an ESIS where:
  - (a) no ESIS has been provided to the consumer previously; or
  - (b) the characteristics of the offer are different from the information contained in the ESIS previously provided.
- 1c. Member States may provide for the obligatory provision of the ESIS before the provision of an offer binding on the creditor. Where a Member State so provides it shall require that the ESIS shall only be required to be provided again where the condition in para 1b (b) is met.

2. Member States shall specify a time period of at least 7 days during which the consumer will have sufficient time to compare offers, assess their implications and make an informed decision.

Member States shall specify that the time period specified in the first sub-paragraph shall be either a reflection period before the signing of the credit agreement or a right of withdrawal after the signing of the credit agreement or a combination of the two.

Where a Member State specifies a reflection period before the signing of a credit agreement:

- (a) the offer shall be binding on the creditor for the duration of the reflection period, and
- (b) the consumer shall be able to accept the offer at any time during the reflection period.

Member States may provide that consumers cannot accept the offer for a period not exceeding the first 10 days of the reflection period.

Where the interest rate and/or other costs applicable to the offer are determined on the basis of the selling of underlying bonds or other long term funding instruments, Member States may provide that the interest rate and/or other costs may vary from that stated in the offer in accordance with the value of the underlying bond or other long term funding instrument.

Where the consumer has a right of withdrawal in accordance with the second sub-paragraph Article 6 of 2002/65/EC shall not apply.

- 2a. The creditor and, where applicable, the credit intermediary or appointed representative who has supplied the ESIS to the consumer shall be deemed to have fulfilled the requirements regarding information provision to the consumer prior to the conclusion of a distance contract as [...] laid down in Article 3(1) of Directive 2002/65/EC and shall be deemed to satisfy the requirements of Article 5(1) of that Directive only where they have at least supplied the ESIS prior to the conclusion of the contract.
- 2b. Member States shall not modify the ESIS model other than as provided for in Annex II. Any additional information which the creditor or, where applicable, the credit intermediary or appointed representative, may provide to the consumer or is required to provide to the consumer by national legislation shall be given in a separate document which may be annexed to the ESIS.
3. The Commission shall be empowered to adopt delegated acts to amend the standard wording in Part A or the instructions in Part B of Annex II to address the need for information or warnings concerning new products that were not marketed before entry into force of the Directive. Such delegated acts shall however not change the structure or format of the ESIS.
4. In the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of point (b) of Article 3(3) of that Directive shall include at least the items referred to in Part A sections 2, 3, 4 and 5 of Annex II.
5. Member States shall ensure that at least where no right of withdrawal exists the creditor or, where applicable, credit intermediary or appointed representative provides the consumer with a copy of the draft credit agreement [...], at the time of the provision of an offer binding on the creditor. Where a right of withdrawal exists Member States shall ensure that the creditor or, where applicable, credit intermediary or appointed representative offers to provide the consumer with a copy of the draft credit agreement at the time of the provision of an offer binding on the creditor.

*Article 10*

*Information requirements concerning credit intermediaries and appointed representatives*

1. [...] Member States shall ensure that in good time before the provision of any of the services listed in point (e) of Article 3, the credit intermediary or appointed representative shall provide the consumer with at least the following information on paper or on another durable medium:
  - (a) the identity and the geographical address of the credit intermediary;
  - (b) the register in which he has been included, the registration number, where applicable, and the means for verifying such registration;
  - (c) whether the credit intermediary is tied to or works exclusively for one or more creditors. Where the credit intermediary is tied to or works exclusively for one or more creditors, it shall provide the names of the creditor(s) for which it is acting. The credit intermediary may disclose that it is independent where it meets the conditions laid down in accordance with [Article 17 (2b)]
  - (d) whether the credit intermediary offers advisory services;
  - (e) the fee, where applicable, payable by the consumer to the credit intermediary for [...] its services or where this is not possible, the method for calculating the fee;
  - (f) the procedures allowing consumers [...] or other interested parties to register complaints internally about credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;

- (g) where applicable, the existence and where known the amount of commissions or other inducements, payable by the creditor or third parties to the credit intermediary for their services in relation to the credit agreement. Where the amount is not known at the time of disclosure the credit intermediary shall inform the consumer that the actual amount shall be disclosed at a later stage in the ESIS.
2. Credit intermediaries who are not tied but who receive commission from one or more creditors shall, at the consumer's request, provide information on the variation in levels of commission payable by the different creditors providing the credit agreements being offered to the consumer. The consumer shall be informed that he has the right to request such information.
- 2a. Where the credit intermediary charges a fee to the consumer and also receives commission from the creditor or a third party, the credit intermediary shall explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.
3. Member States shall ensure that the fee, if any, payable by the consumer to the credit intermediary, for its services is communicated to the creditor by the credit intermediary, for the purpose of calculating of the annual percentage rate of charge.
- 3a. Member States shall require credit intermediaries to ensure that in addition to the disclosures required by this Article, an appointed representative discloses to the consumer the capacity in which he is acting and the credit intermediary he is representing when contacting or before dealing with any consumer.

*Article 11*  
*Adequate explanations*

1. Member States shall ensure that creditors and, where applicable, credit intermediaries or appointed representatives provide adequate explanations to the consumer on the proposed credit agreement(s) and any ancillary service(s), in order to place the consumer in a position enabling him to assess whether the proposed credit agreements and ancillary services are adapted to his needs and financial situation.

The explanation shall, where applicable, include in particular:

- (a) [...] the pre-contractual information to be provided in accordance with:
    - (i) Articles [9a/11] in case of creditors;
    - (ii) Articles [9a/11 and 10/12] in case of credit intermediaries or appointed representatives.
  - (b) the essential characteristics of the products proposed;
  - (c) the specific effects they may have on the consumer, including the consequences of default in payment by the consumer; and
  - (d) where ancillary services are bundled with a credit agreement, whether each component of the bundle can be terminated separately and the implications for the consumer of doing so.
2. [...] Member States may adapt the manner by which and the extent to which the assistance referred to in paragraph 1 is given, as well as by whom it is given, to the circumstances of the situation in which the credit agreement [...] is offered, the person to whom it is offered and the nature of the credit offered.

## Chapter 4

### Annual percentage rate of charge

#### *Article 12*

#### *Calculation of the annual percentage rate of charge*

1. The annual percentage rate of charge [...] shall be calculated in accordance with the mathematical formula set out in Annex I.
2. The costs of opening and maintaining [...] a specific account, [...] of using a means of payment for both transactions and drawdowns on that account and of other costs relating to [...] payment transactions [...] shall be included in the total cost of credit to the consumer whenever the opening or maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed.
3. The calculation of the annual percentage rate of charge shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.
4. In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, in the charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the level set at the conclusion of the contract.

- 4a. For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period of at least 5 years, at the end of which a negotiation on the borrowing rate takes place to agree on a new fixed rate for a further material period, the calculation of the additional, illustrative annual percentage rate of charge disclosed in the ESIS shall cover only the initial fixed rate period and shall be based on the assumption that, at the end of the fixed borrowing rate period, the capital outstanding is repaid.
- 4b. Where the credit agreement allows for variations in the borrowing rate, Member States shall ensure that the consumer is informed of the possible impacts of variations on the amounts payable and on the APRC at least by means of the ESIS. This shall be done by providing the consumer with an additional APRC which illustrates the possible risks linked to a significant increase in the borrowing rate. Where the borrowing rate is not capped, this information shall be accompanied by a warning highlighting that the total cost of the credit, shown by the APRC, may change<sup>8</sup>. This provision shall not apply to credit agreements where the borrowing rate is fixed for an initial period of at least 5 years, at the end of which a negotiation on the borrowing rate takes place to agree on a new fixed rate for a further material period, for which an additional, illustrative annual percentage rate of charge is foreseen in the ESIS.
- 4c. [...] Where applicable, the assumptions set out in Annex I should be used in calculating the annual percentage rate of charge.
5. The Commission shall [...] be empowered to adopt delegated acts [...] in accordance with Article 26 to amend the remarks or update the assumptions used to calculate the annual percentage rate of charge as set out in Annex I, in particular if the remarks or assumptions set out in this Article and in Annex I do not suffice to calculate the annual percentage rate of charge in a uniform manner or are not longer adapted to the commercial situation on the market.

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<sup>8</sup> ‘Where the borrowing rate... may change’: This provision could be also inserted in Art EP8/Council 9 para 2 (e) for variable rate loans (Article on Advertising)

*Article 13*  
*Information concerning the borrowing rate*

Deleted.

## Chapter 5

### Creditworthiness assessment

*Article 14*  
*Obligation to assess the creditworthiness of the consumer*

1. Member States shall ensure that, before concluding a credit agreement, the creditor makes a thorough assessment of the consumer's creditworthiness. The assessment shall take appropriate account of factors relevant to verifying the prospect of the consumer to meet his obligations under the credit agreement.
  - 1a. Member States shall ensure that the procedures and information on which the assessment is based shall be established, documented and maintained.
  - 1b. The assessment of creditworthiness shall not rely predominantly on the value of the residential immovable property exceeding the amount of the credit or the assumption that the residential immovable property will increase in value unless the purpose of the credit agreement is to construct or renovate the residential immovable property.

- 1c. Member States shall ensure that where a creditor concludes a credit agreement with a consumer it shall not subsequently cancel or alter the credit agreement to the detriment of the consumer on the grounds that the assessment of creditworthiness was incorrectly conducted. This paragraph shall not apply where it is demonstrated that the consumer knowingly withheld or falsified the information within the meaning of Article [15/16].
  
2. Member States shall ensure [...] that:
  - (a) [...] The creditor only makes the credit available to the consumer where the result of the creditworthiness [...] assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement.
  
  - (b) In accordance with Article 10 of Directive 95/46/EC, the creditor informs the consumer in advance that a database is to be consulted.
  
  - (c) Where the credit application is rejected the creditor informs the consumer without delay of the rejection and, where applicable, that the decision is based on automated processing of data. Where the rejection is based on the result of the database consultation, the creditor shall also inform the consumer of the result of such consultation and of the particulars of the database consulted.
  
3. Member States shall ensure that the consumer's creditworthiness is re-assessed on the basis of updated information before any significant increase in the total amount of credit is granted after the conclusion of the credit agreement unless this additional credit was foreseen and included in the original creditworthiness assessment.
  
- 3a. This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

*Article 14a*  
*Property valuation*

1. Member States shall ensure that reliable property valuation standards for mortgage lending purposes are developed within their territory. Member States shall require creditors to ensure that those standards are used where they carry out a property valuation or to take reasonable steps to ensure that those standards are applied where a valuation is conducted by a third party. Where national authorities are responsible for regulating independent appraisers who carry out property valuations they shall ensure that they comply with the national rules that are in place.
  
2. Member States shall ensure that internal and external appraisers conducting property valuations are professionally competent and sufficiently independent from the credit underwriting process so that they can provide an impartial and objective valuation, which shall be documented in a durable medium and a record of it kept by the creditor.

*Article 15*  
*Disclosure and verification of consumer information*

1. The assessment of creditworthiness referred to in Article [14/15] shall be carried out on the basis of information on the consumer's income and expenses and other financial and economic circumstances which is necessary, sufficient and proportionate. The information shall be obtained by the creditor from relevant internal or external sources, including the consumer, and including information provided to the credit intermediary or appointed representative during the credit application process. The information shall be appropriately verified, including through reference to independently verifiable documentation when necessary.

- 1a. Member States shall ensure that credit intermediaries or appointed representatives accurately submit the necessary information obtained from the consumer to the relevant creditor to enable the creditworthiness assessment to be carried out.
  
2. Member States shall ensure that creditors specify in a clear and straightforward way at the pre-contractual phase the necessary information and independently verifiable evidence that the consumer needs to provide and the timing by which the consumer needs to provide the information. Such request for information shall be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment. Member States shall allow creditors to seek clarification of the information received in response to this request where necessary to enable the assessment of creditworthiness.

Member States shall not allow a creditor to terminate the credit agreement on the grounds that the information provided before the conclusion of the credit agreement was incomplete.

The previous subparagraph shall not prevent Member States from allowing the termination of the credit agreement by the creditor where it is demonstrated that the consumer knowingly withheld or falsified the information.

- 2a. Member States shall have measures in place to ensure that consumers are aware of the need to provide correct information in response to the request referred to in paragraph 2 and that such information is as complete as necessary to conduct a proper creditworthiness assessment. The creditor, credit intermediary or appointed representative shall warn the consumer that where the creditor is unable to carry out an assessment of creditworthiness because the consumer chooses not to provide the information or verification necessary for an assessment of creditworthiness the credit cannot be granted. This warning may be provided in a standardised format.

3. This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, in particular Article 6 thereof.

## Chapter 6

### Database access

#### *Article 16*

#### *Database access*

1. Each Member State shall ensure access for all creditors from all Member States to databases used in that Member State for assessing the creditworthiness of consumers and for the sole purpose of monitoring consumers' compliance with the credit obligations over the life of the credit agreement. The conditions for such access shall be non-discriminatory.
  - 1a. Paragraph 1 shall apply both to databases, which are operated by private credit bureaux or credit reference agencies and to public registers.
2. This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

## Chapter 7

### Advisory services

#### *Article 17*

#### *[...] Standards for advisory services*

1. Member States shall ensure that the creditor, [...] credit intermediary [...] or appointed representative explicitly informs the consumer, in the context of a given transaction, whether advisory services are being or can be provided [...] to the consumer.
  
2. Member States shall ensure that before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor, credit intermediary or appointed representative provides the consumer with the following information on paper or another durable medium.
  - (a) [...] whether the recommendation will be based on considering only their own product range in accordance with point (b) of paragraph 2a or a wide range of products from across the market in accordance with point (c) of paragraph 2a so that the consumer can understand the basis on which the recommendation is made;
  
  - (b) [...] where applicable, the fee payable by the consumer for the advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.

The above information may be provided to the consumer in the form of additional pre-contractual information.

2a. Where advisory services are provided to consumers, Member States shall ensure, in addition to the requirements set out in Articles 5 and EP 6/Council 7, that:

- (a) the creditor, credit intermediary or appointed representative obtains the necessary information regarding the consumer's personal and financial situation, his preferences and objectives so as to enable the recommendation of suitable credit agreements. Such an assessment shall be based on information that is up to date at that moment in time and shall take into account reasonable assumptions as to risks to the consumer's situation over the term of the proposed credit agreement;
- (b) creditors, tied credit intermediaries or appointed representatives appointed by tied credit intermediaries consider a sufficiently large number of credit agreements in their product range and recommend a suitable credit agreements or several suitable credit agreements from among their product range for the consumer's needs, financial situation and personal circumstances;
- (c) not tied credit intermediaries or appointed representatives appointed by not tied credit intermediaries consider a sufficiently large number of credit agreements available on the market and recommend a suitable credit agreement or several suitable credit agreements available on the market for the consumer's needs, financial situation and personal circumstances;
- (d) creditors, credit intermediaries or appointed representatives act in the best interests of the consumer by:
  - (i) informing themselves about the consumer's needs and circumstances and
  - (ii) recommending suitable credit agreements in accordance with points (a) to (c);and

(e) the creditor, credit intermediary or appointed representative providing the advisory services gives the consumer a record in a durable medium of the recommendation provided;

2b. Member States may prohibit the use of the term "advice" and "advisor" or similar terms when the advisory services are being provided to consumers by:

(i) creditors

(ii) tied credit intermediaries

(iii) appointed representatives of tied credit intermediaries.

Where Member States do not prohibit the use of the term 'advice' and 'advisor', they shall impose the following conditions on the use of the term "independent advice" or "independent advisor" by creditors, credit intermediaries or appointed representatives providing advisory services.

When providing advisory services on an independent basis, creditors, credit intermediaries or appointed representatives shall:

(i) consider a sufficiently large number of credit agreements available on the market; and

(ii) where the number of creditors considered is less than a majority of the market, not be remunerated for those advisory services by one or more creditors.

Member States may impose more stringent requirements in relation to the use of the term "independent advice" or "independent advisor" by creditors, credit intermediaries or appointed representatives, including a ban on receiving remuneration from a creditor.

- 2c. Member States may provide for an obligation for creditors, credit intermediaries and appointed representatives to warn a consumer when, considering the consumer's financial situation, a credit agreement may induce a specific risk for the consumer.
- 2d. Member States shall ensure that advisory services are only provided by creditors, credit intermediaries or appointed representatives.

Member States may waive the application of the first sub-paragraph to:

- (i) persons carrying out the activities set out in Article 3(e) or Article 3(ra) where the activities are provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
- (ii) persons providing advisory services in the context of managing existing debt which are insolvency practitioners where that activity is regulated by legal or regulatory provisions or public or voluntary debt advisory services which do not operate on a commercial basis; or
- (iii) persons providing advisory services who are not creditors, credit intermediaries or appointed representatives where such persons are admitted and supervised by competent authorities in accordance with the requirements for credit intermediaries under this Directive.

Persons benefiting from the waiver in the second sub-paragraph shall not benefit from the right referred to in the first paragraph of Article 22 to provide services for the entire territory of the Union.

- 2e. This Article shall be without prejudice to Article [13/11] and to Member States' ability to ensure that services are made available to consumers to help them understand their financial needs and which types of products are likely to meet those needs.

## Chapter 8a

### Sound performance of credit agreements

#### *Article 17a*

#### *Foreign currency loans and variable interest rates*

1. Member States shall ensure that where a credit agreement relates to a foreign currency loan, an appropriate regulatory framework is in place at the time the credit agreement is concluded to at least ensure that:
  - (a) the consumer has a right to convert the credit agreement into an alternative currency under specified conditions; or
  - (b) there are other arrangements in place to limit the currency risk to which the consumer is exposed under the credit agreement.

2. The alternative currency referred to in paragraph 1(a) shall be either:
  - (a) the currency in which the consumer primarily receives income or holds assets from which the loan is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the credit agreement was made; or
  - (b) the currency of the Member State in which the consumer either was resident at the time the credit agreement was concluded or is currently resident.

Member States may specify whether both of the above choices are available to the consumer or only one of them or may allow creditors to specify.

3. Where a consumer has a right to convert the credit agreement into another currency in accordance with paragraph 1(a), the Member State shall ensure that the exchange rate at which the conversion is carried out will be the market exchange rate applicable on the day of application for conversion unless otherwise specified in the credit agreement.
4. Member States shall ensure that where a consumer has a foreign currency loan, the creditor warns the consumer on a regular basis in a durable medium at least where the value of the loan amount outstanding or of the regular instalments varies by more than 20% from what it would be if the exchange rate between the currency of the credit agreement and the currency of the Member State applicable at the time of the conclusion of the credit agreement were applied. The warning shall inform the consumer of the rise in the amount payable, set out where applicable the right to convert to another currency and the conditions for doing so and explain any other applicable mechanism for limiting the exchange rate risk to which the consumer is exposed.
5. Member States shall not be precluded from further regulating foreign currency loans provided that such regulations are not applied with retrospective effect.

6. The arrangements applicable under this Article shall be disclosed to the consumer in the ESIS and in the credit agreement. Where there is no provision in the credit agreement to limit the currency risk to which the consumer is exposed to a currency fluctuation of less than 20%, this shall include an illustrative example of the impact of a 20% fluctuation in the exchange rate.

*Article 17b*

*Variable rate loans and underlying indexes and reference rates*

Where the credit agreement is a variable rate loan:

1. Member States shall ensure that if any index or reference rate used to calculate the borrowing rate it is clear, accessible, objective and verifiable by the parties to the credit agreement and the competent authorities.
2. Member States shall ensure that historical records of indexes for calculating the borrowing rates are maintained either by the providers of these indexes or the creditors.

## Chapter 8

### Sound execution of credit agreements and related rights

#### *Article 18*

#### *Early repayment*

1. Member States shall ensure that the consumer has a right to discharge fully or partially his obligations under a credit agreement prior to the expiry of that agreement. In such cases, the consumer shall be entitled to a reduction in the total cost of the credit such reduction consisting of the interest and the costs for the remaining duration of the contract.
2. Member States may provide that the exercise of the right referred to in paragraph 1 be subject to certain conditions. Such conditions may include time limitations on the exercise of the right, a different treatment depending on the type of the borrowing rate or on the moment the consumer exercises the right, or restrictions with regard to the circumstances under which the right may be exercised.
3. Member States may provide that the creditor is entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment but shall not impose a penalty on the consumer. In this regard, the compensation shall not exceed the financial loss of the creditor. Within those conditions Member States may provide that the compensation may not exceed a certain level or be allowed only for a certain period of time.
4. Where a consumer seeks to discharge his obligations under a credit agreement prior to the expiry of the agreement, the creditor shall provide the consumer without delay after receipt of the request, on paper or on another durable medium, with the information necessary to consider that option. That information shall at least quantify the implications for the consumer of discharging his obligations prior to the expiry of the credit agreement and clearly set out any assumptions used. Any assumptions used shall be reasonable and justifiable.

5. Where the early repayment falls within a period for which the borrowing rate is fixed Member States may provide that the exercise of the right referred to in paragraph 1 is subject to the existence of a legitimate interest on the part of the consumer.

*Article 18a*

*Flexible and reliable markets*

1. Member States shall have appropriate mechanisms in place to ensure that the claim against the collateral is enforceable by or on behalf of creditors. Member States shall also ensure that creditors keep appropriate records concerning the types of property accepted as collateral as well as the related mortgage underwriting policies used.
2. Member States shall take the necessary measures to ensure an appropriate statistical monitoring of the residential property market, including for market surveillance purposes, where appropriate by encouraging the development and use of specific prices indexes which may be public or private or both.

*Article 18b*

*Information concerning the borrowing rate*

1. Member States shall ensure that the creditor informs the consumer of any change in the borrowing rate, on paper or another durable medium, before the change enters into force. The information shall at least state the amount of the payments to be made after the entry into force of the new borrowing rate and, in cases where the number or frequency of the payments changes, particulars thereof.

2. However, the Member States may allow the parties to agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically where the change in the borrowing rate is correlated with a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor and communicated personally to the consumer together with the amount of new periodic instalments.
- 2a. Member States shall also provide that the creditor may continue to inform consumers periodically where the change in the borrowing rate is not correlated with a change in a reference rate where this was allowed under national law before ...<sup>9</sup>.
- 2b. Where changes in the borrowing rate are determined by way of auction on the capital markets and it is therefore impossible for the creditor to inform the consumer of any change before the change enters into force, the creditor shall, in good time before the auction, inform the consumer in writing of the upcoming procedure and provide an indication of how the borrowing rate could be affected.

### *Article 18c*

#### *Arrears and foreclosure*

1. Member States shall adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated.
2. Member States may require that, where the creditor is permitted to define and impose charges on the consumer arising from the default, those charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default.

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<sup>9</sup> [OJ: please insert the date of entry into force of this Directive]

3. Member States may allow creditors to impose additional charges on the consumer in the event of default. In this case Member States shall place a cap on those charges.
- 3a. Member States shall not prevent the parties to a credit agreement from expressly agreeing that return of collateral or proceeds from the sale of the collateral is sufficient to repay the loan.
4. Where the price obtained for the property affects the amount owed by the consumer Member States shall have procedures or measures to procure that the best efforts price for the foreclosed property is obtained.

Where after foreclosure proceedings outstanding debt remains, Member States shall ensure to put in place measures to facilitate repayment in order to protect consumers.

## Chapter 9

### Requirements [...] for establishment and supervision of credit intermediaries and appointed representatives

#### *Article 19*

#### *Admission of credit intermediaries*

1. Credit intermediaries shall be duly admitted to carry out the activities set out in Article 3(e) or advisory services by a competent authority in their home Member State through a process of authorisation and/or registration. Where a Member State allows appointed representatives under Article 21, such an appointed representative shall not also need to be admitted as a credit intermediary under this Article.
  
2. Member States shall ensure that the admission of credit intermediaries is made subject to fulfilment of at least the requirements provided for in subparagraphs (a) – (c) in addition to the requirements of Articles 6 / 7.
  - (a) credit intermediaries shall hold professional indemnity insurance covering the territories in which they offer services, or some other comparable guarantee against liability arising from professional negligence. However, for tied intermediaries, the home Member State may provide that such insurance or comparable guarantee can be provided by a creditor for which the credit intermediary is empowered to act.

Powers are delegated to the Commission to adopt and, where necessary amend, regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(a). These regulatory technical standards shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

EBA shall develop draft regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(a) for submission to the Commission [within 6 months of the adoption of the proposal]. EBA shall review, and if necessary, develop draft regulatory technical standards to amend the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(a) for submission to the Commission for the first time [4 years after entry into force of the Directive] and every two years thereafter.

- (b) a natural person established as a credit intermediary, the members of board of a credit intermediary established as a legal person or natural persons performing equivalent tasks within a credit intermediary which is a legal person but does not have a board shall be of good repute. As a minimum they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.
- (c) a natural person established as a credit intermediary, the members of board of a credit intermediary established as a legal person or natural persons performing equivalent tasks within a credit intermediary which is a legal person but does not have a board shall possess the appropriate level of knowledge and competence in relation to credit agreements. The home Member State shall establish the appropriate level of knowledge and competence in accordance with the principles set out in Annex III.

- 2a. Member States shall ensure that the criteria established in order for credit intermediaries or creditors' staff to meet their professional requirements are made public.
  
3. Member States shall ensure that all admitted credit intermediaries, whether established as natural or legal persons, are entered into a register with a competent authority in their home Member State. Member States shall ensure that the register of credit intermediaries is kept up to date and is publicly available online.

The register of credit intermediaries shall contain at least the following information:

- (i) the names of the persons within the management who are responsible for the intermediation business. Member States may also require the registration of all natural persons who exercise a client-facing function in an undertaking that pursues the activity of credit intermediation;
- (ii) the Member State(s) in which the credit intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services and in Accordance with Article [22] of which the credit intermediary has informed the competent authority of the home Member State;
- (iii) whether the credit intermediary is tied or not;

Member States that decide to avail of the option referred to in Article [21 a] shall ensure that the register indicates the creditor on whose behalf the tied credit intermediary acts.

Member States that decide to avail of the option referred to in Article [21b] shall ensure that the register indicates the credit intermediary or in the case of an appointed representative of a tied credit intermediary, the creditor on whose behalf the appointed representatives acts.

4. Member States shall ensure that:
- (i) any credit intermediary which is a legal person has its head office in the same Member State as its registered office if under its national law it has a registered office;
  - (ii) any credit intermediary which is not a legal person or any credit intermediary which is a legal person but under its national law has no registered office have its head office in the Member State in which it actually carries on its main business.
5. Member States shall ensure that a single information point is established to allow quick and easy public access to information from the national register, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State.
- EBA shall publish on its website references or hyperlinks to that information point.
6. Home Member States shall ensure that all admitted credit intermediaries and appointed representatives comply with the conditions defined in paragraph 2 on a continuing basis. This paragraph shall be without prejudice to the provisions of Article 21a and 21b.
7. Member States may waive the application of this Article to persons carrying out the activities set out in Article 3(e) where the activities are provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service.

8. Paragraph 1 shall not apply to credit institutions holding an authorisation as defined in Art. 4 (2) of the Directive 2006/48/EC or to other financial institutions which under national law are subject to an equivalent authorization and supervision regime.
- 8a. Member States may forbid or impose restrictions on payments from a consumer to a creditor or credit intermediary prior to the conclusion of a credit agreement.

#### *Article 20*

##### *Credit intermediaries tied to only one creditor*

1. Without prejudice to Article 21(1), Member States may allow those credit intermediaries specified in Article 3(f)(i) to be admitted by competent authorities through the credit institution on whose behalf the tied credit intermediary is exclusively acting.

In such cases, the creditor shall remain fully and unconditionally responsible for any action or omission on the part of the tied credit intermediary that is acting on behalf of the creditor in areas regulated by this Directive. Member States shall require the creditor to ensure that those credit intermediaries falling under 3(f)(i) comply with at least the requirements set out in Article 21(2)(a) to 21(2)(c). However, the home Member State may provide that for credit intermediaries defined in 3(f)(i), the professional indemnity insurance or a comparable guarantee can be provided by the creditor for which the tied credit intermediary is empowered to act.

2. Without prejudice to Article 24 of this Directive Member States shall require creditors to monitor the activities of credit intermediaries tied to only one creditor in order to ensure that they continue to comply with this Directive. In particular, the creditor shall be responsible for monitoring compliance with the knowledge and competence requirements of the tied credit intermediary and its staff.

*Article 21*  
*Appointed representatives*

1. Member States may decide to allow a credit intermediary to appoint appointed representatives

Member States shall require that where the credit intermediary has appointed an appointed representative and is tied to only one creditor as set out in Article 3(f) (i), the creditor shall remain fully and unconditionally responsible for any action or omission on the part of the appointed representative that is acting on behalf of the credit intermediary in areas regulated by this Directive. In other cases the credit intermediary shall remain fully and unconditionally responsible for any action or omission on the part of the appointed representative acting on behalf of the credit intermediary in areas regulated by this Directive.

2. Member States shall require the credit intermediary to ensure that the appointed representative complies at least with the requirements set out in Article [21(2)(a) to 21(2) (c)]. However, the home Member State may provide that the professional indemnity insurance or a comparable guarantee can be provided by a credit intermediary for which the appointed representative is empowered to act.
3. Without prejudice to Article [24] of this Directive Member States shall require the credit intermediaries to monitor the activities of their appointed representatives in order to ensure full compliance with this directive. In particular, the credit intermediaries shall be responsible for monitoring compliance with the knowledge and competence requirements of the appointed representatives and its staff.

- 3a. Member States that decide to allow a credit intermediary to appoint appointed representatives shall establish a public register containing at least the information referred to in Article 21(3). Appointed representatives shall be registered in the public register in the Member State where they are established. The register shall be updated on a regular basis. It shall be publicly available for consultation online.

## *Article 22*

### *Freedom of establishment and freedom to provide services by credit intermediaries*

1. The admission of a credit intermediary by the competent authority of its home Member State as laid down in Article 21(1) to carry out part or all of the activities referred to in Article 3(e) or advisory services shall be effective for the entire territory of the Union without further admission by the competent authorities of the host Member State(s) being required for the provision of these services, provided that the activities a credit intermediary intends to carry out in the host Member State(s) are covered by the admission. However credit intermediaries shall not be allowed to provide their services in relation to credit agreements offered by a non-credit institution to consumers in a Member State where such non-credit institutions are not allowed to operate.
- 1a. Appointed representatives appointed in Member States which avail themselves of the option under Article 21b are not allowed to carry out part or all of the activities referred to in Article 3(e) or to provide advisory services in Member States where such appointed representatives are not allowed to operate.
2. Any admitted credit intermediary intending to carry out business for the first time in one or more Member States under the freedom to provide services or when establishing a branch shall inform the competent authorities of its home Member State.

Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member State(s) concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification. They shall also notify the competent authorities of the host Member State(s) concerned of the creditor or creditors to which the credit intermediary is tied and whether the creditor takes full and unconditional responsibility for the credit intermediary's activities. The host Member State shall use the information received from the home Member State to introduce the necessary information in its register.

The credit intermediary may start business one month after the date on which he was informed by the competent authorities of the home Member State of the notification referred to in the second subparagraph.

3. [...] Before the branch of a credit intermediary commences its activities or within two months of receiving the information referred to in paragraph 2, the competent authorities of the host Member State shall prepare for the supervision of the credit intermediary in accordance with Article 24 and, if necessary, indicate to the credit intermediary the conditions under which, in areas not harmonised in Union law, those activities are to be carried out in the host Member State.

#### *Article 22a*

#### *Withdrawal of admission of credit intermediaries*

1. The competent authority of the home Member State may withdraw the admission granted to a credit intermediary in accordance with Article 21 where such a credit intermediary:
  - (a) expressly renounces the admission or has not provided services referred to in Article 3(e) for the preceding 6 months, unless the Member State concerned has provided for admission to lapse in such cases;

- (b) has obtained the admission through false or misleading statements or any other irregular means;
  - (c) no longer fulfils the requirements under which admission was granted;
  - (d) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal;
  - (e) has seriously or systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for credit intermediaries.
2. Where the admission of a credit intermediary is withdrawn by the competent authority of the home Member State, the latter shall notify the competent authorities of the host Member State(s) of such withdrawal as soon as possible and at the latest within 14 days, by any appropriate means.
  3. Member States shall ensure that credit intermediaries whose admission has been withdrawn are deleted from the register without undue delay.

#### *Article 22b*

##### *Supervision of credit intermediaries and appointed representatives*

1. Member States shall ensure that credit intermediaries are subject to supervision of their ongoing activities by the competent authorities of the home Member State.

Home Member States shall provide that tied credit intermediaries shall be subject to supervision directly or as part of the supervision of the creditor on behalf of which they act if the creditor is a credit institution holding an authorisation as defined in art. 4 (2) of the Directive 2006/48/EC or another financial institution which under national law is subject to an equivalent authorization and supervision regime. If the tied credit intermediary provides services in another Member State other than the home Member State, then the tied credit intermediary shall be subject to direct supervision by the competent authority.

Home Member States which allow credit intermediaries to appoint representatives in accordance with Article 21b shall ensure that such appointed representative are subject to supervision either directly or as part of the supervision of the credit intermediary on behalf of which it acts.

2. The competent authorities of the Member State(s) in which a credit intermediary has a branch shall be responsible for ensuring that the services provided by the credit intermediary within its territory comply with the obligations laid down in Articles 5(1), Council 6, 6/7, 7/8, 8/9, 9/10, 9a/11, 10/12, 11/13, 12/14, 15/16, 17/18, 25/30 and in measures adopted pursuant thereto.

Where the competent authorities of a host Member State ascertain that a credit intermediary that has a branch within its territory is in breach of the provisions adopted in that State pursuant to the provisions of Articles 5(1), Council 6, 6/7, 7/8, 8/9, 9/10, 9a/11, 10/12, 11/13, 12/14, 15/16, 17/18, 25/30 of this Directive, those authorities shall require the credit intermediary concerned to put an end to its irregular situation.

If the credit intermediary concerned fails to take the necessary steps, the competent authorities of the host Member State shall take all appropriate measures to ensure that the credit intermediary concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the home Member State.

If, despite the measures taken by the host Member State, the credit intermediary persists in breaching the legal or regulatory provisions referred to in the first subparagraph in force in the host Member State, the host Member State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise further irregularities and, in so far as necessary, to prevent the credit intermediary from initiating any further transactions within its territory. The Commission shall be informed of any such measures without undue delay.

Where the competent authority of the home Member State disagrees with such measures taken by the host Member State, it may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case, the EBA may act in accordance with the powers conferred on it by that Article.

3. The competent authorities of the Member State(s) in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to fulfil its responsibilities under paragraph 2 and to enable the competent authorities of the home Member State to enforce the obligations under Article 5(2),(2a) and (2b) and measures adopted pursuant thereto with respect to the services provided by the branch.
4. Where the competent authority of the host Member State has clear and demonstrable grounds for concluding that a credit intermediary acting within its territory under the freedom to provide services is in breach of the obligations arising from the provisions adopted pursuant to this Directive or that a credit intermediary that has a branch within its territory is in breach of the obligations arising from the provisions adopted pursuant to this Directive, other than those specified in paragraph 2, it shall refer those findings to the competent authority of the home Member State which shall take the appropriate measures.

In cases where the competent authority of the home Member State fails to take any measures within one month from obtaining those findings or where, despite the measures taken by the competent authority of the home Member State, a credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of the host Member State consumers or orderly functioning of the markets, the following shall apply:

- (a) the competent authority of the host Member State, after having informed the competent authority of the home Member State shall take all appropriate measures needed to protect consumers and ensure the proper functioning of the markets, including by preventing the offending credit intermediary from initiating any further transactions within their territories. The Commission and EBA shall be informed of such measures without undue delay;
- (b) the competent authority of the host Member State may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case the EBA may act in accordance with the powers conferred on it by that Article.

5. Each Member State shall provide that, where a credit intermediary authorised in another Member State has established a branch within its territory, the competent authorities of the home Member State of the credit intermediary, in the exercise of its responsibilities and after having informed the competent authorities of the host Member State, may carry out on-site inspections in that branch.
6. The allocation of tasks between Member States specified in this Article is without prejudice to the Member States' competences in relation to fields not covered by this Directive in conformity with their obligations under Union law.

## Chapter 10

### Admission and supervision of non-credit institutions

#### *Article 23*

#### *Admission and supervision of non-credit institutions*

Member States shall ensure that non-credit institutions as referred to in Article 3(i) are subject to adequate admission process including but not limited to entering the non-credit institution in a register and supervision arrangements by a competent authority.

## Chapter 11

### Cooperation between competent authorities of different Member States

#### *Article 23a*

#### *Obligation to cooperate*

1. Competent authorities of different Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive, making use of their powers whether set out in this Directive or in national law.

Competent authorities shall render assistance to competent authorities of the other Member States. In particular, they shall exchange information and cooperate in any investigation of supervisory activities.

In order to facilitate and accelerate cooperation, and more particularly the exchange of information, Member States shall designate one single competent authority as a contact point for the purposes of this Directive. Member States shall communicate to the Commission and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph.

2. Member States shall take the necessary administrative and organisational measures to facilitate assistance provided for in paragraph 1.
3. Competent authorities of Member States having been designated as contact points for the purposes of this Directive in accordance with paragraph 1 shall without undue delay supply one another with the information required for the purposes of carrying out the duties of the competent authorities, designated in accordance with Article 4, set out in the provisions adopted pursuant to this Directive.

Competent authorities exchanging information with other competent authorities under this Directive may indicate at the time of communication that such information must not be disclosed without their express agreement, in which case such information may be exchanged solely for the purposes for which those authorities gave their agreement.

The competent authority having been designated as the contact point may transmit the information received to the other authorities referred to in Article 4, however it shall not transmit the information to other bodies or natural or legal persons without the express agreement of the competent authorities which disclosed it and solely for the purposes for which those authorities gave their agreement, except in duly justified circumstances. In this last case the contact point shall immediately inform the contact point that sent the information.

4. A competent authority may refuse to act on a request for cooperation in carrying out an investigation or supervisory activity or to exchange information as provided for in paragraph 3 only where:
- (a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of the State addressed;
  - (b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Member State addressed;
  - (c) final judgement has already been delivered in the Member State addressed in respect of the same persons and the same actions.

In the case of such a refusal, the competent authority shall notify the requesting competent authority accordingly, providing as detailed information as possible.

#### *Article 23b*

##### *Settlement of disagreements between competent authorities in cross-border situations*

The competent authorities may refer the situation to the EBA where a request for cooperation, in particular the exchange of information, has been rejected or has not been acted upon within a reasonable time, and request the EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In such cases, the EBA may act in accordance with the powers conferred on it by that Article and any binding decision made by EBA in accordance with that Article shall be binding on the competent authorities concerned regardless of whether those competent authorities are members of EBA or not.

## Chapter 12

### Final provisions

#### *Article 24*

##### *Sanctions*

1. Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted on the basis of this Directive and shall take all measures necessary to ensure that they are implemented. Those sanctions shall be effective, proportionate and dissuasive.
2. Member States shall provide that the competent authority may disclose to the public any administrative sanction that will be imposed for infringement of the provisions adopted in the implementation of this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

#### *Article 25*

##### *Dispute resolution mechanism*

1. Member States shall ensure that appropriate and effective complaints and redress procedures are established for the out-of-court settlement of consumer disputes with creditors, credit intermediaries and appointed representatives in relation to credit agreements, using existing bodies where appropriate. Member States shall ensure that such procedures are applicable to creditors and credit intermediaries and also cover the activities of appointed representatives.

2. Member States shall require these bodies to cooperate so that cross-border disputes concerning credit agreements can also be resolved.

## *Article 26*

### *Exercise of the delegation*

1. The power to adopt delegated acts [...] is conferred on the Commission [...] subject to the conditions laid down in this Article.
  - 1a. The power to adopt delegated acts referred to in [Articles 9a(3), 12(5) ] shall be conferred on the Commission for an indeterminate period of time from the entry into force of this Directive..
  2. The delegation of power referred to in Articles 9a(3), and 12(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the powers specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
  3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
    - 3a. A delegated act adopted pursuant to Articles 9a(3) and 12(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

*Article 27*

*Imperative nature of this Directive*

1. Member States shall ensure that:
  - (a) consumers may not waive the rights conferred on them by the provisions of national law implementing or corresponding to this Directive.
  - (b) the provisions they adopt in implementing this Directive cannot be circumvented in a way which could lead to consumers losing the protection granted by this Directive as a result of the way in which agreements are formulated, in particular by integrating credit agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid the application of those provisions.

*Article 28*

*Transposition*

1. Member States shall adopt and publish, by [2 years after entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall forthwith communicate to the Commission the text of those provisions.

- 1a. Member States shall apply those provisions from [2 years after entry into force].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 28a*

##### *Transitional provisions*

1. This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.
2. By derogation from Article [28] paragraph 1a, credit intermediaries already performing activities referred to in Article 3(e) at the date of application of national provisions transposing this Directive referred to in Article [28] paragraph [1a] and which have not already been [authorised/registered/approved/admitted] in accordance with the conditions set out in the national law of the home Member State implementing this Directive may continue to carry out those activities in compliance with national law until at the latest 3 years after the entry into force of this Directive. Where a credit intermediary relies on this derogation it may perform the activities only within their home Member State unless it also satisfies the necessary legal requirements of the host Member States.
3. By derogation from Article [28] paragraph 1a, Member States shall provide that creditors, credit intermediaries or appointed representatives performing activities regulated by this Directive before its entry into force comply with the national law implementing Article 7 at the latest by 3 years after the entry into force of this Directive.

*Article 29*  
*Review clause*

1. The Commission shall undertake a review of this Directive five years after its entry into force. The review shall consider the effectiveness and appropriateness of the provisions on consumers and the internal market.

The review shall include the following:

- (a) an assessment of the use and consumer understanding of and satisfaction with the ESIS;
- (b) an analysis of other pre-contractual disclosures;
- (c) an analysis of cross-border business by credit intermediaries and creditors;
- (d) an analysis of the evolution of the market for non-credit institutions providing credit agreements relating to residential immovable property;
- (e) an assessment on the need for further measures, including a passport for non-credit institutions providing credit agreements relating to residential immovable property;
- (f) an examination of the [...] need to introduce additional rights and obligations with regard to the post-contractual stage of credit agreements;
- (g) an assessment of whether the scope of this Directive remains appropriate, taking account of its impact on other, substitutable forms of credit;

- (gb) an assessment of whether additional measures are necessary to ensure the traceability of credit agreements secured against residential immovable property;
- (gc) an assessment of the availability of data on trends in prices of residential immovable property and on the extent to which data are comparable;
- (gd) an assessment of whether it continues to be appropriate to apply Directive 2008/48/EC to unsecured loans the purpose of which is the renovation of a residential immovable property involving a total amount of credit above the maximum amount specified in Article 2(2)c of that Directive;
- (ge) an assessment of whether the arrangements for the publication of sanctions under Article 24/29(1) provide sufficient transparency;
- (gf) an assessment of the proportionality of warnings under Art. 9/10, point (n) of the first paragraph and under paragraph 4a of Article 8/9 and the potential for further harmonisation of risk warnings.

#### *Article 29a*

#### *Further initiatives on responsible lending and borrowing*

By ...<sup>10</sup>, the Commission shall submit a comprehensive report assessing the wider challenges of private over-indebtedness directly linked to credit activity. It will also examine the need for the supervision of credit registers and the possibility for the development of more flexible and reliable markets. The report shall be accompanied, where appropriate, by legislative proposals.

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<sup>10</sup> OJ please insert date: 60 months after the date of entry into force of this Directive.

*Article 29b*  
*Amendment to Directive 2008/48/EC*

Directive 2008/48/EC is amended as follows:

In Article 2, the following paragraph 2a is added:

"Notwithstanding Article 2(2), letter c), this Directive shall also apply to unsecured credit agreements the purpose of which is the renovation of a residential immovable property involving a total amount of credit above 75000 €."

*Article 30*

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

*Article 31*

This Directive is addressed to the Member States in accordance with the Treaties.

## ANNEX 1

### *Calculation of the annual percentage rate of charge*

1. Basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other.

The basic equation, which establishes the annual percentage rate of charge (APRC), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.:

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

where:

- X is the APRC
- m is the number of the last drawdown
- k is the number of a drawdown, thus  $1 \leq k \leq m$
- $C_k$  is the amount of drawdown k
- $t_k$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus  $t_1 = 0$
- $m'$  is the number of the last repayment or payment of charges
- l is the number of a repayment or payment of charges
- $D_l$  is the amount of a repayment or payment of charges
- $s_l$  is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:

(a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.

(b) The starting date shall be that of the first drawdown.

(c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30.41666 days (i.e.  $365/12$ ) regardless of whether or not it is a leap year.

Where intervals between dates used in the calculations cannot be expressed as a whole number of weeks, months or years, the intervals shall be expressed as a whole number of one of those periods in combination with a number of days. Where using days:

(i) every day shall be counted, including weekends and holidays;

(ii) equal periods and then days shall be counted backwards to the date of the initial drawdown;

(iii) the length of the period of days shall be obtained excluding the first day and including the last day and shall be expressed in years by dividing this period by the number of days (365 or 366 days) of the complete year counted backwards from the last day to the same day of the previous year.

(d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at [...] the preceding decimal place shall be increased by one.

(e) The equation can be rewritten using a single sum and the concept of flows ( $A_k$ ), which will be positive or negative, in other words either paid or received during periods 1 to  $n$ , expressed in years, i.e.:

$$S = \sum_{k=1}^n A_k (1 + X)^{-t_k} ,$$

$S$  being the present balance of flows. If the aim is to maintain the equivalence of flows, the value will be zero.

## II. Additional assumptions for the calculation of the annual percentage rate of charge

(a) If a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full.

(b) If a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement.

(c) If a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the credit agreement and in accordance with those drawdown limits.

(ca) If different interest rates and charges are offered for a limited period or amount, the interest rate and the charges shall be deemed to be the highest for the whole duration of the credit agreement.

(d) Deleted.

(e) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculation of the annual percentage rate, based on the value of the agreed indicator or internal reference rate at that time, but is not less than the fixed borrowing rate.

(g) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 170 000. In the case of credit agreements, other than contingent liabilities or guarantees, the purpose of which is not to acquire or retain a right in immovable property or land, overdrafts, deferred debit cards or credit cards this ceiling is assumed to be EUR 1 500.

(ga) In the case of credit agreements other than overdrafts, bridging loans, [...] shared equity agreements, contingent liabilities or guarantees and open ended credit agreements as referred to in the assumptions set out in points (i), (j), (k), (l) and (m):

(i) if the date or amount of a repayment of capital to be made by the consumer cannot be ascertained, it shall be assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides;

(ii) if the interval between the date of initial drawdown and the date of the first payment to be made by the consumer cannot be ascertained, it shall be assumed the shortest interval.

(h) Where the date or amount of a payment to be made by the consumer cannot be ascertained on the basis of the credit agreement or the assumptions set out in points (g), (i), (j), (k), (l) and (m) it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown:

(i) interest charges are paid together with the repayments of the capital;

(ii) non-interest charges expressed as a single sum is paid at the date of the conclusion of the credit agreement;

(iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;

(iv) the final payment clears the balance of capital, interest and other charges, if any.

(i) In the case of an overdraft facility, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the overdraft facility is not known, the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is three months.

(j) In the case of a bridging loan, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the credit agreement is not known the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is twelve months.

(k) In the case of an open ended credit agreement, other than an overdraft facility and bridging loan, it shall be assumed that:

(i) for credit agreements, the purpose of which is to acquire or retain rights in immovable property the credit is provided for a period of twenty years starting from the date of the initial drawdown, and that the final payment made by the consumer clears the balance of capital, interest and other charges, if any; in the case of credit agreements, the purpose of which is not to acquire or retain rights in immovable property or which are drawn down by deferred debit cards or credit cards, this period shall be of one year.

(ii) the capital is repaid by the consumer in equal monthly payments, commencing one month after the date of the initial drawdown. However, in cases where the capital must be repaid only in full, in a single payment, within each payment period, successive drawdowns and repayments of the entire capital by the consumer shall be assumed to occur over the period of one year. Interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the credit agreement.

For the purposes of this point, an open ended credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

(l) In the case of contingent liabilities or guarantees:

(i) the total amount of credit shall be deemed to be drawn down in full as a single amount at the earlier of:

(a) the latest draw down date permitted under the credit agreement being the potential source of the liability or guarantee; or

(b) in the case of a rolling credit agreement at the end of the initial period prior to the roll over of the agreement.

(m) In the case of shared equity agreements:

(i) the payments by consumers shall be deemed to occur at the latest date or dates permitted under the credit agreement;

(ii) percentage increases in value of the immovable property which secures the shared equity credit agreement, and the rate of any inflation index referred to in the agreement, shall be assumed to be a percentage equal to the higher of the current central bank target inflation rate or the level of inflation in the Member State where the property is located at the time of conclusion of the credit agreement or 0% if these percentages are negative.

## *ANNEX II*

### *European Standardised Information Sheet (ESIS)*

#### *PART A*

The text in this model shall be reproduced as such in the ESIS. Indications between square brackets shall be replaced with the corresponding information. Instructions for the creditor or, where applicable, credit intermediary on how to complete the ESIS are provided in Part B.

Wherever the words 'where applicable' [...] are indicated, the creditor shall [...] provide the information required if it is relevant to the credit agreement. Where the information is not relevant, the creditor shall delete the information in question or the entire section (for example, in cases where the section is not applicable). Where the entire section is deleted, the numbering of the ESIS sections shall be adjusted accordingly.

The information below shall be provided in a single document. The font used shall be clearly readable. Bold font, shading or larger font sizes shall be used for the information elements to be highlighted. All applicable risks warnings shall be highlighted.

## ESIS Model

<p><i>(Introductory text)</i></p>
<p>This document was produced for [name of consumer] on [current date].</p> <p>This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.</p> <p>The information below remains valid until [validity date], (where applicable) apart from the interest rate and other costs. After that date, it may change in line with market conditions.</p> <p>(Where applicable) This document does not constitute an obligation for [name of creditor] to grant you a loan.</p>
<p>1. Lender</p>
<p>[Name] [Telephone number] [Geographical address] (Optional) [E-mail address] (Optional) [Fax number] (Optional) [Web address] (Optional)[Contact person/point]</p> <p>(Where applicable information as to whether advisory services are being provided:) [("We recommend, having assessed your needs and circumstances, that you take out this mortgage"/"We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice" )]</p>
<p>1a. (Where applicable) Credit intermediary</p>
<p>[Name] [Telephone number] [Geographical address] (Optional) [E-mail address] (Optional) [Fax number] (Optional) [Web address] (Optional)[Contact person/point]</p> <p>(Where applicable [information as to whether advisory services are being provided]) [("We recommend, having assessed your needs and circumstances, that you take out this mortgage"/"We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice" )]</p> <p>[Remuneration]</p>

## 2. Main features of the loan

Amount and currency of the loan to be granted: [value][currency]

(Where applicable) "This loan is not in [national currency of the borrower]"

(Where applicable) "The value of your loan in [national currency of the borrower] could change.

(Where applicable) For example, if the value of [national currency of the borrower] fell by 20 % relative to [credit currency], the value of your loan would increase to [insert amount in national currency of the borrower]. However, it could be more than this if the value of [national currency of the borrower] falls by more than 20 %."

(Where applicable) The maximum value of your loan will be [insert amount in national currency of the borrower]."(Where applicable) You will receive a warning if the credit amount reaches [insert amount in national currency of the borrower. (Where applicable) You will have the opportunity to [insert right to renegotiate foreign currency loan or right to convert loan into [relevant currency] and conditions]

Duration of the loan: [duration]

[Type of loan]

[Type of applicable interest rate]

Total amount to be reimbursed:

This means that you will pay back [amount] for every [unit of the currency] borrowed.

(Where applicable) "This /part of this is an interest-only loan. You will still owe [insert amount of loan on an interest-only basis] at the end of the mortgage term."

(Where applicable) Value of the property assumed to prepare this information sheet: [insert amount]

(Where applicable) Maximum available loan amount relative to the value of the property [insert ratio] or Minimum value of the property required to borrow the illustrated amount [insert amount]

(Where applicable) [Security]

### 3. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is [APRC].

It comprises:

Interest rate [value in percentage or, where applicable, indication of a reference rate and percentage value of creditor's spread]

[Other components of the APRC]

Costs to be paid on a one-off basis

(Where applicable) You will need to pay a fee to register the mortgage. [Insert amount of fee where known or basis for calculation.]

Costs to be paid regularly

(Where applicable) This APRC is calculated using assumptions regarding the interest rate.

(Where applicable) Because [part of] your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to [scenario as described in Part B], the APRC could increase to [insert illustrative APRC corresponding to the scenario]

(Where applicable) Please note that this APRC is calculated on the basis that the borrowing rate remains at the level fixed for the initial period throughout the duration of the contract.

(Where applicable) The following costs are not known to the creditor and are therefore not included in the APRC: [Costs]

(Where applicable) You will need to pay a fee to register the mortgage.

Please make sure that you are aware of all other taxes and costs associated with your loan.

### 4. Frequency and number of payments

Repayment frequency: [frequency]

Number of payments: [number]

<p>5. Amount of each instalment</p>
<p>[Amount] [currency]</p> <p>(1) Your income may change. Please consider whether you will still be able to afford your [frequency] repayment instalments if your income falls.</p> <p>(2) (Where applicable) Because this/part of this is an interest-only loan you will need to make separate arrangements to repay the [insert amount of loan on an interest-only basis] you will owe at the end of the mortgage term. Remember to add any extra payments you will need to make to the instalment amount shown here.</p> <p>(3) (Where applicable) The interest rate on [part of] this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to [scenario as described in Part B] your payments could increase to [insert instalment amount corresponding to the scenario].</p> <p>(3a)(Where applicable) The value of the amount you have to pay in [national currency of the borrower] each [frequency of instalment] could change. (Where applicable) Your payments could increase to [insert maximum amount in national currency of the borrower] each [insert period] (Where applicable) For example, if the value of [national currency of the borrower] fell by 20 % relative to [credit currency] you would have to pay an extra [insert amount in national currency of the borrower] each [insert period]. Your payments could increase by more than this.</p> <p>(Where applicable) The exchange rate used for converting your repayment in [credit currency] to [national currency of the borrower] [...] will be the rate published by [name of institution publishing exchange rate] on [date] or will be calculated on [date] using [insert name of benchmark or method of calculation].</p> <p>(4) (Where applicable) [Details on tied savings products, deferred-interest loans]</p>
<p>6. (Where applicable) Illustrative repayment table</p>
<p>This table shows the amount to be paid every [frequency].</p> <p>The instalments (column [relevant no.]) are the sum of interest to be paid (column [relevant no.]), where applicable, capital paid (column [relevant no.]) and, where applicable, other costs (column [relevant no.]). (Where applicable) The costs in the other costs column relate to [list of costs]. Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed after each instalment.</p> <p>[Table]</p>

7. Additional obligations
<p>The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.</p> <p>[Obligations]</p> <p>(Where applicable) Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with.</p> <p>(Where applicable) Please note the [...] possible consequences of terminating at a later stage any of the ancillary services relating to the loan:</p> <p>[Consequences]</p>
8. Early repayment
<p>[...] You have the possibility to repay this loan early, either fully or partially.</p> <p>(Where applicable) [Conditions]</p> <p>(Where applicable) Exit charge: [insert amount or, where not possible, the method of calculation]</p> <p>(Where applicable) Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit [...] charge at that moment.</p>
8a. Flexible features
<p>(Where applicable) [Information on portability/subrogation] You have the possibility to transfer this loan [...] to another [lender][or] [property]. [Insert conditions]</p> <p>(Where applicable) You do not have the possibility to transfer this loan to another [lender] [or] [property]</p> <p>(Where applicable) [...] Additional features: [insert explanation of additional features listed in Part B and, optionally, any other features offered by the lender as part of the credit agreement not referred to in previous sections].</p>

9. Other rights of the borrower
<p>(0) (Where applicable) You have [length of reflection period] after [point in time when the reflection period begins] to reflect before committing yourself to taking out this loan. (Where applicable) Once you have received the credit contract from the creditor, you may not accept it before the end of [length of reflection period].</p> <p>(1) (Where applicable) For a period of [length of withdrawal period] after [point in time when the withdrawal period begins] you may exercise your right to cancel the agreement. [Conditions] [Insert procedure]</p> <p>(1a) (Where applicable) You may lose your right to cancel the agreement if, during that period, you buy or sell a property connected to this credit agreement.</p> <p>(2) (Where applicable) Should you decide to exercise your right of withdrawal [from the credit agreement], please verify whether you will remain bound by your other obligations relating to the loan [including the ancillary services relating to the loan [, referred to in Section 7].</p>
10. Complaints
<p>[...] If you have a complaint please contact [insert internal contact point and source of information on procedure]</p> <p>[...] (Where applicable) Maximum time for handling the complaint [period of time]</p> <p>[(Where applicable) If we do not resolve the complaint to your satisfaction internally,] you can also contact: [insert name of external body for out-of-court complaints and redress] (Where applicable) or you can contact FIN-NET for details of the equivalent body in your own country.</p>
11. Non-compliance with the commitments linked to the loan: consequences for the borrower
<p>[Types of non-compliance]</p> <p>[Financial and/or legal consequences]</p> <p>Should you encounter difficulties in making your [frequency] payments, please contact us straight away to explore possible solutions.</p> <p>(Where applicable) As a last resort, your home may be repossessed if you do not keep up with payments.</p>
(Where applicable) 12. Additional information ■
<p>(1) (Where applicable) [Indication of the law applicable to the credit contract].</p> <p>(Where the lender intends to use a language different from the language of the ESIS) Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] during the duration of the credit agreement.</p> <p>[Insert statement on right to be provided with or offered, as applicable, a draft credit agreement]</p>

12a. Supervisor

This lender is supervised by [Name(s), and web address(es) of supervisory authority/ies]

(Where applicable) This credit intermediary is supervised by [Name and web address of supervisory authority].

## PART B

### *Instructions to complete the ESIS*

In completing the ESIS, at least the following instructions shall be followed. Member States may however elaborate or further specify the instructions for completing the ESIS.

#### *Section 'Introductory text'*

- (1) The validity date [...] shall be properly highlighted. For the purpose of this section, the 'validity date' means the length of time the information, [e.g. the interest rate,] contained in the ESIS will remain unchanged and will apply should the creditor decide to grant the credit within this period of time. Where the determination of the applicable interest rate and other costs depends on the results of the selling of underlying bonds, the eventual interest and other costs may be different from that stated. In these circumstances only, the fact that the interest rate and other costs does not remain valid after the validity date of the lending conditions described in the ESIS shall be mentioned while indicating: "apart from the interest rate and other costs".

#### *Section '1. Lender'*

- (1) Name, telephone number, and geographical address [...] of the creditor shall refer to [...] the contact information that the consumer may use for future correspondence.
- (2) Information on the e-mail address, fax number, web address and contact person/point is optional.
- (3) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall indicate, where applicable, the name and geographical address of its representative in the Member State of residence of [...] the consumer. Indication of the telephone number, e-mail address and web address of the representative of the credit provider is optional.
- (4) Where section (1a) is not applicable, the creditor shall inform the consumer whether advisory services are being provided and on what basis using the wording in Part A.

#### *(Where applicable) Section '1a. Credit intermediary'*

Where the product information is being provided to the consumer by a credit intermediary, that intermediary shall include the following information:

- (1) Name, telephone number and geographical address of the credit intermediary shall refer to the contact information that the consumer may use for future correspondence.
- (2) Information on the e-mail address, fax number, web address and contact person/point is optional.

- (3) The credit intermediary shall inform the consumer whether advisory services are being provided and on what basis using the wording in Part A.
- (4) An explanation of how the credit intermediary is being remunerated. Where it is receiving commission from a creditor, the amount and, where different from the name in section 1, the name of the creditor shall be provided.

*Section '2. Main features of the loan'*

- (1) This section shall clearly explain the main characteristics of the loan, including the value and currency and the potential risks associated with the interest rate, including the ones referred to in point (8), and amortisation structure.
- (2) Where the credit currency is different from the national currency of the borrower, the creditor shall indicate that the consumer will receive a regular warning at least when the exchange rate fluctuates by more than 20% , where applicable the right to convert the currency of the credit agreement and/or to the possibility to renegotiate the conditions and any other arrangements available to the consumer to limit their exposure to currency risk. The creditor shall also indicate either where applicable the maximum amount that the consumer will have to pay back or if there is no maximum amount an illustration of the effect of a 20% fall in the value of borrower's national currency relative to the credit currency on the value of the loan.
- (3) The duration of the credit shall be [...] expressed in years or months, whichever is the most relevant. Where the duration of the credit can vary during the lifetime of the contract, the creditor shall explain when and under which conditions this can occur. Where the credit is open-ended, for example, for a secured credit card, the creditor shall clearly state that fact.
- (4) The type of loan shall be clearly indicated (e.g. mortgage loan, home loan, secured credit card, etc.). The description of the type of credit shall clearly indicate how the capital and the interest shall be reimbursed during the life of the credit (i.e. the amortisation structure), specifying clearly whether the credit agreement is on capital repayment or interest-only basis, or a mixture of the two.
- (5) Where all or part of the loan is an interest-only loan, a statement clearly indicating that fact shall be inserted prominently at the end of this section using the wording in Part A. "
- (6) This section shall also explain whether the [...] borrowing rate is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the interest rate variability, such as caps or floors.

The formula used to revise the borrowing rate and its different components (e.g. reference rate, interest rate spread) shall be explained. [The creditor shall also indicate, e.g. by means of a web address, where further information on the indices or rates used in the formula can be found, e.g. Euribor, Central Bank reference rate.]

- (7) If different borrowing rates apply in different circumstances, the information shall be provided on all applicable rates.
- (8) The 'total amount to be reimbursed' corresponds to the total amount payable by the consumer. It shall be shown as the sum of the credit amount and the total cost of the credit. Where the borrowing rate is not fixed for the duration of the contract, it shall be highlighted that this amount is illustrative and may vary in particular in relation with the variation in the borrowing rate.
- (9) Where the credit will be secured by a mortgage on the property or another [...] comparable security or by a right related to immovable property, the creditor shall draw the borrower's attention to this. Where applicable the creditor shall also indicate the assumed value of the property or other security used for the purpose of preparing this information sheet.
- (10) The creditor shall indicate, where applicable, either:
  - a) 'maximum available loan amount relative to the value of the property', indicating the loan-to-value ratio. This ratio is to be accompanied by an example in absolute terms of the maximum amount that can be borrowed for a given property value; or
  - b) the 'minimum value of the property required by the creditor to lend the illustrated amount'.
- (11) Where loans are multi-part loans (e.g. concurrently part fixed rate, part variable rate), this shall be reflected in the indication of the loan type and the required information shall be given for each part of the loan.

*Section '3. Interest rate' and other costs*

- (1) The reference to 'interest rate' corresponds to the borrowing rate or rates.
- (2) The interest rate shall be mentioned as a percentage value. Where the interest rate is variable and based on a reference rate the creditor may indicate the interest rate by stating a reference rate and a percentage value of creditor's spread. The creditor shall however indicate the value of the reference rate valid on the day of issuing the ESIS.

Where the interest rate is variable the information shall also include: (a) the assumptions used to calculate the APRC; (b) where relevant, the applicable caps and floors and (c) a warning that the variability could affect the actual level of the APRC. To attract the consumer's attention the font size used for the warning should be bigger and should figure prominently in the main body of the ESIS. The warning shall be accompanied by an illustrative example on the APRC. Where there is a cap on the borrowing rate, the example shall assume that the borrowing rate rises at the earliest possible opportunity to the highest level foreseen in the credit agreement. Where there is no cap the example shall illustrate the APRC at the highest borrowing rate in at least the last 20 years, or where the underlying data for the calculation of the borrowing rate is available for a period of less than 20 years the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the borrowing rate where applicable or the highest value of a benchmark rate specified by a competent authority or the EBA where the creditor does not use an external reference rate. Such requirement shall not apply to credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the creditor and the consumer. For credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the creditor and the consumer, the information shall include a warning that the APRC is calculated on the basis of the borrowing rate for the initial period. The warning shall be accompanied by an additional, illustrative APRC calculated in accordance with Article [12/14 paragraph 4, second subparagraph]. Where loans are multi-part loans (e.g. concurrently part fixed rate, part variable rate), the information shall be given for each part of the loan.

- (3) In the section on 'other components of the APRC' all the other costs contained in the APRC shall be listed, including one-off costs such as administration fees, and regular costs, such as annual administration fees. The creditor shall list each of the costs by category (costs to be paid on a one-off basis, costs to be paid regularly and included in the instalments, costs to be paid regularly but not included in the instalments), indicating their amount, to whom they are to be paid and at which moment. This does not have to include costs incurred for breaches of contractual obligations. Where the amount is not known, the creditor shall provide an indication of the amount if possible, or if not possible, how the amount will be calculated and specify that the amount provided is indicative only. Where certain costs are not included in the APRC because they are unknown to the creditor, this shall be highlighted.

Where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall, where possible, use those components; if a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumptions set out in Part II of Annex I, it should indicate that other drawdown mechanisms for this type of credit agreement may result in a higher APRC. Where the conditions for drawdown are used for calculating the APRC, the creditor shall highlight the charges associated with other drawdown mechanisms that are not necessarily the ones used in calculating the APRC.

- (4) Where a fee is payable for registration of the mortgage or comparable security that shall be disclosed in this section with the amount, where known, or where this is not possible the basis for determining the amount. Where the fees are known and included in the APRC the existence and amount of the fee shall be listed under "Costs to be paid on a one-off basis". Where the fees are not known to the creditor and therefore not included in the APRC the existence of the fee should be clearly mentioned in the list of costs which are not known to the creditor. In either case the standardised wording in Part A should be used under the appropriate heading.

#### *Section '4. Frequency and number of payments'*

- (1) Where payments are to be [...] made on a regular basis, the frequency of payments shall be indicated (e.g. monthly). Where the frequency of payments will be irregular, this shall be clearly explained to the borrower.
- (2) The number of payments indicated shall cover the whole duration of the credit.

#### *Section '5. Amount of each instalment'*

- (1) The loan currency and currency of the instalments shall be clearly indicated.
- (2) Where the amount of the instalments may change during the life of the credit, the creditor shall specify the period during which that initial instalment amount will remain [...] unchanged and when and how frequently afterwards it will change.
- (3) Where all or part of the loan is an interest-only loan, a statement clearly indicating that fact, shall be inserted prominently at the end of this section using the wording in Part A.

If there is a requirement for the consumer to take out a tied savings product as a condition for being granted an interest-only loan secured by a mortgage or another comparable security, the amount and frequency of any payments for this product shall also be provided.

- (4) Where the interest rate is variable the information shall also include a statement indicating that fact, using the wording in Part A and an illustration of a maximum instalment amount. Where there is a cap, the illustration shall show the amount of the instalments if the interest rate rises to the level of the cap. Where there is no cap, the worst case scenario shall illustrate the level of instalments at the highest borrowing rate in the last 20 years based on the highest value of any external reference rate used in calculating the borrowing rate where applicable. The requirement to provide an illustrative example shall not apply to credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the creditor and the consumer. Where loans are multi-part loans (e.g. concurrently part fixed rate, part variable rate), the information shall be given for each part of the loan, and in total.
- (5) (Where applicable) Where the credit currency is different from the borrower's national currency or where the credit is indexed to a currency which is different from the borrower's national currency, the creditor shall include numerical examples clearly showing how changes to the relevant exchange rate may affect the amount of the instalments using the wording in Part A. This shall be based on an example of a 20 % reduction in the value of the borrower's national currency together with a prominent statement that the instalments could increase by more than the amount assumed in this illustration. Where there is a cap which limits the variation to a lower amount than the 20% the maximum value of the payments in the borrower's currency shall be given instead and the statement on the possibility of further increases omitted.
- (6) Where the loan is fully or partly a variable rate loan and paragraph (5) also applies, the illustration in paragraph (5) shall be given on the basis of the instalment amount referred to in paragraph 1.
- (7) Where the currency used for the payment of instalments is different from the credit currency or where the amount of each instalment expressed in the borrower's national currency depends on the corresponding amount in a different currency, this section shall indicate the date at which the applicable exchange rate is calculated [...] and either the exchange rate or the basis on which it will be calculated and the frequency of their adjustment. Where applicable such indication shall include the name of institution publishing the exchange rate.
- (8) Where the loan is a deferred-interest loan under which interest due is not fully repaid by the instalments and is added to the loan amount outstanding, there shall be an explanation of: how and when deferred interest is added to the loan as a cash amount; and what the implications are for the consumer in terms of their remaining debt.

### *Section '6. Illustrative repayment table'*

- (1) This section shall be included where the loan is a deferred interest loan under which interest due is not fully repaid by the instalments and is added to the loan amount outstanding or where the borrowing rate is fixed for the duration of the credit agreement. Member States may provide that the illustrative repayment table is compulsory in other cases.

Where the borrower has the right to receive a revised amortisation table, this shall be indicated along with the conditions under which the borrower has that right.

- (1a) Member States may require that where the interest rate may vary during the lifetime of the credit, the creditor shall indicate, after the reference to the interest rate, the period during which that initial interest rate will remain [...] unchanged.
- (2) The table to be included in this section shall contain the following columns: 'repayment schedule' (e.g. month 1, month 2, month 3), 'amount of the instalment', 'interest to be paid per instalment', 'other costs included in the instalment' (where relevant), 'capital repaid per instalment' and 'outstanding capital after each instalment'.
- (3) For the first repayment year the information shall be given for each instalment and a subtotal shall be indicated for each of the columns at the end of that first year. For the following years, the detail can be provided on an annual basis. An overall total row shall be added at the end of the table and shall provide the total amounts for each column. The total cost of the credit paid by the borrower (i.e. the overall sum of the 'amount of the instalment' column) shall be clearly highlighted and presented as such.
- (4) Where the interest rate is subject to revision and the amount of the instalment after each revision is unknown, the creditor may indicate in the repayment table the same instalment amount for the whole credit duration. In such a case, the creditor shall draw that fact to the attention of the borrower by visually differentiating the amounts which are known from the hypothetical ones (e.g. using a different font, borders or shading). In addition, a clearly legible text shall explain for which periods the amounts represented in the table may vary and why. [...]

### *Section '7. Additional obligations'*

- (1) The creditor shall refer in this section to obligations such as the [...] obligation to insure the property, to purchase life insurance, to have a salary domiciled or to buy any other product or service. For each obligation, the creditor shall specify towards whom and by when the obligation needs to be fulfilled.
- (2) The creditor shall also specify the duration of the obligation, e.g. until the end of the credit agreement. The creditor shall specify for each obligation any costs to be paid by the consumer, which are not included in the APRC.
- (3) The creditor shall state whether it is compulsory for the consumer to hold any ancillary services to obtain the credit on the stated terms, and if so whether the consumer is obliged to purchase them from the creditor's preferred supplier or whether they may be purchased from a provider of consumer's choice. Where such possibility is conditional on the ancillary services meeting certain minimum characteristics, such characteristics shall be described in this section.

Where the credit agreement is bundled with other products the creditor shall state the key features of those other products and clearly state whether the consumer has a right to terminate the credit agreement and/or the bundled products separately, the conditions for and implications of doing so, and, where applicable, of the possible consequences of terminating the ancillary services required in connection with the credit agreement.

### *Section '8. Early repayment'*

- (1) The creditor shall indicate under what conditions the borrower can repay the loan early, either fully or partially [...].
- (2) In the section on exit charges the creditor shall draw the borrower's attention to any exit charge or other costs payable on early repayment in order to compensate the creditor and where possible indicate their amount. In cases where the amount of compensation would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the creditor shall indicate how the compensation will be calculated and provide the maximum amount that the charge might be, or where this is not possible, an illustrative example in order to demonstrate to the borrower the level of compensation under different possible scenarios.

### *Section '8a. Flexible features*

- (1) Where applicable, the creditor shall explain the possibility to and conditions for transferring the loan to another creditor or property.
- (2) (Where Appropriate) Additional Features: Where the product contains any of the features listed in point (4), this section must list these features and provide a brief explanation of: the circumstances in which the consumer can use the feature; any conditions attached to the feature; if the feature being part of the loan secured by a mortgage or comparable security means that the consumer loses any statutory or other protections usually associated with the feature; and the firm providing the feature (if not the creditor).
- (2a) If the feature contains any additional credit, then this section must explain to the consumer: the total amount of credit (including the credit secured by the mortgage or comparable security); whether the additional credit is secured or not; the relevant interest rates; and whether it is regulated or not. Such additional credit amount shall either be included in the original creditworthiness assessment or, if it is not, this section shall make clear that the availability of the additional amount is dependent on a further assessment of the consumer's ability to repay.
- (3) If the feature involves a savings vehicle, the relevant interest rate must be explained.
- (4) The possible additional features are: 'Overpayments/Underpayments' [paying more or less than the instalment ordinarily required by the amortisation structure]; 'Payment holidays' [periods where the consumer is not required to make payments]; 'Borrow back' [ability for the consumer to borrow again funds already drawn down and repaid]; 'Additional borrowing available without further approval'; 'Additional secured or unsecured borrowing' [in accordance with point 2a above]; 'Credit card'; 'Linked current account'; and 'Linked savings account'.
- (5) The creditor may also include any other features offered by the creditor as part of the credit agreement not mentioned in previous sections.

### *Section '9. Other rights of the borrower*

- (1) The creditor shall clarify the right(s) of e.g. withdrawal or reflection and where applicable other rights such as, portability (including subrogation) that exist, specify the conditions to which this/these right(s) is subject, the procedure that the borrower will need to follow in order to exercise this/these right(s), inter alia, the address to which the notification of withdrawal shall be sent, and the corresponding fees (where applicable).
- (2) Where a reflection period or right of withdrawal for the consumer applies this shall be clearly mentioned.
- (2) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the consumer shall be informed of the existence or absence of a right of withdrawal.

### *Section '10. Complaints'*

- (1) This Section shall indicate the internal contact point [name of the relevant department] and a means of contacting them to complain [Geographical address] or [Telephone number] or Contact person: [contact details] and a link to the complaints procedure on the relevant page of a website or similar information source.
- (2) It shall also indicate the name of the relevant external body for out-of-court complaints and redress and where using the internal complaint procedure is a precondition for access to that body, indicate that fact using the wording in Part A.
- (3) In the case of credit agreements with a consumer who is resident in another Member States, the creditor shall refer to the existence of FIN-NET ([http://ec.europa.eu/internal\\_market/fin-net/](http://ec.europa.eu/internal_market/fin-net/)).

### *Section '11. Non-compliance with the commitments linked to the credit: consequences for the borrower'*

- (1) Where non-observance of any of the borrower's obligations linked to the credit may have financial or legal consequences for the borrower, the creditor shall describe in this section the different [...] main cases (e.g. late payments/default, failure to respect the obligations set out in Section 7 'Additional obligations') and indicate where further information could be obtained.
- (2) For each of those cases, the creditor shall specify, in clear, easy comprehensible terms, the penalties or consequences to which they may give rise. Reference to serious consequences shall be highlighted.
- (3) Where the property used to secure the loan may be repossessed, if the borrower does not comply with the obligations, this section shall also include a statement indicating that fact, using the wording in Part A.

### *Section '12. Additional information'*

- (1) In the case of distance marketing, this section will include any clause stipulating the law applicable to the credit agreement and/or the competent court.
- (2) Where the creditor intends to communicate with the consumer during the life of the contract in a language different from the language of the ESIS that fact shall be included and the language of communication named. This is without prejudice to Article 3(1)(3)(g) of Directive 2002/65/EC.
- (3) The creditor or credit intermediary shall state the consumer's right to be provided with or offered, as applicable, a copy of the draft credit agreement at least once an offer binding on the creditor has been made.

*Section '12a. Supervisor*

- (1) The relevant authority or authorities for the supervision of the pre-contractual stage of lending shall be indicated.

## *ANNEX IIa*

### *Minimum knowledge and competence requirements*

1. The minimum knowledge and competence requirements for creditors', credit intermediaries' and appointed representatives' staff referred to in Article 7 and for persons involved in the management of credit intermediaries or appointed representatives referred to in Article 21(2c) and 21b(2) should include at least:
  - (a) appropriate knowledge of credit products within the scope of Article 2 and the ancillary services typically offered with them;
  - (b) appropriate knowledge of the laws related to the credit agreements for consumers, in particular consumer protection;
  - (c) appropriate knowledge and understanding of the property purchasing process;
  - (d) appropriate knowledge of security valuation;
  - (e) appropriate knowledge of organization and functioning of land registers;
  - (f) appropriate knowledge of the market in the relevant Member State;
  - (g) appropriate knowledge of business ethics standards;
  - (h) appropriate knowledge of the consumer's creditworthiness assessment process or where applicable, competence in assessing consumers' creditworthiness;
  - (i) appropriate level of financial and economic competency.
  
2. When establishing minimum knowledge and competence requirements Member States may differentiate between the levels and types of requirements applicable to the staff of creditors, the staff of credit intermediaries or appointed representatives and the management of credit intermediaries or appointed representatives

3. Member States shall determine the appropriate level of knowledge and competence should be determined on the basis of:
- (a) professional qualifications, e.g. diplomas, degrees, trainings, competency tests; or
  - (b) professional experience, which may be defined as a minimum number of years working in areas related to the origination, distribution or intermediation of credit products.

By [five years from entry into force of this Directive], the demonstration of appropriate knowledge and competence shall not be based solely on the methods listed in point b) in the previous paragraph.

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