



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from: General Secretariat of the Council  
to: Delegations  
Subject: Proposal for a Directive of the European parliament and of the Council on  
credit agreements relating to residential property  
- Presidency compromise proposal

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Delegations will find attached a new Presidency compromise proposal in view of the meeting of the Working Party on Financial Services on 25 October 2011.

Additions and changes to the text of the previous compromise (doc. 15354/11) are denoted by **bold underlining**.

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on credit agreements relating to 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<sup>1</sup>,

After transmission of the draft legislative act to the national Parliaments<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

Having regard to the opinion of the European Central Bank<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure<sup>6</sup>,

Whereas:

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<sup>1</sup> OJ C XX, XX, p. xx.

<sup>2</sup> OJ C XX, XX, p. xx.

<sup>3</sup> OJ C XX, XX, p. xx.

<sup>4</sup> OJ C XX, XX, p. xx.

<sup>5</sup> OJ C XX, XX, p. xx.

<sup>6</sup> OJ C XX, XX, p. xx.

- (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 immovable property. In 2007, it adopted a White Paper on the integration of EU mortgage credit markets<sup>7</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 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 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 immovable property and in the regulation and supervision of credit intermediaries and non-credit institutions providing credit agreements relating to 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>7</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 to potentially severe social and economic consequences. Many consumers have lost confidence in the financial sector and borrowers have found their loans increasingly unaffordable, result in defaults and forced sales rising. In view of the problems brought to light in the financial crisis and with a view to ensuring an efficient and competitive internal market, the Commission has proposed measures with regard to credit agreements relating to 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>8</sup>
- (4) A series of problems in EU mortgage markets relating to irresponsible lending and borrowing at the pre-contractual stage coupled with the potential scope for irresponsible behaviour by credit intermediaries and non-credit institutions have been identified. 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 an adequate 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 registration, authorisation and supervision regimes for credit intermediaries and non-credit institutions providing credit for 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.

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<sup>8</sup> *Driving European Recovery*, COM(2009) 114, 4.3.2009.

- (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, a harmonised Union legal framework needs to be established in a number of areas. It is also further necessary to establish harmonised standards in order to ensure that consumers looking for credit agreements relating to immovable property are able to do so confident in the knowledge that the institutions they interact with act in a professional and responsible manner.
- (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. The establishment of quality standards for services for the provision of credit necessarily involves the introduction of provisions regarding authorisation and prudential requirements.
- (7) For those areas not covered by this Directive, Member States should be free to maintain or introduce national legislation. Member States should be able to maintain or introduce national provisions, among other things, in areas such as contract law relating to the validity of credit agreements, including reflection periods or rights of withdrawal. They should also be able to maintain or introduce national provisions concerning property valuation, land registration, contractual information, post-contractual issues, and the handling of defaults.
- (7a) The provisions of this Directive apply irrespective of whether the creditor or credit intermediary is a legal person or a natural person. However, this Directive does not affect the right of Member States to limit, in conformity with Union law, the provision of credits relating to immovable property offered to consumers 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 to enter into other agreements. This Directive should therefore apply only to credit granted to consumers. Member States should, however, have the possibility to extend the scope of this Directive to natural or legal persons that are not consumers, notably micro-enterprises, as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises<sup>9</sup>.
- (9) The objective of this Directive is to ensure that all 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, or credits which are used to purchase a property in some Member States that are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC<sup>10</sup> which lays down rules at Union level concerning consumer credit agreements. This Directive covers also credits in excess of EUR 75 000 the purpose of which is renovation of immovable property. However, since the Directive 2008/48/EC does not exempt credits for the renovation of immovable property from its scope and some Member States already apply the Directive 2008/48/EC to such credit agreements, they should have the possibility to maintain consistency of their legal systems by deciding whether they apply this Directive or the Directive 2008/48/EC.

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<sup>9</sup> OJ L 124, 20.5.2003, p. 36.

<sup>10</sup> OJ L 133, 22.5.2008, p. 66.

- (9a) Since some Member States already apply the provisions of Directive 2008/48/WE to consumer credits the purpose of which is not to acquire rights in immovable property and which are secured by a mortgage or another comparable security on immovable property or by a right related to immovable property, such as consumption loans or credit cards, they should be able to maintain their current legislation instead of applying this Directive. However they may do so only provided that the scope of application of the Directive 2008/48/EC is not restricted to certain provisions only.
- (9b) Member States should be able to decide that some provisions of this Directive will not apply to certain types of credit agreements where the credit is granted by an employer to his employees under certain circumstances, as already provided in Directive 2008/48/EC or where a credit is granted to a restricted public under a statutory provision, on terms more favourable to consumers than those prevailing on the market.
- (10) This Directive should not apply to certain credit agreements that will eventually be repaid from the sale proceeds 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. Furthermore, the Directive should apply to those secured loans whose primary objective is to facilitate the purchase of an immovable property, including those loans that do not require the reimbursement of the capital or those whose purpose is to provide temporary financing between the sale of one immovable property and the purchase of another.

- (10a) The application of certain provisions of this Directive may be, upon the decision of the Member States, waived to persons with another professional activity, such as lawyers, property brokers, tax experts or others who in the course of their trade, business or profession merely introduce a consumer to a creditor, provided that the purpose of that activity is not to help a consumer to conclude a credit agreement. Such persons may not be required to be authorised and registered, nor to provide information specified in this Directive for the pre-contractual stage.
- (11) For reasons of legal certainty, the Union legal framework in the area of credit agreements relating to immovable property should be consistent with and complementary to other Union acts, particularly in the areas of consumer protection and prudential supervision. Essential definitions of terms such as 'consumer', 'creditor', 'credit intermediary', 'credit agreements' and 'durable medium' as well as key concepts used in standard information to designate the financial characteristics of the credit, such as the total amount of credit, the cost of the credit to the consumer, the total amount payable by the consumer, the annual percentage rate of charge and the 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 immovable property. Member States should therefore ensure in the transposition of this Directive that there is a consistency of application and interpretation.

- (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, notably the notions that information included in advertising concerning credit agreements relating to 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 of the credit agreement 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 authorisation, registration 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<sup>11</sup> which requires that the 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 immovable property given the significance of the financial commitment for the consumer. Furthermore, as foreseen in Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (Doorstep Selling Directive)<sup>12</sup>, consumers should have a right of withdrawal for credit agreements relating to immovable property concluded off-premises and should be informed about the existence of that right.

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<sup>11</sup> OJ L 271, 9.10.2002, p. 16.

<sup>12</sup> OJ L 372, 31.12.1985, p. 31.

- (14) At the same time, it is important to take into consideration the specificities of credit agreements relating to immovable property which justify a differentiated approach. Given the nature and the possible consequences of a credit agreement relating to immovable property for the consumer, personalised pre-contractual information and, if assessed as appropriate by the Member States, also advertising materials, should include specific risk warnings, for instance about 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.

- (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<sup>13</sup> and Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC<sup>14</sup>. In particular, prudential requirements for intermediaries should be broadly in line with Directive 2002/92/EC in order to simplify the process of establishing as a credit intermediary and operating cross-border.
- (16) The applicable legal framework should give consumers the confidence that creditors and credit intermediaries are acting in the best interests of the consumer. For example that could imply among other things that creditors shall 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 shall 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.

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<sup>13</sup> OJ L 9, 15.1.2003, p. 3.

<sup>14</sup> OJ L 145, 30.4.2004, p. 1.

**(16a) While this Directive should require relevant knowledge and competence to be proven at the level of the institution, Member States should be free to introduce or maintain such requirements applicable to individual natural persons. However Member States shall ensure that natural persons working for creditors or credit intermediaries having contacts with consumers and engaged in the activities covered by this Directive, possess adequate level of knowledge and competence in order to ensure a high level of professionalism. Member States should lay down principles to establish knowledge and competence requirements, taking into account the minimum knowledge and competence requirements set out in this Directive. When establishing those requirements Member States may differentiate between both the levels and types of knowledge and competence requirements applicable to the staff of creditors, the staff of credit intermediaries and the management of credit intermediaries. Member States may also differentiate the levels of minimum knowledge requirements according to the involvement of creditors and credit intermediaries in carrying out particular services or processes. For instance where some of the services or processes being subject to the minimum knowledge and competence requirements as specified in this Directive are typically not performed by creditors or credit intermediaries (outsourcing), their staff should possess only the basic knowledge of such services or processes to be in a position to explain the main characteristics thereof to the consumer.**

(16b) The way the creditors and credit intermediaries remunerate their staff should constitute one of the key aspects of ensuring consumer confidence in financial sector. This Directive provides the rules for staff remuneration, with the aim to eliminate cases in which the employees are rewarded according to the number or type of credit agreements they conclude and ancillary services they offer to the consumer with no explicit consideration of consumer's interests and needs.

**(16c) This Directive provides for harmonised rules as regards the fields of knowledge and competence that creditors' and credit intermediaries' staff should possess in relation to the 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 relating to immovable property and a list of items to be included in advertisements and marketing materials directed at consumers 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 contain information on the cost of credit.

(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 this respect, general information plays an important role in educating the consumer in 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.

- (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 with a credit intermediary.
- (20) The Commission Recommendation 2001/193/EC of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans<sup>15</sup> endorsed the Voluntary Code agreed in 2001 between associations and federations representing lenders and consumers and which contains a European Standardised Information Sheet (ESIS). This provides personalised information for the borrower, on the credit agreement being provided. In its Recommendation, the Commission committed itself to monitoring compliance with the Code as well as its effectiveness, and to considering submitting a proposal for binding legislation to the European Parliament and the Council should the terms of the Recommendation not be fully complied with. Evidence collected by the Commission has since 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 'external complaint body' and 'risks and warnings', should be added.

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<sup>15</sup> OJ L 69, 10.3.2001, p. 25.

- (20a) Consumers should receive personalised 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. In particular when binding offer is provided to the consumer, it shall 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 by means of the ESIS. Credit agreement should only be concluded if the consumer has had sufficient time to compare the offers, assess their implications and take an informed decision on whether to accept an offer, regardless of the means of conclusion of the contract. In order to achieve this objective Member States may regulate the period of time regarded as sufficient for the consumer to compare the offers, assess their implications and take an informed decision on whether to accept an offer.
- (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 credit intermediaries should further disclose to consumers information on the amounts of commissions payable by creditors for whom they are acting. When it is not possible to specify the amount of the commission credit intermediary shall inform the consumer of the method of its calculation and disclose its level. Such information may be provided to the consumer as a integral part of the pre-contractual information as specified in preceding recitals. 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. The relevant information, as well as the essential characteristics of the products proposed, should therefore be explained to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. In order to determine the level of explanations to be given to the consumer and adjust such explanations accordingly the creditors and, where applicable, credit intermediaries should carry out the assessment of the consumer's level of knowledge of and experience with credit.
- (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 ensure the comparability of information relating to annual percentage rates of charge throughout the Union. 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, except for notarial costs. It should therefore include interest, commissions, taxes, fees for credit intermediaries and any other fees as well as the cost of insurance or other ancillary products, where these are obligatory in order to obtain the credit on the terms and conditions marketed. As the annual percentage rate of charge can at the pre-contractual 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. Given the complexities of calculating an annual percentage rate of charge (for instance, for credits based on variable interest rates or non-standard amortisation) and in order to accommodate product innovation, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the

Commission to amend or specify the method of calculation of the annual percentage rate of charge. The definition of and methodology used for calculating the annual percentage rate of charge in this Directive should be the same as those in Directive 2008/48/EC in order to facilitate consumer understanding and comparison. Those definitions and methodologies may, however, differ in the future should Directive 2008/48/EC be amended at a later date.

- (24) An assessment of creditworthiness should take into consideration all necessary factors that could influence a consumer's ability to repay the credit over its lifetime including, but not limited to, the consumer's income, savings, assets, regular expenditures, debts and other financial commitments, credit score, past credit history, ability to handle interest rate adjustments, and reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement. Additional provisions may be necessary to further elaborate on the different elements that may be taken into consideration in a creditworthiness assessment. Member States may issue guidance on the method and criteria to assess a consumer's creditworthiness, for example by setting limits on loan-to-value or loan-to-income ratios. If a consumer is subsequently unable to meet his debt obligation relating to the credit agreement after a positive creditworthiness assessment, this should not automatically mean that the creditworthiness assessment was conducted improperly. The provisions of this Directive are without prejudice to the national and Union regulations on the sound and prudent management of creditors.
- (26) Consumers should provide all available relevant information on their financial situation and personal circumstances to the creditor or intermediary in order to facilitate the creditworthiness assessment. The consumer should not, however, be penalised where he is not in a position to provide certain information or assessments of the future evolution of his financial situation. Member States should provide for penalties in particular cases where consumers knowingly provide incomplete or incorrect information in order to obtain a positive creditworthiness assessment where the complete and correct information would have resulted in a negative creditworthiness assessment, and are subsequently unable to fulfil the conditions of the agreement, and shall take all measures necessary to ensure that they are implemented.

- (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 in order to identify and assess the potential for default. In the event that a potential default is evident or objectively demonstrated, the creditor should contact the consumer to discuss the different options to avoid the possibility of default, such as a rescheduling of the loan. In any event, the creditor should not consider terminating the credit without having first explored with the consumer all possible alternatives to avoid default. 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>16</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.
- (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 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.

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<sup>16</sup> OJ L 281, 23.11.1995, p. 31.

- (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 main reasons for such rejection, including the explanation whether the rejection was based on an automated decision or on systematic methods such as credit scoring systems. 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) **In principle advice constitutes separate service from granting of credit and from the credit intermediation services. Therefore in** order to be in a position to understand the nature of the services provided to them, consumers should be made aware whether the advice can be provided to them by the creditor or credit intermediary and of what constitutes advice. **However Member States may provide for an obligation to provide advice as a part of the credit granting process. In such case Member States should be free to determine the cost of the obligatory advice services to the consumer. .**

**(31a)** Those providing advice should comply with general standards in order to ensure that the consumer is presented with a range of products suitable for his needs and circumstances. That service should be based on a fair and sufficiently wide-ranging analysis of the products on offer, in case advice is provided by creditors and tied credit intermediaries, or products available on the market, in case advice is provided by credit intermediaries, that are not tied. **The obligation to consider a sufficiently large number of credit agreements should not prohibit creditors or credit intermediaries specialising in niche product(s). In this context, when providing advice, specialised creditors or credit intermediaries should ensure that they consider the credit agreements available on that particular niche market. In any case creditors and credit intermediaries shall disclose to the consumer the range of credit agreements under consideration in order to ensure that the consumer understands the basis for a recommendation.**

**(31b)** **The provision of advice should be based** on a close examination of the consumer's financial situation, preferences and objectives. Such an assessment should be based on up-to-date information and reasonable assumptions on the consumer's circumstances during the lifetime of the loan. Member States may clarify how the suitability of a given product for a consumer should be assessed in the context of the provision of advice. Member States may also decide to make advice obligatory service in the course of credit granting process. In such cases advice should be provided to consumers free of charge.

(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. 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, either by legislation or by means of contractual clauses, that consumers have a statutory or contractual 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, whether fixed or variable, restrictions with regard to the circumstances under which the right may be exercised. Member States could 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 any event if 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 special interest on the part of the consumer. Such special interest may for example occur in case of divorce or unemployment. Where a Member State chooses to lay down such conditions, these should not make the exercise of the right excessively difficult or onerous for the consumer.

**(32a) In order to ensure full transparency, the consumer should be provided with information concerning the borrowing rate both at a pre-contractual and contractual stage. During the contractual relationship, the consumer should further be informed of changes to the variable borrowing rate. Member States are free to maintain or introduce prohibitions on unilateral changes to the borrowing rate by the creditor**

- (33) Although credit intermediaries play a central role in the distribution of credit agreements relating to 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 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) Credit intermediaries should be registered with the competent authority of **their home** Member State, provided that they have been authorised in accordance with strict professional requirements in relation to their competence, good repute, and professional indemnity cover. With a view to promoting consumer confidence in credit intermediaries, Member States should ensure that authorised credit intermediaries are subject to ongoing and thorough supervision by their home Member State competent authority. Such requirements should apply at least at the level of the institution, however, Member States may clarify whether such requirements for authorisation and subsequent registration apply to individual employees of the credit intermediary. 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 registered in 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. The provisions of this Directive are without prejudice to the national regulations prohibiting credit intermediaries being tied to more than one creditor or to a group.

**(34a) In order to ensure that the credit intermediaries operating on the basis of European passport do not opt for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State, within the territory of which it intends to carry on or does carry on the greater part of its activities, a credit intermediary which is a legal person should be authorised in the Member State in which it has its registered office. A credit intermediary which is not a legal person should be authorised 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** registration and authorisation requirements 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 register and authorise 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.

(36) In order to ensure a level playing field between creditors and to promote financial stability, and pending further harmonisation, Member States should ensure that appropriate measures are in place for the authorisation, registration and supervision of non-credit institutions providing credit agreements relating to immovable property. In accordance with the principle of proportionality, this Directive should not lay down detailed conditions for the authorisation, registration 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)<sup>17</sup>; 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 penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of Member States, the penalties 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 immovable property and consumers as well as between credit intermediaries and consumers.
- (39) In order to take account of developments in the markets for credit relating to immovable property or in the evolution of credit products as well as economic developments, such as inflation, and in order to further specify on how to address 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 particular, **in** order to take account of developments in the markets for credit relating to immovable property, including the range of products available, the power to adopt acts should be delegated to the Commission in order for it to amend the content and format of the European Standardised Information Sheet (ESIS) **and** the formula and the assumptions used to calculate the annual percentage rate of charge. In order to take account of economic developments, such as inflation and developments in markets for credit agreements related to immovable property, the power to adopt acts should be delegated to

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<sup>17</sup> OJ L 177, 30.6.2006, p. 1.

the Commission to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee with regard to credit intermediaries by establishing regulatory technical standards.

- (41a) In the Declaration (No 39) on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the Conference took note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of the draft delegated acts in the financial services area, in accordance with its established practice.
- (42) In order to facilitate the ability of credit intermediaries to provide their services on a cross-border basis, for purposes of cooperation, information exchange and dispute resolution between competent authorities, the competent authorities responsible for the authorisation and supervision 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)<sup>18</sup> **or other 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.**
- (43) When preparing and drawing-up delegated acts, the Commission should also ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council. The European Parliament and the Council should have two 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 one month 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.

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<sup>18</sup> OJ L 331, 15.12.2010, p. 12.

- (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 immovable property. The Commission should therefore review the Directive five years after the entry into force. The review should include, among other things, an analysis of the evolution of the market for non-credit institutions providing credit agreements relating to immovable property and an assessment on the need for further measures, including a passport for such non-credit institutions, an examination of the necessity to introduce rights and obligations with regard to the post-contractual stage of credit agreements, and an assessment of whether an extension of the scope of this Directive to include lending to small companies is warranted.
- (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 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) In order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market this Directive lays down the provisions that shall be subject to maximum harmonisation. Consumers should benefit from maximum harmonisation when advertising, general information, pre-contractual information by means of the ESIS and annual percentage rate of charge is concerned, as well as in terms of authorisation and registration of credit intermediaries. 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 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 specified as being subject to maximum harmonisation. Such targeted approach is needed in order not to bring about an adverse effect on the provision of credit agreements relating to immovable property.

- (46) In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>19</sup>, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (47) The European Central Bank and the Committee of the Regions delivered an opinion on this Directive respectively on ... and ...- The European Data Protection Supervisor was consulted on...

HAVE ADOPTED THIS DIRECTIVE:

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<sup>19</sup> OJ C 321, 31.12.2003, p. 1.

## Chapter 1

### Subject matter, scope, definitions and competent authorities

#### *Article 1*

##### *Subject matter*

This Directive lays down a framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning credit agreements for consumers relating to immovable property and on the prudential and supervisory requirements for credit intermediaries and creditors.

#### *Article 2*

##### *Scope*

1. This Directive shall apply to the following credit agreements:
  - (a) Credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property.
  - (b) Credit agreements the purpose of which is to acquire or retain rights in land or immovable property.
  - (c) Credit agreements in excess of 75.000 EUR the purpose of which is the renovation of the immovable property a person owns or aims to acquire, unless a Member State applies the provisions of the Directive 2008/48/EC to such credit agreements and the scope of application of that Directive is not limited to certain provisions only.
2. This Directive shall not apply to:
  - (a) Credit agreement where the creditor:

- contributes a lump sum and/or periodic payments and/or other forms of credit disbursement in return for a sum deriving from the future sale of an immovable property and/or a right relating to immovable property and
- 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);

[(b) credit agreements which are the outcome of a settlement reached in court or before another statutory authority;]

(c) credit agreements where the credit is granted free of interest and without any other charges except those that recover costs for activities related to the securing of the loan.

3. Member States may decide that some or all of Articles 5(2), 6, 9, 14 of this Directive shall not apply to:

- a) 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;
- b) credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or for free of interest 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.

- 3a. Member States may waive the application of Articles 9, 9a, 10, 11, 19 to suppliers of goods or services who in the course of their trade, business or profession, acting in an ancillary capacity, merely introduce a consumer to a creditor without engaging in any credit activity. This is without prejudice to the creditor's obligation to ensure that the consumer receives the pre-contractual information referred to in this Directive.

*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 meaning 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 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 within the meaning of Article 2 and/or;

- (ii) assists consumers by undertaking preparatory work in respect of credit agreements within the meaning of Article 2 other than as referred to in point (i) and/or;
  - (iii) concludes credit agreements within the meaning of Article 2 with consumers on behalf of the creditor.
- (f) 'Tied credit intermediary' means any credit intermediary who acts on behalf of and under the full responsibility of:
- only one creditor or one group, or
  - limited number of creditors or groups.
- (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<sup>20</sup>.
- (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 any natural person working for the creditor or credit intermediary having contacts with consumers and who are engaged in the activities covered by this Directive.
- (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.

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<sup>20</sup> OJ L 193, 18.7.1993, p. 1.

- (l) 'Total amount payable by the consumer' means the total amount payable by the consumer as defined in Article 3(h) 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 10(1)(d) and Article 12(2).
- (n) 'Borrowing rate' means the borrowing rate as defined in Article 3(j) 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 Article 3(m) 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.
- (s) 'Advice' means the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements.
- (t) 'Competent authority' means an authority designated as competent by a Member State in accordance with article 4.

*Article 4*  
*Competent authorities*

1. Member States shall designate the competent authorities empowered to ensure enforcement of this Directive and shall ensure that they are granted all the powers necessary for the performance of their duties.

Member States shall inform the Commission of the designation of the competent authorities, indicating any division of the respective duties between different competent authorities.

2. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.
3. Member States shall ensure that the authorities designated as competent for ensuring the enforcement of Articles 6, 19, 20, 21 and 22 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) 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.

## Chapter 2

### Conditions applicable to creditors and credit intermediaries

#### *Article 5*

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

1. Member States shall require that, when granting, intermediating or advising on credit and, where appropriate, ancillary services to consumers, the creditor or the credit intermediary acts honestly, fairly and professionally in accordance with the best interests of the consumer.
2. Member States shall ensure that the manner in which creditors remunerate their staff and the credit intermediaries and the manner in which credit intermediaries remunerate their staff do not impede compliance with the obligation to act in accordance with the best interests of the consumer, as referred to in paragraph 1.

#### *Article 6*

##### *Minimum knowledge and competence requirements for staff*

1. Member States shall ensure that the staff of creditors and of credit intermediaries possess an appropriate level of knowledge and competence in relation to the offering or granting of credit agreements within the meaning of Article 2, or the activity of credit intermediation as defined in Article 3(e). Where the conclusion of a credit agreement includes an ancillary service related to it, they shall also possess appropriate knowledge and competence in relation to that ancillary service. In particular, where the ancillary service is an insurance or investment service, they shall possess appropriate knowledge and competence in order to satisfy the requirements set out in Article 19 of Directive 2004/39/EC and Article 4 of Directive 2002/92/EC.

2. Member States shall ensure that the minimum competence requirements referred to in paragraph 1 are established in accordance with the principles set out in Annex III.
3. The home Member State shall be responsible for establishing the minimum competence requirements applicable to the staff of a creditor or credit intermediary authorised and providing services within its jurisdiction.

**Where a creditor or credit intermediary authorised in a home Member State provides its services within the territory of another Member State (s):**

**(i) through a branch, the host Member State shall be responsible for establishing and monitoring compliance with 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 and monitoring compliance with the minimum knowledge and competence requirements applicable to the staff, except for those requirements referred to in Annex III paragraph 1(a), 1(b), 1(c) and 1(e), which shall be established and monitored by the host Member State.**

4. **Member States shall ensure that creditors and credit intermediaries are supervised on an ongoing basis in order to assess whether their staff comply with Annex III.**

## Chapter 3

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

#### *Article 6a*

##### *Information provision free of charge to the consumer*

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 7*

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

1. Member States shall require that any advertising and marketing communications concerning credit agreements within the meaning of Article 2 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.
2. Member States may provide that advertising concerning credit agreements which does not indicate an interest rate or any figures relating to the cost of credit to the consumer, nevertheless includes an indication of the annual percentage rate of charge. In such cases, Member States may provide that the standard information requirements in paragraph 2 do not apply.

*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.
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;
  - (b) the indication that the product advertised is a credit agreement and, where applicable, it should be secured either by a mortgage or another comparable security commonly used in a Member State on immovable property or by a right related to 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;
  - (f) the duration of the credit agreement;
  - (g) if applicable, the amount of the instalments;
  - (h) if applicable, the total amount payable by the consumer;
  - (ha) if applicable, the number of instalments;

The information listed in point (c) to (ha) shall be specified by means of 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 mentioned in paragraph 2 and 3 shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising and marketing.
5. Where considered appropriate, Member States may require the inclusion of a warning concerning specific risks associated with credit agreements.
6. This Article shall be without prejudice to Directive 2005/29/EC.

#### *Article 9*

##### General information

1. Member States shall ensure that general information about credit agreements is made available by creditors or, where applicable, by [tied] credit intermediaries at all times on paper or in electronic form.

Such general information shall include at least the following:

- (a) the identity and the geographical address of the issuer of the information;
- (b) the purposes for which the credit may be used;
- (c) the forms of surety;
- (d) the possible duration of the credit agreements;
- (e) in case 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;

- (f) borrowing rate, , indicating whether fixed or variable, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;
- (g) indicative and 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) particulars of any charges included in the total cost of a credit to the consumer;
- (h) the different options available for reimbursing the credit to the creditor (including the indicative and representative example of the number, frequency and amount of the regular repayment instalments);
- (i) a description of the conditions attached to early repayment;
- (j) if applicable, information on the measures required from the consumer regarding the valuation of the property and any related costs to the consumer;
- k) description 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;
- l) a warning concerning the risk of losing the immovable property in the event of non-compliance with the commitments linked to the credit agreement.
- m) Member States may oblige the creditors to include other types of warnings which are relevant in a Member State.

*Article 9a*

*Pre-contractual information*

1. Member States shall ensure that the creditor and, where applicable, the credit intermediary, provides the consumer with the personalised information needed to compare the credit products available on the market, assess their implications and take an informed decision on whether to conclude a credit agreement:
  - without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 15 and
  - in good time before the consumer is bound by any credit agreement or offer.

Such 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.

2. Member States shall ensure that when a binding offer is provided to the consumer, it shall be accompanied by an ESIS, if:
  - none has been provided to the consumer previously or
  - an ESIS has already been provided to the consumer and the characteristics of the offer are different from the information contained in the ESIS.
3. The creditor and, where applicable, the credit intermediary 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.
- 3a. Any additional information which the creditor or where applicable, the credit intermediary, may provide to the consumer or is required to provide to the consumer by national legislation in fields not covered by this Directive shall be given in a separate document which may be annexed to 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 Article 3(3)(b) 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 the creditor or, where applicable, credit intermediary, upon request of the consumer, provides the consumer with a copy of the draft credit agreement free of charge. This provision shall not apply in cases where the creditor is unwilling, at the time of the request, to proceed to the conclusion of the credit agreement with the consumer.
6. To take into account market developments and the evolution of credit products, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to amend the content and format of the ESIS set out in Annex II.

In particular, such delegated acts shall, where necessary:

- (a) delete any of the information items laid down in Annex II;
- (c) make additions to the list of information items laid down in Annex II;
- (d) amend the presentation of the contents of the ESIS as laid down in Annex II;
- (e) elaborate on the instructions for the completion of the ESIS as laid down in Annex II.

## *Article 10*

### *Information requirements concerning credit intermediaries*

1. Prior to the performance of any of the services listed in Article 3(e) and, if applicable prior to the conclusion of a contract on the provision of such services, a credit intermediary 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 number of registration, the register in which it has been included and the means for verifying such registration;
  - (c) the extent of its powers, in particular whether it works exclusively with one or more creditors or as an independent credit intermediary. In case a credit intermediary works exclusively with one or more creditors it shall provide the names of the creditor(s) for which it is acting;
  - (d) the fee, where applicable, payable by the consumer to the credit intermediary for its services and to be agreed between the consumer and the credit intermediary;
  - (e) the procedures allowing consumers or other interested parties to register complaints about credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;
  - (f) where applicable, the existence and amount of the commission(s) payable to them by the creditors or third parties. Where the amount cannot be ascertained at the time of disclosure the credit intermediary shall inform the consumer of the method of calculating the amount or shall give him an indication of their levels.

2. In cases where the credit intermediary charges a fee and also receives commission from the creditor, it 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:
  - (a) is agreed between the consumer and credit intermediary on paper on another durable medium prior to the conclusion of the contract on provision of services; and
  - (b) is communicated to the creditor by the credit intermediary, for the purpose of calculating of the annual percentage rate of charge.

### *Article 11*

#### *Adequate explanations*

1. Member States shall ensure that creditors and, where applicable, credit intermediaries 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, where appropriate by explaining at least:
  - (a) the pre-contractual information to be provided in accordance with:
    - Articles 9a in case of creditors,
    - Articles 9a and 10 in case of credit intermediaries.
  - (b) the essential characteristics of the products proposed
  - (c) the consequences the concluding of the credit agreement may have on the consumer, including the consequences of default in payment by the consumer.

2. Adequate explanations shall include the provision of personalised information on the characteristics of the credits on offer, without however formulating any recommendation. Member States may adapt the manner by which and the extent to which such assistance 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, equating, 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, shall be calculated in accordance with the mathematical formula set out in Annex I.
2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined excluding any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement.

Where the opening of an account is obligatory in order to obtain the credit, the costs of maintaining such an account, the costs of using a means of payment for both payment transactions and drawdowns on that account, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer, unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer..

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 at the level set at the signature of the contract.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to amend the formula and the assumptions used to calculate the annual percentage rate of charge as set out in Annex I.

The Commission shall, when adopting such delegated acts, amend, where necessary, the formula or assumptions laid down in Annex I, in particular if the 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 no longer adapted to the commercial situation on the market.

*Article 13*

Deleted.

## Chapter 5

### Creditworthiness assessment

#### *Article 14*

#### *Obligation to assess the creditworthiness of the consumer*

1. Member States shall ensure that, before the conclusion of the credit agreement, creditors carry out a thorough creditworthiness assessment. **In making the creditworthiness assessment the creditor shall take into consideration all necessary factors that could influence the prospect for the debt obligations resulting from the credit agreement to be met over the lifetime of the credit agreement. However, in this context, Member States shall ensure that any reliance on an increase in the value of the property over the lifetime of a credit agreement as a means to meet the debt obligations is prohibited.** That assessment shall be carried out on the basis of the necessary information, obtained by the creditor or, where applicable, the credit intermediary from the consumer and from relevant internal or external sources and shall respect the requirements with regard to necessity and proportionality set out in Article 6 of Directive 95/46/EC.
  - 1a. Member States shall ensure that credit intermediaries submit the **necessary** information obtained from the consumer to the relevant creditor to enable the creditworthiness assessment to be carried out.
  - 1b. Member States shall ensure that creditors establish appropriate processes to assess the consumer's creditworthiness. These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.
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 resulted from the credit agreement are likely to be met** in the manner required under **that** agreement.

- (b) Where the credit application is rejected on the basis of a negative creditworthiness assessment for the consumer, the creditor informs the consumer **without delay** of the main reasons for such rejection.
  - (c) In accordance with Article 10 of Directive 95/46/EC, the creditor informs the consumer in advance that a database is to be consulted.
  - (d) Where the credit application is rejected on the basis of the result of consultation of a database, the creditor informs the consumer **without delay** of the result of the consultation, the name of the database that was consulted as well as of its controller and of the consumer's right to access and, where necessary, to rectify his data in that database. The information shall be provided unless the provision of such information is prohibited by other Union legislation or is contrary to objectives of public policy or public security.
3. Member States shall ensure that, where the parties consider increases in the total amount of credit extended to the consumer after the conclusion of the credit agreement, the financial information at the disposal of the creditor concerning the consumer is updated and the consumer's creditworthiness re-assessed before any significant increase in the total amount of credit is granted.

#### *Article 15*

##### *Disclosure obligation on the part of the consumer*

1. Consumers shall provide creditors and, where applicable, credit intermediaries **in the course of the credit application process** with complete and correct information on their financial situation and personal circumstances **as far as this information is necessary to conduct a proper creditworthiness assessment** . That information should be supported, when necessary, by documentary evidence from independently verifiable sources.

2. As regards the information to be provided by the consumer in order for the creditor to be able to conduct a thorough assessment of the consumer's creditworthiness and make a decision on whether to grant the credit, Member States shall ensure that creditors clearly specify, at the pre-contractual phase, the information that the consumer needs to provide, including independently verifiable evidence where necessary. Member States shall also ensure that creditors state the exact timing by which consumers are required to provide such information.

In this context, the creditor or credit intermediary shall inform the consumer that the necessary information must be provided completely and correctly. Furthermore, the creditor or credit intermediary shall warn the consumer that it is not possible to carry out a creditworthiness assessment and therefore that the credit may not be granted, if the consumer does not provide the information requested for. 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 the non-discriminatory access for all creditors from all Member States to databases used in that Member State for assessing the creditworthiness of consumers and for monitoring consumer's compliance with the credit obligation over the life of the credit agreement. Such databases comprise databases operated by private credit bureaux or credit reference agencies and 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

### Advice

#### *Article 17*

#### *Advice standards*

1. For the purpose of this Directive advice constitutes a separate service from the granting of a credit and from the services specified in art. 3(e).
2. Member States may **provide for an obligation for** creditors and **tied** credit intermediaries to provide advice **as a part of the** credit granting process. In such case, **Member States may determine the cost, if any, for the provision of** advice.
3. Member States shall ensure that the creditor or credit intermediary informs the consumer, in the context of a given transaction:
  - (a) whether or not advice is being or can be provided to **the consumer, unless it is obligatory, as specified in paragraph 2,**
  - (b) **where advice is provided, of the range of credit agreements being considered so that the consumer can understand whether the recommendation is being made on the basis of a consideration of the creditor or credit intermediary's own product range or on the basis of a consideration of a large number of products available on the market;**
  - (c) **where** applicable, the fee payable by the consumer for the provision of advice. This may be undertaken through the provision of additional pre-contractual information.
3. Where advice is provided to consumers, Member States shall ensure, in addition to the requirements set out in Articles 5 and 6, that:

- (a) **creditors and credit intermediaries obtain 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 on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.**
- (b) creditors and tied credit intermediaries consider a sufficient large number of credit agreements in their product range and recommend **a** suitable credit agreement for the consumer's needs, financial situation and personal circumstances,
- (c) not tied credit intermediaries consider a sufficiently large number of credit agreements available on the market and recommend **a** suitable credit agreement for the consumer's needs, financial situation and personal circumstances;

## Chapter 8

### Information and rights concerning credit agreements

#### *Article 18*

#### *Early repayment*

1. Member States shall ensure that the consumer has a statutory or contractual right to discharge fully or partially his obligations under a credit agreement prior to the expiry of that agreement. In such cases, he shall be entitled to a reduction in the total cost of the credit, such a 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 restrictions with regard to the circumstances under which the right may be exercised. 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 any event, if 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 special interest on the part of the consumer.

Where a Member State lays down such conditions, these shall not make the exercise of the right referred to in paragraph 1 excessively difficult or onerous for the consumer.

3. Where a consumer seeks to discharge his obligations under a credit agreement prior to the expiry of the agreement, the creditor must provide the consumer, in writing, with the information needed to consider this option.

This information must at least:

- a) Quantify the implications for the consumer of discharging his obligations earlier [including an indicative cost comparative of the total cost of the existing mortgage if they do discharge the debt earlier and the total cost of the mortgage if they do not discharge the debt earlier];
- b) Clearly set out any assumptions used. Any assumptions used must be reasonable and justifiable.

*Article 18a*

*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 state the amount of the repayments 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 parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate correlates directly 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.

## Chapter 9

### Prudential and supervisory requirements

#### *Article 19*

#### *Authorisation and registration of credit intermediaries*

1. Credit intermediaries shall be duly authorised to carry out the activities set out in Article 3(e) by a competent authority in their home Member State. Such authorisation shall be granted on the basis of requirements established in the home Member State of the credit intermediary and shall include the fulfilment of the following requirements:
  - (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 will 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 biannually thereafter.

- (b) the natural persons within the management of credit intermediaries who are responsible for or have a role in the provision of services referred to in Article 3(e) or Article 17 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) the natural persons within the management of credit intermediaries who are responsible for or have a role in the provision of services referred to in Article 3(e) or Article 17 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.

2. Member States shall ensure that all authorised credit intermediaries, whether established as natural or legal persons, are registered with a competent authority **as defined in Article 4**, in their home Member State. **Member States shall ensure that such register is kept up to date.**

**The register of authorised credit intermediaries should at least:**

- (i) **specify 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) **indicate the Member State(s) in which the credit intermediary intends to conduct business under the rules on the freedom of establishment or on the freedom to provide services.**

3. 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.
  - (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 business.**
4. 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.
5. **Home Member States shall ensure that authorised credit intermediaries comply with the conditions for initial authorisation as defined in Article 19(1) on a continuing basis.**

#### *Article 20*

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

1. The authorisation of a credit intermediary by the competent authority of its home Member State **to carry out part or all of the activities referred to in Article 3(e)** shall be effective for the entire territory of the Union without further authorisation 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 authorisation.

2. Any **authorised** 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. 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.

#### *Article 21*

#### **Withdrawal of authorisation of credit intermediaries**

1. **The competent authority of the home Member State may withdraw the authorisation issued to a credit intermediary where such a credit intermediary:**
- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has not provided services referred to in Article 3(e) for the preceding 6 months, unless the Member State concerned has provided for authorisation to lapse in such cases;
  - (b) has obtained the authorisation through false **or misleading** statements or any other irregular means;
  - (c) no longer fulfils the requirements under which authorisation 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 authorisation 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 one month, by any appropriate means.**

3. Member States shall ensure that credit intermediaries whose authorisation has been withdrawn are deleted from the register without undue delay.

#### **Article 21a**

##### **Supervision of credit intermediaries**

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

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), 7, **8**, 9, 9a, 10, 11, 17 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), 7, 8, 9, 9a, 10, 11, 17 of this Directive, those authorities shall require the credit intermediary concerned to put an end to 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 latter 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 such measures without undue delay.**

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 and to enable the competent authorities of the home Member State to enforce the obligations under Article 5(2) 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.**

**In cases 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 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.

*Article 22*

*Authorisation, registration 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 authorisation, registration and supervision arrangements by a competent authority as defined in Article 4.

## **Chapter 9a**

### **Cooperation between competent authorities of different Member States**

#### **Article 23**

##### **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.**

**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.**

## Chapter 10

### Final provisions

#### *Article 24*

##### *Penalties*

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall ensure that the competent authority discloses to the public any measure or 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 mechanisms*

1. Member States shall ensure that appropriate and effective complaints and redress procedures are established for the out-of-court settlement of disputes concerning rights and obligations established under this Directive between creditors and consumers and between credit intermediaries and consumers, using existing bodies where appropriate. Member States shall ensure that all creditors and credit intermediaries are covered by one or more bodies established for dealing with out-of-court settlement of disputes,
2. Member States shall ensure that those bodies cooperate in order to also resolve cross-border disputes concerning credit agreements covered by this Directive.

## *Article 26*

### *Exercise of the delegation*

1. The powers to adopt delegated acts referred to in Article 9a, 12(5) and 21(3) shall be conferred on the Commission for an indeterminate period of time following the entry into force of this Directive.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27 and 28.

## *Article 27*

### *Revocation of the delegation*

1. The delegation of powers referred to in Articles 9a, 12(5) and 21(3) may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for any revocation.
3. The decision of revocation shall terminate the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

*Article 28*

*Objections to delegated acts*

1. The European Parliament and the Council may object to a delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by one month.
2. Where, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period where the European Parliament and the Council have both informed the Commission of their intention not to raise objections.
3. Where either the European Parliament or the Council objects to an adopted delegated act within the period referred to in paragraph 1, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

*Article 29*

*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 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 29a

### *Harmonisation*

Except in the areas covered by Articles 8, 9, 9a, 12, 14(2), 19-21 and Annex I and II Member States may maintain or introduce more stringent provisions, in particular to ensure a higher level of consumer protection. Such provisions shall comply with Union law.

## Article 30

### *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 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.

- 1.(a) This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.
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 31

### *Review clause*

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 consumer satisfaction with the ESIS;
- (b) an analysis 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 immovable property;
- (e) an assessment of the need for further measures, including a passport for non-credit institutions providing credit agreements relating to immovable property;
- (f) an examination of the need to introduce rights and obligations with regard to the post-contractual stage of credit agreements
- (g) an assessment of the need to extend the scope of this Directive to small companies.

#### *Article 32*

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

#### *Article 33*

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

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

## Annex I

### Calculation of the annual percentage rate of charge

I. 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.
- (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 that particular 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  $k$ , 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, among the different ways of drawdown, a limitation with regard to the amount and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the agreement and in accordance with those drawdown limits.
- (d) If there is no fixed timetable for repayment, it shall be assumed:
  - (i) that the credit is provided for a period of twenty years, and
  - (ii) that the credit will be repaid in 240 equal instalments and at monthly intervals.
- (e) If there is a fixed timetable for repayment but the amount of such repayments is flexible, the amount of each repayment shall be deemed to be the lowest for which the agreement provides.
- (f) Unless otherwise specified, where the credit agreement provides for more than one repayment date, the credit is to be made available and the repayments made on the earliest date provided for in the agreement.
- (g) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 180 000.
- (h) 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 three months.
- (i) 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.

- (j) 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, 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 calculating the annual percentage rate, based on the value of the agreed indicator at that time.

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 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. In the latter case, 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.

ESIS Model

<i>(Introductory text)</i>
This document was produced on [current date] in reply to your request for information. This document does not constitute an obligation for us to grant you a loan.  This document was produced on the basis of the information that you have provided so far and on the current financial market conditions. The information below remains valid until [validity date]. After that date, it may change in line with market conditions.
1. Lender
[Name] [Geographical address] [Telephone number] [E-mail address] [Web address]  Supervisory authority: [Name and Web address of supervisory authority]  Contact person: [Full contact details of contact person]
2. Main features of the loan

<p>Amount and currency of the loan to be granted: [value][currency]</p> <p><i>(Where applicable)</i> "This loan is not in [national currency of the borrower]"</p> <p>Duration of the loan: [duration]</p> <p>[Type of loan]</p> <p>[Type of applicable interest rate]</p> <p>Total amount to be reimbursed:</p> <p>[Maximum available loan amount relative to the value of the property]:</p> <p><i>(Where applicable)</i> [Security]</p>
<p>3. Interest rate</p>
<p>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:</p> <p>Interest rate [value in percentage]</p> <p>[Other components of the APRC]</p>
<p>4. Frequency and number of payments</p>
<p>Repayment frequency: [frequency]</p> <p>Number of payments: [number]</p>
<p>5. Amount of each instalment</p>
<p>[Amount] [currency]</p> <p><i>(Where applicable)</i> 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].</p>
<p>6. 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.]), capital to be paid (column [relevant no.]) <i>and, where applicable</i> other costs to be paid (column [relevant no.]). <i>Where applicable</i>, 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>[Amount and currency of the loan]</p> <p>[Duration of the loan]</p> <p>[Interest rate]</p> <p>[Table]</p> <p><i>(Where applicable)</i> [Warning on the variability of the instalments]</p>
<p>7. Additional obligations and costs</p>
<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><i>(Where applicable)</i> 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>In addition to the costs already included in the [frequency] instalments, this loan entails the following costs:</p> <p>Costs to be paid on a one-off basis</p> <p>Costs to be paid regularly</p> <p>Please make sure that you are aware of all other taxes and costs (e.g. notary fees) associated with this loan.</p>
<p>8. Early repayment</p>
<p><i>(Where applicable)</i> You do not have the possibility to repay this loan early.</p> <p><i>(Where applicable)</i> You have the possibility to repay this loan early, either fully or partially.</p> <p><i>(Where applicable)</i> [Conditions]</p> <p>[Procedure]</p> <p><i>(Where applicable)</i> Exit charge:</p> <p><i>(Where applicable)</i> Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge at that moment.</p>
<p><i>(Where applicable)</i> 9. Right of withdrawal</p>

For a period of [length of withdrawal period] after the signing of the credit agreement, the borrower may exercise his right to cancel the agreement.
10. Internal complaint scheme
[Name of the relevant department] [Geographical address] [Telephone number] [E-mail address] Contact person: [contact details]
11. External complaint body
In the event of disagreement with the lender which remains unresolved the borrower has the possibility to address a complaint to: [Name of the complaint body] [Geographical address] [Telephone number] [E-mail address]
12. Non-compliance with the commitments linked to the loan: consequences for the borrower
[Types of non-compliance] [Financial and/or legal consequences] Should you encounter difficulties in making your [frequency] payments, we invite you to contact us as quickly as possible to explore possible solutions.
<i>(Where applicable)</i> 13. Additional information in the case of distance marketing
<i>(Where applicable)</i> The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract is [applicable law]. Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] throughout the duration of the credit agreement.
14. Risks and warnings

- *(Where applicable)* We draw your attention to the risks involved in taking out a mortgage loan.
- *(Where applicable)* The interest rate of this loan does not remain fixed during the whole duration of the loan.
- *(Where applicable)* This loan is not in [national currency of the borrower]. Please note that the amount in [national currency of the borrower] that you will need to pay at each instalment will vary in line with the [loan's currency/national currency of the borrower] exchange rate.
- *(Where applicable)* This is an interest-only loan. This means that, throughout its duration, you will need to build up enough capital in order to reimburse the loan amount at maturity.
- You will also need to pay other taxes and costs *(where applicable)*, e.g. notary fees.
- Your income may change. Please make sure that if your income falls you will still be able to afford your [frequency] repayment instalments.
- *(Where applicable)* Your home may be repossessed if you do not keep up with payments.

## PART B

### Instructions to complete the ESIS

In completing the ESIS, the following instructions shall be followed:

#### *Section 'Introductory text'*

- (1) The validity date shall be properly highlighted.

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

- (1) Name, telephone number, geographical address and web address of the creditor shall refer to the creditor's headquarters. The relevant authority for the supervision of lending activities shall be indicated.
- (2) Information on the contact person 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) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall indicate the name of the trade register in which the creditor is entered and its registration number or an equivalent means of identification in that register.

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

- (1) 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.

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. constant, progressive or regressive reimbursements).

(2) This section shall also explain whether the interest 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 interest rate shall be explained. The creditor shall also indicate where further information on the indices or rates used in that formula can be found. Where the credit currency is different from the national currency of the borrower, the creditor shall include information on the formula used to calculate the exchange rate spreads and the frequency of their adjustment.

- (3) The 'total amount to be reimbursed' shall be calculated as the sum of the credit amount and the total cost of the credit.
- (4) Under the heading, 'Maximum available loan amount relative to the value of the property', it shall indicate 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.
- (5) 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.

#### *Section '3. Interest rate'*

- (1) In addition to the interest rate, all the other costs contained in the APRC shall be listed (name and equivalence in percentage). Where providing a percentage rate for each of those costs is not possible or does not make sense, the creditor shall provide a global percentage rate.

#### *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. The number of payments indicated shall cover the whole duration of the credit.

*Section '5. Amount of each instalment'*

- (1) The loan currency 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 the credit currency 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. The illustrated examples of exchange rate changes need to be realistic, symmetrical and include at least the same number of unfavourable cases as favourable cases.
- (4) Where the currency used for the payment of instalments is different from the credit currency, the exchange rate to be used shall be clearly indicated. Such indications shall include the name of the institution publishing the exchange rate and the moment at which the applicable exchange rate will be calculated.

*Section '6. Illustrative repayment table'*

- (1) 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 moment', '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 amount 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. The creditor shall also: (1) specify, where relevant, the applicable caps and floors; (2) give an example of how the amount of the instalment would vary where the interest rate would increase or decrease by 1 percentage point, or by a higher number of percentage points, where this is more realistic given the magnitude of normal changes to the interest rate and (3) where there is a cap, indicate the instalment amount in the worst-case scenario.

*Section '7. Additional obligations and costs'*

- (1) The creditor shall refer in this section to obligations such as the obligation to insure the property, to purchase life insurance 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 list each of the costs by category, indicating their amount, to whom they are to be paid and at what moment. Where the amount is not known, the creditor shall provide a possible range or an indication of how the amount will be calculated.

*Section '8. Early repayment'*

- (1) Where the credit may be repaid early, the creditor shall indicate under what conditions, if any, the borrower can do so. The creditor shall also indicate the steps the borrower should take in order to request the early repayment.
- (2) Where an exit charge will be applied to the early repayment, the creditor shall draw the borrower's attention to this and indicate its amount. In cases where the amount of the exit charge 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 exit charge will be calculated. The creditor shall then provide at least two illustrative examples in order to demonstrate to the borrower the level of the exit charge under different possible scenarios.

*Section '9. Right of withdrawal'*

- (1) Where a right of withdrawal exists, the creditor shall specify the conditions to which this right is subject, the procedure that the borrower will need to follow in order to exercise this right, inter alia, the address to which the notification of withdrawal should be sent, and the corresponding fees (where applicable).
- (2) In accordance 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.
- (3) In accordance with Article 5 of Directive 85/577/EEC, where the transaction is being offered away from business premises, the consumer shall be informed of the existence of a right of withdrawal.

*Section '10. Internal complaint scheme'*

- (1) Information on the contact person is optional.

*Section '11. External complaint body'*

- (1) In accordance with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall also specify whether or not there is an out-of-court complaint and redress mechanism for the borrower and, if so, explain the methods of access to it.

*Section '12. 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 possible cases (e.g. late payments/default, failure to respect the obligations set out in Section 7 'Additional obligations and costs').
- (2) For each of those cases, the creditor shall specify, in clear, easily comprehensible terms, the penalties or consequences to which they may give rise. Reference to serious consequences should be highlighted.

*Section '13. Additional information in the case of distance marketing'*

- (1) Where applicable, this section will include a clause stipulating the law applicable to the credit agreement and/or the competent court.

*Section '14. Risks and warnings'*

- (1) All the listed warnings shall be highlighted.
- (2) Where applicable, the creditor shall recapitulate in this section the general interest rate revision rules and provide a quantitative example of how the instalments would increase if the credit's interest rate were to increase by X % (as explained in section 'Illustrative repayment table') and/or in the worst-case scenario (if there is a cap on the interest rate variability).

## Annex III

### Minimum **knowledge and** competence requirements

1. The minimum competence requirements for creditors and credit intermediaries' staff (Article 6) and for management of credit intermediaries (Article 19) should include at least:
  - (a) Appropriate knowledge of mortgage products and ancillary services typically offered together with mortgage products;
  - (b) Appropriate knowledge of the laws **related to the conclusion of credit agreements;**
  - (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 level of financial and economic competency;
  - (g) Appropriate knowledge of **business** ethics;
  - (h) **Appropriate knowledge of the rules for the assessment of** consumer's creditworthiness.
  
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 and the management of credit intermediaries.
  
3. Member States shall determine the appropriate level of knowledge and competence should be determined on the basis of:
  - (a) recognised qualifications, e.g. diplomas, degrees, professional 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.

[Member States shall ensure that the criteria for meeting competence requirements established in order for credit intermediaries or creditors' staff and for the management of credit intermediaries to meet their professional competence requirements are made public. Such criteria shall include a list of any recognised qualifications.]

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