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THE EUROPEAN UNION**

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NOTE

from: General Secretariat
to: Delegations

Subject: Proposal for a Directive of the European Parliament and of the Council on
credit agreements relating to residential property (Mortgage Credit Directive-
MCD)
- General Approach

Delegations will find attached the Council's general approach with regard to the above-mentioned proposal, as agreed by Coreper (part 2) on 30 May 2012.

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on credit agreements for consumers 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 Commission¹,

After transmission of the draft legislative act to the national Parliaments²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Having regard to the opinion of the European Central Bank⁵,

Acting in accordance with the ordinary legislative procedure⁶,

Whereas:

¹ OJ C XX, XX, p. xx.

² OJ C XX, XX, p. xx.

³ OJ C XX, XX, p. xx.

⁴ OJ C XX, XX, p. xx.

⁵ OJ C XX, XX, p. xx.

⁶ 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 markets⁷. 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.

⁷ 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.⁸
- (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 approval 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.

⁸ *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 approval and supervision of credit intermediaries and non-credit institutions.
- (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.
- (8) 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.

- (9) 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.
- (9a) The definition of consumer should cover natural persons who are acting outside their trade, business or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.

(10) The definitions contained in this Directive determine the scope of harmonisation. The obligations on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. For instance, the obligations on Member States to implement the provisions of this Directive are limited to credit agreements concluded with consumers, meaning with natural persons who, in transactions covered by this Directive, are acting outside their trade, business or profession. Similarly, Member States are obliged to implement the provisions of this Directive regulating the activity of persons acting as credit intermediary as defined in the Directive. However, this Directive should be without prejudice to the application by Member States in accordance with Union law, of the provisions of this Directive to areas not covered by its scope. For instance, Member States should have the possibility to extend the scope of this Directive to natural or legal persons that, in transactions covered by this Directive, are not acting outside their trade, business or profession, notably micro-enterprises, as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁹. In addition, the definitions contained in this Directive are without prejudice of the possibility for Member States to adopt sub-definitions under national law for specific purposes, provided that they are still compliant with the definitions set out in this Directive. An illustration is that Member States may determine under national law sub-categories of credit intermediaries that are not identified in this Directive, where such sub-categories are necessary at national level for instance to differentiate the level of competence and knowledge requirements to be fulfilled by the different credit intermediaries. Member States may also introduce national legislation corresponding to the provisions of this Directive or certain of its provisions on credit agreements exempted from the scope of this Directive.

⁹ OJ L 124, 20.5.2003, p. 36.

- (11) The objective of this Directive is to ensure that credit agreements relating to immovable property provided to consumers benefit from a high level of protection. It should therefore apply to credits secured by real estate, regardless of the purpose of the credit, credit agreements which are used to retain rights in property or land, such as refinancing agreements or other credit agreements that would help an owner or part owner continue to keep ownership of the property or land, or credits which are used to purchase a property in some Member States, including those loans that do not require the reimbursement of the capital or those whose purpose is to provide temporary financing between the sale of one immovable property and the purchase of another.
- (12) While this Directive should not cover the credit agreements whose purpose is to purchase or retain rights in immovable property or that are secured by the immovable property entirely used by a natural person in the context of his business, trade or profession, the freedom should be left to the Member States to decide whether they apply the provisions of this Directive to the credit agreements whose purpose is to purchase or retain rights in immovable property or that are secured by the immovable property primarily but not exclusively used or intended for use by the natural person in the context of his business, trade or profession.

(13) 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. The Directive should also not cover other explicitly listed types of niche credit agreements, that are different in their nature and risks involved from standard mortgage credits and therefore require tailored approach, notably credit agreements being outcome of a settlement reached in court or before another statutory authority; credits granted free of interest and without other charges, except costs that are directly related to the securing of the credit, such as the cost for registering the credit in a mortgage or land register and the legal fees; credits granted by the employers to their employees and credits granted by the government or a government appointed entity, or a public entity on non-commercial terms (i.e. under more favourable conditions than those prevailing on the market to support a public policy objective for a restricted public (for example, first-time buyers). Member States should, however, have the possibility to extend the scope of this Directive to such credit agreements. Credit agreements where the property is not to be occupied as a house, apartment or another place of residence by the consumer or a family member and is occupied as a house, apartment or another place of residence on a basis of a rental agreement, have risks and features that are different from standard credit agreements. Member States may therefore waive certain provisions of this directive to this kind of credit agreements, provided that an equivalent framework- applies that ensures consumers receive complete, adequate and timely information on such credit agreements at the advertising and pre-contractual stage as well as adequate explanations.

- (14) 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.
- (15) 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 approval process and supervision of all creditors providing credit agreements relating to immovable property and should introduce requirements for the establishment of, and access to, out-of-court dispute resolution mechanisms.

- (16) 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/EC¹⁰ 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. This Directive should not affect national general contract law such as the rules on the validity, formation or effect of a contract, insofar as general contract law aspects are not regulated in this Directive.
- (17) 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.

¹⁰ OJ L 271, 9.10.2002, p. 16.

(18) 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 mediation¹¹ 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/EEC¹². To the extent that this Directive relates to the full and unconditional responsibilities placed on creditors and credit intermediaries for the activities of tied credit intermediaries or appointed representatives, such responsibilities should not extend to activities outside the scope of this Directive unless Member States should choose to do so.

¹¹ OJ L 9, 15.1.2003, p. 3.

¹² OJ L 145, 30.4.2004, p. 1.

- (19) The applicable legal framework should give consumers the confidence that creditors and credit intermediaries consider the interests of the consumer, taking into account the information available to the creditor and credit intermediary at that moment in time and based on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement. For example it could also imply among other things that creditors should not market the credit so that the marketing significantly impairs or is likely to impair the consumer's ability to carefully consider the taking of the loan; or that the creditor should not use the granting of the credit as a main method of marketing when marketing goods, services or immovable property to consumers. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry.
- (20) 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 creditors and credit intermediaries require natural persons working for them, having contacts with consumers and engaged in the activities covered by this Directive, to possess adequate level of knowledge and competence in order to ensure a high level of professionalism. Member States should establish minimum knowledge and competence requirements for creditors' and credit intermediaries' staff, taking into account the minimum knowledge and competence requirements set out in this Directive. In this context, staff means employees of the creditor, credit intermediary or appointed representative as well as outsourced personnel, working for and within the creditor, credit intermediary or appointed representative, who has contacts with consumers and engage in the activities covered by this Directive as well as any person directly managing or supervising those individuals and engaged in the activities covered by this Directive; consequently this would exclude managers such as those responsible for human resources. Member States may allow creditors and credit intermediaries to differentiate between the levels of minimum knowledge requirements according to the involvement in carrying out particular services or processes.

- (20a) Where a creditor or credit intermediary provides its services within the territory of another Member State under the freedom to provide services, the home Member State shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff. However host Member States who deem it necessary, may establish their own competence requirements in certain areas applicable to creditors and credit intermediaries that provide its services within the territory of that Member State under the freedom to provide services.
- (20b) Member States shall ensure that creditors and credit intermediaries are supervised on an ongoing basis in order to assess whether they make sure that their staff comply with the knowledge and competence requirements. For that purpose creditors and credit intermediaries shall on request at least provide the competent authority a written, sufficient documentation on the fulfilment of the knowledge and competence requirements. However to ensure the functioning of the internal market and in line with the principle of proportionality the directive does not oblige Member States to request this documentation before the creditor or credit intermediary start carrying out their activities.
- (21) 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 limit miss-selling practices and to ensure that the way staff is remunerated does not impede compliance with the obligation to consider the interests of the consumer. In particular the creditors and credit intermediaries should not design their remuneration policies in a way that would incentivise their staff to conclude a given number or type of credit agreements or to offer particular ancillary services to the consumers with no explicit consideration of consumer's interests and needs. In this context, Member States may find it necessary to decide that a particular practice, for example, tied intermediaries collecting fees, is against the interests of a consumer. Member States may also specify that the remuneration received by staff should not be dependent on the rate or the type of credit agreement concluded with the consumer.

- (22) 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.
- (23) 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 indicate an interest rate or contain any figures relating to the cost of credit.
- (24) 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. Although this requirement is not applicable to non-tied credit intermediaries due to the possibility of an infinite number of credit agreements that could be presented by them, this is without prejudice to the fact that non-tied credit intermediaries are still obliged to provide consumers with personalised pre-contractual information.

- (25) 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.
- (26) The Commission Recommendation 2001/193/EC of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans¹³ 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, while sections, such as 'nominal rate' and 'annual percentage rate of charge', should be merged and new information, such as information on risk warnings, should be added. An illustrative repayment table should be provided to consumer as part of the ESIS; however, Member States may provide that the provision of such an illustrative repayment table in the ESIS is not compulsory for credit agreements with a borrowing rate that is not fixed for the duration of the contract.

¹³ OJ L 69, 10.3.2001, p. 25.

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

(29) In order to ensure that the ESIS provides the consumer with all relevant information to make an informed choice, the creditor should follow the instructions set out in this Directive when completing the ESIS. Member States may elaborate or further specify the instructions for completing the ESIS on the basis of the instructions set out in this Directive. For instance, Member States may further specify the information to be given in order to describe the 'type of borrowing rate' in order to take into account the specificities of the national products and market. However, such further specifications should not be contrary to the instructions contained in this Directive nor imply any change in the text of the ESIS model, which should be reproduced as such by the creditor. Member States may also add further warnings on credit agreements, adapted to their national market and practices, where such warnings are not already covered by the ESIS. Member States may provide that the creditor should be bound by the information provided for in the ESIS, provided that the creditor decides to grant the credit.

- (30) Consumer should receive information by means of the ESIS without undue delay after he has delivered the necessary information on his needs, financial situation and preferences and in good time before the consumer is bound by any credit agreement or offer, in order to enable him to compare and reflect on the characteristics of credit products. 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. However Member States may provide for the obligatory provision of the ESIS both before the provision of any binding offer and together with the binding offer. The information provided to the consumer in the ESIS should be personalised, taking into account his needs, financial situation and preferences. The provision of personalised information through an ESIS does not imply an obligation to provide advice. 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.
- (30a) Where the consumer has a secured credit agreement for the purchase of property or land and the duration of the security is longer than that of the credit agreement, and where the consumer can decide to withdraw the repaid capital again subject to signature of a new credit agreement, a new ESIS disclosing the new APRC and based on the specific characteristics of the new credit agreement should be provided to the consumer before the signature of the new credit agreement.
- (30b) A credit intermediary or appointed representative should upon request of the consumer, provide the consumer with a copy of the draft credit agreement, in good time before the conclusion of the credit agreement. However Member States may provide that the provision of a copy of the draft credit agreement is obligatory.

- (31) 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.
- (32) 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.

- (33) 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.
- (34) 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, such as interest, commissions, taxes, fees for credit intermediaries, the costs of property valuation for a mortgage and any other fees, except for notarial fees. It should also include the cost of any insurance or other ancillary products that the consumer is required to pay where the conclusion of the service contract is obligatory in order to obtain the credit, e.g. life insurance, or to obtain it on the terms and conditions marketed, e.g. fire insurance. The provisions of this directive concerning ancillary products and services (eg. the provisions concerning the costs of opening and maintaining a bank account) should be without prejudice to the national and Union regulations on unfair contractual terms, specifically in Directive 2005/29/EC and Directive 93/13/EC. The total cost of the credit to the consumer should exclude costs that the consumer pays in relation to the purchase of the immovable property or land, such as the costs of land registration, taxes associated with the purchase and notarial costs associated therewith. The creditor's actual knowledge of the costs should be assessed objectively, taking into account the requirements of professional diligence. In this respect, the creditor should be presumed to have knowledge of the costs of the ancillary services which he offers to the consumer himself, or on behalf of a third party, unless the price thereof depends on the specific characteristics or situation of the consumer.

- (34a) If estimated information is used, the consumer should be made aware of this and that the information is expected to be representative of the type of agreement or practices under consideration. The additional assumptions for the calculation of the APRC aim to ensure that the annual percentage rate of charge is calculated in a consistent way and to ensure comparability. Additional assumptions are necessary for specific types of credit agreement, such as the amount, duration or the cost of the credit are uncertain or they vary depending on how the agreement is operated. Where the provisions in themselves do not suffice to calculate the annual percentage rate of charge, the creditor should use those additional assumptions provided in the Annex. However, given that the calculation of the APRC will depend on the terms of the individual credit agreement, only those assumptions necessary and clearly addressing the situation of a given credit should be used.
- (35) In order to further ensure a high degree of comparability of the APRC between offers from different creditors, the intervals between dates used in the calculation should not be expressed in days where they can be expressed as a whole number of years, months or weeks. Implicit in this context is that if certain time intervals are used in the APRC formula, those intervals shall also be used to ascertain the amounts of interest and other charges used in the formula. For this reason, creditors shall use the method of measurement of time intervals described in Annex I to obtain the figures for the payment of charges. However, this is only applicable for the purposes of calculation of the APRC and does not impact on the amounts actually charged by the creditor under the credit agreement. In case those numbers are different it may be necessary to explain them to the consumer in order to avoid misleading the consumer. This also implies that in the absence of non-interest charges, and assuming an identical method of calculation, that the APRC will be equal to the (effective) borrowing rate of the credit.

- (36) As the annual percentage rate of charge at the advertising stage can be indicated only through an example, such an example should be representative. The representative example used in advertising and marketing materials should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration. When determining the representative example, the frequency of certain types of credit agreement in a specific market should also be taken into account. In such an instance, it may be preferable for each creditor to base the representative example on an amount of credit which is representative of that creditor's own product range and expected customer base, as these may vary considerably among creditors. As regards the annual percentage rate of charge disclosed in the ESIS, the preferences and information provided by the consumer should be taken into account. In such circumstances, the creditor or credit intermediary should make it clear whether the information provided is representative or binding to the creditor. In any case, the representative examples used by creditors should not be contrary to the requirements set out in Directive 2005/29/EC.
- (37) Where the borrowing rate and charges may vary in a way that is unquantifiable at the time of the calculation of the APRC, the rates and charges are assumed to remain fixed in relation to their initial level until the end of the credit agreement. This may be the case, for example, for a contract with an initial period of fixation, followed by an option for consumer to choose between fixed and variable rates at the end of the fixed period. Where there is a period of initial fixation, after which the rate adjusts according to an agreed and known indicator, including a creditor's standard variable interest rate where it exists, or index, or where a teaser rate is offered for a limited period or amount, the additional assumptions in this Directive should apply.

- (38) In order to ensure consistency between the calculation of the annual percentage rate of charge for credit agreements for consumers and for credit agreements for consumers relating to immovable property, the assumptions used for calculating similar forms of credit agreement should be generally consistent. In this respect, Commission Directive 2011/90/EU of 14 November 2011 amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions for the calculation of the annual percentage rate of charge¹⁴, modifying the assumptions for calculating the annual percentage rate of charge should be incorporated in their entirety. While not all assumptions will necessarily apply to credit agreements relating to immovable property, product innovation in this sector is active and it is necessary to have the assumptions in place. Furthermore, for the purpose of calculating the annual percentage rate of charge, the identification of the most common drawdown mechanism should be based on reasonable expectations of the drawdown mechanism most frequently used by consumers for the type of product offered by that specific creditor. For existing products, the expectation should be based on the previous twelve months.
- (39) 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. The value of the property (the collateral) is an important element in ascertaining the amount of the credit that may be granted to a consumer under a secured credit agreement. However, the creditworthiness assessment should focus on the consumer's ability to meet the obligations set out under the credit agreement. Consequently, the fact that the value of the property at the time of the creditworthiness assessment or in the future

¹⁴ OJ L 296, 15.11.2011, p.35.

might exceed the credit amount should not generally be a sufficient condition to grant the credit in question. However, while in general the creditworthiness assessment should not be based on the assumption that the property will appreciate in value, where the purpose of a credit agreement is to construct or renovate an existing immovable property, the creditor should be able to consider this fact. Specific provisions may be necessary for the different elements that may be taken into consideration in the creditworthiness assessment of certain types of credit agreements. For example, for credit agreements to purchase a property which explicitly state that the property is not to be occupied as a house, apartment or another place of residence by the consumer or a family member (buy-to-let agreements), Member States may decide to specify that future rental income is taken into account when assessing the consumer's ability to repay the loan. In those Member States where such a specification is not set out by national provisions, creditors may also decide to include a prudent assessment of future rental income. Member States are encouraged to implement the Financial Stability Board's Principles for Sound Residential Mortgage Underwriting Practices. 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. The assessment of the consumer's creditworthiness should not imply the transfer to the creditor of the responsibility of the consumer for the non-compliance with his obligations resulting from the credit agreement. The provisions of this Directive are without prejudice to the national and Union regulations on the sound and prudent management of creditors.

- (40) The outcome of the creditworthiness assessment should effectively be taken into account by the creditor when deciding whether to make a credit agreement available to a consumer. For example, the capacity for the creditor to transfer part of the credit risk to a third party should not drive him to ignore the conclusions of the creditworthiness assessment by making a credit agreement available to a consumer who is likely not to be able to repay it. Member States may transpose this principle by requiring supervisors to take relevant actions as part of the supervisory review process and to monitor the compliance of creditors' creditworthiness assessment procedures.

- (41) The creditworthiness assessment shall be carried out on the basis of the necessary information obtained from various sources including from the consumer. In this respect consumers should provide information on their financial situation and economic circumstances to the creditor or intermediary in order to facilitate the creditworthiness assessment. The consumer should not be penalised where he is not in a position to provide certain information or assessments, for instance with regard the future evolution of his financial situation or when he has decided not to continue the application process for getting the loan. However Member States should provide for sanctions 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.
- (42) 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. 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 data¹⁵, 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.

¹⁵ OJ L 281, 23.11.1995, p. 31.

- (43) 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.
- (44) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, and provide the name of the database consulted and of any other elements required by Directive 95/46/EC so as to enable the consumer to exercise his right to access and, where justified, rectify, erase or block personal data concerning him and processed therein. Where a decision to reject an application for credit results from a negative creditworthiness assessment the creditor should inform the consumer of the rejection without undue delay. Member States should be free to decide whether they require creditors to provide further explanations on the reasons of the rejection. However, the creditor should not be required to give such information when to do so would be prohibited by other Union legislation such as legislation on money laundering or the financing of terrorism. Such information should not be provided where to do so would be contrary to the objectives of public policy or public security such as the prevention, investigation, detection or prosecution of criminal offences.
- (45) 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.

- (46) In principle advisory services constitute 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 advisory services can be provided to them by the creditor or credit intermediary and of what constitute advisory services. However Member States may provide for an obligation to provide advisory services as a part of the credit granting process. In such cases Member States should be free to determine the cost of the obligatory advisory services services to the consumer.
- (47) Those providing advisory services 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 advisory services are provided by creditors and tied credit intermediaries, or products available on the market, in case advisory services are 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 advisory services, 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.
- (48) The provision of advisory services 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 advisory services.

(49) 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, different treatment depending on the funding instrument, or restrictions with regard to the circumstances under which the right may be exercised. The conditions set by Member States may also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit or that early repayment is free of charge for the consumer in all certain instances, for example, for variable interest rate credits. 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.

- (50) 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. Member States may for instance provide that any change to the borrowing rate or to the reference rate should be agreed upon expressly by the creditor and the consumer. In case of a change in the borrowing rate, Member States may also provide that the consumer is entitled to receive an up-dated amortisation table.
- (51) 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.

(52) Before being able to carry out their activities all credit intermediaries should be subject to an approval process under which they would be authorised by and/or registered with the competent authority of their home Member State. In the context of this Directive, the competent authority undertaking the approval process should ensure that the credit intermediary has met at least the requirements for providing their services on the market, in accordance with strict professional requirements in relation to their competence, good repute, and professional indemnity cover. In this respect, home Member States may provide for additional requirements, for instance that the shareholders of the credit intermediary are of good repute in order for the credit intermediary to be approved or restrictions on the number of creditors that a credit intermediary can be tied to. For instance a Member State can require a tied credit intermediary to be tied to only one creditor. Once the approval process is successfully completed, the competent authority should enter the credit intermediary's relevant information in a public register. Tied credit intermediaries who work exclusively with one creditor under its full and unconditional responsibility, including full responsibility for compliance with regulatory and disciplinary provisions, should be approved by the competent authority. However they may be approved by the competent authority under the auspices of the creditor on whose behalf they act.

- (53) With a view to promoting consumer confidence in credit intermediaries, Member States should ensure that approved 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 approval 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 entered into one register or whether different registers are required depending on whether the credit intermediary is tied or acts as independent credit intermediary. Furthermore Member States should be free to maintain or to impose restrictions on the possibility to charge any fees on consumers by the credit intermediaries tied to one or more creditors. 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.
- (53a) In some Member States credit intermediaries may decide to use the services of appointed representatives to perform their activities on their behalf. Member States should have the possibility to apply the specific regime laid down by this Directive for appointed representatives. However, Member States should also be free not to introduce such regime or to allow other entities to perform a role which is comparable to that of appointed representatives, provided that these entities are subject to the same regime as credit intermediaries. The rules on appointed representatives set out in this Directive do not in any way oblige Member States to allow appointed representatives to operate in their jurisdiction unless appointed representatives are considered credit intermediaries under this Directive.

- (54) 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 approved in the Member State in which it has its registered office. A credit intermediary which is not a legal person should be approved in the Member State in which it has its head office. In addition, Member States should require that a credit intermediary's head office must always be situated in its home Member State and that it actually operates there.
- (55) The requirements for approval 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 approve all individual staff within the credit intermediary, the notification of the intention to provide services should be on the basis of the credit intermediary rather than the individual employee. However, while this Directive provides a framework for all approved credit intermediaries, including credit intermediaries tied to only one creditor, to operate throughout the Union, this Directive does not provide such a framework for appointed representatives. In such instances, appointed representatives wishing to operate in another Member State would have to comply with the requirements for the approval of credit intermediaries set out in this Directive.
- (56) In some Member States, credit intermediaries can carry out their activities in respect of credit agreements offered by credit institutions as well as by non-credit institutions. As a principle approved credit intermediaries should be allowed to operate in the entire territory of the Union. However such approval with the competent authorities of the home Member States should not allow them to provide their services in relation to credit agreements offered by non-credit institution to a consumer in a Member State where such non-credit institutions are not allowed to operate.

- (57) Member States may provide that persons carrying out credit intermediation activities only on an incidental basis in the course of professional activity, for instance but not necessarily or exclusively lawyers or notaries, should not be subject to the approval procedure set out in this Directive provided that such professional activity is regulated and the relevant rules do not prohibit the provision, of an incidental basis, of credit intermediation services. Such an exemption from the approval procedure laid down in this Directive should however mean that such persons cannot benefit from the passport regime provided in this Directive. Natural or legal persons who merely introduce a consumer to a creditor on an incidental basis in the course of their professional activity, for instance by indicating the existence of a particular creditor to the consumer or a type of product with this particular creditor to the consumer without further advertising or engaging in the presentation, offering, preparatory work or conclusion of the credit agreement, should not be regarded as credit intermediaries for the purposes of this Directive.
- (58) 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 approval 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 approval 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)¹⁶; 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.

¹⁶ OJ L 177, 30.6.2006, p. 1.

- (59) Member States should lay down rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of sanctions remains within the discretion of Member States, the sanctions provided for should be effective, proportionate and dissuasive.
- (60) 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. Member States should ensure that participation in such alternative dispute resolution procedures is not optional for creditors and credit intermediaries. . To ensure the smooth functioning of alternative dispute resolution procedures in cases of cross-border activity, Member States should ensure that the bodies responsible for resolving out of court complaints and redress cooperate. In this context, Member States out-of-court complaint and redress bodies are encouraged to participate in FIN-NET, a financial dispute resolution network of national out-of-court schemes that are responsible for handling disputes between consumers and financial services providers.
- (61) 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 respect of the ability to amend the remarks and assumptions used to calculate the annual percentage rate of charge and stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee with regard to credit intermediaries by establishing regulatory technical standards. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at an expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of the relevant documents to the European Parliament and the Council.

- (62) 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 approval 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)¹⁷ 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.
- (63) Member States should designate competent authorities empowered to ensure enforcement of this Directive and shall ensure that they are granted investigation and enforcement powers and adequate resources necessary for the performance of their duties. To this effect Member States should be allowed to designate other bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. Competent authorities, may act by application to courts competent to grant a legal decision, including, where appropriate, by appeal. This would enable Member States, in particular where provisions of this Directive were transposed into civil law, to leave the enforcement of these provisions to the abovementioned bodies and the courts. Member States should be able to designate different competent authorities in order to enforce the wide ranging obligations laid down in this Directive. For instance, for some provisions, Member States may designate competent authorities responsible for the enforcement of consumer protection, while for others, they may decide to designate prudential supervisors. The designation of such authorities should not exclude the delegation under the responsibility of the competent authority. The ability to designate different competent authorities should not affect the obligations for ongoing supervision and cooperation between the competent authorities, as foreseen in this Directive.

¹⁷ OJ L 331, 15.12.2010, p. 12.

- (64) 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.
- (65) 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. However three years after entry into force of this Directive the Commission should review the Directive in order to examine whether the need exists to extend its scope to certain credit agreements excluded from the scope.
- (66) 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.

- (67) 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 provisions that shall be subject to maximum harmonisation. Consumers should benefit from maximum harmonisation when standard information to be included in advertising, pre-contractual information by means of the ESIS and annual percentage rate of charge is concerned. 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 clearly 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. Member States are for example allowed to retain or adopt more stringent provisions with regard to knowledge and competence requirements for staff, general information about credit agreements, the instructions to complete the ESIS and conditions for approval of credit intermediaries.
- (68) Member States may decide that certain aspects covered by this Directive are addressed in national law by prudential law, for example the creditworthiness assessment of the consumer, while others are addressed by fraud, civil, penal or criminal law, for example the obligations relating to responsible borrower.
- (69) In accordance with point 34 of the Interinstitutional Agreement on better law-making¹⁸, 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.

¹⁸ OJ C 321, 31.12.2003, p. 1.

(70) The European Central Bank and the Economic and Social Committee delivered an opinion on this Directive respectively on 5 July 2011 and 14 July 2011. The European Data Protection Supervisor delivered its opinion on 25 July 2011.

HAVE ADOPTED THIS DIRECTIVE:

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 requirements for establishment and supervision of credit intermediaries, appointed representatives 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 immovable property.
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 directly related to the securing of the loan.
 - (d) 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;
 - (e) 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.
3. Member States may waive the provisions of Article 9, Article 11 and Annex II to the credit agreements for consumers, secured 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, the purpose of which is not to acquire or retain the right to immovable property, provided that the Member States apply to such credit agreements Article 4, Article 5, Annex II and III of Directive 2008/48/EC.

4. Member States may waive the provisions of Articles 9 to 11, Article 13(1) (a), Article 15(4) and Annex II to credit agreements to purchase a property where the credit agreement provides, that the property cannot at any moment be occupied as a house, apartment or another place of residence by the consumer or a family member and is to be occupied as a house, apartment or another place of residence on the basis of a rental agreement.

Member States who avail of the option referred to in subparagraph 1 shall ensure the application of an equivalent framework to ensure consumers receive complete, adequate and timely information on such credit agreements at the advertising and precontractual stage.

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 not merely introducing, either directly or indirectly a consumer to 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 and unconditional responsibility of:
- (i) only one creditor; or
 - (ii) only one group of creditors, or
 - (iii) a 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 accounts¹⁹.
- (h) 'Credit institution' means credit institution as defined in Article 4(1) of Directive 2006/48/EC.

¹⁹ OJ L 193, 18.7.1993, p. 1.

- (i) 'Non-credit institution' means any creditor that is not a credit institution.
- (j) 'Staff' means:
 - (i) any natural person working for the creditor or credit intermediary having contacts with consumers and being engaged in the activities covered by this Directive and who is not an appointed representative; and
 - (ii) any natural person working for the appointed representative having contacts with consumers and being engaged in the activities covered by this Directive; and
 - (iii) any natural person directly managing and/or supervising the natural persons referred to in (i) and (ii) and who is not an appointed representative.
- (k) 'Total amount of credit' means the total amount of credit as defined in Article 3(l) of Directive 2008/48/EC.
- (l) '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. It shall exclude any charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement.
- (m) '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.
- (n) 'Annual percentage rate of charge' means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in Article 12(1)(d) and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the consumer.

- (o) 'Borrowing rate' means the borrowing rate as defined in Article 3(j) of Directive 2008/48/EC.
- (p) 'Creditworthiness assessment' means the evaluation of the prospect for the debt obligation resulting from the credit agreement to be met.
- (q) 'Durable medium' means durable medium as defined in Article 3(m) of Directive 2008/48/EC.
- (r) '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.
- (s) '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.
- (t) 'Advisory services' mean the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements and constitutes a separate service from the granting of a credit and from the services specified in point (e).
- (u) 'Competent authority' means an authority designated as competent by a Member State in accordance with article 4.
- (v) 'Bridging loan' means a credit agreement either of no fixed duration or which is due to be repaid within 12 months, used by the consumer as a temporary financing solution while transitioning to another financial arrangement for the property.

- (w) ‘Appointed representative’ means a natural or legal person who performs activities referred to in point (e) that is acting on behalf of and under the full and unconditional responsibility of only one credit intermediary.
- (x) ‘Contingent liability or guarantee’ means a credit agreement which acts as a guarantee to another separate but ancillary transaction, and where the capital secured against an immovable property is only drawn down if a contingent event or events specified in the contract occurs.
- (y) ‘Shared equity credit agreement’ means a credit agreement where the capital repayable is based on a contractually set percentage of the value of the immovable property at the time of the capital repayment or repayments.

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 investigation and enforcement powers and adequate resources necessary for the performance of their duties.

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

Member States shall ensure that competent authorities, all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. No confidential information which they may receive in the course of their duties may be divulged to any

person or authority whatsoever, save in summary or aggregate form, without prejudice to cases covered by criminal law or provisions of this Directive. This shall not however prevent the competent authorities from exchanging or transmitting confidential information in accordance with this Directive and with national and Union law.

Member States shall inform the Commission of the designation of the competent authorities, indicating any division of the respective duties between different competent authorities within 2 years after the entry into force of this directive.

2. The competent authorities may exercise their powers in conformity with national law either:
 - (a) directly under their own authority or under the supervision of the judicial authorities; or
 - (b) by application to courts competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful, except for Articles 7, 21, 22, 23, 24 and 25.

Insofar as competent authorities exercise their powers by application to the courts in accordance with paragraph 2(b), those courts shall be competent to grant the necessary decisions.

3. Where there is more than one competent authority on its territory, a Member State shall ensure that their respective duties are clearly defined and that those authorities collaborate closely so that they can discharge their respective duties effectively.
4. Member States shall ensure that the authorities designated as competent for ensuring the enforcement of Articles 7, 21, 22, 23, 24 and 25 of this Directive are:
 - (i) competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), and/or
 - (ii) authorities other than the national authorities listed in point (i) provided that national legislation or administrative regulations require those authorities to cooperate with the authorities referred to in point (i) whenever necessary in order to carry out their duties under this Directive.

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

Chapter 2

Conditions applicable to creditors, credit intermediaries and appointed representatives

Article 5

Conduct of business obligations when providing credit to consumers

1. Member States shall require that, when granting, intermediating or advising on credit and, where appropriate, ancillary services to consumers, the creditor, the credit intermediary or appointed representatives acts honestly, fairly and professionally, taking into account the interests of the consumer at that moment in time and making reasonable assumptions about the consumer's situation over the term of the credit agreement.
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 and appointed representatives do not impede compliance with the obligation to act in accordance with the principles referred to in paragraph 1.

Article 6

Obligation to provide information free of charge to consumers

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

Article 7

Knowledge and competence requirements for staff

1. Member States shall ensure that creditors, credit intermediaries and appointed representatives require their staff to 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, appropriate knowledge and competence in relation to that ancillary service shall be required. In particular, where the ancillary service is an insurance or investment service, appropriate knowledge and competence shall be required 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. Home Member States shall establish the minimum knowledge and competence requirements for creditors', credit intermediaries' and appointed representatives' staff in accordance with the principles set out in Annex III.
- 2a. Where a creditor or credit intermediary provides its services within the territory of another Member State(s):
 - (i) through a branch, the host Member State shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff of a branch;
 - (ii) under the freedom to provide services, the home Member State shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff in accordance with Annex III. However host Member States may establish the minimum knowledge and competence requirements for those requirements referred to in Annex III paragraph 1(b), 1(c) and 1(e).

3. Member States shall ensure that creditors, credit intermediaries and appointed representatives are supervised on an ongoing basis in order to assess whether they make sure that their staff and, where applicable, appointed representatives comply with the requirements laid down in paragraph 1 and for creditors and credit intermediaries according to the division of competences laid down in paragraph 2 and 2 a. For that purpose creditors and credit intermediaries shall on request at least provide the competent authority a written, sufficient documentation on the fulfilment of the knowledge and competence requirements.

For the effective supervision of creditors and credit intermediaries providing their services within the territory of another Member State(s) under the freedom to provide services, the competent authorities of the host and the home Member States shall cooperate closely for the effective supervision and enforcement of the minimum knowledge and competence requirements of the host Member State. For this purpose they may delegate tasks and responsibilities to each other.

Chapter 3

Information and practices preliminary to the conclusion of the credit agreement

Article 8

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.

Article 9

Standard information to be included in advertising

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

Member States may provide that 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.

2. The standard information shall specify in a clear, concise and prominent way:
- (a) the identity of the creditor or, where applicable, the credit intermediary or appointed representative;
 - (b) 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;
 - (i) if applicable, the number of instalments;

The information listed in point (c) to (i) 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 10

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 or their appointed representatives at all times on paper or in electronic form. Member States may also provide that general information is made available by non tied credit intermediaries.

Such general information shall include at least the following:

- (a) the identity and the geographical address of the issuer of the information;
- (b) 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 or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;
- (g) representative example of the total amount of credit, the total cost of credit for the consumer, the total amount payable by the consumer and annual percentage rate of charge;
- (h) particulars of any charges included in the total cost of a credit to the consumer;
- (i) 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);
- (j) a description of the conditions related to early repayment;
- (k) if applicable, information on the measures required from the consumer regarding the valuation of the property and any related costs to the consumer;
- (l) 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;
- m) a warning concerning risks associated with credit agreements, including possible consequences of non-compliance with the commitments linked to the credit agreement;
- n) Member States may oblige the creditors to include other types of warnings which are relevant in a Member State.

Article 11

Pre-contractual information

1. Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, provides the consumer with the personalised information needed to compare the 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 16 and
- in good time before the consumer is bound by any credit agreement or offer.

Such obligatory information, on paper or on another durable medium, shall be provided by means of the European Standardised Information Sheet ('ESIS'), as set out in Annex II.

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.

However, Member States may provide for the obligatory provision of the ESIS both before the provision of any binding offer in accordance with paragraph 1 and together with the binding offer.

3. The creditor and, where applicable, the credit intermediary or appointed representative who has supplied the ESIS to the consumer shall be deemed to have fulfilled the requirements regarding information provision to the consumer prior to the conclusion of a distance contract as laid down in Article 3(1) of Directive 2002/65/EC.

4. Any additional information which the creditor or where applicable, the credit intermediary or appointed representative, may provide to the consumer or is required to provide to the consumer by national legislation shall be given in a separate document which may be annexed to the ESIS.
5. 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 (3), (4), (5) and (6) of Annex II.
6. Member States shall ensure that the creditor or, where applicable, credit intermediary or appointed representative, upon request of the consumer, provides the consumer with a copy of the draft credit agreement, in good time before the conclusion of the credit agreement. 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.

Member States may however provide that the provision of the draft credit agreement is mandatory.

Article 12

Information requirements concerning credit intermediaries and appointed representatives

1. In good time before the conclusion of a contract on the provision of services listed in Article 3(e), 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;
- (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 the credit intermediary 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 to the consumer and also receives commission from the creditor or a third party, the credit intermediary shall explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.

3. Member States shall ensure that the fee, if any, payable by the consumer to the credit intermediary, for its services:

- (a) is agreed between the consumer and credit intermediary on paper or 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.

4. Member States shall require that credit intermediaries ensure that in addition to the disclosures required by this article, an appointed representative discloses to the consumer the capacity in which he is acting and the credit intermediary he is representing when contacting or before dealing with any consumer.

Article 13

Adequate explanations

1. Member States shall ensure that creditors and, where applicable, credit intermediaries or appointed representatives provide adequate explanations to the consumer on the proposed credit agreement(s) and any ancillary service(s), in order to place the consumer in a position enabling him to assess whether the proposed credit agreements and ancillary services are adapted to his needs and financial situation, where appropriate by explaining at least:
 - (a) the pre-contractual information to be provided in accordance with:
 - Articles 11 in case of creditors;
 - Articles -11 and 12 in case of credit intermediaries or appointed representatives.
 - (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 14

Calculation of the annual percentage rate of charge

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

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 31, to amend the remarks and 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 remarks or assumptions laid down in Annex I, in particular if the remarks and 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.

Chapter 5

Creditworthiness assessment

Article 15

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 appropriately take into consideration the 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. The creditworthiness assessment shall not however be based on the sole assumption that the value of the immovable property exceeds the amount of the credit or the assumption that the immovable property will appreciate in value, unless the purpose of the credit agreement is to construct or renovate the immovable property. That assessment shall be carried out on the basis of the necessary information, obtained by the creditor or, where applicable, the credit intermediary or appointed representative 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.
2. Member States shall ensure that credit intermediaries or appointed representatives submit the necessary information obtained from the consumer to the relevant creditor to enable the creditworthiness assessment to be carried out.
3. 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.

4. 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 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.
5. 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.
6. This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Article 16

Disclosure obligation on the part of the consumer

1. Consumers shall provide creditors and, where applicable, credit intermediaries or appointed representatives in the course of the credit application process with complete and correct information on their financial situation and personal economic 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. Such request for information shall be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment. 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, credit intermediary or appointed representative shall inform the consumer that the necessary information must be provided completely and correctly. Furthermore, the creditor, credit intermediary or appointed representative 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 17

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. 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

Advisory services

Article 18

Standards for advisory services

1. Member States shall ensure that the creditor, credit intermediary or appointed representative explicitly informs the consumer, in the context of a given transaction, whether or not advisory services are being or can be provided to the consumer.
2. Member States shall ensure that before the provision of advisory services or, where applicable, before the conclusion of a contract on the provision of advisory services, the creditor, credit intermediary or appointed representative provides the consumer with the following information on paper or another durable medium:
 - (a) the range of credit agreements they will consider so that the consumer can understand whether the recommendation is being made on the basis of a consideration of the creditors, credit intermediary's or their appointed representative's own product range or on the basis of a consideration of a large number of products available on the market;
 - (b) where applicable, the fee payable by the consumer for the provision of advisory services

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

3. Where advisory services are provided to consumers, Member States shall ensure, in addition to the requirements set out in Articles 5 and 7, that:
 - (a) creditors, credit intermediaries and appointed representatives 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, tied credit intermediaries and appointed representatives appointed by tied credit intermediaries consider a sufficiently large number of credit agreements in their product range and recommend the most suitable credit agreements or several suitable credit agreements for the consumer's needs, financial situation and personal circumstances,
 - (c) not tied credit intermediaries and appointed representatives appointed by not tied credit intermediaries consider a sufficiently large number of credit agreements available on the market and recommend the most suitable credit agreement or several suitable credit agreements for the consumer's needs, financial situation and personal circumstances;
4. Member States may provide for an obligation for creditors and tied credit intermediaries and appointed representatives appointed by tied credit intermediaries to provide advisory services as a part of the credit granting process. In such case Member States may determine the cost, if any, for the provision of advisory services.
 - 4a. Member States may provide for an obligation for creditors, credit intermediaries and appointed representatives to warn a consumer when, considering the consumer's financial situation, a credit agreement may induce a specific risk for the consumer.

5. Member States may prohibit the use of the term “advice” and “advisor” or similar terms when the advisory services are being provided to consumers by:
- (i) creditors;
 - (ii) tied credit intermediaries; or
 - (iii) appointed representatives of tied credit intermediaries;
6. The provisions of this Article are without prejudice to the obligation to provide adequate explanations to consumers according to Article 13.

Chapter 8

Information and rights concerning credit agreements

Article 19

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, Member States may make the exercise of the right 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 shall provide the consumer without delay after receipt of the request, on paper or on another durable medium, with the information needed to consider this option.

This information shall at least quantify the implications for the consumer of discharging his obligations prior to the expiry of the credit agreement and clearly set out any assumptions used. Any assumptions used shall be reasonable and justifiable.

Article 20

Information concerning the borrowing rate

1. Member States shall ensure that the creditor informs the consumer of any change in the borrowing rate, on paper or another durable medium, before the change enters into force. The information shall at least state the amount of the payments to be made after the entry into force of the new borrowing rate and, in cases where the number or frequency of the payments changes, particulars thereof.
2. However, the Member States may allow the parties to agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate is as a consequence of 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

Requirements for establishment and supervision of credit intermediaries and appointed representatives

Article 21

Approval of credit intermediaries

1. Credit intermediaries shall be duly approved to carry out the activities set out in Article 3(e) by a competent authority in their home Member State through a process of authorisation and/or registration.
2. Member States shall ensure that the approval of credit intermediaries is made subject to fulfilment of at least the requirements provided for in subparagraphs (a) – (c).
 - (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) a natural person established as a credit intermediary, the members of board of a credit intermediary established as a legal person or natural persons performing equivalent tasks within a credit intermediary which is a legal person but does not have a board shall be of good repute. As a minimum they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.
- (c) a natural person established as a credit intermediary, the members of board of a credit intermediary established as a legal person or natural persons performing equivalent tasks within a credit intermediary which is a legal person but does not have a board shall possess the appropriate level of knowledge and competence in relation to credit agreements. The home Member State shall establish the appropriate level of knowledge and competence in accordance with the principles set out in Annex III.

3. Member States shall ensure that all approved credit intermediaries and their appointed representatives, whether established as natural or legal persons, are entered into a register with a competent authority in their home Member State. Member States shall ensure that the register of credit intermediaries and appointed representatives is kept up to date and is available online.

The register of credit intermediaries and appointed representatives should contain at least the following information:

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

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

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

4. Member States shall ensure that:
 - (i) any credit intermediary which is a legal person has its head office in the same Member State as its registered office.
 - (ii) any credit intermediary which is not a legal person or any credit intermediary which is a legal person but under its national law has no registered office have its head office in the Member State in which it actually carries on its main business.
5. Member States shall ensure that a single information point is established to allow quick and easy public access to information from the national register, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State.
6. Home Member States shall ensure that all approved credit intermediaries and appointed representatives comply with the conditions defined in paragraph 2 on a continuing basis. This paragraph shall be without prejudice to the provisions of article 21 a and 21 b.
7. Member States may waive the application of this Article to persons carrying out the activities set out in Article 3(e) where the activities are provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service.
8. Paragraph 1 does not apply to credit institutions holding an authorisation as defined in art. 4 (2) of the Directive 2006/48/EC as well as to other financial institutions which under national law are subject to an equivalent authorization and supervision regime.

Article 21a

Credit intermediaries tied to only one creditor

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

In such cases, Member States shall require the creditor to ensure that those credit intermediaries falling under 3(f)(i) comply with at least the requirements set out in Article 21(2)(a) to 21(2)(c). However, the home Member State may provide that for credit intermediaries defined in 3(f)(i), the professional indemnity insurance or a comparable guarantee can be provided by the creditor for which the tied credit intermediary is empowered to act.

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

Article 21b

Appointed representatives

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

Where the credit intermediary has appointed an appointed representative and is tied to only one creditor as set out in Article 3(f) (i), the creditor shall remain fully and unconditionally responsible for any action or omission on the part of the appointed representative that is acting on behalf of the credit intermediary.

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

Article 22

Freedom of establishment and freedom to provide services by credit intermediaries

1. The approval of a credit intermediary by the competent authority of its home Member State as laid down in Article 21(1) to carry out part or all of the activities referred to in Article 3(e) shall be effective for the entire territory of the Union without further approval 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 approval. However credit intermediaries are not allowed to provide their services in relation to credit agreements offered by a non-credit institution to consumers in a Member State where such non-credit institutions are not allowed to operate.
 - 1a. Appointed representatives appointed in Member States which avail themselves of the option under article 21b are not allowed to carry out part or all of the activities referred to in Article 3(e) in Member States where such appointed representatives are not allowed to operate.

2. Any approved credit intermediary intending to carry out business for the first time in one or more Member States under the freedom to provide services or when establishing a branch shall inform the competent authorities of its home Member State.

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

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

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

Article 23

Withdrawal of approval of credit intermediaries

1. The competent authority of the home Member State may withdraw the approval granted to a credit intermediary in accordance with Article 21 where such a credit intermediary:
 - (a) expressly renounces the approval or has not provided services referred to in Article 3(e) for the preceding 6 months, unless the Member State concerned has provided for approval to lapse in such cases;
 - (b) has obtained the approval through false or misleading statements or any other irregular means;
 - (c) no longer fulfils the requirements under which approval 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 approval of a credit intermediary is withdrawn by the competent authority of the home Member State, the latter shall notify the competent authorities of the host Member State(s) of such withdrawal as soon as possible and at the latest within 14 days, by any appropriate means.
3. Member States shall ensure that credit intermediaries whose approval has been withdrawn are deleted from the register without undue delay.

Article 24

Supervision of credit intermediaries and appointed representatives

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

Home Member States may provide that:

- (i) tied credit intermediaries shall be subject to supervision directly or as part of the supervision of the creditor on behalf of which they act if the creditor is a credit institution holding an authorisation as defined in art. 4 (2) of the Directive 2006/48/EC or another financial institution which under national law is subject to an equivalent authorization and supervision regime. If the tied credit intermediary provides services in another Member State other than the home Member State, then the tied credit intermediary shall be subject to direct supervision by the competent authority.
 - (ii) the appointed representative referred to in Article 21 b shall be subject to supervision either directly or as part of the supervision of the credit intermediary on behalf of which it acts.
2. The competent authorities of the Member State(s) in which a credit intermediary has a branch shall be responsible for ensuring that the services provided by the credit intermediary within its territory comply with the obligations laid down in Articles 5(1), 6, 7, 8, 9, 10, 11, 12, 13, 18, 30 and in measures adopted pursuant thereto.

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

If the credit intermediary concerned fails to take the necessary steps, the competent authorities of the host Member State shall take all appropriate measures to ensure that the credit intermediary concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the home Member State. If, despite the measures taken by the host Member State, the credit intermediary persists in breaching the legal or regulatory provisions referred to in the first subparagraph in force in the host Member State, the 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.

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

3. The competent authorities of the Member State(s) in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed 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 the competent authority of the home Member State fails to take any measures within one month from obtaining those findings or where, despite the measures taken by the competent authority of the home Member State, a credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of the host Member State consumers or orderly functioning of the markets, the following shall apply:

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

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

Chapter 10

Approval and supervision of non-credit institutions

Article 25

Approval 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 approval process, including but not limited to entering the non-credit institution in a register as well as supervision arrangements by a competent authority as defined in Article 4.

Chapter 11

Cooperation between competent authorities of different Member States

Article 26

Obligation to cooperate

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

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

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

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

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

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

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

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

Article 27

Settlement of disagreements between competent authorities in cross-border situations

1. Competent authorities shall cooperate with the EBA for the purposes of this Directive.
2. 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 12

Final provisions

Article 29

Sanctions

1. Member States shall lay down the rules on sanctions 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 sanctions provided for must be effective, proportionate and dissuasive.

Member States may maintain their existing national rules on sanctions applicable to consumers for non-compliance with national provisions adopted pursuant to Article 16.1

2. Member States shall provide that the competent authority may disclose to the public any administrative sanction that will be imposed for infringement of the provisions adopted in the implementation of this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Article 30

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 or appointed representatives and consumers, using existing bodies where appropriate. Member States shall ensure that all creditors, credit intermediaries and appointed representatives get involved in the procedures 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 31

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 14(6) and 21(1)(a) shall be conferred for an indeterminate period of time from the entry into force of this Directive.
3. The delegation of power referred to in Articles 14(6) and 21(1)(a) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 14(6) and 21(1)(a) shall enter into force only if no objection has been expressed either by the European Parliament and the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 1 month at the initiative of the European Parliament or the Council.

Article 32

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 33

Level of Harmonisation

This Directive shall not preclude Member States from retaining or adopting more stringent provisions in order to protect consumers, provided that such provisions are consistent with their obligations under Union law and this Directive.

Article 34

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.

Member States shall apply those provisions from 2 years after entry into force.

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

2. This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.
3. 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 34a

Transitional provisions

1. Credit intermediaries already performing activities referred to in Article 3(e) before the entry into force of this Directive shall take all necessary measures to comply with national implementing law stemming from Article 21. Where credit intermediaries have not already been approved according to the standards set out in the national law implementing the standards of this Directive, Member States shall ensure that credit intermediaries comply with Article 21 at the latest 3 years after the entry into force of this Directive during which time they may continue to perform the activities referred to in article 3 (e) within their home Member State.
2. Creditors and credit intermediaries or appointed representatives performing activities under this Directive before its entry into force shall take all necessary measures to comply with national implementing law stemming from Article 7 at the latest 3 years after the entry into force of this Directive.

Article 35

Review clause

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

The review shall include the following:

- (a) an assessment of 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;
2. The Commission shall undertake a review of this Directive three years after its entry into force in order to examine the need to extend the scope of this Directive to the credit agreements excluded from its scope under Article 2(2)(d) and 2(2)(e).

Article 37

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

Article 38

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

Done at Brussels,

For the European Parliament

For the Council

The President

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.

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

- (i) every day shall be counted, including weekends and holidays;
 - (ii) equal periods and then days shall be counted backwards to the date of the initial drawdown;
 - (iii) the length of the period of days shall be obtained excluding the first day and including the last day and shall be expressed in years by dividing this period by the number of days (365 or 366 days) of the complete year counted backwards from the last day to the same day of the previous year.
- (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at 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 n , expressed in years, i.e.:

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

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

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

- (a) If a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full.
- (b) If a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the credit agreement and in accordance with those drawdown limits.
- (c) 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.
- (d) If different borrowing rates and charges are offered for a limited period or amount, the borrowing rate and the charges shall be deemed to be the highest for the whole duration of the credit agreement.

- (e) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculation of the annual percentage rate, based on the value of the agreed indicator or internal reference rate at that time.
- (f) If the ceiling applicable to the credit has not yet been agreed that ceiling is assumed to be EUR 160 000. In the case of credit agreements, other than contingent liabilities or guarantees, the purpose of which is not to acquire or retain a right in immovable property or land, overdrafts, deferred debit cards or credit cards this ceiling is assumed to be EUR 1 500.
- (g) In the case of credit agreements other than overdrafts, bridging loans, shared equity agreements, contingent liabilities or guarantees and open ended credit agreements as referred to in the assumptions set out in points (i), (j), (k), (l) and (m):
- (i) if the date or amount of a repayment of capital to be made by the consumer cannot be ascertained, it shall be assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides;
- (ii) if the interval between the date of initial drawdown and the date of the first payment to be made by the consumer cannot be ascertained, it shall be assumed the shortest interval.
- (h) Where the date or amount of a payment to be made by the consumer cannot be ascertained on the basis of the credit agreement or the assumptions set out in points (g), (i), (j), (k), (l) and (m) it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown:

- (i) interest charges are paid together with the repayments of the capital;
 - (ii) a non-interest charges expressed as a single sum is paid at the date of the conclusion of the credit agreement;
 - (iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;
 - (iv) the final payment clears the balance of capital, interest and other charges, if any.
- (i) In the case of an overdraft facility, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the overdraft facility is not known, the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is three months.
- (j) In the case of a bridging loan, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the credit agreement is not known the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is twelve months.
- (k) In the case of an open ended credit agreement, other than an overdraft facility and bridging loan, it shall be assumed that:
- (i) for credit agreements, the purpose of which is to acquire or retain rights in immovable property the credit is provided for a period of twenty years starting from the date of the initial drawdown, and that the final payment made by the consumer clears the balance of capital, interest and other charges, if any; in the case of credit agreements, the purpose of which is not to acquire or retain rights in immovable property or which are drawn down by deferred debit cards or credit cards, this period shall be of one year.

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

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

- (l) In the case of contingent liabilities or guarantees:
 - (i) the total amount of credit shall be deemed to be drawn down in full as a single amount at the earlier of:
 - a) the latest draw down date permitted under the credit agreement being the potential source of the liability or guarantee; or
 - b) in the case of a rolling credit agreement at the end of the initial period prior to the roll over of the agreement.
- (m) In the case of shared equity agreements:
 - (i) the payments by consumers shall be deemed to occur at the latest date or dates permitted under the credit agreement;

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

Annex II
European Standardised Information Sheet (ESIS)

PART A

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

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

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

ESIS Model

<i>(Introductory text)</i>
This document was produced for [name and geographical address of consumer] on [current date] for information.
This document was produced on the basis of the information that you have provided so far and on the current financial market conditions. The lending conditions below, <i>(where applicable)</i> apart from the interest rate and other costs, will remain unchanged until [validity date].
<i>(Where applicable)</i> After that date, it may change in line with market conditions.
<i>(Where applicable)</i> This document does not constitute an obligation for us to grant you a loan.
You have the right, upon request, to obtain a free copy of the draft credit agreement. This provision does not apply if the lender is, at the time of the request, unwilling to conclude a credit agreement with you.

1. Lender
[Name] [Geographical address] [Telephone number] [Fax number] [E-mail address] [Web address] [Registration number] Contact person: [Full contact details of contact person]
<i>(Where applicable)</i> 2. Credit intermediary
[Name] [Geographical address] [Telephone number] [Fax number] [E-mail address] [Web address] [Registration number] Contact person:[Full contact details of contact person]
3. Main features of the loan
Amount and currency of the loan to be granted: [value][currency] <i>(Where applicable)</i> "This loan is not in [national currency of the borrower]" Duration of the loan: [duration] [Type of loan] [Type of applicable interest rate] Total amount to be reimbursed: This means that you will pay back [amount] for every [unit of the currency] borrowed. <i>(Where applicable)</i> [Maximum available loan amount relative to the value of the property] <i>(Where applicable)</i> [Estimated value of the property] <i>(Where applicable)</i> [Security]

4. Total cost of the loan
<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 or, where applicable, indication of a reference rate and percentage value of creditor's spread]</p> <p>[Other components of the APRC]</p> <p>Costs to be paid on a one-off basis</p> <p>Costs to be paid regularly</p> <p><i>(Where applicable)</i> The following costs are not known to the creditor and are therefore not included in the APRC: [Costs]</p> <p><i>(Where applicable)</i> You will also need to pay other taxes and costs [example, notary fees]. <i>(Where applicable)</i> You may also be able to benefit from tax deductions. Please make sure that you are aware of all other taxes and costs associated with the loan.</p>
5. Frequency and number of payments
Repayment frequency: [frequency]
Number of payments: [number]
6. Amount of each instalment
<p>[Amount] [currency]</p> <p>Your income may change. Please make sure that you have been made aware of the consequences the drop in your income may have on the repayment of instalments.</p> <p><i>(Where applicable)</i> This is interest only loan. This means that, throughout its duration, you will need to build up enough capital in order to reimburse the amount you have borrowed at maturity.</p> <p><i>(Where applicable)</i> The interest rate of this loan does not remain fixed during the whole duration of the loan. This means that the amount of your instalments may increase or decrease depending on the interest rate.</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><i>(Where applicable)</i> 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.</p>

7. Additional obligations
<p>The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.</p> <p>[Obligations]</p> <p><i>(Where applicable)</i> Please note the possible consequences of cancelling at a later stage any of the ancillary services relating to the loan;</p> <p>[Consequences]</p>
8. Early repayment
<p>You have the possibility to repay this loan early, either fully or partially.</p> <p><i>(Where applicable)</i> [Conditions]</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 compensation at that moment.</p>
<i>(Where applicable)</i> 9. Other rights of the borrower.
<p><i>(Where applicable)</i> For a period of [length of withdrawal period] after [when the withdrawal period begins] the borrower may exercise his right to cancel the agreement.</p> <p><i>(Where applicable)</i> Should you decide to exercise your right of withdrawal [from the credit agreement], please verify whether you will remain bound by your other obligations relating to the loan [including the ancillary contracts you concluded in relation to the credit agreement[, referred to in Section 7.</p> <p><i>(Where applicable)</i> Once you have received the credit contract from the creditor, you may not accept it before the end of [length of reflection period]</p> <p><i>(Where applicable)</i> The information included in the credit contract provided to you by the creditor will remain valid for [length of the period of validity of the offer].</p> <p><i>(Where applicable)</i> [Other important legal aspects related to the conclusion of the credit agreement]</p>

10. Internal complaint procedure
<p>[Name of the relevant department]</p> <p>[Geographical address]</p> <p>[Telephone number]</p> <p>[E-mail address]</p> <p>Contact person: [contact details]</p> <p><i>(Where applicable)</i> Maximum time for the creditor to handle the complaint [period of time]</p>
11. External complaint body/bodies
<p>In the event of disagreement with the lender which remains unresolved the borrower has the possibility to address a complaint to:</p> <p>[Name of the complaint body/bodies]</p> <p>[Geographical address]</p> <p>[Telephone number]</p> <p>[E-mail address]</p> <p>[Web address]</p>
12. Non-compliance with the commitments linked to the loan: consequences for the borrower
<p>[Types of non-compliance]</p> <p>[Financial and/or legal consequences]</p> <p>Should you encounter difficulties in making your [frequency] payments, we invite you to contact us as quickly as possible to explore possible solutions.</p> <p><i>(Where applicable)</i> As a last resort, your home may be repossessed if you do not keep up with payments.</p>
<i>(Where applicable)</i> 13. Additional information in the case of distance marketing
<p><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].</p> <p>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.</p>
14. Supervisor
<p>This lender is supervised by [Name, geographical and web address of supervisory authority]</p> <p><i>(Where applicable)</i> This credit intermediary is supervised by [Name, geographical and web address of supervisory authority].</p>

(Where applicable) 15. Illustrative repayment table

This table shows the amount to be paid every [frequency].

The instalments (column [relevant no.]) are the sum of interest to be paid (column [relevant no.]), capital to be paid (column [relevant no.]) *and, (where applicable)* other costs to be paid (column [relevant no.]). *(Where applicable)*, The costs in the other costs column relate to [list of costs]. Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed after each instalment.

[Amount and currency of the loan]

[Duration of the loan]

[Interest rate]

[Table]

(Where applicable) [Warning on the variability of the instalments]

PART B

Instructions to complete the ESIS

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

Section 'Introductory text'

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

Section '1. Lender'

- (1) Name, telephone number, and geographical address of the creditor shall refer to the contact information that the consumer may use for future correspondence.
- (2) Information on the e-mail address, fax number, web address and contact person 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) 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.
- (5) The creditor shall inform the consumer whether or not advisory services are being provided and on what basis.

Section '2. Credit intermediary'(1)

- (1) Name, telephone number and geographical address of the credit intermediary shall refer to the contact information that the consumer may use for future correspondence.
- (2) Information on the e-mail address, fax number, web address and contact person is optional.
- (3) The credit intermediary shall indicate the name of the trade register in which the credit intermediary is entered and its registration number or an equivalent means of identification in that register.
- (4) The credit intermediary shall inform the consumer whether or not advisory services are being provided and on what basis.

Section '3. Main features of the loan'

- (1) This section shall clearly explain the characteristics of the loan, including the potential risks associated with the interest rate and amortisation structure.
- (2) The duration of the credit shall be expressed in years and months, whichever is the most relevant. Where the duration of the credit can vary during the lifetime of the contract, the creditor shall explain when and under which conditions this can occur. Where the credit is open ended, for example, for a secured credit card, the creditor shall clearly state the fact.

- (3) The type of loan should be clearly indicated (e.g. mortgage loan, home loan, secured credit card, etc.). The description of the type of credit shall clearly indicate how the capital and the interest shall be reimbursed during the life of the credit (i.e. the amortisation structure), specifying clearly whether the credit agreement is on capital repayment or interest-only basis.
- (4) In the case of a loan under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.
- (5) This section shall also explain whether the borrowing rate is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the interest rate variability, such as caps or floors. The formula used to revise the borrowing rate and its different components (e.g. reference rate, interest rate spread) shall be explained. The creditor shall also indicate, e.g. by means of web address, where further information on the indices or rates used in the formula can be found, e.g. Euribor, Central Bank reference rate. 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. If different borrowing rates apply in different circumstances, the information should be provided on all applicable rates.

- (6) The 'total amount to be reimbursed' corresponds to the total amount payable by the consumer. It shall be shown as the sum of the credit amount and the total cost of the credit. Where the borrowing rate is not fixed for the duration of the contract, it shall be highlighted that this amount is illustrative and may vary in particular in relation with the variation in the borrowing rate. The conditions governing the drawdown of the loan shall be explained.
- (6) Where it is a condition for the loan, 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.
- (7) Where the credit will be secured by a mortgage on the property or another comparable security or by a right related to immovable property, the creditor shall draw the borrower's attention to this. Where applicable the creditor shall also indicate the assumed value of the security and whether or not a formal valuation needs to be undertaken prior to the granting of a credit.

Section '4. Total cost of the loan

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

- (3) In the section on ‘other components of the APRC’ all the other costs contained in the APRC shall be listed, including one-off costs such as administration fees, mortgage registration fee, and regular costs such as annual administration fees. The creditor shall list each of the costs by category (costs to be paid on a one-off basis, costs to be paid regularly and included in the instalments, costs to be paid regularly but not included in the instalments), indicating their amount, to whom they are to be paid and at which moment. Where the amount is not known, the creditor shall provide an indication of the amount if possible, or if not possible, how the amount will be calculated and specify that the amount provided is indicative only. Where certain costs are not included in the APRC because they are unknown to the creditor, this should be highlighted.
- (4) The APRC should be illustrated by means of a representative example, mentioning all the assumptions used in order to calculate that rate; where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components into account; if a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumptions set out in Part II of Annex I, it should indicate that other drawdown mechanisms for this type of credit agreement may result in a higher APRC. Where the conditions for drawdown are used for calculating the APRC, the creditor should highlight the charges associated with other drawdown mechanisms that are not necessarily the ones used in calculating the APRC.

Section '5. 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 '6. 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 or where the credit is indexed to the currency which is different from the borrower's national currency, the creditor shall include numerical examples clearly showing how changes to the relevant exchange rate may affect the amount of the instalments. 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 or where the amount of each instalment expressed in the borrower's national currency depends on the corresponding amount in different 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 '7. Additional obligations'

- (1) The creditor shall refer in this section to obligations such as the obligation to insure the property, to purchase life insurance, to have a salary domiciled or to buy any other product or service. For each obligation, the creditor shall specify towards whom and by when the obligation needs to be fulfilled. The creditor shall also specify the duration of the obligation, e.g. until the end of the credit agreement. The creditor shall also specify for each obligation whether or not the possible costs to be paid by the consumer in relation to such obligation is included in the APRC (making reference to the corresponding costs mentioned in Section 4 where applicable).

- (2) Where applicable, the creditor should clarify that the ancillary services may be purchased from a provider of consumer's choice. Where such possibility is conditional on the ancillary services meeting certain minimum characteristics, such characteristics should be described in this section.
- (3) Where applicable, the creditor shall inform the consumer of the possible consequences of cancelling the ancillary services required in connection with the credit agreement.
- (4) Where the conditions explained are in order to obtain the credit on the terms and conditions marketed, the lender shall inform the borrower of the possibility to receive an ESIS with different lending conditions.

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.
- (2) In the section on the exit charge⁵, the creditor shall draw the borrower's attention to this and indicate its amount. In cases where the amount of compensation would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the creditor shall indicate how the compensation will be calculated. The creditor shall then provide an illustrative example in order to demonstrate to the borrower the level of compensation under different possible scenarios. The creditor shall also indicate whether there are any other costs in addition to early repayment charge, e.g. administrative fees, file closure fees, as well as their level.
- (3) Where applicable, the creditor shall indicate whether or not the loan may be transferred to another property.

Section '9. Other important legal aspects'

- (1) Where specific rights of e.g. withdrawal, reflection, portability (including subrogation) for the borrower exist in relation to the conclusion of the credit agreements, the creditor shall clarify the right that exist, specify the conditions to which this/these right(s) is subject, the procedure that the borrower will need to follow in order to exercise this/these right(s), inter alia, the address to which the notification of withdrawal should be sent, and the corresponding fees (where applicable).
- (2) Where the transaction is being offered at a distance, the consumer shall be informed of the existence or absence of a right of withdrawal.

Section '10. Internal complaint scheme'

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

Section '11. External complaint body'

- (1) The creditor shall explain further conditions for making a complaint.
- (2) In the case of credit agreements with a cross-border element, the creditor shall provide a reference to FIN-NET.

*Section '12. Non-compliance with the commitments linked to the loan:
consequences for the borrower'*

- (1) Where non-observance of any of the borrower's obligations linked to the credit may have financial or legal consequences for the borrower, the creditor shall describe in this section the different main cases (e.g. late payments/default, failure to respect the obligations set out in Section 7 'Additional obligations ') and indicate where further information could be obtained.
- (2) For each of those cases, the creditor shall specify, in clear, 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. Supervisor'

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

Section '15. Illustrative repayment table'

- (1) An illustrative repayment table should be provided to consumer as part of the ESIS. However according to national law, such provision may not be compulsory for credit agreements with a borrowing rate that is not fixed for the duration of the contract.

Where applicable, the creditor should clarify that there is a right to receive a revised amortisation table under certain conditions. The creditor should clearly explain those conditions.

- (2) 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.
- (3) The table to be included in this section shall contain the following columns: 'repayment schedule' (e.g. month 1, month 2, month 3), 'amount of the instalment', 'interest to be paid per instalment', 'other costs included in the instalment' (where relevant), 'capital repaid per instalment' and 'outstanding capital after each instalment'.
- (4) 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.

- (5) 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:
- (i) specify, where relevant, the applicable caps and floors;
 - (ii) 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
 - (iii) where there is a cap, indicate the instalment amount in the worst-case scenario.

Annex III

Minimum knowledge and competence requirements

1. The minimum knowledge and competence requirements for creditors', credit intermediaries' and appointed representatives' staff (Article 7) and for persons involved in the management of credit intermediaries or appointed representatives (Article 21(1b)) 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 credit agreements for consumers;
 - (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 standards;
 - (h) Appropriate knowledge of the consumer's creditworthiness assessment process.

2. When establishing minimum knowledge and competence requirements Member States may differentiate between the levels and types of requirements applicable to the staff of creditors, the staff of credit intermediaries or appointed representatives and the management of credit intermediaries or appointed representatives.

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