

Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (Text with EEA relevance)

CHAPTER 1

SUBJECT MATTER, SCOPE, DEFINITIONS AND COMPETENT AUTHORITIES

Article 1

Subject matter

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

Article 2

Level of harmonisation

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

2 Notwithstanding paragraph 1, Member States shall not maintain or introduce in their national law provisions diverging from those laid down in Article 14(2) and Annex II Part A with regard to standard pre-contractual information through a European Standardised Information Sheet (ESIS) and Article 17(1) to (5), (7) and (8) and Annex I with regard to a common, consistent Union standard for the calculation of the annual percentage rate of charge (APRC).

Article 3

Scope

- 1 This Directive shall apply to:
 - a credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property; and
 - b credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.
- 2 This Directive shall not apply to:

- a Equity release credit agreements where the creditor:
 - (i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and
 - (ii) will not seek repayment of the credit until the occurrence of one or more specified life events of the consumer, as defined by Member States, unless the consumer breaches his contractual obligations which allows the creditor to terminate the credit agreement;
 - b credit agreements where the credit is granted by an employer to his employees as a secondary activity where such a credit agreement is offered free of interest or at an APRC lower than those prevailing on the market and not offered to the public generally;
 - c credit agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;
 - d credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;
 - e credit agreements which are the outcome of a settlement reached in court or before another statutory authority;
 - f credit agreements which relate to the deferred payment, free of charge, of an existing debt and which do not fall within the scope of point (a) of paragraph 1.
- 3 Member States may decide not to apply:
- a Articles 11 and 14 and Annex II to credit agreements for consumers, secured by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property, the purpose of which is not to acquire or retain the right to residential immovable property, provided that the Member States apply to such credit agreements Articles 4 and 5 of and Annexes II and III to Directive 2008/48/EC;
 - b this Directive to credit agreements which relate to an immovable property where the credit agreement provides that the immovable property cannot at any time be occupied as a house, apartment or another place of residence by the consumer or a family member of the consumer and is to be occupied as a house, apartment or another place of residence on the basis of a rental agreement;
 - c this Directive to credit agreements which relate to credits granted to a restricted public under a statutory provision with a general interest purpose, free of interest or at lower borrowing rates than those prevailing on the market or on other terms which are more favourable to the consumer than those prevailing on the market and at borrowing rates not higher than those prevailing on the market;
 - d this Directive to bridging loans;
 - e this Directive to credit agreements where the creditor is an organisation within the scope of Article 2(5) of Directive 2008/48/EC.
- 4 Member States which use the option referred to in point (b) of paragraph 3 shall ensure the application of an appropriate framework at a national level for this type of credit.
- 5 Member States which use the option referred to in point (c) or (e) of paragraph 3 shall ensure the application of adequate alternative arrangements to ensure consumers receive timely information on the main features, risks and costs of such credit agreements at the pre-contractual stage and that advertising of such credit agreements is fair, clear and not misleading.

Article 4

Definitions

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

- (1) ‘Consumer’ means a consumer as defined in point (a) of Article 3 of Directive 2008/48/EC.
- (2) ‘Creditor’ means a natural or legal person who grants or promises to grant credit falling within the scope of Article 3 in the course of his trade, business or profession.
- (3) ‘Credit agreement’ means an agreement whereby a creditor grants or promises to grant, to a consumer, a credit falling within the scope of Article 3 in the form of a deferred payment, loan or other similar financial accommodation.
- (4) ‘Ancillary service’ means a service offered to the consumer in conjunction with the credit agreement.
- (5) ‘Credit intermediary’ means a natural or legal person who is not acting as a creditor or notary and not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary, and who, in the course of his trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration:
 - (a) presents or offers credit agreements to consumers;
 - (b) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to in point (a); or
 - (c) concludes credit agreements with consumers on behalf of the creditor.
- (6) ‘Group’ means a group of creditors which are to be consolidated for the purposes of drawing up consolidated accounts, as defined in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings⁽¹⁾.
- (7) ‘Tied credit intermediary’ means any credit intermediary who acts on behalf of and under the full and unconditional responsibility of:
 - (a) only one creditor;
 - (b) only one group; or
 - (c) a number of creditors or groups which does not represent the majority of the market.
- (8) ‘Appointed representative’ means a natural or legal person who performs activities referred to in point 5 that is acting on behalf of and under the full and unconditional responsibility of only one credit intermediary.
- (9) ‘Credit institution’ means credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013.
- (10) ‘Non-credit institution’ means any creditor that is not a credit institution.

- (11) 'Staff' means:
- (a) any natural person working for the creditor, or credit intermediary who is directly engaged in the activities covered by this Directive or who has contacts with consumers in the course of activities covered by this Directive;
 - (b) any natural person working for an appointed representative who has contacts with consumers in the course of activities covered by this Directive;
 - (c) any natural person directly managing or supervising the natural persons referred to in points (a) and (b).
- (12) 'Total amount of credit' means the total amount of credit as defined in point (l) of Article 3 of Directive 2008/48/EC.
- (13) 'Total cost of the credit to the consumer' means the total cost of the credit to the consumer as defined in point (g) of Article 3 of Directive 2008/48/EC including the cost of valuation of property where such valuation is necessary to obtain the credit but excluding registration fees for the transfer of ownership of the immovable property. It excludes any charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement.
- (14) 'Total amount payable by the consumer' means the total amount payable by the consumer as defined in point (h) of Article 3 of Directive 2008/48/EC.
- (15) 'Annual percentage rate of charge' (APRC) 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 17(2) and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the consumer.
- (16) 'Borrowing rate' means the borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC.
- (17) 'Creditworthiness assessment' means the evaluation of the prospect for the debt obligation resulting from the credit agreement to be met.
- (18) 'Durable medium' means durable medium as defined in point (m) of Article 3 of Directive 2008/48/EC.
- (19) 'Home Member State' means:
- (a) where the creditor or credit intermediary is a natural person, the Member State in which his head office is situated;
 - (b) where the creditor or credit intermediary is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated.
- (20) '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.
- (21) 'Advisory services' means the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements and constitutes a separate activity from the granting of a credit and from the credit intermediation activities set out in point 5.

- (22) ‘Competent authority’ means an authority designated as competent by a Member State in accordance with Article 5.
- (23) ‘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 immovable property.
- (24) ‘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 an event or events specified in the contract occur.
- (25) ‘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.
- (26) ‘Tying practice’ means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.
- (27) ‘Bundling practice’ means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.
- (28) ‘Foreign currency loan’ means a credit agreement where the credit is:
 - (a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; or
 - (b) denominated in a currency other than that of the Member State in which the consumer is resident.

Article 5

Competent authorities

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

The authorities referred to in the first subparagraph 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.

2 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 by this Directive. This shall not, however, prevent the competent authorities from exchanging or transmitting confidential information in accordance with national and Union law.

3 Member States shall ensure that the authorities designated as competent for ensuring the application and enforcement of Articles 9, 29, 32, 33, 34 and 35 of this Directive are either or both of the following:

- a competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010;
- b authorities other than the competent authorities referred to in point (a) provided that national laws, regulations or administrative provisions require those authorities to cooperate with the competent authorities referred to in point (a) whenever necessary in order to carry out their duties under this Directive, including for the purposes of cooperating with the European Supervisory Authority (European Banking Authority) (EBA) as required under this Directive.

4 Member States shall inform the Commission and EBA of the designation of the competent authorities and any changes thereto, indicating any division of the respective duties between different competent authorities. The first such notification shall be made as soon as possible and at the latest on 21 March 2016.

5 The competent authorities shall 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 which are 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 9, 29, 32, 33, 34 and 35.

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

7 The Commission shall publish a list of the competent authorities in the *Official Journal of the European Union* at least once a year, and update it continuously on its website.

CHAPTER 2

FINANCIAL EDUCATION

Article 6

Financial education of consumers

1 Member States shall promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements. Clear and general information on the credit granting process is necessary in order to guide consumers, especially those who take out a mortgage credit for the first time. Information regarding the guidance that consumer organisations and national authorities may provide to consumers, is also necessary.

2 The Commission shall publish an assessment of the financial education available to consumers in the Member States and identify examples of best practices which could be further developed in order to increase the financial awareness of consumers.

CHAPTER 3

**CONDITIONS APPLICABLE TO CREDITORS, CREDIT
INTERMEDIARIES AND APPOINTED REPRESENTATIVES***Article 7***Conduct of business obligations when providing credit to consumers**

1 Member States shall require that when manufacturing credit products or granting, intermediating or providing advisory services on credit and, where appropriate, ancillary services to consumers or when executing a credit agreement, the creditor, credit intermediary or appointed representative acts honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers. In relation to the granting, intermediating or provision of advisory services on credit and, where appropriate, of ancillary services the activities shall be based on information about the consumer's circumstances and any specific requirement made known by a consumer and on reasonable assumptions about risks to the consumer's situation over the term of the credit agreement. In relation to such provision of advisory services, the activity shall in addition be based on the information required under point (a) of Article 22(3).

2 Member States shall ensure that the manner in which creditors remunerate their staff and credit intermediaries and the manner in which credit intermediaries remunerate their staff and appointed representatives do not impede compliance with the obligation set out in paragraph 1.

3 Member States shall ensure that, when establishing and applying remuneration policies for staff responsible for the assessment of creditworthiness, creditors comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

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

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

5 Member States may prohibit or impose restrictions on payments from a consumer to a creditor or credit intermediary prior to the conclusion of a credit agreement.

*Article 8***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 is provided without charge to the consumer.

Article 9

Knowledge and competence requirements for staff

1 Member States shall ensure that creditors, credit intermediaries and appointed representatives require their staff to possess and to keep up-to-date an appropriate level of knowledge and competence in relation to the manufacturing, the offering or granting of credit agreements, the carrying out of credit intermediation activities set out in point 5 of Article 4 or the provision of advisory services. Where the conclusion of a credit agreement includes an ancillary service, appropriate knowledge and competence in relation to that ancillary service shall be required.

2 Except in the circumstances referred to in paragraph 3, home Member States shall establish minimum knowledge and competence requirements for creditors', credit intermediaries' and appointed representatives' staff in accordance with the principles set out in Annex III.

3 Where a creditor or credit intermediary provides its services within the territory of one or more other Member States:

- (i) through a branch, the host Member State shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff of a branch;
- (ii) under the freedom to provide services, the home Member State shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff in accordance with Annex III, however host Member States may establish the minimum knowledge and competence requirements for those requirements referred to in points (b), (c), (e) and (f) of paragraph 1 of Annex III.

4 Member States shall ensure that compliance with the requirements of paragraph 1 is supervised by the competent authorities, and that the competent authorities have powers to require creditors, credit intermediaries and appointed representatives to provide such evidence as the competent authority deems necessary to enable such supervision.

5 For the effective supervision of creditors and credit intermediaries providing their services within the territory of other Member States 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 that purpose they may delegate tasks and responsibilities to each other.

CHAPTER 4

INFORMATION AND PRACTICES PRELIMINARY TO THE CONCLUSION OF THE CREDIT AGREEMENT

Article 10

General provisions applicable to advertising and marketing

Without prejudice to Directive 2005/29/EC, Member States shall require that any advertising and marketing communications concerning credit agreements are fair, clear

and not misleading. In particular, wording that may create false expectations for a consumer regarding the availability or the cost of a credit shall be prohibited.

Article 11

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 includes the standard information in accordance with this Article.

Member States may provide that the first subparagraph shall not apply where national law requires the indication of the APRC in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph.

2 The standard information shall specify in a clear, concise and prominent way:

- a the identity of the creditor or, where applicable, the credit intermediary or appointed representative;
- b where applicable, that the credit agreement will be secured by a mortgage or another comparable security commonly used in a Member State on residential immovable property or by a right related to residential immovable property;
- c the borrowing rate, indicating whether this is fixed or variable or a combination of 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 APRC which shall be included in the advertisement at least as prominently as any interest rate;
- f where applicable, the duration of the credit agreement;
- g where applicable, the amount of the instalments;
- h where applicable, the total amount payable by the consumer;
- i where applicable, the number of instalments;
- j where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the consumer.

3 The information listed in paragraph 2, other than that listed in points (a), (b) or (j) thereof, shall be specified by means of a representative example and shall adhere to that representative example throughout. Member States shall adopt criteria for determining a representative example.

4 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 be stated in a clear, concise and prominent way, together with the APRC.

5 The information referred to in paragraphs 2 and 4 shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising.

6 Member States may require the inclusion of a concise and proportionate warning concerning specific risks associated with credit agreements. They shall notify those requirements to the Commission without delay.

7 This Article shall be without prejudice to Directive 2005/29/EC.

Article 12

Tying and bundling practices

- 1 Member States shall allow bundling practices but shall prohibit tying practices.
- 2 Notwithstanding paragraph 1, Member States may provide that creditors can request the consumer or a family member or close relation of the consumer to:
 - a open or maintain a payment or a savings account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default;
 - b purchase or keep an investment product or a private pension product, where such product which primarily offers the investor an income in retirement serves also to provide additional security for the creditor in the event of default or to accumulate capital to repay the credit, to service the credit or to pool resources to obtain the credit;
 - c conclude a separate credit agreement in conjunction with a shared-equity credit agreement to obtain the credit.
- 3 Notwithstanding paragraph 1, Member States may allow tying practices when the creditor can demonstrate to its competent authority that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the consumers taking due account of the availability and the prices of the relevant products offered on the market. This paragraph shall only apply to products which are marketed after 20 March 2014.
- 4 Member States may allow creditors to require the consumer to hold a relevant insurance policy related to the credit agreement. In such cases Member States shall ensure that the creditor accepts the insurance policy from a supplier different to his preferred supplier where such policy has a level of guarantee equivalent to the one the creditor has proposed.

Article 13

General information

- 1 Member States shall ensure that clear and comprehensible general information about credit agreements is made available by creditors or, where applicable, by tied credit intermediaries or their appointed representatives at all times on paper or on another durable medium or in electronic form. In addition, Member States may 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 security, including, where applicable, the possibility for it to be located in a different Member State;
- d the possible duration of the credit agreements;
- e types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;

- f where foreign currency loans are available, an indication of the foreign currency or currencies, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;
 - g a representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC;
 - h an indication of possible further costs, not included in the total cost of the credit to the consumer, to be paid in connection with a credit agreement;
 - i the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments;
 - j where applicable, a clear and concise statement that compliance with the terms and conditions of the credit agreement does not guarantee repayment of the total amount of credit under the credit agreement;
 - k a description of the conditions directly relating to early repayment;
 - l whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the consumer;
 - m indication of ancillary services the consumer is obliged to acquire in order to obtain the credit or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor; and
 - n a general warning concerning possible consequences of non-compliance with the commitments linked to the credit agreement.
- 2 Member States may oblige the creditors to include other types of warnings which are relevant in a Member State. They shall notify those requirements to the Commission without delay.

Article 14

Pre-contractual information

- 1 Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, provides the consumer with the personalised information needed to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a credit agreement:
- a without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 20; and
 - b in good time before the consumer is bound by any credit agreement or offer.
- 2 The personalised information referred to in paragraph 1, on paper or on another durable medium, shall be provided by means of the ESIS, as set out in Annex II.
- 3 Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be provided on paper or on another durable medium and accompanied by an ESIS where:
- a no ESIS has been provided to the consumer previously; or
 - b the characteristics of the offer are different from the information contained in the ESIS previously provided.
- 4 Member States may provide for the obligatory provision of the ESIS before the provision of an offer binding on the creditor. Where a Member State so provides, it shall require that the ESIS shall only be required to be provided again where point (b) of paragraph 3 is met.

5 Member States which before 20 March 2014 have implemented an information sheet that meets equivalent information requirements to those set out in Annex II may continue to use it for the purposes of this Article until 21 March 2019.

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

Member States shall specify that the time period referred to in the first subparagraph shall be either a reflection period before the conclusion of the credit agreement or a period for exercising a right of withdrawal after the conclusion of the credit agreement or a combination of the two.

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

- a the offer shall be binding on the creditor for the duration of the reflection period; and
- b the consumer may accept the offer at any time during the reflection period.

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

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

Where the consumer has a right of withdrawal in accordance with the second subparagraph of this paragraph, Article 6 of Directive 2002/65/EC shall not apply.

7 The creditor and, where applicable, the credit intermediary or appointed representative who has supplied the ESIS to the consumer shall be deemed to have fulfilled the requirements regarding information provision to the consumer prior to the conclusion of a distance contract as laid down in Article 3(1) of Directive 2002/65/EC and shall be deemed to satisfy the requirements of Article 5(1) of that Directive only where they have at least supplied the ESIS prior to the conclusion of the contract.

8 Member States shall not modify the ESIS model other than as provided for in Annex II. Any additional information which the creditor or, where applicable, the credit intermediary or appointed representative, may provide to the consumer or is required to provide to the consumer by national law shall be given in a separate document which may be annexed to the ESIS.

9 The Commission shall be empowered to adopt delegated acts in accordance with Article 40 to amend the standard wording in Part A of Annex II or the instructions in Part B thereof to address the need for information or warnings concerning new products that were not marketed before 20 March 2014. Such delegated acts shall however not change the structure or format of the ESIS.

10 In the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of point (b) of Article 3(3) of that Directive shall include at least the items referred to in sections 3 to 6 of Part A of Annex II to this Directive.

11 Member States shall ensure that at least where no right of withdrawal exists the creditor or, where applicable, the credit intermediary or appointed representative provides the consumer with a copy of the draft credit agreement, at the time of the provision of an offer binding on

the creditor. Where a right of withdrawal exists, Member States shall ensure that the creditor or, where applicable, the credit intermediary or appointed representative offers to provide the consumer with a copy of the draft credit agreement at the time of the provision of an offer binding on the creditor.

Article 15

Information requirements concerning credit intermediaries and appointed representatives

1 Member States shall ensure that in good time before the carrying out of any of the credit intermediation activities set out in point 5 of Article 4, the credit intermediary or appointed representative shall provide the consumer with at least the following information on paper or on another durable medium:

- a the identity and the geographical address of the credit intermediary;
- b the register in which he has been included, the registration number, where applicable, and the means for verifying such registration;
- c whether the credit intermediary is tied to or works exclusively for one or more creditors. Where the credit intermediary is tied to or works exclusively for one or more creditors, it shall provide the names of the creditors for which it is acting. The credit intermediary may disclose that it is independent where it meets the conditions laid down in accordance with Article 22(4);
- d whether the credit intermediary offers advisory services;
- e the fee, where applicable, payable by the consumer to the credit intermediary for its services or where this is not possible, the method for calculating the fee;
- f the procedures allowing consumers or other interested parties to register complaints internally about credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;
- g where applicable, the existence and where known the amount of commissions or other inducements, payable by the creditor or third parties to the credit intermediary for their services in relation to the credit agreement. Where the amount is not known at the time of disclosure the credit intermediary shall inform the consumer that the actual amount will be disclosed at a later stage in the ESIS.

2 Credit intermediaries who are not tied but who receive commission from one or more creditors shall, at the consumer's request, provide information on the variation in levels of commission payable by the different creditors providing the credit agreements being offered to the consumer. The consumer shall be informed that he has the right to request such information.

3 Where the credit intermediary charges a fee to the consumer and additionally 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.

4 Member States shall ensure that the fee, if any, payable by the consumer to the credit intermediary for its services is communicated to the creditor by the credit intermediary, for the purpose of calculating of the APRC.

5 Member States shall require credit intermediaries to ensure that in addition to the disclosures required by this Article, their 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 16

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 agreements and any ancillary services, in order to place the consumer in a position enabling him to assess whether the proposed credit agreements and ancillary services are adapted to his needs and financial situation.

The explanations shall, where applicable, include in particular:

- a the pre-contractual information to be provided in accordance with:
 - (i) Article 14 in the case of creditors;
 - (ii) Articles 14 and 15 in the case of credit intermediaries or appointed representatives;
- b the essential characteristics of the products proposed;
- c the specific effects the products proposed may have on the consumer, including the consequences of default in payment by the consumer; and
- d where ancillary services are bundled with a credit agreement, whether each component of the bundle can be terminated separately and the implications for the consumer of doing so.

2 Member States may adapt the manner by which and the extent to which the explanations referred to in paragraph 1 is given, as well as by whom it is given, to the circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the nature of the credit offered.

CHAPTER 5

ANNUAL PERCENTAGE RATE OF CHARGE

Article 17

Calculation of the APRC

1 The APRC shall be calculated in accordance with the mathematical formula set out in Annex I.

2 The costs of opening and maintaining a specific account, of using a means of payment for both transactions and drawdowns on that account and of other costs relating to payment transactions shall be included in the total cost of credit to the consumer whenever the opening or maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed.

3 The calculation of the APRC 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 APRC but unquantifiable at the time of calculation, the APRC 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 For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period of at least five years, at the end of which a negotiation on the borrowing rate takes place to agree on a new fixed rate for a further material period, the calculation of the additional, illustrative APRC disclosed in the ESIS shall cover only the initial fixed rate period and shall be based on the assumption that, at the end of the fixed borrowing rate period, the capital outstanding is repaid.

6 Where the credit agreement allows for variations in the borrowing rate, Member States shall ensure that the consumer is informed of the possible impacts of variations on the amounts payable and on the APRC at least by means of the ESIS. This shall be done by providing the consumer with an additional APRC which illustrates the possible risks linked to a significant increase in the borrowing rate. Where the borrowing rate is not capped, this information shall be accompanied by a warning highlighting that the total cost of the credit to the consumer, shown by the APRC, may change. This provision shall not apply to credit agreements where the borrowing rate is fixed for an initial period of at least five years, at the end of which a negotiation on the borrowing rate takes place in order to agree on a new fixed rate for a further material period, for which an additional, illustrative APRC is provided for in the ESIS.

7 Where applicable, the additional assumptions set out in Annex I shall be used in calculating the APRC.

8 The Commission shall be empowered to adopt delegated acts in accordance with Article 40 in order to amend the remarks or update the assumptions used to calculate the APRC as set out in Annex I, in particular if the remarks or assumptions set out in this Article and in Annex I do not suffice to calculate the APRC in a uniform manner or are no longer adapted to the commercial situation on the market.

CHAPTER 6

CREDITWORTHINESS ASSESSMENT

Article 18

Obligation to assess the creditworthiness of the consumer

1 Member States shall ensure that, before concluding a credit agreement, the creditor makes a thorough assessment of the consumer's creditworthiness. That assessment shall take appropriate account of factors relevant to verifying the prospect of the consumer to meet his obligations under the credit agreement.

2 Member States shall ensure that the procedures and information on which the assessment is based are established, documented and maintained.

3 The assessment of creditworthiness shall not rely predominantly on the value of the residential immovable property exceeding the amount of the credit or the assumption that the residential immovable property will increase in value unless the purpose of the credit agreement is to construct or renovate the residential immovable property.

4 Member States shall ensure that where a creditor concludes a credit agreement with a consumer the creditor shall not subsequently cancel or alter the credit agreement to the detriment of the consumer on the grounds that the assessment of creditworthiness was incorrectly conducted. This paragraph shall not apply where it is demonstrated that the consumer knowingly withheld or falsified the information within the meaning of Article 20.

5 Member States shall ensure that:

- a the creditor only makes the credit available to the consumer where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement;
- b in accordance with Article 10 of Directive 95/46/EC, the creditor informs the consumer in advance that a database is to be consulted;
- c where the credit application is rejected the creditor informs the consumer without delay of the rejection and, where applicable, that the decision is based on automated processing of data. Where the rejection is based on the result of the database consultation, the creditor shall inform the consumer of the result of such consultation and of the particulars of the database consulted.

6 Member States shall ensure that the consumer's creditworthiness is re-assessed on the basis of updated information before any significant increase in the total amount of credit is granted after the conclusion of the credit agreement unless such additional credit was envisaged and included in the original creditworthiness assessment.

7 This Article shall be without prejudice to Directive 95/46/EC.

Article 19

Property valuation

1 Member States shall ensure that reliable standards for the valuation of residential immovable property for mortgage lending purposes are developed within their territory. Member States shall require creditors to ensure that those standards are used where they carry out a property valuation or to take reasonable steps to ensure that those standards are applied where a valuation is conducted by a third party. Where national authorities are responsible for regulating independent appraisers who carry out property valuations they shall ensure that they comply with the national rules that are in place.

2 Member States shall ensure that internal and external appraisers conducting property valuations are professionally competent and sufficiently independent from the credit underwriting process so that they can provide an impartial and objective valuation, which shall be documented in a durable medium and of which a record shall be kept by the creditor.

Article 20

Disclosure and verification of consumer information

1 The assessment of creditworthiness referred to in Article 18 shall be carried out on the basis of information on the consumer's income and expenses and other financial and economic circumstances which is necessary, sufficient and proportionate. The information shall be obtained by the creditor from relevant internal or external sources, including the consumer, and including information provided to the credit intermediary or appointed representative during the credit application process. The information shall be appropriately verified, including through reference to independently verifiable documentation when necessary.

2 Member States shall ensure that credit intermediaries or appointed representatives accurately submit the necessary information obtained from the consumer to the relevant creditor to enable the creditworthiness assessment to be carried out.

3 Member States shall ensure that creditors specify in a clear and straightforward way at the pre-contractual phase the necessary information and independently verifiable evidence that the consumer needs to provide and the timeframe within which the consumer needs to provide the information. Such request for information shall be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment. Member States shall allow creditors to seek clarification of the information received in response to that request where necessary to enable the assessment of creditworthiness.

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

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

4 Member States shall have measures in place to ensure that consumers are aware of the need to provide correct information in response to the request referred to in the first subparagraph of paragraph 3 and that such information is as complete as necessary to conduct a proper creditworthiness assessment. The creditor, credit intermediary or appointed representative shall warn the consumer that, where the creditor is unable to carry out an assessment of creditworthiness because the consumer chooses not to provide the information or verification necessary for an assessment of creditworthiness, the credit cannot be granted. That warning may be provided in a standardised format.

5 This Article shall be without prejudice to Directive 95/46/EC, in particular Article 6 thereof.

CHAPTER 7

DATABASE ACCESS

Article 21

Database access

1 Each Member State shall ensure access for all creditors from all Member States to databases used in that Member State for assessing the creditworthiness of consumers and for the sole purpose of monitoring consumers' compliance with the credit obligations over the life of the credit agreement. The conditions for such access shall be non-discriminatory.

2 Paragraph 1 shall apply both to databases which are operated by private credit bureaux or credit reference agencies and to public registers.

3 This Article shall be without prejudice to Directive 95/46/EC.

CHAPTER 8

ADVISORY SERVICES

*Article 22***Standards for advisory services**

1 Member States shall ensure that the creditor, credit intermediary or appointed representative explicitly informs the consumer, in the context of a given transaction, whether advisory services are being or can be provided to the consumer.

2 Member States shall ensure that before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor, credit intermediary or appointed representative provides the consumer with the following information on paper or another durable medium:

- a whether the recommendation will be based on considering only their own product range in accordance with point (b) of paragraph 3 or a wide range of products from across the market in accordance with point (c) of paragraph 3 so that the consumer can understand the basis on which the recommendation is made;
- b where applicable, the fee payable by the consumer for the advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.

The information referred to in points (a) and (b) of the first subparagraph 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 7 and 9, that:

- a creditors, credit intermediaries or 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 shall take into account reasonable assumptions as to risks to the consumer's situation over the term of the proposed credit agreement;
- b creditors, tied credit intermediaries or appointed representatives of tied credit intermediaries consider a sufficiently large number of credit agreements in their product range and recommend a suitable credit agreements or several suitable credit agreements from among their product range for the consumer's needs, financial situation and personal circumstances;
- c non-tied credit intermediaries or appointed representatives of non-tied credit intermediaries consider a sufficiently large number of credit agreements available on the market and recommend a suitable credit agreement or several suitable credit agreements available on the market for the consumer's needs, financial situation and personal circumstances;
- d creditors, credit intermediaries or appointed representatives act in the best interests of the consumer by:
 - (i) informing themselves about the consumer's needs and circumstances; and
 - (ii) recommending suitable credit agreements in accordance with points (a), (b) and (c); and

- e creditors, credit intermediaries or appointed representatives give the consumer a record on paper or on another durable medium of the recommendation provided.

4 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 creditors, tied credit intermediaries or appointed representatives of tied credit intermediaries.

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

- a creditors, credit intermediaries or appointed representatives shall consider a sufficiently large number of credit agreements available on the market; and
- b creditors, credit intermediaries or appointed representatives shall not be remunerated for those advisory services by one or more creditors.

Point (b) of the second subparagraph shall apply only where the number of creditors considered is less than a majority of the market.

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

5 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.

6 Member States shall ensure that advisory services are only provided by creditors, credit intermediaries or appointed representatives.

Member States may decide not to apply the first subparagraph to persons:

- a carrying out the credit intermediation activities set out in point 5 of Article 4 or providing advisory services where those activities are carried out or services 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 carrying out of those activities or the provision of those services;
- b providing advisory services in the context of managing existing debt which are insolvency practitioners where that activity is regulated by legal or regulatory provisions or public or voluntary debt advisory services which do not operate on a commercial basis; or
- c providing advisory services who are not creditors, credit intermediaries or appointed representatives where such persons are admitted and supervised by competent authorities in accordance with the requirements for credit intermediaries under this Directive.

Persons benefiting from the waiver in the second subparagraph shall not benefit from the right referred to in Article 32(1) to provide services for the entire territory of the Union.

7 This Article shall be without prejudice to Article 16 and to Member States’ competence to ensure that services are made available to consumers to help them understand their financial needs and which types of products are likely to meet those needs.

CHAPTER 9

FOREIGN CURRENCY LOANS AND VARIABLE RATE LOANS*Article 23***Foreign currency loans**

1 Member States shall ensure that, where a credit agreement relates to a foreign currency loan, an appropriate regulatory framework is in place at the time the credit agreement is concluded to at least ensure that:

- a the consumer has a right to convert the credit agreement into an alternative currency under specified conditions; or
- b there are other arrangements in place to limit the exchange rate risk to which the consumer is exposed under the credit agreement.

2 The alternative currency referred to in point (a) of paragraph 1 shall be either:

- a the currency in which the consumer primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the credit agreement was made; or
- b the currency of the Member State in which the consumer either was resident at the time the credit agreement was concluded or is currently resident.

Member States may specify whether both of the choices referred to in points (a) and (b) of the first subparagraph are available to the consumer or only one of them or may allow creditors to specify whether both of the choices referred to in points (a) and (b) of the first subparagraph are available to the consumer or only one of them.

3 Where a consumer has a right to convert the credit agreement into an alternative currency in accordance with point (a) of paragraph 1, the Member States shall ensure that the exchange rate at which the conversion is carried out is the market exchange rate applicable on the day of application for conversion unless otherwise specified in the credit agreement.

4 Member States shall ensure that where a consumer has a foreign currency loan, the creditor warns the consumer on a regular basis on paper or on another durable medium at least where the value of the total amount payable by the consumer which remains outstanding or of the regular instalments varies by more than 20 % from what it would be if the exchange rate between the currency of the credit agreement and the currency of the Member State applicable at the time of the conclusion of the credit agreement were applied. The warning shall inform the consumer of a rise in the total amount payable by the consumer, set out where applicable the right to convert to an alternative currency and the conditions for doing so and explain any other applicable mechanism for limiting the exchange rate risk to which the consumer is exposed.

5 Member States may further regulate foreign currency loans provided that such regulation is not applied with retrospective effect.

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

Article 24

Variable rate credits

Where the credit agreement is a variable rate credit, Member States shall ensure that:

- (a) any indexes or reference rates used to calculate the borrowing rate are clear, accessible, objective and verifiable by the parties to the credit agreement and the competent authorities; and
- (b) historical records of indexes for calculating the borrowing rates are maintained either by the providers of these indexes or the creditors.

CHAPTER 10

SOUND EXECUTION OF CREDIT AGREEMENTS AND RELATED RIGHTS

Article 25

Early repayment

1 Member States shall ensure that the consumer has a right to discharge fully or partially his obligations under a credit agreement prior to the expiry of that agreement. In such cases, the consumer shall be entitled to a reduction in the total cost of the credit to the consumer, such reduction consisting of the interest and the costs for the remaining duration of the contract.

2 Member States may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right, a different treatment depending on the type of the borrowing rate or on the moment the consumer exercises the right, or restrictions with regard to the circumstances under which the right may be exercised.

3 Member States may provide that the creditor is entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment but shall not impose a sanction on the consumer. In that regard, the compensation shall not exceed the financial loss of the creditor. Subject to those conditions Member States may provide that the compensation may not exceed a certain level or be allowed only for a certain period of time.

4 Where a consumer seeks to discharge his obligations under a credit agreement prior to the expiry of the agreement, the creditor shall provide the consumer without delay after receipt of the request, on paper or on another durable medium, with the information necessary to consider that option. That information shall at least quantify the implications for the consumer of discharging his obligations prior to the expiry of the credit agreement and clearly set out any assumptions used. Any assumptions used shall be reasonable and justifiable.

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

Article 26

Flexible and reliable markets

1 Member States shall have appropriate mechanisms in place to ensure that the claim against the security is enforceable by or on behalf of creditors. Member States shall ensure that creditors keep appropriate records concerning the types of immovable property accepted as a security as well as the related mortgage underwriting policies used.

2 Member States shall take the necessary measures to ensure an appropriate statistical monitoring of the residential property market, including for market surveillance purposes, where appropriate by encouraging the development and use of specific price indexes which may be public or private or both.

Article 27

Information concerning changes in 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 takes effect. The information shall at least state the amount of the payments to be made after the new borrowing rate takes effect and, in cases where the number or frequency of the payments changes, particulars thereof.

2 However, the Member States may allow the parties to agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically where the change in the borrowing rate is correlated with a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is kept available in the premises of the creditor and communicated personally to the consumer together with the amount of new periodic instalments.

3 Creditors may continue to inform consumers periodically where the change in the borrowing rate is not correlated with a change in a reference rate where this was allowed under national law before 20 March 2014.

4 Where changes in the borrowing rate are determined by way of auction on the capital markets and it is therefore impossible for the creditor to inform the consumer of any change before the change takes effect, the creditor shall, in good time before the auction, inform the consumer on paper or on another durable medium of the upcoming procedure and provide an indication of how the borrowing rate could be affected.

Article 28

Arrears and foreclosure

1 Member States shall adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated.

2 Member States may require that, where the creditor is permitted to define and impose charges on the consumer arising from the default, those charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default.

3 Member States may allow creditors to impose additional charges on the consumer in the event of default. In that case Member States shall place a cap on those charges.

4 Member States shall not prevent the parties to a credit agreement from expressly agreeing that return or transfer to the creditor of the security or proceeds from the sale of the security is sufficient to repay the credit.

5 Where the price obtained for the immovable property affects the amount owed by the consumer Member States shall have procedures or measures to enable the best efforts price for the foreclosed immovable property to be obtained.

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

CHAPTER 11

REQUIREMENTS FOR ESTABLISHMENT AND SUPERVISION OF CREDIT INTERMEDIARIES AND APPOINTED REPRESENTATIVES

Article 29

Admission of credit intermediaries

1 Credit intermediaries shall be duly admitted to carry out all or part of the credit intermediation activities set out in point 5 of Article 4 or to provide advisory services by a competent authority in their home Member State. Where a Member State allows appointed representatives under Article 31, such an appointed representative shall not need to be admitted as a credit intermediary under this Article.

2 Member States shall ensure that the admission of credit intermediaries is made subject to fulfilment of at least the following professional requirements in addition to the requirements provided for in Article 9:

- 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 credit 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 the first paragraph of this point. Those 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 the first paragraph of this point for submission to the Commission by 21 September 2014. EBA shall review, and if necessary, develop draft regulatory technical standards to amend the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in the first paragraph of this point for submission to the Commission for the first time by 21 March 2018 and every two years thereafter.

- b A natural person established as a credit intermediary, the members of the board of a credit intermediary established as a legal person and 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 the board of a credit intermediary established as a legal person and 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 the criteria established in order for credit intermediaries' or creditors' staff to meet their professional requirements are made public.

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

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

- a the names of the persons within the management who are responsible for the intermediation business. Member States may require the registration of all natural persons who exercise a client-facing function in an undertaking that pursues the activity of credit intermediation;
- b the Member States in which the credit intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services and of which the credit intermediary has informed the competent authority of the home Member State in accordance with Article 32(3);
- c whether the credit intermediary is tied or not.

Member States that decide to avail themselves of the option referred to in Article 30 shall ensure that the register indicates the creditor on whose behalf the tied credit intermediary acts.

Member States that decide to avail themselves of the option referred to in Article 31 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.

5 Member States shall ensure that:

- a any credit intermediary which is a legal person has its head office in the same Member State as its registered office if under its national law it has a registered office;
- b 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 has its head office in the Member State in which it actually carries on its main business.

6 Each Member State shall establish a single information point to allow quick and easy public access to information from the national register, which shall be compiled electronically and kept constantly updated. These information points shall provide the identification details of the competent authorities of each Member State.

EBA shall publish on its website references or hyperlinks to that information point.

7 Home Member States shall ensure that all admitted credit intermediaries and appointed representatives comply with the requirements defined in paragraph 2 on a continuing basis. This paragraph shall be without prejudice to Articles 30 and 31.

8 Member States may decide not to apply this Article to persons carrying out the credit intermediation activities set out in point 5 of Article 4 where those activities are carried out 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 carrying out of those activities.

9 This Article shall not apply to credit institutions authorised in accordance with Directive 2013/36/EU or to other financial institutions which under national law are subject to an equivalent authorisation and supervision regime.

Article 30

Credit intermediaries tied to only one creditor

1 Without prejudice to Article 31(1), Member States may allow tied credit intermediaries specified in point (a) of point 7 of Article 4 to be admitted by competent authorities through the creditor on whose behalf the tied credit intermediary is exclusively acting.

In such cases, the creditor shall remain fully and unconditionally responsible for any action or omission on the part of the tied credit intermediary that is acting on behalf of the creditor in areas regulated by this Directive. Member States shall require the creditor to ensure that those tied credit intermediaries comply with at least the professional requirements set out in Article 29(2).

2 Without prejudice to Article 34, creditors shall monitor the activities of tied credit intermediaries specified in point (a) of point 7 of Article 4 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 31

Appointed representatives

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

Where the appointed representative is appointed by a tied credit intermediary specified in point (a) of point 7 of Article 4, 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 that tied credit intermediary in areas regulated by this Directive. In other cases the credit intermediary shall remain fully and unconditionally responsible for any action or omission on the part of the appointed representative acting on behalf of the credit intermediary in areas regulated by this Directive.

2 The credit intermediaries shall ensure that their appointed representatives comply at least with the professional requirements set out in Article 29(2). 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 34, credit intermediaries shall 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 their staff.

4 Member States that decide to allow a credit intermediary to appoint appointed representatives shall establish a public register containing at least the information referred to in Article 29(4). Appointed representatives shall be registered in the public register in the Member State where they are established. The register shall be updated on a regular basis. It shall be publicly available for consultation online.

Article 32

Freedom of establishment and freedom to provide services by credit intermediaries

1 The admission of a credit intermediary by the competent authority of its home Member State as laid down in Article 29(1) shall be effective for the entire territory of the Union without further admission by the competent authorities of the host Member States being required for the carrying out of the activities and provision of services covered by the admission, provided that the activities a credit intermediary intends to carry out in the host Member States are covered by the admission. However, credit intermediaries shall not be allowed to provide their services in relation to credit agreements offered by non-credit institutions to consumers in a Member State where such non-credit institutions are not allowed to operate.

2 Appointed representatives appointed in Member States which avail themselves of the option under Article 31 are not allowed to carry out part or all of the credit intermediation activities set out in point 5 of Article 4 or to provide advisory services in Member States where such appointed representatives are not allowed to operate.

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

Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member States concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification. They shall notify the competent authorities of the host Member States concerned of the creditors to which the credit intermediary is tied and whether the creditors take full and unconditional responsibility for the credit intermediary's activities. The host Member State shall use the information received from the home Member State to enter the necessary information into 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.

4 Before the branch of a credit intermediary commences its activities or within two months of receiving the notification referred to in the second subparagraph of paragraph 3, the competent authorities of the host Member State shall prepare for the supervision of the credit intermediary in accordance with Article 34 and, if necessary, indicate to the credit intermediary the conditions under which, in areas not harmonised in Union law, those activities are to be carried out in the host Member State.

Article 33

Withdrawal of admission of credit intermediaries

1 The competent authority of the home Member State may withdraw the admission granted to a credit intermediary in accordance with Article 29 where such a credit intermediary:

- a expressly renounces the admission or has carried out neither credit intermediation activities set out in point 5 of Article 4 nor provided advisory services for the preceding six months, unless the Member State concerned has provided for admission to lapse in such cases;
- b has obtained the admission through false or misleading statements or any other irregular means;
- c no longer fulfils the requirements under which admission was granted;
- d falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal;
- e has seriously or systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for credit intermediaries.

2 Where the admission of a credit intermediary is withdrawn by the competent authority of the home Member State, the latter shall notify the competent authorities of the host Member States of such withdrawal as soon as possible and at the latest within 14 days, by any appropriate means.

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

Article 34

Supervision of credit intermediaries and appointed representatives

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

Home Member States shall provide that tied credit intermediaries are to 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 authorised in accordance with Directive 2013/36/EU or another financial institution which under national law is subject to an equivalent authorisation and supervision regime. However, if the tied credit intermediary provides services in a Member State other than the home Member State, then the tied credit intermediary shall be subject to supervision directly.

Home Member States which allow credit intermediaries to appoint representatives in accordance with Article 31 shall ensure that such appointed representatives are subject to supervision either directly or as part of the supervision of the credit intermediary on behalf of which it acts.

2 The competent authorities of the Member States 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 Article 7(1) and Articles 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 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 measures adopted in that Member State pursuant to Article 7(1) and Articles 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39, 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 action to ensure that the credit intermediary concerned puts an end to its irregular situation. The nature of that action shall be communicated to the competent authorities of the home Member State.

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

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

3 The competent authorities of the Member States in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to fulfil its responsibilities under paragraph 2 and to enable the competent authorities of the home Member State to enforce the obligations under Article 7(2), (3) and (4) 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 measures 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 measures adopted pursuant to this Directive, other than those specified in paragraph 2, it shall refer those findings to the competent authority of the home Member State which shall take the appropriate action.

Where the competent authority of the home Member State fails to take any action within one month from obtaining those findings or where, despite the action 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 competent authority of the host Member State:

- a shall, after having informed the competent authority of the home Member State, take all appropriate action 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 its territory. The Commission and EBA shall be informed of such action without undue delay;
- b may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case EBA may act in accordance with the powers conferred on it by that Article.

5 Member States shall provide that, where a credit intermediary admitted in another Member State has established a branch within its territory, the competent authorities of the home

Member State, in the exercise of their 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 shall be without prejudice to the Member States' competences in relation to fields not covered by this Directive in conformity with their obligations under Union law.

CHAPTER 12

ADMISSION AND SUPERVISION OF NON-CREDIT INSTITUTIONS

Article 35

Admission and supervision of non-credit institutions

Member States shall ensure that non-credit institutions are subject to adequate admission process including entering the non-credit institution in a register and supervision arrangements by a competent authority.

CHAPTER 13

COOPERATION BETWEEN COMPETENT AUTHORITIES OF DIFFERENT MEMBER STATES

Article 36

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 or 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 5, set out in the measures 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 competent authorities, 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 which case it shall immediately inform the contact point that supplied 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 Member 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 event of such a refusal, the competent authority shall notify the requesting competent authority accordingly, providing as detailed information as possible.

Article 37

Settlement of disagreements between competent authorities of different Member States

The competent authorities may refer the situation to 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 EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In such cases, EBA may act in accordance with the powers conferred on it by that Article and any binding decision made by EBA in accordance with that Article shall be binding on the competent authorities concerned regardless of whether those competent authorities are members of EBA or not.

CHAPTER 14

FINAL PROVISIONS

Article 38

Sanctions

1 Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted on the basis of this Directive and shall take all measures necessary to ensure that they are implemented. Those sanctions shall be effective, proportionate and dissuasive.

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

Article 39

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 consumer disputes with creditors, credit intermediaries and appointed representatives in relation to credit agreements, using existing bodies where appropriate. Member States shall ensure that such procedures are applicable to creditors and credit intermediaries and cover the activities of appointed representatives.

2 Member States shall require the bodies responsible for the out-of-court settlement of consumer disputes to cooperate so that cross-border disputes concerning credit agreements can be resolved.

Article 40

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 power to adopt delegated acts referred to in Articles 14(9) and 17(8) shall be conferred on the Commission for an indeterminate period of time from 20 March 2014.

3 The delegation of power referred to in Articles 14(9) and 17(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the powers specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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(9) and 17(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 41

Imperative nature of this Directive

Member States shall ensure that:

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

Article 42

Transposition

1 Member States shall adopt and publish, by 21 March 2016, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

2 Member States shall apply measures referred to in paragraph 1 from 21 March 2016.

When Member States adopt those measures, 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.

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 43

Transitional provisions

1 This Directive shall not apply to credit agreements existing before 21 March 2016.

2 Credit intermediaries already carrying out credit intermediation activities set out in point 5 of Article 4 before 21 March 2016 and which have not yet been admitted in accordance with the conditions set out in the national law of the home Member State transposing this Directive may continue to carry out those activities in compliance with national law until 21 March 2017. Where a credit intermediary relies on this derogation it may perform the activities only within their home Member State unless it also satisfies the necessary legal requirements of the host Member States.

3 Creditors, credit intermediaries or appointed representatives performing activities regulated by this Directive before 20 March 2014 shall comply with the national law transposing Article 9 by 21 March 2017.

Article 44

Review clause

The Commission shall undertake a review of this Directive by 21 March 2019. The review shall consider the effectiveness and appropriateness of the provisions on consumers and the internal market.

The review shall include the following:

- (a) an assessment of the use and consumer understanding of and satisfaction with the ESIS;
- (b) an analysis of other pre-contractual disclosures;
- (c) an analysis of cross-border business by credit intermediaries and creditors;
- (d) an analysis of the evolution of the market for non-credit institutions providing credit agreements relating to residential immovable property;
- (e) an assessment on the need for further measures, including a passport for non-credit institutions providing credit agreements relating to residential immovable property;
- (f) an examination of the need to introduce additional rights and obligations with regard to the post-contractual stage of credit agreements;
- (g) an assessment of whether the scope of this Directive remains appropriate, taking account of its impact on other, substitutable forms of credit;
- (h) an assessment of whether additional measures are necessary to ensure the traceability of credit agreements secured against residential immovable property;
- (i) an assessment of the availability of data on trends in prices of residential immovable property and on the extent to which data are comparable;
- (j) an assessment of whether it continues to be appropriate to apply Directive 2008/48/EC to unsecured credits the purpose of which is the renovation of a residential immovable property involving a total amount of credit above the maximum amount specified in point (c) of Article 2(2) of that Directive;
- (k) an assessment of whether the arrangements for the publication of sanctions under Article 38(2) provide sufficient transparency;
- (l) an assessment of the proportionality of warnings referred to in Articles 11(6) and 13(2) and the potential for further harmonisation of risk warnings.

Article 45

Further initiatives on responsible lending and borrowing

By 21 March 2019, the Commission shall submit a comprehensive report assessing the wider challenges of private over-indebtedness directly linked to credit activity. It will also examine the need for the supervision of credit registers and the possibility for the development of more flexible and reliable markets. That report shall be accompanied, where appropriate, by legislative proposals.

Article 46

Amendment of Directive 2008/48/EC

In Article 2 of Directive 2008/48/EC, the following paragraph is inserted:

- 2a. Notwithstanding point (c) of paragraph 2, this Directive shall apply to unsecured credit agreements the purpose of which is the renovation of a residential immovable property involving a total amount of credit above EUR 75 000.

*Article 47***Amendment of Directive 2013/36/EU**

In Directive 2013/36/EU, the following Article is inserted:

Article 54a

Articles 53 and 54 shall be without prejudice to the powers of investigation conferred on the European Parliament pursuant to Article 226 TFEU.

*Article 48***Amendment of Regulation (EU) No 1093/2010**

Regulation (EU) No 1093/2010 is amended as follows:

- (1) The second subparagraph of Article 13(1) is replaced by the following:

Where the Commission adopts a regulatory technical standard which is the same as the draft regulatory technical standard submitted by the Authority, the period during which the European Parliament and the Council may object shall be 1 month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended for an initial period of 1 month and shall be extendable for a further period of 1 month.

- (2) The second subparagraph of Article 17(2) is replaced by the following:

Without prejudice to the powers laid down in Article 35, the competent authority shall, without delay, provide the Authority with all information which the Authority considers necessary for its investigation including as to how the acts referred to in Article 1(2) are applied in accordance with Union law.

*Article 49***Entry into force**

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

*Article 50***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 4 February 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

E. VENIZELOS

Status: This is the original version (as it was originally adopted).

(1) [OJ L 182, 29.6.2013, p. 19.](#)