

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 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

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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

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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.

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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.