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2011/0062(COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on credit agreements relating to residential property**

**(Text with EEA relevance)**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### **Grounds for and objectives of the proposal**

The present proposal has to be seen in the context of efforts to create an internal market for mortgage credit and against the background of the financial crisis.

The financial crisis has had a substantial impact on EU citizens. Although an important contributing factor was the growth in securitisation, which allowed creditors<sup>1</sup> to pass the risk of their lending portfolios to investors, consumers have faced the consequences first hand. Many have lost confidence in the financial sector and certain lending practices that used to prevail are now having a direct impact.<sup>2</sup> As borrowers have found their loans increasingly unaffordable, defaults and foreclosures have risen. Addressing irresponsible lending and borrowing is therefore an important element in financial reform efforts.

For several years, the Commission has engaged in a comprehensive review of EU residential mortgages markets to ensure the efficient functioning of the single market. The White Paper on the integration of EU mortgage markets<sup>3</sup> previously identified areas of direct relevance to responsible lending and borrowing (e.g. pre-contractual information, advice, assessment of creditworthiness, early repayment and credit intermediation) acting as barriers to the efficient functioning of the single market. These barriers prevent the pursuit of business or raise the cost of doing business in another Member State and lead to consumer detriment through low consumer confidence, higher costs and reduced customer mobility, both domestically and cross-border. In view of the problems brought to light in the financial crisis and in the context of efforts to ensure an efficient and competitive single market, the Commission undertook to come forward with measures on responsible lending and borrowing, including a reliable framework on credit intermediation.<sup>4</sup> To this end, the objectives of the proposal are twofold. First, it aims to create an efficient and competitive single market for consumers, creditors and credit intermediaries with a high level of protection by fostering consumer confidence, customer mobility, cross-border activity of creditors and credit intermediaries, and a level playing field while respecting fundamental rights, particularly the right to the protection of personal data, enshrined in the *Charter of Fundamental Rights of the European Union*. Second, the proposal seeks to promote financial stability by ensuring that mortgage credit markets operate in a responsible manner.

#### **General context**

The size of the EU mortgage market is significant: in 2008, outstanding residential mortgage lending in the EU27 amounted to almost EUR 6 trillion, or about 50 % of EU GDP.<sup>5</sup> The EU mortgage market is also of vital importance for the millions of European citizens currently repaying a mortgage and for would-be home owners. Taking out a mortgage is one of the

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<sup>1</sup> Creditors are defined as credit institutions and non-credit institutions.

<sup>2</sup> E.g. foreign currency lending, self-certified mortgages.

<sup>3</sup> COM(2007) 807, 18.12.2007.

<sup>4</sup> *Driving European Recovery*, COM(2009) 114, 4.3.2009.

<sup>5</sup> *Hypostat 2008: A review of Europe's Mortgage and Housing Markets*, European Mortgage Federation, November 2009, pp. 7, 70 and 71.

most important financial decisions in a person's life, entailing a financial commitment potentially lasting decades.

Rising household debt levels exist throughout Europe. However, they are not in themselves a sign of irresponsible lending and borrowing as long as the levels of debt are sustainable and repayments can be met. However, figures show that citizens are having increasing difficulties in meeting their debts. The difficulty in meeting repayments has led to an increase in default rates and a rise in foreclosures. Data can be influenced by factors other than irresponsible lending and borrowing such as the general economic downturn. However, the statistical data combined with qualitative evidence through stakeholders' contributions and anecdotal evidence from across Europe shows that this is not just a cyclical problem or limited to one or two Member States but can be found throughout the EU.

A range of factors drive the decision to grant a particular mortgage credit, the borrower's eventual choice of mortgage product and the borrower's ability to repay the loan. These include the economic climate, information asymmetries and conflicts of interest, regulatory gaps and inconsistencies, as well as other factors such as the borrower's financial literacy and mortgage financing structures. While these other factors clearly play a role, the fact remains that irresponsible behaviour by certain market actors contributed to a housing bubble and was one of the key features of the financial crisis. It is therefore clear that irresponsible lending and borrowing need to be addressed to avoid a repeat of the conditions that led to the current financial crisis.

### **Existing provisions in the area of the proposal**

Misleading advertising is regulated by Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising<sup>6</sup> which applies to relations between traders, and Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market<sup>7</sup>. These rules do not however take into account the specificities of mortgage credit or address the need for consumers to be able to compare adverts.

Unfair terms in consumer contracts are regulated by Directive 93/13/EEC of the Council of 5 April 1993 concerning unfair terms in consumer contracts<sup>8</sup> and which introduces a notion of 'good faith' in order to prevent significant imbalances in the rights and obligations of consumers on the one hand and sellers and suppliers on the other hand. This general requirement is supplemented by a list of examples of terms that may be regarded as unfair. These rules do not however take into account the specificities of mortgage credit. Pre-contractual information for mortgage loans is the subject of a European Voluntary Code of Conduct on Pre-contractual Information for Home Loans ('the Code') of March 2001<sup>9</sup>. The Code was endorsed by the Commission in Recommendation 2001/193/EC of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans<sup>10</sup>. The objective of the Code was to set out the general information that should be available to

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<sup>6</sup> OJ L 376, 27.12.2006, p. 21.

<sup>7</sup> OJ L 149, 11.6.2005, p. 22.

<sup>8</sup> OJ L 95, 21.4.1993, p. 29.

<sup>9</sup> *European Agreement on a voluntary Code of Conduct on pre-contractual information for home loans*, 5.3.2001.

<sup>10</sup> OJ L 69, 10.3.2001, p. 25.

the consumer and to agree upon a European Standardised Information Sheet with which consumers could compare home loans both domestically and cross-border. Implementation of the Code is however inconsistent and sub-optimal.

A number of Member States apply selected provisions of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers (the Consumer Credit Directive)<sup>11</sup> to mortgage credit. That Directive covers consumer credit loans from EUR 200 to EUR 75 000 and regulates advertising, pre-contractual and contractual information, creditworthiness assessments, adequate explanations, as well as disclosure requirements for credit intermediaries. Credits to purchase a property secured by a mortgage or another comparable security or loans for renovation in excess of EUR 75 000 are outside the scope of that Directive.

Credit institutions are regulated and subject to authorisation, registration and supervision requirements under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>12</sup>. No such requirements exist at EU level for non-credit institutions providing mortgage credit or for credit intermediaries.

### **Consistency with the EU's other policies and objectives of the Union**

The objectives of the proposal are consistent with the policies and objectives pursued by the Union. The Treaty provides for action to ensure the establishment and functioning of an internal market with a high level of consumer protection as well as the freedom to provide services. Such a market for residential mortgages is far from completion as several obstacles exist to the free provision of services.

The proposal is furthermore consistent with and complementary to other EU legislation and policies, particularly in the areas of consumer protection and prudential supervision. The Consumer Credit Directive<sup>13</sup> was adopted in 2008 with the aim of enhancing the level of consumer protection and facilitating the integration of the consumer credit market. This proposal complements the Consumer Credit Directive by creating a similar framework for mortgage credit. The proposal largely draws on the conduct of business provisions in the Consumer Credit Directive; however, where appropriate the specific features of mortgage credit have been taken into account, for example by introducing risk warnings in the pre-contractual information provisions and by strengthening creditworthiness assessment provisions. In so doing, the proposal also takes into account the fact that some Member States have already decided to apply certain provisions of the Consumer Credit Directive to mortgage credit. Furthermore, planned or ongoing changes to the prudential and supervisory rules governing the banking sector, for example the changes to capital requirements and rules on securitisation, will have a direct bearing on banks' lending practices. This proposal complements the work on the supervisory side by focusing on ensuring responsible conduct of business and on ensuring that a regulatory framework is in place for all actors in the lending chain. Together, these initiatives should each contribute to a lower level of credit risk and to greater financial stability.

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<sup>11</sup> OJ L 133, 22.5.2008, p. 66.

<sup>12</sup> OJ L 177, 30.6.2006, p. 1.

<sup>13</sup> Directive 2008/48/EC on credit agreements for consumers, 23.4.2008.

## 2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

### Consultation of interested parties

#### *Consultation methods, main sectors targeted and general profile of respondents*

In recent years, the Commission has undertaken a thorough review of EU mortgage markets, culminating in the White Paper on the integration of EU mortgage markets<sup>14</sup>. The White Paper and the extensive consultative work leading up to it form an integral part of the preparatory work for the responsible lending and borrowing initiative.

Against this background and in the wake of the financial crisis, the Commission launched a public consultation to strengthen and deepen its understanding of the issues surrounding responsible lending and borrowing. Commission services also held a number of meetings with Member States, creditors and credit intermediary representatives, trade union representatives, and consumer representatives, throughout the process. The European Parliament and the European Economic and Social Committee have adopted several reports on issues relating to responsible lending and borrowing. The Commission consulted the European Data Protection Supervisor with regard to the protection of consumers' personal data. The Commission also took note of significant research undertaken in other fora such as the OECD and the World Bank.

#### *Summary of responses and how they have been taken into account*

The extensive consultation process has allowed some key messages to be identified. First, the banking industry argues that irresponsible lending does not exist in the EU to the same extent as in the US, so that there is no need for EU intervention. Although the problems in EU mortgage markets have not been as widespread as in the US, similar weaknesses in the regulation of EU markets have been identified, e.g. a lack of effective regulation of certain actors and weaknesses in the regulation of the mortgage marketing and sales processes. Second, consumer representatives support an initiative that will ensure a high level of consumer protection and that could prevent over-indebtedness. They are also supportive of measures that would allow consumers to compare offers and give consumers confidence in the actors with whom they engage. They favour an EU-level proposal that would introduce only minimum standards, leaving Member States free to enhance consumer protection in line with local conditions and culture. Third, given the current small market for cross-border mortgages, some stakeholders argue that it would be more appropriate for measures to be taken at national rather than EU level. Three of the issues for which there was the most consistent cross-stakeholder support for EU action were the obligation to undertake a creditworthiness assessment, the need for clear, comprehensible and comparable pre-contractual information and the need to ensure that all players in the lending market are subject to appropriate regulation and supervision.

The information collected has confirmed that there is a case for EU intervention in the field of responsible mortgage lending and borrowing and has substantially contributed to the prioritisation and design of the Directive.

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<sup>14</sup> COM(2007) 807, 18.12.2007.

## **Collection and use of expertise**

The Commission also drew on a series of studies and reports undertaken on issues relating to responsible lending and borrowing, including the study by London Economics on the role and regulation of non-credit institutions in the EU mortgage market (December 2008); the study by Europe Economics on credit intermediaries in the internal market (January 2009); the report of the Expert Group on Credit Histories (June 2009); the report by OPTEM on the consumer testing of a possible new format and content for the European Standardised Information Sheet on home loans (October 2009); and the study by London Economics on the costs and benefits of different policy options for mortgage credit (March 2011).

## **Impact assessment**

The Commission carried out an impact assessment.

The impact assessment identifies a series of problems in EU mortgage markets associated with irresponsible lending and borrowing at the pre-contractual stage and the potential scope for irresponsible behaviour by credit intermediaries and non-credit institutions. These problems are driven by market and regulatory failures as well as other factors such as the general economic climate and low levels of financial literacy. At the pre-contractual stage, the following problems were identified: non-comparable, unbalanced, incomplete and unclear advertising materials; insufficient, untimely, complex, non-comparable and unclear pre-contractual information; inappropriate advice; and inadequate suitability and creditworthiness assessments. Other problems highlighted include ineffective, inconsistent, or non-existent registration, authorisation and supervision regimes for credit intermediaries and non-credit institutions providing mortgage credit. The problems identified have potentially significant macroeconomic spill-over effects, can lead to consumer detriment, act as economic or legal barriers to cross-border activity and create an unlevel playing field between actors.

The impact assessment considers a range of policy options for each problem area including no intervention, principles-based rules, and more detailed or specific rules at EU level. It also assesses the most appropriate instrument for measures, considering self-regulation, a Directive, a Regulation, a Communication and a Recommendation.

The impact assessment concludes that a package of preferred policy options is necessary to ensure responsible lending and borrowing throughout the EU and that the preferred instrument is a Directive.

The impact assessment's preferred options should result in a substantial improvement in terms of a reduction of consumer detriment. They will improve consumer confidence in creditors, credit intermediaries and mortgage products and will reduce the likelihood of consumers purchasing an unaffordable product, which could potentially lead to overindebtedness, default and eventually foreclosure. The strong positive effect on consumer confidence is also expected to underpin the demand for mortgage credit products and encourage consumer mobility at both national and, albeit to a lesser extent, cross-border level. The implementation of some of the selected options will not lead to significant changes in the operation of market actors on the supply side in a number of Member States, where similar obligations already exist. However, the preferred policy options will have an important impact on the cross-border activity of creditors and credit intermediaries. Implementation of the preferred options will encourage cross-border activity by offering new business opportunities as well as economies of scale and scope. This will have a positive impact both on the market players and

for consumers. The entry of foreign credit providers and credit intermediaries should strengthen competition and, thus, translate into a wider range of credit products for the consumer and potentially even a marginal decrease in prices. The preferred policy options will also entail costs for creditors and credit intermediaries. However, these costs will be limited by several factors including the fact that a number of the preferred policy options are already implemented in several Member States, that many of the preferred policy options are already common practice amongst large parts of industry and that substantial synergies are expected between the different policy options. The estimated total benefits of the package of measures are in the range of EUR 1 272–1 931 million. The expected total one-off and ongoing costs are in the range of EUR 383-621 million and of EUR 268-330 million respectively.

The different policy options and their impact on stakeholders are discussed at length in the impact assessment.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **Legal basis**

Article 114 of the Treaty on the functioning of the EU.

#### **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Union.

The objectives of the proposed action cannot be sufficiently achieved by Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union, for the following reason(s):

The Treaty provides for action to ensure the establishment and functioning of an internal market with a high level of consumer protection as well as the free provision of services. Such a market for residential mortgages is far from completion as several obstacles exist to the free provision of services and the creation of an internal market. These obstacles restrict the level of cross-border activity on the supply and demand sides, reducing competition. Creditors may be less efficient than they could be and borrowers may face the risk of consumer detriment.

Factors that prevent the pursuit of business or raise the cost of doing business in another Member State relative to the costs faced by domestic providers can be addressed by appropriate EU policy initiatives. Some of the problems identified could raise the cost of mortgage lending for domestic providers or prevent them from doing business. However, the costs of entering into business are exacerbated for creditors seeking to engage in cross-border activity and can deter new market entrants thereby restricting competition.

In a competitive and efficiently functioning single market with a high level of consumer protection, consumers would search for the best product offered for their needs, be it in their own country or in another Member State. EU consumers continue to predominantly shop locally though for their mortgage credits. This can be attributed, inter alia, to a lack of consumer awareness of what exists elsewhere and lack of consumer confidence due to insufficient or bad information, fears about whether legal rights will be upheld, or poor legal protection in the event that something goes wrong.



Financial integration and financial stability are mutually reinforcing objectives which operate at national level but crucially depend on certain tasks that can only be achieved at EU level. As the recent financial crisis illustrated, the effects of irresponsible lending in one country can quickly spread beyond national borders due in part to the multinational presence of certain banking groups and also the international nature of securitised risk. This Directive focuses on the interaction between creditors/intermediaries and citizens. Irresponsible lending and borrowing was one of the factors at the origin of the financial crisis: it greatly contributed to the emergence of the financial turmoil. The proposed provisions should ensure that mortgage credit throughout the EU is undertaken in a responsible manner and that it contributes to promoting EU financial, economic and social stability.

Creating an internal market in mortgage credit with a high level of consumer protection as well as facilitating the provision of services throughout the EU would be fully in line with the Treaty. Action by Member States alone is likely to result in different sets of rules, which may undermine or create new obstacles to the functioning of the internal market as well as create unequal levels of consumer protection throughout the EU. Common standards at the EU level, such as the ones proposed, should promote an efficient and competitive internal market with a high level of consumer protection. Such standards are further essential in order to ensure that the appropriate lessons are learnt from the sub-prime crisis and to ensure that such a financial crisis does not reoccur in the future.

The proposal therefore complies with the subsidiarity principle.

### **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s):

The proposal does not go beyond what is strictly necessary to achieve its objectives. It does not regulate all aspects of lending and borrowing but focuses on some key aspects of the mortgage credit transaction.

All of the proposed rules have been the subject of a proportionality test and intensive consultation to ensure appropriate and proportionate regulation.

The proposal allows for the later adoption of implementing measures or technical standards, in case specific issues require the development of more detailed technical guidance or clarification.

On 23 September 2009, the Commission adopted proposals for Regulations establishing EBA, EIOPA, and ESMA.<sup>15</sup> In this respect the Commission wishes to recall the Statements in relation to Articles 290 and 291 TFEU it made at the adoption of the Regulations establishing the European Supervisory Authorities according to which: "As regards the process for the adoption of regulatory standards, the Commission emphasises the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognised in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with Articles 290 and 291 TFEU."

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<sup>15</sup> [http://ec.europa.eu/internal\\_market/finances/committees/index\\_en.htm#package](http://ec.europa.eu/internal_market/finances/committees/index_en.htm#package)

## **Choice of instruments**

Proposed instrument: Directive.

Other means would not be adequate for the following reason(s):

Full harmonisation is not always necessary or appropriate: e.g., the structure of housing markets and mortgage markets differs throughout the EU, and the products and remuneration structures also vary. EU intervention needs to be detailed enough to be effective but high level enough to take into account the EU's diversity. A Directive offers a degree of flexibility in terms of the level of harmonisation. Such targeted provisions can accommodate the diversity that exists in the EU's mortgage markets.

It is recommended that the legal instrument of a Directive be used for the package of proposed measures.

## **4. BUDGETARY IMPLICATION**

Leaving aside the normal administrative costs linked to ensuring compliance with EU legislation, there will be no budgetary impact since no new committees are created and no financial commitments are made.

## **5. ADDITIONAL INFORMATION**

### **Review/revision/sunset clause**

The proposal includes a review clause.

### **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

### **Detailed explanation of the proposal**

The following short summary aims to facilitate the decision making process by outlining the main substance of the Directive.

Article 1 (subject matter) states that the Directive focuses on mortgage credit to consumers and on certain prudential and supervisory requirements for creditors and credit intermediaries. As such, the focus of the Directive is on residential rather than commercial property.

Article 2 (scope) sets out the scope of the Directive, which covers credit agreements secured by a mortgage or by another security, loans to purchase a property and certain credit agreements aimed at financing the renovation of a property. The Directive does not preclude the possibility that some Member States may wish to extend the scope to other beneficiaries such as small or medium-sized enterprises or indeed to some commercial property transactions.

Article 3 (definitions) defines the terms used in this Directive. To the greatest extent possible, definitions have been aligned with those in other Union texts in particular Directive

2008/48/EC of the European Parliament and of the Council of 23 April 2008 which lays down rules at Union level concerning credit agreements for consumers and Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation<sup>16</sup>. However, given the specificities of this Directive, some have been tailored to the needs of this proposal.

Article 4 (competent authorities) requires Member States to designate specific competent authorities to implement the Directive.

Articles 5 (conduct of business obligations when providing credit to consumers) and 6 (minimum competence requirements) stipulate important conditions for both creditors and credit intermediaries in order to ensure a high degree of professionalism in the provision of mortgage credit, such as an obligation to act in the best interests of the consumer and requirements with regard to having appropriate knowledge and competence.

Articles 7 (general provisions applicable to advertising and marketing) and 8 (standard information to be included in advertising) introduce general principles for marketing and advertising communications and set out the form and content of information to be included in advertising. The standard information concerns key features of the credit and, when the credit is secured by a mortgage, a warning as to the consequences for the consumer in the event of non-observance of his commitments linked to the credit agreement. These provisions complement and expand on the obligations of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive').

Article 9 (pre-contractual information) creates an obligation for creditors and credit intermediaries to make general information available on the range of credit products at all times. It further introduces an obligation for creditors and, where applicable, credit intermediaries to provide personalised information to the consumer on the basis of a European Standardised Information Sheet. These requirements largely mirror the voluntary obligations set out in the European Voluntary Code of Conduct on Home Loans. The content and layout of the European Standardised Information Sheet, as detailed in Annex II, has, however, been updated to take into account the results of consumer testing in 27 Member States.

Article 10 (information requirements concerning credit intermediaries) requires credit intermediaries to disclose information to consumers concerning their identity, status, and relationship with the creditor, prior to the performance of their services in order to increase transparency of possible conflicts of interest.

Article 11 (adequate explanations) introduces an obligation for creditors and credit intermediaries to give explanations on the proposed credit agreement(s) to the consumer at the pre-contractual stage, determined by the level of the consumer's knowledge and experience with credit.

Article 12 (calculation of the annual percentage rate of charge) concerns the main indicator used for the comparison of mortgage credit products. It requires, for mortgage credit products,

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<sup>16</sup> OJ L 9, 15.1.2003, p. 3.

the use of the definition of the annual percentage rate of charge (APRC) used in Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 which lays down rules at Union level concerning consumer credit agreements. Details of the APRC calculation method are given in Annex I and provisions for amending the methodology are laid down in order to be able to take market developments into account.

Article 13 (information concerning the borrowing rate) provides for information to be delivered to the consumer in the event of changes to the borrowing rate.

Article 14 (obligation to assess the creditworthiness of the consumer) requires the creditor to assess the consumer's ability to repay the credit, taking into account the consumer's personal circumstances and based on sufficient information. It also introduces a duty for the creditor to refuse to grant the credit where the results of the creditworthiness assessment are negative.

Articles 15 (disclosure obligation on the part of the consumer) introduces the requirement for 'responsible borrowing', namely that the borrower must provide all necessary and correct information to enable the creditworthiness assessment to be carried out.

Article 16 (database access) introduces provisions to ensure that creditors are able to access information from relevant databases on a non-discriminatory basis.

Article 17 (advice standards) establishes standards to ensure that, where advice is given, it is clear to the borrower that advice is being provided, without introducing any obligation to provide advice. It introduces a requirement that a sufficient number of credit agreements on the market be considered and that advice be given in line with the profile of the borrower.

Article 18 (early repayment) requires Member States to ensure that consumers have a right to repay their credit before the expiry of the credit agreement, giving freedom to Member States to set conditions on the exercise of that right, provided that such conditions are not excessively onerous.

Articles 19 to 22 (on the authorisation, registration and supervision of credit intermediaries) establish the principles for a regulatory and supervisory framework for credit intermediaries. This framework provides for the authorisation and registration of credit intermediaries, subject to compliance with certain requirements on entry into the business and on an ongoing basis, and for the establishment of a passport regime. The requirements apply to all credit intermediaries, whether they are tied or not in order to ensure a high degree of professionalism in the industry.

Article 23 (authorisation, registration and supervision of non-credit institutions) stipulates that non-credit institutions must be subject to adequate authorisation, registration and supervision. This should ensure that all creditors, whether they are a credit institution or not, are adequately regulated and supervised.

Article 24 (penalties) requires Member States to ensure that appropriate administrative measures or sanctions can be taken in the case of non-compliance with the Directive.

Article 25 (dispute resolution mechanisms) requires Member States to establish out-of-court redress bodies for the resolution of disputes between creditors and consumers and between credit intermediaries and consumers.

Articles 26 to 28 (delegated acts) sets out the procedures to be followed to allow certain elements of the Directive to be adapted, specified or updated.

Article 29 (imperative nature of this Directive) and Article 30 (transposition) stipulate respectively that the Directive should be implemented by Member States and how it should be implemented.

Article 31 (review clause) provides for a review of the appropriateness and effectiveness of the Directive in meeting its objectives after five years.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on credit agreements relating to residential property**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission<sup>17</sup>,

After transmission of the draft legislative act to the national Parliaments<sup>18</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>19</sup>,

Having regard to the opinion of the Committee of the Regions<sup>20</sup>,

Having regard to the opinion of the European Central Bank<sup>21</sup>,

After having consulted the European Data Protection Supervisor<sup>22</sup>,

Acting in accordance with the ordinary legislative procedure<sup>23</sup>,

Whereas:

- (1) In March 2003, the Commission launched a process to identify and assess the impact of barriers to the internal market for credit agreements relating to residential immovable property. In 2007, it adopted a White Paper on the integration of EU mortgage credit markets<sup>24</sup>. The White Paper announced the Commission's intention to assess the impact of, among other things, the policy options for pre-contractual information, credit databases, creditworthiness, the annual percentage rate of charge and advice. The Commission also established an Expert Group on Credit Histories to assist the Commission in preparing measures to improve the accessibility,

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<sup>17</sup> OJ C XX, XX, p. xx.

<sup>18</sup> OJ C XX, XX, p. xx.

<sup>19</sup> OJ C XX, XX, p. xx.

<sup>20</sup> OJ C XX, XX, p. xx.

<sup>21</sup> OJ C XX, XX, p. xx.

<sup>22</sup> OJ C XX, XX, p. xx.

<sup>23</sup> OJ C XX, XX, p. xx.

<sup>24</sup> COM(2007) 807, 18.12.2007.

comparability and completeness of credit data. Studies on the role and operations of credit intermediaries and non-credit institutions providing credit agreements relating to residential immovable property were also launched.

- (2) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The development of a more transparent and efficient credit market within that area is vital to promote the development of cross-border activity and create an internal market in credit agreements relating to residential immovable property. There are substantial differences in the laws of the various Member States with regard to conduct of business in the granting of credit agreements relating to residential immovable property and in the regulation and supervision of credit intermediaries and non-credit institutions providing credit agreements relating to residential immovable property. Such differences create obstacles that restrict the level of cross-border activity on the supply and demand sides, thus reducing competition and choice in the market, raising the cost of lending for providers and even preventing them from doing business.
- (3) The financial crisis has shown that irresponsible behaviour by market participants can undermine the foundations of the financial system, leading to a lack of confidence among all parties, in particular consumers, and potentially severe social and economic consequences. Many consumers have lost confidence in the financial sector and borrowers have found their loans increasingly unaffordable, with defaults and forced sales rising. In view of the problems brought to light in the financial crisis and in the context of efforts to ensure an efficient and competitive internal market, the Commission has proposed measures with regard to credit agreements relating to residential immovable property, including a reliable framework on credit intermediation, in the context of delivering responsible and reliable markets for the future and restoring consumer confidence.<sup>25</sup>
- (4) A series of problems in EU mortgage markets associated with irresponsible lending and borrowing at the pre-contractual stage and the potential scope for irresponsible behaviour by credit intermediaries and non-credit institutions have been identified. Some problems concerned loans denominated in a foreign currency which consumers had taken out in that currency to take advantage of the interest rate offered but without having an adequate understanding of the currency risk involved. These problems are driven by market and regulatory failures as well as other factors such as the general economic climate and low levels of financial literacy. Other problems include ineffective, inconsistent, or non-existent registration, authorisation and supervision regimes for credit intermediaries and non-credit institutions providing credit for residential immovable property. The problems identified have potentially significant macroeconomic spill-over effects, can lead to consumer detriment, act as economic or legal barriers to cross-border activity and create an unlevel playing field between actors.
- (5) In order to facilitate the emergence of a smoothly functioning internal market with a high level of consumer protection in the area of credit agreements relating to residential immovable property, a harmonised Union framework needs to be

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<sup>25</sup> *Driving European Recovery*, COM(2009) 114, 4.3.2009.

established in a number of areas. It is further necessary to establish harmonised standards in order to ensure that consumers looking for credit agreements relating to residential immovable property are able to do so confident in the knowledge that the institutions they interact with act in a professional and responsible manner.

- (6) This Directive should improve conditions for the establishment and functioning of the internal market through the approximation of Member States' laws and the establishment of quality standards for certain services, notably with regard to the distribution and provision of credit through creditors and credit intermediaries. The establishment of quality standards for services for the provision of credit necessarily involves the introduction of provisions regarding authorisation and prudential requirements.
- (7) For those areas not covered by this Directive, Member States should be free to maintain or introduce national legislation. Member States should be able to maintain or introduce national provisions in areas such as contract law relating to the validity of credit agreements, property valuation, land registration, contractual information, post-contractual issues, and handling defaults.
- (8) As consumers and enterprises are not in the same position, they do not need the same level of protection. While it is important to guarantee consumers' rights by provisions that cannot be derogated from by contract, it is reasonable to let enterprises and organisations engage in other agreements. This Directive should therefore apply to credit granted to consumers. Member States should, however, have the possibility to extend the scope to natural or legal persons that are not consumers, notably micro-enterprises, as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises<sup>26</sup>.
- (9) The objective of this Directive is to ensure that all credits provided to consumers benefit from a high level of protection. It should therefore apply to credits secured by real estate, or credits which are used to purchase a property in some Member States and to credits for the renovation of residential property that are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC<sup>27</sup> which lays down rules at Union level concerning consumer credit agreements. Furthermore, this Directive should not be applied to certain types of credit agreements where the credit is granted by an employer to his employees under certain circumstances, as already provided in Directive 2008/48/EC.
- (10) This Directive should not apply to certain credit agreements that will eventually be repaid from the sale proceeds of an immovable property and whose primary objective is to facilitate consumption, such as equity release products or other equivalent specialised products. Such credit agreements have specific characteristics which are beyond the scope of this Directive. An assessment of the borrower's creditworthiness, for example, is irrelevant since the payments are made from the creditor to the borrower rather than the other way round. Such a transaction would also require, amongst other things, substantially different pre-contractual information. Furthermore, other products, such as home reversions, which have comparable functions to reverse

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<sup>26</sup> OJ L 124, 20.5.2003, p. 36.

<sup>27</sup> OJ L 133, 22.5.2008, p. 66.



mortgages or lifetime mortgages do not involve the provision of credit and so would remain outside the scope of this Directive. However this Directive should apply to those secured loans whose primary objective is to facilitate the purchase of an immovable property, including those loans that do not require the reimbursement of the capital or those whose purpose is to provide temporary financing between the sale of one immovable property and the purchase of another.

- (11) For reasons of legal certainty, the Union framework in the area of credit agreements relating to residential immovable property should be consistent with and complementary to other Union acts, particularly in the areas of consumer protection and prudential supervision. Essential definitions of terms such as 'consumer', 'creditor', 'credit intermediary', 'credit agreements' and 'durable medium' as well as key concepts used in standard information to designate the financial characteristics of the credit, such as the total cost of the credit to the consumer, the total amount payable by the consumer, the annual percentage rate of charge and the borrowing rate, should be in line with those in Directive 2008/48/EC so that the same terminology refers to the same type of facts irrespective of whether the credit is a consumer credit or a credit relating to residential immovable property. Member States should therefore ensure in the transposition of this Directive that there is a consistency of application and interpretation.
- (12) In order to ensure a consistent framework for consumers in the area of credit as well as to minimise the administrative burden for creditors and credit intermediaries, the core framework of this Directive should follow the structure of Directive 2008/48/EC, notably the notions that information included in advertising concerning credit agreements relating to residential immovable property should be provided to the consumer by means of a representative example, that detailed pre-contractual information should be given to him by means of a standardised information sheet, that the consumer should receive adequate explanations before the conclusion of the credit agreement and that creditors should assess the consumer's creditworthiness before the provision of a loan. Similarly, non-discriminatory access for creditors to relevant credit databases should also be ensured in order to achieve a level playing field with the provisions as guaranteed by Directive 2008/48/EC. Similarly to Directive 2008/48/EC, this Directive should ensure the appropriate authorisation, registration and supervision of all creditors providing credit agreements relating to residential immovable property and should introduce requirements for the establishment of, and access to, out-of-court dispute resolution mechanisms.
- (13) This Directive should supplement Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC<sup>28</sup> which requires that the consumer be informed of the existence or absence of a right of withdrawal and foresees a right of withdrawal. However, while Directive 2002/65/EC foresees the possibility for the supplier to communicate pre-contractual information after the conclusion of the contract, this would be inappropriate for contracts for credit agreements relating to residential immovable property given the significance of the financial commitment for the consumer. Furthermore, as foreseen in Directive 85/577/EEC of 20 December 1985 to

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<sup>28</sup> OJ L 271, 9.10.2002, p. 16.

protect the consumer in respect of contracts negotiated away from business premises (Doorstep Selling Directive)<sup>29</sup>, consumers should have a right of withdrawal for credit agreements relating to residential immovable property concluded off-premises and should be informed about the existence of that right.

- (14) At the same time, it is important take into consideration the specificities of credit agreements relating to residential immovable property which justify a differentiated approach. Given the nature and the possible consequences of a credit agreement relating to residential immovable property for the consumer, advertising materials and personalised pre-contractual information should include specific risk warnings, for instance about the nature and implications of taking out a security. Following what already existed as a voluntary approach by the industry concerning home loans, general pre-contractual information should be made available at all times in addition to the personalised pre-contractual information. Furthermore, a differentiated approach is justifiable in order to take into consideration the lessons learnt from the financial crisis in order to ensure that loan origination takes place in a sound manner. In this respect, the provisions on the creditworthiness assessment should be strengthened in comparison to consumer credit, more precise information should be provided by credit intermediaries on their status and relationship with the creditors in order to disclose potential conflicts of interest, and all actors involved in the origination of credit agreements relating to residential immovable property should be adequately authorised, registered and supervised.
- (15) Intermediaries often engage in more activities that just credit intermediation, in particular insurance intermediation or investment services provision. This Directive should therefore also ensure a degree of coherence with Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation<sup>30</sup> and Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC<sup>31</sup>. In particular, prudential requirements for intermediaries should be broadly in line with Directive 2002/92/EC in order to simplify the process of establishing as a credit intermediary and operating cross-border.
- (16) The applicable legal framework should give consumers the confidence that creditors and credit intermediaries are acting in the best interests of the consumer. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry. While this Directive should require relevant knowledge and competence to be proven at the level of the institution, Member States should be free to introduce or maintain such requirements applicable to individual natural persons.
- (17) Creditors and credit intermediaries frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific provisions on the advertising of

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<sup>29</sup> OJ L 372, 31.12.1985, p. 31.

<sup>30</sup> OJ L 9, 15.1.2003, p. 3.

<sup>31</sup> OJ L 145, 30.4.2004, p. 1.

credit agreements relating to residential immovable property and a list of items to be included in advertisements and marketing materials directed at consumers are necessary to enable them to compare different offers. Such provisions take into account the specificities of credit agreements relating to residential immovable property, for instance, the fact that if the loan repayments are not met, there is a risk of the consumer losing the property. Member States should remain free to introduce or maintain disclosure requirements in their national laws regarding advertising which does not contain information on the cost of credit.

- (18) Advertising tends to focus on one or several products in particular, while consumers should be able to make their decisions in full knowledge of the range of credit products on offer. In this respect, general information plays an important role in educating the consumer in the broad range of products and services available from a particular creditor or credit intermediary and the key features thereof. Consumers should therefore be able at all times to access general information on the credit products available. They should further receive personalised information in good time prior to the conclusion of the credit agreement in order to enable them to compare and reflect on the characteristics of credit products.
- (19) In order to ensure a level playing field and in order for the consumer's decision to be based on the details of the credit products on offer rather than on the distribution channel through which such credit products are accessed, consumers should receive information on the credit regardless of whether they are dealing directly with a creditor or a credit intermediary.
- (20) The Commission Recommendation 2001/193/EC on pre-contractual information to be given to consumers by lenders offering home loans<sup>32</sup> endorsed the Voluntary Code agreed in 2001 between associations and federations representing lenders and consumers and which contains a European Standardised Information Sheet (ESIS). This provides information, personalised for the borrower, on the credit agreement being provided. In its Recommendation, the Commission committed to monitoring compliance with the Code as well as its effectiveness, and to consider presenting binding legislation should the terms of the Recommendation not be fully complied with. Evidence collected by the Commission has since highlighted the need to revise the content and presentation of the ESIS to ensure that it is clear, understandable and contains all information found to be relevant for consumers. The content and layout of the ESIS should incorporate the necessary improvements identified during consumer testing in all Member States. The structure of the sheet (in particular, the order of the information items) should be revised, the wording should be more user-friendly, while sections, such as 'nominal rate' and 'annual percentage rate of charge', should be merged and new sections, such as 'external complaint body' and 'risks and warnings', should be added.
- (21) In order to ensure the fullest possible transparency and to prevent abuses arising from possible conflicts of interest when consumers use the services of credit intermediaries, the latter should be subject to certain information disclosure obligations prior to the performance of their services. Such disclosures should include information on their identity and links with creditors, for instance whether they are considering products

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<sup>32</sup> OJ L 69, 10.3.2001, p. 25.

from a broad range of creditors or only from a more limited number of creditors. Those credit intermediaries that are not tied to one creditor or one group of creditors should further disclose to consumers information on the existence of commissions payable by creditors for whom they are acting and the possible variations within those commissions.

- (22) The consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Creditors, and where the transaction is through a credit intermediary, credit intermediaries should provide such assistance in relation to the credit products which they offer to the consumer. The relevant information, as well as the essential characteristics of the products proposed, should therefore be explained to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. Member States could determine when and to what extent such explanations are to be given to the consumer, taking into account the particular circumstances in which the credit is offered, the consumer's need for assistance and the nature of individual credit products.
- (23) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Union, it is necessary to ensure the comparability of information relating to annual percentage rates of charge throughout the Union. The total cost of the credit to the consumer should comprise all the costs that the consumer has to pay in connection with the credit agreement, except for notarial costs. It should therefore include interest, commissions, taxes, fees for credit intermediaries and any other fees as well as the cost of insurance or other ancillary products, where these are obligatory in order to obtain the credit on the terms and conditions marketed. As the annual percentage rate of charge can at the pre-contractual stage be indicated only through an example, such an example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration. Given the complexities of calculating an annual percentage rate of charge (for instance, for credits based on variable interest rates or non-standard amortisation) and in order to be able to accommodate product innovation, technical regulatory standards could be employed to amend or specify the method of calculation of the annual percentage rate of charge. The definition of and methodology used for calculating the annual percentage rate of charge in this Directive should be the same as those in Directive 2008/48/EC in order to facilitate consumer understanding and comparison. Those definitions and methodologies may, however, differ in the future should Directive 2008/48/EC be modified at a later date. Member States are free to maintain or introduce prohibitions on unilateral changes to the borrowing rate by the creditor.
- (24) An assessment of creditworthiness should take into consideration all necessary factors that could influence a consumer's ability to repay over the lifetime of the loan including, but not limited to, the consumer's income, regular expenditures, credit score, past credit history, ability to handle interest rate adjustments, and other existing credit commitments. Additional provisions may be necessary to further elaborate on the different elements that may be taken into consideration in a creditworthiness assessment. Member States may issue guidance on the method and criteria to assess a consumer's creditworthiness, for example by setting limits on loan-to-value or loan-to-income ratios.

- (25) A negative creditworthiness assessment should indicate to the creditor that the consumer is unable to afford the credit and as a consequence, the creditor should not grant the credit. Such a negative outcome may derive from a wide range of reasons, including but not limited to the consultation of a database or a negative credit score. A positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.
- (26) Consumers should provide all available relevant information on their financial situation and personal circumstances to the creditor or intermediary in order to facilitate the creditworthiness assessment. The consumer should not, however, be penalised where he is not in a position to provide certain information or assessments of the future evolution of his financial situation. In situations where consumers knowingly provide incomplete or inaccurate information, Member States should be able to determine the appropriate penalties.
- (27) Consultation of a credit database is a useful element in the assessment of creditworthiness. Some Member States require creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database. Creditors should also be able to consult the credit database over the lifetime of the loan in order to identify and assess the potential for default. In the event that such a potential is evident or objectively demonstrated, the creditor should contact the consumer to discuss the different options to avoid the possibility of default, such as a rescheduling of the loan. In any event, the creditor should not consider withdrawing the credit without having first explored all possible alternatives with the consumer to avoid default. Pursuant to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>33</sup>, consumers should be informed by creditors of the consultation of the credit database prior to its consultation, and should have the right to access the information held on them in such a credit database in order to, where necessary, rectify, erase or block the personal data concerning them processed therein where it is inaccurate or has been unlawfully processed.
- (28) To prevent any distortion of competition among creditors, it should be ensured that all creditors (including credit institutions or non-credit institutions providing credit agreements relating to residential immovable property) have access to all public and private credit databases concerning consumers under non-discriminatory conditions. Such conditions should not therefore include a requirement to be established as a credit institution. Access conditions, such as the costs of access or requirements for any request for information to be based upon a request for credit would continue to apply. Member States are free to determine whether, within their jurisdictions, credit intermediaries may also have access to such databases.
- (29) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, of the name of the database consulted and of any other elements required by Directive 95/46/EC so as to enable the consumer to exercise his right to access and, where necessary, rectify, erase or block personal data concerning him and processed therein. Where a decision to reject an application for credit is based on an

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<sup>33</sup> OJ L 281, 23.11.1995, p. 31.

automated decision or on systematic methods such as credit scoring systems, the creditor should inform the consumer thereof and explain the logic involved in the decision and of the arrangements enabling the consumer to request the automated decision to be reviewed manually. However, the creditor should not be required to give such information when to do so would be prohibited by other Union legislation such as legislation on money laundering or the financing of terrorism. Neither should such information be provided where to do so would be contrary to the objectives of public policy or public security such as the prevention, investigation, detection or prosecution of criminal offences.

- (30) This Directive addresses the use of personal data in the context of the assessment of the consumer's creditworthiness. In order to ensure the protection of personal data, Directive 95/46/EC applies to the data processing activities carried out within the context of such assessments..
- (31) In order to be in a position to understand the nature of the service, consumers should be made aware of what constitutes a personalised recommendation on suitable credit agreements for that consumer's needs and financial situation ('advice') and when it is being provided and when it is not. Those providing advice should comply with general standards in order to ensure that the consumer is presented with a range of products suitable for his needs and circumstances. That service should be based on a fair and sufficiently wide-ranging analysis of the products available on the market, and on a close inspection of the consumer's financial situation, preferences and objectives. Such an assessment should be based on up-to-date information and reasonable assumptions on the consumer's circumstances during the lifetime of the loan. Member States may clarify how the suitability of a given product for a consumer should be assessed in the context of the provision of advice.
- (32) A consumer's ability to repay his credit prior to the expiry of his credit agreement may play an important role in promoting competition in the single market and the free movement of EU citizens. However, substantial differences exist between the national principles and conditions under which consumers have the ability to repay and the conditions under which such early repayment can take place. Whilst recognising the diversity in mortgage funding mechanisms and the range of products available, certain standards with regard to early repayment of credit are essential at Union level in order to ensure that consumers have the possibility to discharge their obligations before the date agreed in the credit agreement and the confidence to shop around for the best products to meet their needs. Member States should therefore ensure, either by legislation or by means of contractual clauses, that consumers have a statutory or contractual right to early repayment; nevertheless, Member States should be able to define the conditions for the exercise of such a right. These conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, whether fixed or variable, restrictions with regard to the circumstances under which the right may be exercised. Member States could also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In any event if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a special interest on the part of the consumer. Such special interest may for example occur in case of divorce or unemployment. Where a Member State chooses to lay down such

conditions, these should not make the exercise of the right excessively difficult or onerous for the consumer.

- (33) Although credit intermediaries play a central role in the distribution of credit agreements relating to residential immovable property in the Union, substantial differences remain between national provisions on the conduct of business and supervision of credit intermediaries which create barriers to the taking-up and pursuit of the activities of credit intermediaries in the internal market. The inability of credit intermediaries to operate freely throughout the Union hinders the proper functioning of the single market in credit agreements relating to residential immovable property. While recognising the diversity in the types of actor involved in credit intermediation, certain standards at Union level are essential in order to ensure a high level of professionalism and service.
- (34) Credit intermediaries should be registered with the competent authority of the Member State where they have their residence or their head office, provided that they have been authorised in accordance with strict professional requirements in relation to their competence, good repute, and professional indemnity cover. With a view to promoting consumer confidence in credit intermediaries, Member States should ensure that authorised credit intermediaries are subject to ongoing and thorough supervision by their home Member State competent authority. Such requirements should apply at least at the level of the institution; however, Member States may clarify whether such requirements for authorisation and subsequent registration apply to individual employees within the credit intermediary.
- (35) Such registration and authorisation requirements should allow credit intermediaries to operate in other Member States in accordance with the principles of freedom of establishment and freedom to provide services, provided that an appropriate notification procedure has been followed between the competent authorities. Even in cases where Member States decide to register and authorise all individual staff within the credit intermediary, the notification of the intention to provide services should be on the basis of the credit intermediary rather than the individual employee.
- (36) In order to ensure a level playing field between creditors and promote financial stability, and pending further harmonisation, Member States should ensure that appropriate measures are in place for the authorisation, registration and supervision of non-credit institutions providing credit agreements relating to residential immovable property. Detailed conditions should not be laid down in this Directive for the authorisation, registration or supervision of creditors providing such credit agreements and that are not credit institutions as defined in Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>34</sup> for reasons of proportionality; the number of such institutions operating in the EU at present is limited as is their market share and the number of Member States in which they are active, particularly since the financial crisis. Nor should the introduction of a 'passport' for such institutions be provided for in this Directive for the same reason.

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<sup>34</sup> OJ L 177, 30.6.2006, p. 1.

- (37) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of Member States, the penalties provided for should be effective, proportionate and dissuasive.
- (38) Consumers should have access to out-of-court complaint and redress procedures for the settlement of disputes arising from the rights and obligations set out in this Directive between providers of credit agreements relating to residential immovable property and consumers as well as between credit intermediaries and consumers.
- (39) In order to take account of developments in the markets for credit relating to residential immovable property or in the evolution of credit products as well as economic developments, such as inflation, and in order to provide further explanations on how to address certain of the requirements contained in this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union. In particular, the Commission should be empowered to adopt delegated acts to specify the details concerning the professional requirements applicable to creditors' staff and credit intermediaries, the criteria used for assessing the creditworthiness of the consumer and in ensuring that credit products are not unsuitable for the consumer, and further harmonisation of key terms such as 'default' the registration criteria and data processing conditions to be applied to credit databases.
- (40) In order to take account of developments in the markets for credit relating to residential immovable property, including the range of products available, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union to amend the content of the standard information items to be included in advertising, the content and format of the European Standardised Information Sheet (ESIS), the content of the information disclosures by credit intermediaries, the formula and the assumptions used to calculate the annual percentage rate of charge and the criteria to be taken into account for the assessment of the consumer's creditworthiness.
- (41) In order to take account of economic developments, such as inflation and developments in markets for credit agreements related to residential immovable property, the Commission should be empowered to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee with regard to credit intermediaries by adopting regulatory technical standards.
- (42) In order to facilitate the ability of credit intermediaries to provide their services on a cross-border basis, for purposes of cooperation, information exchange and dispute resolution between competent authorities, the competent authorities responsible for the authorisation and supervision of credit intermediaries should be those acting under the auspices of the EBA, as set out in Article 4(2) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)<sup>35</sup>.
- (43) The European Parliament and the Council should have two months from the date of notification to object to a delegated act. At the initiative of the European Parliament or

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<sup>35</sup> OJ L 331, 15.12.2010, p. 12.



the Council, it should be possible to prolong that period by one month with regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.

- (44) The efficient functioning of this Directive will need to be reviewed, as will progress on the establishment of an internal market with a high level of consumer protection for credit agreements relating to residential immovable property. The Commission should therefore review the Directive five years after the deadline for its transposition. The review should include, among other things, an analysis of the evolution of the market for non-credit institutions providing credit agreements relating to residential immovable property and an assessment on the need for further measures, including a passport for such non-credit institutions, an examination of the necessity to introduce rights and obligations with regard to the post-contractual stage of credit agreements, and an assessment of whether an extension of the scope to include lending to small companies is warranted.
- (45) Action by Member States alone is likely to result in different sets of rules, which may undermine or create new obstacles to the functioning of the internal market. Since an efficient and competitive internal market in credit agreements relating to residential immovable property with a high level of consumer protection cannot be sufficiently achieved by Member States and can therefore by reason of the effectiveness of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (46) In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>36</sup>, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

## **Chapter 1**

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

#### *Article 1* *Subject matter*

The purpose of this Directive is to lay down a framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning credit agreements relating to residential immovable property for consumers and concerning certain aspects of the prudential and supervisory requirements for credit intermediaries and creditors.

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<sup>36</sup> OJ C 321, 31.12.2003, p. 1.

## *Article 2*

### *Scope*

1. This Directive shall apply to the following credit agreements:
  - (a) Credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property.
  - (b) Credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected residential building.
  - (c) Credit agreements the purpose of which is the renovation of the residential immovable property a person owns or aims to acquire, which are not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008.
2. This Directive shall not apply to:
  - (a) Credit agreements which will eventually be repaid from the sale proceeds of an immovable property.
  - (b) Credit agreements where the credit is granted by an employer to his employees as a secondary activity where such a credit agreement is offered free of interest or at annual percentage rates of charge lower than those prevailing on the market and not offered to the public generally.

## *Article 3*

### *Definitions*

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

- (a) 'Consumer' means a consumer as defined in Article 3(a) of Directive 2008/48/EC.
- (b) 'Creditor' means a natural or legal person who grants or promises to grant credit within the meaning of Article 2 in the course of his trade, business or profession.
- (c) 'Credit agreement' means an agreement whereby a creditor, directly or through a credit intermediary, grants or promises to grant, to a consumer, a credit within the meaning of Article 2 in the form of a deferred payment, loan or other similar financial accommodation.
- (d) 'Ancillary service' means a financial service offered to the consumer by the creditor or credit intermediary in conjunction with the credit agreement.
- (e) 'Credit intermediary' means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:
  - (i) offers credit agreements within the meaning of Article 2 to consumers;

- (ii) assists consumers by undertaking preparatory work in respect of credit agreements within the meaning of Article 2 other than as referred to in point (i);
  - (iii) concludes credit agreements within the meaning of Article 2 with consumers on behalf of the creditor.
- (f) 'Tied credit intermediary' means any credit intermediary who acts on behalf of and under the full responsibility of only one creditor or one group.
  - (g) 'Group' means, for the purpose of this Directive, creditors which are joined for the purposes of consolidated accounts, as defined in Directive 83/349/EEC<sup>37</sup>.
  - (h) 'Credit institution' means credit institution as defined in Article 4(1) of Directive 2006/48/EC.
  - (i) 'Non-credit institution' means any natural or legal person who grants or promises to grant credit within the meaning of Article 2 in the course of his trade, business or profession and is not a credit institution.
  - (j) 'Staff' means any employees of the creditor or credit intermediary having contacts with consumers and who are engaged in the activities covered by this Directive.
  - (k) 'Total cost of the credit to the consumer' means the total cost of the credit to the consumer as defined in Article 3(g) of Directive 2008/48/EC.
  - (l) 'Total amount payable by the consumer' means the total amount payable by the consumer as defined in Article 3(h) of Directive 2008/48/EC.
  - (m) 'Annual percentage rate of charge' means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in Article 12(2).
  - (n) 'Borrowing rate' means the borrowing rate as defined in Article 3(j) of Directive 2008/48/EC.
  - (o) 'Creditworthiness assessment' means the evaluation of a consumer's ability to meet his debt obligations.
  - (p) 'Durable medium' means durable medium as defined in Article 3(m) of Directive 2008/48/EC.
  - (q) 'Home Member State' means:
    - (i) where the creditor or credit intermediary is a natural person, the Member State in which his residence is situated and in which he carries on his business;
    - (ii) where the creditor or credit intermediary is a legal person, the Member State in which its registered office is situated or, if under national law it has no registered office, the Member State in which its head office is situated.

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<sup>37</sup> OJ L 193, 18.7.1993, p. 1.

- (r) 'Host Member State' means the Member State in which the creditor or credit intermediary has a branch or provides services.

*Article 4*  
*Competent authorities*

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

Member States shall ensure that the authorities designated as competent for ensuring the implementation of Articles 18, 19, 20 and 21 of this Directive are one of those competent authorities included in Article 4(2) of Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority).

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

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

## **Chapter 2**

### **Conditions applicable to creditors and credit intermediaries**

*Article 5*  
*Conduct of business obligations when providing credit to consumers*

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

*Article 6*  
*Minimum competence requirements*

1. Home Member States shall ensure that:
  - (a) The staff of creditors and credit intermediaries possess an appropriate level of knowledge and competence in relation to the offering or granting of credit agreements within the meaning of Article 2, or the activity of credit intermediation as defined in Article 3(e). Where the conclusion of a credit

agreement includes an ancillary service related to it, in particular insurance or investment services, they shall also possess appropriate knowledge and competence in relation to that ancillary service in order to satisfy the requirements set out in Article 19 of Directive 2004/39/EC and Article 4 of Directive 2002/92/EC.

- (b) The natural persons within the management of creditors and credit intermediaries who are responsible for or have a role in the intermediation, advice or approval of the credit agreement, possess appropriate knowledge and competence in relation to credit agreements.
  - (c) Creditors and credit intermediaries are monitored in order to assess whether the requirements referred to in paragraph 1, points (a) and (b), are complied with on a continuing basis.
2. Home Member States shall ensure that the appropriate level of knowledge and competence is determined on the basis of recognised qualifications or experience.
  3. Home Member States shall make public the criteria they have established in order for credit intermediaries or creditors' staff to meet their competence requirements. Such criteria shall include a list of any recognised qualifications.
  4. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to specify the requirements provided in paragraph 1 and 2 of this Article, and in particular, the necessary requirements for appropriate knowledge and competence.

### **Chapter 3**

## **Information and practices**

# **preliminary to the conclusion of the credit agreement**

#### *Article 7*

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

Member States shall require that any advertising and marketing communications concerning credit agreements as set out in Article 2 are fair, clear and not misleading within the meaning of Articles 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market<sup>38</sup>. In particular, wording that may create false expectations for a consumer regarding the availability or the cost of a credit shall be prohibited.

#### *Article 8*

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

1. Member States shall ensure that any advertising concerning credit agreements as set out in Article 2 which indicates an interest rate or any figures relating to the cost of

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<sup>38</sup> OJ L 149, 11.6.2005, p. 22.

the credit to the consumer shall include the standard information in accordance with this Article.

2. The standard information shall specify the following in a clear, concise and prominent way by means of a representative example:
  - (a) the identity of the creditor or, where applicable, the credit intermediary;
  - (b) that the product advertised is a credit agreement and, where applicable, is secured either by a mortgage or another comparable security commonly used in a Member State on residential immovable property or by a right related to residential immovable property;
  - (c) the borrowing rate, indicating whether this is fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer;
  - (d) the total amount of credit;
  - (e) the annual percentage rate of charge;
  - (f) the duration of the credit agreement;
  - (g) the amount of the instalments;
  - (h) the total amount payable by the consumer;
  - (i) a warning, where applicable, concerning the risk of losing the immovable property in the event of non-observance of the commitments linked to the credit agreement when the credit is secured by a mortgage or another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property.

The standard information shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising and marketing.

3. Where the conclusion of a contract regarding an ancillary service relating to the credit agreement, in particular insurance, is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed, and the cost of that service cannot be determined in advance, the obligation to enter into that contract shall also be stated in a clear, concise and prominent way, together with the annual percentage rate of charge.
4. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to further specify the list of standard information items to be included in advertising.

In particular, the Commission, when adopting such delegated acts shall amend, where necessary, the list of the standard information items laid down in paragraphs 2(a) to (i) of this Article.

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

*Article 9*  
*Pre-contractual information*

1. Member States shall ensure that general information about credit agreements is made available by creditors or, where applicable, credit intermediaries at all times in a durable medium or in electronic form.

The general information shall include at least the following:

- (a) identity and the geographical address of the creditor as well as, where applicable, the identity and geographical address of the credit intermediary involved;
  - (b) purposes for which the credit may be used;
  - (c) forms of surety;
  - (d) the duration of the credit agreements;
  - (e) descriptions of the types of credit available, with a short description of the characteristics of fixed and variable rate products, including related implications for the consumer;
  - (f) indication of the currency or currencies in which credits are available, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;
  - (g) an indicative example of the total cost of credit for the consumer and annual percentage rate of charge;
  - (h) the different options available for reimbursing the credit to the creditor (including the number, frequency and amount of the regular repayment instalments);
  - (i) whether there is a possibility of early repayment and, where applicable, a description of the conditions attached to early repayment;
  - (j) whether a valuation of the property is necessary and, where applicable, by whom it should be carried out;
  - (k) details on how to obtain information on tax relief on credit agreement interest or other public subsidies.
2. Member States shall ensure that the creditor and, where applicable, the credit intermediary, without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 14, provides the consumer with the personalised information needed to compare the credits available on the market, assess their implications and take an informed decision on whether to conclude a credit agreement. Such information,

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

Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be accompanied by an ESIS. In such circumstances, Member States shall ensure that the credit agreement cannot be concluded until the consumer has had sufficient time to compare the offers, assess their implications and take an informed decision on whether to accept an offer, regardless of the means of conclusion of the contract.

The creditor and, where applicable, the credit intermediary shall be deemed to have fulfilled the requirements on information provision to the consumer prior to the conclusion of a distance contract as set out in Article 3 of Directive 2002/65/EC where they have supplied the ESIS.

Any additional information which the creditor or where applicable, the credit intermediary, may provide to the consumer shall be given in a separate document which may be annexed to the ESIS.

3. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to amend the standard information items laid down in paragraph 1 of this Article and the content and format of the ESIS set out in Annex II.

In particular, such delegated acts shall, where necessary:

- (a) amend the list of the standard information items laid down in paragraph 1 of this Article;
  - (b) delete any of the information items laid down Annex II;
  - (c) make additions to the list of information items laid down in Annex II;
  - (d) amend the presentation of the contents of the ESIS as laid down in Annex II;
  - (e) elaborate on the instructions for the completion of the ESIS as laid down in Annex II.
4. In the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of Article 3(3)(b) of that Directive shall include at least the items referred to in Part A sections (2), (3), (4) and (5) of Annex II.
  5. Member States shall ensure that the creditor or credit intermediary, upon request of the consumer, provides the consumer with a copy of the draft credit agreement free of charge. This provision shall not apply in cases where the creditor is unwilling, at the time of the request, to proceed to the conclusion of the credit agreement with the consumer.



*Article 10*  
*Information requirements concerning credit intermediaries*

1. Prior to the performance of any of the services listed in Article 3(e), a credit intermediary shall provide the consumer with at least the following information:
  - (a) identity and the geographical address of the credit intermediary;
  - (b) the register in which he has been included and the means for verifying that he has been registered;
  - (c) where he is acting as a tied credit intermediary he shall identify himself as such and, at the consumer's request, provide the names of the creditor(s) for which he is acting;
  - (d) whether he has a holding, direct or indirect, representing more than 10 % of the voting rights or of the capital in a given creditor;
  - (e) whether a given creditor or parent undertaking of a given creditor has a holding, direct or indirect, representing more than 10 % of the voting rights or of the capital in the credit intermediary;
  - (f) the fee, where applicable, payable by the consumer to the credit intermediary for his services;
  - (g) the procedures allowing consumers and other interested parties to register complaints about credit intermediaries and, where appropriate, the means by which recourse to the out-of-court complaint and redress procedures can be sought;
  - (h) for those credit intermediaries that are not tied, the existence of commissions, where applicable, payable by the creditor to the credit intermediary for his services.
2. Credit intermediaries who are not tied 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. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to update the list of information items on credit intermediaries to be provided to the consumer, as laid down in paragraph 1 of this Article.

In particular, the Commission, when adopting such delegated acts shall amend, where necessary, the information items laid down in paragraph 1 of this Article.
4. In order to ensure uniform conditions of application of paragraph 1 of this Article, powers are conferred on the Commission to determine, where necessary, a standardised format and the presentation of the information items set out in paragraph 1 of this Article.

*Article 11*  
*Adequate explanations*

Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer on the proposed credit agreement(s) and any ancillary service(s), in order to place the consumer in a position enabling him to assess whether the proposed credit agreements are adapted to his needs and financial situation. An adequate explanation shall include the provision of personalised information on the characteristics of the credits on offer, without however formulating any recommendation. Creditors and, where applicable, credit intermediaries shall accurately assess the level of knowledge and experience with credit of the consumer by any means necessary so as to enable the creditor or the intermediary to determine the level of explanations to be given to the consumer and adjust such explanations accordingly.

Such adequate explanations shall include an explanation of the information and terms included in the pre-contractual information to be provided in accordance with Articles 9 and 10 and of the consequences that concluding the credit agreement may have for the consumer, including in the event of default in payment by the consumer.

## **Chapter 4** **Annual percentage rate of charge**

*Article 12*  
*Calculation of the annual percentage rate of charge*

1. The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Annex I.
2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined excluding any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement.

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

3. The calculation of the annual percentage rate of charge shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.
4. In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, in the charges contained in the annual

percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will be calculated at the level set at the signature of the contract.

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

The Commission shall, when adopting such delegated acts, amend, where necessary, the formula or assumptions laid down in Annex I, in particular if the assumptions set out in this Article and in Annex I do not suffice to calculate the annual percentage rate of charge in a uniform manner or are not adapted any more to the commercial situation at the market.

### *Article 13*

#### *Information concerning the borrowing rate*

1. Member States shall ensure that the creditor informs the consumer of any change in the borrowing rate, on paper or another durable medium, before the change enters into force. The information shall state the amount of the repayments to be made after the entry into force of the new borrowing rate and, in cases where the number or frequency of the payments changes, particulars thereof.
2. However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate correlates directly with a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

## **Chapter 5**

### **Creditworthiness assessment**

### *Article 14*

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

1. Member States shall ensure that, before the conclusion of the credit agreement, a thorough assessment of the consumer's creditworthiness is conducted by the creditor, based on criteria including the consumer's income, savings, debts and other financial commitments. That assessment shall be carried out on the basis of the necessary information, obtained by the creditor or, where applicable, credit intermediary from the consumer and from relevant internal or external sources and shall respect the requirements with regard to necessity and proportionality set out in Article 6 of Directive 95/46/EC. Member States shall ensure that creditors establish appropriate processes to assess the creditworthiness of the consumer. These processes shall be reviewed at regular intervals and up-to-date records of those processes shall be maintained.

2. Member States shall ensure the following:
  - (a) Where the assessment of the consumer's creditworthiness results in a negative prospect for his ability to repay the credit over the lifetime of the credit agreement, the creditor refuses credit.
  - (b) Where the credit application is rejected, the creditor informs the consumer immediately and without charge of the reasons for rejection.
  - (c) In accordance with Article 10 of Directive 95/46/EC, the creditor informs the consumer in advance that a database is to be consulted.
  - (d) Where the credit application is rejected on the basis of the data contained, or lack thereof, in a database that has been consulted, the creditor informs the consumer immediately and without charge of the name of the database that was consulted as well as of its controller and of his right to access and, where necessary, his right to rectify his data in that database.
  - (e) Without prejudice to the general right of access contained in Article 12 of the Directive 95/46/EC, where the application is rejected on the basis of an automated decision or a decision based on methods such as automated credit scoring, the creditor informs the consumer immediately and without charge and that the creditor explains the logic involved in the automated decision to the consumer.
  - (f) The consumer has the opportunity to request for the decision to be reviewed manually.
3. Member States shall ensure that, where the parties consider increases in the total amount of credit extended to the consumer after the conclusion of the credit agreement, the financial information at the disposal of the creditor concerning the consumer is updated and the consumer's creditworthiness re-assessed before any significant increase in the total amount of credit is granted.
4. Further to assessing a consumer's creditworthiness, Member States shall ensure that creditors and credit intermediaries obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives and consider a sufficiently large number of credit agreements from their product range in order to identify products that are not unsuitable for the consumer given his needs, financial situation and personal circumstances. Such considerations shall be based on information that is up to date at that moment in time and on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.
5. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to specify and amend the criteria to be considered in the conduct of a creditworthiness assessment as laid down in paragraph 1 of this Article and in ensuring that credit products are not unsuitable for the consumer as laid down in paragraph 4 of this Article.

*Article 15*  
*Disclosure obligation on the part of the consumer*

1. Member States shall ensure that consumers provide creditors and, where applicable, credit intermediaries with complete and correct information on their financial situation and personal circumstances in the context of the credit application process. That information should be supported, when necessary, by documentary evidence from independently verifiable sources.
2. As regards the information to be provided by the consumer in order for the creditor to be able to conduct a thorough assessment of the consumer's creditworthiness and make a decision on whether or not to grant the credit, Member States shall ensure that creditors, at the pre-contractual phase, clearly specify the information, including independently verifiable evidence where necessary, that the consumer needs to provide. Member States shall also ensure that creditors state the exact timing by which consumers are required to provide such information.

Member States shall ensure that in cases where the consumer chooses not to provide the information necessary for an assessment of his creditworthiness, the creditor or credit intermediary warns the consumer that they are unable to carry out a creditworthiness assessment and therefore that the credit may not be granted. This warning may be provided in a standardised format.

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

## **Chapter 6** **Database access**

*Article 16*  
*Database access*

1. Each Member State shall ensure non-discriminatory access for all creditors to databases used in that Member State for assessing the creditworthiness of consumers and for monitoring consumers' compliance with the credit obligations over the life of the credit agreement. Such databases comprise databases operated by private credit bureaux or credit reference agencies and public credit registers.
2. Powers are delegated to the Commission in accordance with Article 26 and subject to the conditions of Articles 27 and 28, to define uniform credit registration criteria and data processing conditions to be applied to the databases referred to in paragraph 1 of this Article.

In particular, such delegated acts shall define the registration thresholds to be applied to such databases and shall provide for agreed definitions for key terms used by such databases.

3. The information in the databases shall be provided unless the provision of such information is prohibited by other Union legislation or is contrary to objectives of public policy or public security.
4. This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

## **Chapter 7**

### **Advice**

#### *Article 17*

##### *Advice standards*

1. For the purposes of this Directive, 'advice' constitutes a separate service from the granting of a credit. Such a service can only be marketed as advice when the remuneration of the individual providing the service is transparent to the consumer.
2. Member States shall ensure that the creditor or credit intermediary informs the consumer, in the context of a given transaction, whether or not advice is being or will be provided. This may be done through additional pre-contractual information. Where advice is provided to consumers, in addition to the requirements set out in Articles 5 and 6, Member States shall ensure that creditors and credit intermediaries:
  - (a) consider a sufficiently large number of credit agreements available on the market so as to enable the recommendation of the most suitable credit agreements for the consumer's needs, financial situation and personal circumstances;
  - (b) obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives so as to enable the recommendation of suitable credit agreements. Such an assessment shall be based on information that is up to date at that moment in time and on reasonable assumptions as to the consumer's situation over the term of the proposed credit agreement.

## **Chapter 8**

### **Early repayment**

#### *Article 18*

##### *Early repayment*

1. Member States shall ensure that the consumer has a statutory or contractual right to discharge his obligations under a credit agreement prior to the expiry of that agreement. In such cases, he shall be entitled to a reduction in the total cost of the

credit, such a reduction consisting of the interest and the costs for the remaining duration of the contract.

2. Member States may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate, or restrictions with regard to the circumstances under which the right may be exercised. Member States may also provide that the creditor should be entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In any event, if the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a special interest on the part of the consumer.

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

## **Chapter 9**

### **Prudential and supervisory requirements**

#### *Article 19*

#### *Authorisation and supervision of credit intermediaries*

1. Credit intermediaries shall be duly authorised to carry out the activities set out in Article 3(e) by a competent authority as defined in Article 4 in their home Member State. Such authorisation shall be granted on the basis of requirements established in the home Member State of the credit intermediary and shall include the fulfilment of the professional requirements laid down in Article 20.
2. Home Member States shall ensure that authorised credit intermediaries comply with the conditions for initial authorisation on a continuing basis.
3. Home Member States shall ensure that the authorisation of credit intermediaries is withdrawn where either:
  - (a) the credit intermediary no longer fulfils the requirements under which authorisation was granted;
  - (b) the credit intermediary has obtained the authorisation through false statements or any other irregular means.
4. Member States shall ensure that authorised credit intermediaries are subject to supervision of their ongoing activities by their home competent authority as referred to in Article 4.

*Article 20*  
*Registration of credit intermediaries*

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

As regards legal persons, the register referred to in paragraph 1 shall specify the names of the persons within the management who are responsible for the intermediation business. Member States may also require the registration of all natural persons who fulfil a client-facing function in an undertaking that pursues the activity of credit intermediation.

The register shall indicate the Member State(s) where the intermediary intends to conduct business under the rules on the freedom of establishment or on the freedom to provide services and has informed its home Member State competent authority thereof.

3. Member States shall ensure that credit intermediaries who have had their authorisation withdrawn are deleted from the register without undue delay.
4. Member States shall ensure that a single information point is established to allow quick and easy public access to information from the national register, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State referred to in Article 4.

*Article 21*  
*Professional requirements applicable to credit intermediaries*

1. In addition to the requirements set out in Article 6, the following provisions shall apply to all credit intermediaries on a continuing basis:
  - (a) Credit intermediaries 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.
  - (b) 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, unless such insurance or comparable guarantee is already provided by a creditor or other undertaking on whose behalf the credit intermediary is acting or for which the credit intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.



2. Member States shall ensure that the criteria established in order for credit intermediaries or creditors' staff to meet their professional requirements are made public.
3. Powers are delegated to the Commission to adopt and, where necessary amend, regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in paragraph 1(b).

The regulatory technical standards referred to in subparagraph 1 shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

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

#### *Article 22*

##### *Freedom of establishment for credit intermediaries and freedom to provide credit intermediation services in other Member States*

1. The authorisation of credit intermediaries by their home Member State shall be effective for the entire territory of the Union without a requirement for further authorisation by the competent authorities of the host Member State(s).
2. Any credit intermediary intending to carry on business for the first time in one or more Member States under the freedom to provide services or the freedom of establishment shall inform the competent authorities of its home Member State.

Within a period of one month after being informed, those competent authorities shall notify the competent authorities of the host Member State(s) concerned of the intention of the credit intermediary and shall at the same time inform the credit intermediary concerned of that notification.

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

3. In cases where the authorisation of credit intermediaries is withdrawn by the home Member State that home Member State shall notify the host Member State(s) of such withdrawal as soon as possible and at the latest within one month, by any appropriate means.

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.

The competent authorities may refer situations to the EBA where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time, and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In such cases, the EBA may act in accordance with the powers conferred on it by that Article.

4. Where 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 or through a branch is in breach of the obligations set out in this Directive, it shall refer those findings to the competent authority of the home Member State which shall take the appropriate measures. In cases where, despite measures taken by the competent authority of the home Member State, a credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of host Member State consumers or the orderly functioning of markets, the following shall apply:
  - (a) The competent authority of the host Member State, after informing the competent authority of the home Member State shall take all the appropriate measures needed in order to protect consumers and the proper functioning of the markets including by preventing the offending credit intermediaries from initiating any further transactions within their territories. The Commission shall be informed of such measures without undue delay.
  - (b) In addition, the competent authority of the host Member State may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case, the EBA may act in accordance with the powers conferred on it by that Article.

#### *Article 23*

#### *Authorisation, registration and supervision of non-credit institutions*

Member States shall ensure that non-credit institutions as referred to in Article 3(i) are subject to adequate authorisation, registration and supervision arrangements by a competent authority as defined in Article 4.

## **Chapter 10**

### **Final provisions**

#### *Article 24*

#### *Penalties*

1. Without prejudice to procedures for the withdrawal of authorisation or to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that appropriate administrative measures can be taken or administrative sanctions imposed against persons responsible where the provisions adopted in the implementation of this Directive have not been complied

with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

Member States shall provide for penalties in particular cases where consumers knowingly provide incomplete or incorrect information in order to obtain a positive creditworthiness assessment where the complete and correct information would have resulted in a negative creditworthiness assessment, and are subsequently unable to fulfil the conditions of the agreement, and shall take all measures necessary to ensure that they are implemented.

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

#### *Article 25*

##### *Dispute resolution mechanisms*

1. Member States shall ensure that appropriate and effective complaints and redress procedures are established for the out-of-court settlement of disputes concerning rights and obligations established under this Directive between creditors and consumers and between credit intermediaries and consumers, using existing bodies where appropriate. Member States shall further ensure that all creditors and credit intermediaries adhere to one or more such bodies implementing such complaint and redress procedures.
2. Member States shall ensure that these bodies actively cooperate in the resolution of cross-border disputes.

#### *Article 26*

##### *Exercise of the delegation*

1. The powers to adopt delegated acts referred to in Articles 6(4), 8(4), 9(3), 10(3), 14(5) and 16(2) shall be conferred on the Commission for an indeterminate period of time following the entry into force of this Directive.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27 and 28.

#### *Article 27*

##### *Revocation of the delegation*

1. The delegation of powers referred to in Articles 6(4), 8(4), 9(3), 10(3), 14(5) and 16(2) may be revoked at any time by the European Parliament or by the Council.

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

#### *Article 28*

##### *Objections to delegated acts*

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

#### *Article 29*

##### *Imperative nature of this Directive*

1. Member States shall ensure that consumers may not waive the rights conferred on them by the provisions of national law implementing or corresponding to this Directive.
2. Member States shall further ensure that the provisions they adopt in implementation of this Directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating credit agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid its application.
3. Member States shall take the necessary measures to ensure that consumers do not lose the protection granted by this Directive by virtue of the choice of the law of a third country as the law applicable to the credit agreement.

*Article 30*  
*Transposition*

1. Member States shall adopt and publish, by [2 years after entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [2 years after entry into force].

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

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

*Article 31*  
*Review clause*

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

The review shall include the following:

- (a) an assessment of consumer satisfaction with the ESIS;
- (b) 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 necessity to introduce rights and obligations with regard to the post-contractual stage of credit agreements
- (g) an assessment of the need to extend its scope to small companies.

*Article 32*

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

*Article 33*

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**Annex I**  
**Calculation of the annual percentage rate of charge**

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

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

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

where:

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

Remarks:

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
- (b) The starting date shall be that of the first drawdown.
- (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30.41666 days (i.e. 365/12) regardless of whether or not it is a leap year.
- (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one.
- (e) The equation can be rewritten using a single sum and the concept of flows ( $A_k$ ), which will be positive or negative, in other words either paid or received during periods 1 to k, expressed in years, i.e.:

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

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

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

- (a) If a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full.
- (b) If a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement.
- (c) If a credit agreement gives the consumer freedom of drawdown in general but imposes, among the different ways of drawdown, a limitation with regard to the amount and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the agreement and in accordance with those drawdown limits.
- (d) If there is no fixed timetable for repayment, it shall be assumed:
  - (i) that the credit is provided for a period of twenty years, and
  - (ii) that the credit will be repaid in 240 equal instalments and at monthly intervals.
- (e) If there is a fixed timetable for repayment but the amount of such repayments is flexible, the amount of each repayment shall be deemed to be the lowest for which the agreement provides.
- (f) Unless otherwise specified, where the credit agreement provides for more than one repayment date, the credit is to be made available and the repayments made on the earliest date provided for in the agreement.
- (g) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 180 000.
- (h) In the case of a bridging loan the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the credit agreement is not known the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is three months.
- (i) If different interest rates and charges are offered for a limited period or amount, the interest rate and the charges shall be deemed to be the highest for the whole duration of the credit agreement.
- (j) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of



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

**Annex II**  
**European Standardised Information Sheet (ESIS)**

**PART A**

The text in this model shall be reproduced as such in the ESIS. Indications between square brackets shall be replaced with the corresponding information. Instructions on how to complete the ESIS are provided in Part B.

Wherever 'where applicable' is indicated, the creditor shall fill in the box if the information is relevant to the credit agreement. Where the information is not relevant, the creditor shall delete the information in question or the entire section. In the latter case, the numbering of the ESIS sections shall be adjusted accordingly.

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

**ESIS Model**

<i>(Introductory text)</i>
This document was produced on [current date] in reply to your request for information. This document does not constitute an obligation for us to grant you a loan.  This document was produced on the basis of the information that you have provided so far and on the current financial market conditions. The information below remains valid until [validity date]. After that date, it may change in line with market conditions.
1. Lender
[Name] [Geographical address] [Telephone number] [E-mail address] [Web address] Supervisory authority: [Name and Web address of supervisory authority] Contact person: [Full contact details of contact person]
2. Main features of the loan
Amount and currency of the loan granted: [value][currency] <i>(Where applicable)</i> "This loan is not in [national currency]" Duration of the loan: [duration] [Type of loan] [Type of applicable interest rate] Total amount to be reimbursed: [Maximum available loan amount relative to the value of the property]: <i>(Where applicable)</i> [Security]
3. Interest rate

<p>The APRC is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers. The APRC applicable to your loan is [APRC]. It comprises:</p> <p>Interest rate [value in percentage]</p> <p>[Other components of the APRC]</p>
<p>4. Frequency and number of payments</p>
<p>Repayment frequency: [frequency]</p> <p>Number of payments: [number]</p>
<p>5. Amount of each instalment</p>
<p>[Amount] [currency]</p> <p><i>(Where applicable)</i> The exchange rate used for converting your repayment in [credit currency] to [national currency] will be the rate published by [name of institution publishing exchange rate] on [date].</p>
<p>6. Illustrative repayment table</p>
<p>This table shows the amount to be paid every [frequency].</p> <p>The instalments (column [relevant no.]) are the sum of interest paid (column [relevant no.]), capital paid (column [relevant no.]) <i>and, where applicable</i> other costs (column [relevant no.]). <i>Where applicable</i>, The costs in the other costs column relate to [list of costs]. Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed after each instalment.</p> <p>[Amount and currency of the loan]</p> <p>[Duration of the loan]</p> <p>[Interest rate]</p> <p>[Table]</p> <p><i>(Where applicable)</i> [Warning on the variability of the instalments]</p>
<p>7. Additional obligations and costs</p>
<p>The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.</p> <p>[Obligations]</p> <p><i>(Where applicable)</i> Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with.</p> <p>In addition to the costs already included in the [frequency] instalments, this loan entails the following costs:</p> <p>Costs to be paid on a one-off basis</p> <p>Costs to be paid regularly</p> <p>Please make sure that you are aware of all other taxes and costs (e.g. notary fees) associated with this loan.</p>
<p>8. Early repayment</p>
<p><i>(Where applicable)</i> You do not have the possibility to repay this loan early.</p> <p><i>(Where applicable)</i> You have the possibility to repay this loan early, either fully or partially.</p> <p><i>(Where applicable)</i> [Conditions]</p> <p>[Procedure]</p> <p><i>(Where applicable)</i> Exit charge:</p> <p><i>(Where applicable)</i> Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge at that moment.</p>

<i>(Where applicable)</i> 9. Right of withdrawal
For a period of [length of withdrawal period] after the signing of the credit agreement, the borrower may exercise his right to cancel the agreement.
10. Internal complaint scheme
[Name of the relevant department] [Geographical address] [Telephone number] [E-mail address] Contact person: [contact details]
11. External complaint body
In the event of disagreement with the lender which remains unresolved the borrower has the possibility to address a complaint to: [Name of the complaint body] [Geographical address] [Telephone number] [E-mail address]
12. Non-compliance with the commitments linked to the loan: consequences for the borrower
[Types of non-compliance] [Financial and/or legal consequences] Should you encounter difficulties in making your [frequency] payments, we invite you to contact us as quickly as possible to explore possible solutions.
<i>(Where applicable)</i> 13. Additional information in the case of distance marketing
<i>(Where applicable)</i> The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract is [applicable law]. Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] during the duration of the credit agreement.
14. Risks and warnings
<ul style="list-style-type: none"> <li>• We draw your attention to the risks involved in taking out a mortgage loan.</li> <li>• <i>(Where applicable)</i> The interest rate of this loan does not remain fixed during the whole duration of the loan.</li> <li>• <i>(Where applicable)</i> This loan is not in [national currency]. Please note that the amount in [national currency] that you will need to pay at each instalment will vary in line with the [loan's currency/national currency] exchange rate.</li> <li>• <i>(Where applicable)</i> This is an interest-only loan. This means that, during its duration, you will need to build up enough capital in order to reimburse the loan amount at maturity.</li> <li>• You will also need to pay other taxes and costs <i>(where applicable)</i>, e.g. notary fees.</li> <li>• Your income may change. Please make sure that if your income falls you will still be able to afford your [frequency] repayment instalments.</li> <li>• <i>(Where applicable)</i> Your home may be repossessed if you do not keep up with payments.</li> </ul>

## PART B

### Instructions to complete the ESIS

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

#### *Section 'Introductory text'*

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

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

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

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

- (1) The duration of the credit shall be indicated in years or months, whichever is the most relevant. Where the duration of the credit can vary during the life of the contract, the creditor shall explain when and under which conditions this can occur.

The description of the type of credit shall clearly indicate how the capital and the interest shall be reimbursed during the life of the credit (i.e. constant, progressive or regressive reimbursements).

- (2) This section shall also explain whether the interest rate is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the interest rate variability, such as caps or floors. The formula used to revise the interest rate shall be explained. The creditor shall also indicate where further information on the indices or rates used in the formula can be found. Where the credit currency is different from the national currency, the creditor shall include information on the formula used to calculate the exchange rate spreads and the frequency of their adjustment.
- (3) 'Total amount to be reimbursed' shall be calculated as the sum of the credit amount and the total cost of the credit.

- (4) 'Maximum available loan amount relative to the value of the property' shall indicate the loan-to-value ratio. This ratio is to be accompanied by an example in absolute terms of the maximum amount that can be borrowed for a given property value.
- (5) Where the credit will be secured by a mortgage on the property or another commonly used guarantee, the creditor shall draw the borrower's attention to this.

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

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

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

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

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

- (1) The loan currency shall be clearly indicated.
- (2) Where the amount of the instalments may change during the life of the credit, the creditor shall specify the period during which that initial instalment amount will remain valid and when and how frequently afterwards it will change.
- (3) Where the credit currency is different to the borrower's national currency, the creditor shall include numerical examples clearly showing how changes to the relevant exchange rate may affect the amount of the instalments. The illustrated exchange rate changes need to be realistic, symmetrical and include at least the same number of unfavourable cases as favourable cases.
- (4) Where the currency used for the payment of instalments is different from the credit currency, the exchange rate to be used shall be clearly indicated. Such indications shall include the name of the institution publishing the exchange and the moment at which the applicable exchange is calculated.

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

- (1) Where the interest may vary during the life of the credit, the creditor shall indicate, after the reference to the interest rate, the period during which that initial interest rate will remain valid.
- (2) The table to be included in this section shall contain the following columns: 'repayment moment', 'amount of the instalment', 'interest to be paid per instalment', 'other costs included in the instalment' (where relevant), 'capital repaid per instalment' and 'outstanding capital after each instalment'.

- (3) For the first repayment year the information shall be given for each instalment and a subtotal shall be indicated for each of the columns at the end of that first year. For the following years, the detail can be provided on an annual basis. An overall total row shall be added at the end of the table and shall provide the total amounts for each column. The total amount paid by the borrower (i.e. the overall sum of the 'amount of the instalment' column) shall be clearly highlighted and presented as such.
- (4) Where the interest rate is subject to revision and the amount of the instalment after each revision is unknown, the creditor may indicate in the repayment table the same instalment amount for the whole credit duration. In such a case, the creditor shall draw that fact to the attention of the borrower by visually differentiating the amounts which are known from the hypothetical ones (e.g. using a different font, borders or shading). In addition, a clearly legible text shall explain for which periods the amounts represented in the table may vary and why. The creditor shall also include: (1) where relevant, the applicable caps and floors; (2) an example of how the amount of the instalment would vary where the interest rate increases or decreases by 1 % or by a higher percentage, where this is more realistic given the magnitude of normal changes to the interest rate and (3) where there is a cap, the instalment amount in the worst-case scenario.

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

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

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

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

#### *Section '9. Right of withdrawal'*

- (1) Where a right of withdrawal exists, the creditor shall specify the conditions to which this right is subject, the procedure that the borrower will need to follow in order to exercise this right, inter alia, the address to which the notification of withdrawal should be sent, and the corresponding fees (where applicable).

- (2) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the consumer shall be informed of the existence or absence of a right of withdrawal.
- (3) In line with Article 5 of Directive 85/577/EEC, where the transaction is being offered away from business premises, the consumer shall be informed of the existence of a right of withdrawal.

*Section '10. Internal complaint scheme'*

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

*Section '11. External complaint body'*

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

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

- (1) Where non-observance of any of the borrower's obligations linked to the credit may have financial or legal consequences for the borrower, the creditor shall describe in this section the different possible cases (e.g. late payments/default, failure to respect the obligations set out in Section 7 'Additional obligations and costs').
- (2) For each of those cases, the creditor shall specify, in clear, easily comprehensible terms, the penalties or consequences to which they may give rise. Reference to serious consequences should be highlighted.

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

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

*Section '14. Risks and warnings'*

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