

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

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PARLIAMENT AND OF THE COUNCIL

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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,

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

Having regard to the opinion of the European Central Bank<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure<sup>(3)</sup>,

Whereas:

- (1) In March 2003, the Commission launched a process of identifying and assessing the impact of barriers to the internal market for credit agreements relating to residential immovable property. On 18 December 2007, it adopted a White Paper on the Integration of EU Mortgage Credit Markets. 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 (APRC) and advice on credit agreements. The Commission established an Expert Group on Credit Histories to assist the Commission in preparing measures to improve the accessibility, comparability and completeness of credit data. Studies on the role and operations of credit intermediaries and non-credit institutions providing credit agreements relating to residential immovable property were also launched.
- (2) In accordance with the Treaty on the Functioning of the European Union (TFEU), the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. The development of a more transparent and efficient credit market within that area is vital in promoting the development of cross-border activity and creating an internal market for credit

agreements relating to residential immovable property. There are substantial differences in the laws of the various Member States with regard to the conduct of business in the granting of credit agreements relating to 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, resulting in defaults and forced sales rising. As a result, the G20 has commissioned work from the Financial Stability Board to establish principles on sound underwriting standards in relation to residential immovable property. Although some of the greatest problems in the financial crisis occurred outside the Union, consumers within the Union hold significant levels of debt, much of which is concentrated in credits related to residential immovable property. It is therefore appropriate to ensure that the Union's regulatory framework in this area is robust, consistent with international principles and makes appropriate use of the range of tools available, which may include the use of loan-to-value, loan-to-income, debt-to-income or similar ratios, minimum levels below which no credit would be deemed acceptable or other compensatory measures for the situations where the underlying risks are higher to consumers or where needed to prevent household over-indebtedness. In view of the problems brought to light in the financial crisis and with a view to ensuring an efficient and competitive internal market which contributes to financial stability, the Commission has proposed, in its Communication of 4 March 2009 entitled 'Driving European recovery', 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. The Commission reaffirmed its commitment to an efficient and competitive internal market in its Communication of 13 April 2011 entitled 'Single Market Act: Twelve levers to boost growth and strengthen confidence'.
- (4) A series of problems have been identified in mortgage markets within the Union relating to irresponsible lending and borrowing and the potential scope for irresponsible behaviour by market participants including credit intermediaries and non-credit institutions. Some problems concerned credits denominated in a foreign currency which consumers had taken out in that currency in order to take advantage of the borrowing rate offered but without having adequate information about or understanding of the exchange rate risk involved. Those problems are driven by market and regulatory failures as well as other factors such as the general economic climate and low levels of financial literacy. Other problems include ineffective, inconsistent, or non-existent 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 immovable property and in order to ensure that consumers looking for such agreements are able to do so confident in the knowledge that the institutions they interact with act in a professional and responsible manner, an appropriately harmonised Union legal framework needs to be established in a number of areas, taking into account differences in credit agreements arising in particular from differences in national and regional immovable property markets.
- (6) This Directive should therefore develop a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to immovable property, while promoting sustainable lending and borrowing and financial inclusion, and hence providing a high level of consumer protection.
- (7) In order to create a genuine internal market with a high and equivalent level of consumer protection, this Directive lays down provisions subject to maximum harmonisation in relation to the provision of pre-contractual information through the European Standardised Information Sheet (ESIS) standardised format and the calculation of the APRC. However, taking into account the specificity of credit agreements relating to immovable property and differences in market developments and conditions in Member States, concerning in particular market structure and market participants, categories of products available and procedures involved in the credit granting process, Member States should be allowed to maintain or introduce more stringent provisions than those laid down in this Directive in those areas not clearly specified as being subject to maximum harmonisation. Such a targeted approach is necessary in order to avoid adversely affecting the level of protection of consumers relating to credit agreements in the scope of this Directive. Member States should, for example, be allowed to maintain or introduce more stringent provisions with regard to knowledge and competence requirements for staff and instructions for completing the ESIS.
- (8) 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, in particular with regard to the distribution and provision of credit through creditors and credit intermediaries and the promotion of good practices. The establishment of quality standards for services for the provision of credit necessarily involves the introduction of certain provisions regarding admission, supervision and prudential requirements.
- (9) For those areas not covered by this Directive, Member States are free to maintain or introduce national law. In particular, Member States may maintain or introduce national provisions in areas such as contract law relating to the validity of credit agreements, property law, land registration, contractual information and, to the extent that they are not regulated in this Directive, post-contractual issues. Member States may provide that the appraiser or appraisal company or notaries may be chosen by mutual agreement of the parties. Given the differences between the processes for the purchase or sale

of residential immovable property in the Member States, there is scope for creditors or credit intermediaries to seek to receive payments in advance from consumers on the understanding that such payments could help to secure the conclusion of a credit agreement or the purchase or sale of an immovable property, and for such practices to be misused in particular where consumers are unfamiliar with the requirements and usual practice in that Member State. It is therefore appropriate to allow Member States to impose restrictions on such payments.

- (10) This Directive should apply irrespective of whether the creditor or credit intermediary is a legal person or a natural person. However, this Directive should not affect the right of Member States to limit, in conformity with Union law, the role of creditor or credit intermediary under this Directive to legal persons only or to certain types of legal persons.
- (11) Since consumers and enterprises are not in the same position, they do not need the same level of protection. While it is important to guarantee the rights of consumers by means of provisions that cannot be derogated from by contract, it is reasonable to allow enterprises and organisations to enter into other agreements.
- (12) The definition of consumer should cover natural persons who are acting outside their trade, business or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade, business or profession and the trade, business or professional purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.
- (13) While this Directive regulates credit agreements which solely or predominantly relate to residential immovable property, it does not prevent Member States from extending the measures taken in accordance with this Directive to protect consumers in relation to credit agreements related to other forms of immovable property, or from otherwise regulating such credit agreements.
- (14) The definitions set out in this Directive determine the scope of harmonisation. The obligations of Member States to transpose this Directive should therefore be limited to its scope as determined by those definitions. For instance, the obligations of Member States to transpose this Directive are limited to credit agreements concluded with consumers, meaning with natural persons who, in transactions covered by this Directive, are acting outside their trade, business or profession. Similarly, Member States are obliged to transpose provisions of this Directive regulating the activity of persons acting as credit intermediary as defined in the Directive. However, this Directive should be without prejudice to the application by Member States, in accordance with Union law, of this Directive to areas not covered by its scope. In addition, the definitions set out in this Directive should be without prejudice to the possibility for Member States to adopt sub-definitions under national law for specific purposes, provided that they are still compliant with the definitions set out in this Directive. For example, Member States should be allowed to determine under national law sub-categories of credit intermediaries that are not identified in this Directive, where such sub-categories are necessary at national level for instance to differentiate

the level of knowledge and competence requirements to be fulfilled by the different credit intermediaries.

- (15) The objective of this Directive is to ensure that consumers entering into credit agreements relating to immovable property benefit from a high level of protection. It should therefore apply to credits secured by immovable property regardless of the purpose of the credit, refinancing agreements or other credit agreements that would help an owner or part owner continue to retain rights in immovable property or land and credits which are used to purchase an immovable property in some Member States including credits that do not require the reimbursement of the capital or, unless Member States have an adequate alternative framework in place, those whose purpose is to provide temporary financing between the sale of one immovable property and the purchase of another, and to secured credits for the renovation of residential immovable property.
- (16) This Directive should not apply to certain credit agreements where the creditor contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the sale 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 consumer's creditworthiness, for example, is irrelevant since the payments are made from the creditor to the consumer rather than the other way round. Such a transaction would require, inter alia, substantially different pre-contractual information. Furthermore, other products, such as home reversions, which have comparable functions to reverse mortgages or lifetime mortgages, do not involve the provision of credit and so would remain outside the scope of this Directive.
- (17) This Directive should not cover other explicitly listed types of niche credit agreements, that are different in their nature and risks involved from standard mortgage credits and therefore require a tailored approach, in particular credit agreements which are the outcome of a settlement reached in court or before another statutory authority, and 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 of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers<sup>(4)</sup>. It is appropriate to allow Member States to exclude certain credit agreements, such as those which are granted to a restricted public on advantageous terms or provided by credit unions, provided that adequate alternative arrangements are in place to ensure that policy objectives relating to financial stability and the internal market can be met without impeding financial inclusion and access to credit. Credit agreements where the immovable property is not to be occupied as a house, apartment or another place of residence by the consumer or a family member of the consumer and is occupied as a house, apartment or another place of residence on a basis of a rental agreement, have risks and features that are different from standard credit agreements and therefore may require a more adapted framework. Member States should therefore be able to exclude such credit agreements from the Directive where an appropriate national framework is in place for them.

- (18) Unsecured credit agreements the purpose of which is the renovation of a residential immovable property involving a total amount of credit above EUR 75 000 should fall under the scope of Directive 2008/48/EC in order to ensure an equivalent level of protection to those consumers and to avoid any regulatory gap between that Directive and this Directive. Directive 2008/48/EC should therefore be amended accordingly.
- (19) For reasons of legal certainty, the Union legal 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. Certain essential definitions including the definition of ‘consumer’, and ‘durable medium’, as well as key concepts used in standard information to designate the financial characteristics of the credit, including ‘total amount payable by the consumer’ and ‘borrowing rate’ should be in line with those set out 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 consistency of application and interpretation in relation to those essential definitions and key concepts.
- (20) 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 where possible, notably the notions that information included in advertising concerning credit agreements relating to residential immovable property be provided to the consumer by means of a representative example, that detailed pre-contractual information be given to the consumer by means of a standardised information sheet, that the consumer receives adequate explanations before concluding the credit agreement, a common basis be established for calculating the APRC excluding notary fees, and that creditors assess the consumer’s creditworthiness before providing a credit. Similarly, non-discriminatory access for creditors to relevant credit databases should be ensured in order to achieve a level playing field with the provisions laid down in Directive 2008/48/EC. Similarly to Directive 2008/48/EC, this Directive should ensure the appropriate admission process and supervision of all creditors providing credit agreements relating to immovable property and should lay down requirements for the establishment of, and access to, out-of-court dispute resolution mechanisms.
- (21) 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<sup>(5)</sup> which requires that in distance sales a consumer be informed of the existence or absence of a right of withdrawal and provides for a right of withdrawal. However, while Directive 2002/65/EC provides for 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. This Directive should not affect national general contract law such as the

rules on the validity, formation or effect of a contract, insofar as general contract law aspects are not regulated in this Directive.

- (22) At the same time, it is important to 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 adequate specific risk warnings, for instance about the potential impact of exchange rate fluctuations on what the consumer has to repay and, where assessed as appropriate by the Member States, the nature and implications of taking out a security. Following what already existed as a voluntary approach by the industry concerning home loans, general pre-contractual information should be made available at all times in addition to the personalised pre-contractual information. Furthermore, a differentiated approach is justified in order to take into consideration the lessons learnt from the financial crisis and in order to ensure that credit origination takes place in a sound manner. In this respect, the provisions on the creditworthiness assessment should be strengthened in comparison to consumer credit, more precise information should be provided by credit intermediaries on their status and relationship with the creditors in order to disclose potential conflicts of interest, and all actors involved in the origination of credit agreements relating to immovable property should be adequately admitted and supervised.
- (23) It is necessary to regulate some additional areas in order to reflect the specificity of credits related to residential immovable property. Given the significance of the transaction it is necessary to ensure that consumers have sufficient time of at least seven days to consider the implications. Member States should have flexibility to provide this sufficient time either as a period of reflection before the credit agreement is concluded, a period of withdrawal after the conclusion of the credit agreement or a combination of the two. It is appropriate that Member States should have the flexibility to make the reflection period binding on the consumer for a period not exceeding 10 days but that in other cases consumers who wish to proceed during the reflection period are able to do so and that, in the interests of legal certainty in the context of property transactions, Member States should be able to provide that the reflection period or right of withdrawal should cease where the consumer undertakes any action which, under national law, results in the creation or transfer of a property right connected to or using funds obtained through the credit agreement or, where applicable, transfers the funds to a third party.
- (24) Given the particular characteristics of credit agreements related to residential immovable property it is common practice for creditors to offer to consumers a set of products or services which can be purchased together with the credit agreement. Therefore, given the significance of such agreements for consumers, it is appropriate to lay down specific rules on tying practices. Combining a credit agreement with one or more other financial services or products in packages is a means for creditors to diversify their offer and to compete against each other, provided that the components of the package can also be bought separately. While a combination of credit agreements with one or more other financial services or products in packages can benefit consumers, it may negatively affect consumers' mobility and their ability to make informed choices,

unless the components of the package can be bought separately. It is important to prevent practices such as tying of certain products which may induce consumers to enter into credit agreements which are not in their best interest, without however restricting product bundling which can be beneficial to consumers. Member States should however continue monitoring retail financial services markets closely to ensure that bundling practices do not distort consumer choice and competition in the market.

- (25) As a general rule, tying practices should not be allowed unless the financial service or product offered together with the credit agreement could not be offered separately as it is a fully integrated part of the credit, for example in the event of a secured overdraft. In other instances, it may however be justified for creditors to offer or sell a credit agreement in a package with a payment account, savings account, investment product or pension product, for instance where the capital in the account is used to repay the credit or is a prerequisite for pooling resources to obtain the credit, or in situations where, for instance, an investment product or a private pension product serves as an additional security for the credit. While it is justified for creditors to be able to require the consumer to have a relevant insurance policy in order to guarantee repayment of the credit or insure the value of the security, the consumer should have the opportunity to choose his own insurance provider, provided that his insurance policy has an equivalent level of guarantee as the insurance policy proposed or offered by the creditor. Moreover Member States may standardise, wholly or in part, the cover provided by insurance contracts in order to facilitate comparisons between different offers for consumers who wish to make such comparisons.
- (26) It is important to ensure that the residential immovable property is appropriately valued before the conclusion of the credit agreement and, in particular where the valuation affects the residual obligation of the consumer in the event of default. Member States should therefore ensure that reliable valuation standards are in place. In order to be considered reliable, valuation standards should take into account internationally recognised valuation standards, in particular those developed by the International Valuation Standards Committee, the European Group of Valuers' Associations or the Royal Institution of Chartered Surveyors. Those internationally recognised valuation standards contain high level principles which require creditors, amongst others, to adopt and adhere to adequate internal risk management and securities management processes, which include sound appraisal processes, to adopt appraisal standards and methods that lead to realistic and substantiated property appraisals in order to ensure that all appraisal reports are prepared with appropriate professional skill and diligence and that appraisers meet certain qualification requirements and to maintain adequate appraisal documentation for securities that is comprehensive and plausible. In this regard it is desirable to ensure appropriate monitoring of residential immovable property markets and for the mechanisms in such provisions to be in line with Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms<sup>(6)</sup>. The provisions of this Directive relating to property valuation standards can be complied with for example through law or self-regulation.



- (27) Given the significant consequences for creditors, consumers and potentially financial stability of foreclosure, it is appropriate to encourage creditors to deal proactively with emerging credit risk at an early stage and that the necessary measures are in place to ensure that creditors exercise reasonable forbearance and make reasonable attempts to resolve the situation through other means before foreclosure proceedings are initiated. Where possible, solutions should be found which take account of the practical circumstances and reasonable need for living expenses of the consumer. Where after foreclosure proceedings outstanding debt remains, Member States should ensure the protection of minimum living conditions and put in place measures to facilitate repayment while avoiding long-term over-indebtedness. At least where the price obtained for the immovable property affects the amount owed by the consumer, Member States should encourage creditors to take reasonable steps to obtain the best efforts price for the foreclosed immovable property in the context of market conditions. Member States should not prevent the parties to a credit agreement from expressly agreeing that the transfer of the security to the creditor is sufficient to repay the credit.
- (28) Intermediaries often engage in more activities than just credit intermediation, in particular insurance intermediation or investment services provision. This Directive should therefore also ensure a degree of coherence with Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation<sup>(7)</sup> and Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(8)</sup>. In particular, credit institutions authorised in accordance with Directive 2013/36/EU and other financial institutions subject to an equivalent admission regime under national law should not require a separate admission to operate as a credit intermediary in order to simplify the process of establishing as a credit intermediary and operating cross-border. The full and unconditional responsibility placed on creditors and credit intermediaries for the activities of tied credit intermediaries or appointed representatives should only extend to activities within the scope of this Directive unless Member States choose to extend that responsibility to other areas.
- (29) In order to increase the ability of consumers to make informed decisions for themselves about borrowing and managing debt responsibly, Member States should promote measures to support the education of consumers in relation to responsible borrowing and debt management in particular relating to mortgage credit agreements. It is particularly important to provide guidance for consumers taking out mortgage credit for the first time. In that regard, the Commission should identify examples of best practices to facilitate the further development of measures to enhance consumers' financial awareness.
- (30) Due to the significant risks attached to borrowing in a foreign currency, it is necessary to provide for measures to ensure that consumers are aware of the risk they are taking on and that the consumer has the possibility to limit their exposure to exchange rate risk during the lifetime of the credit. The risk could be limited either through giving the consumer the right to convert the currency of the credit, or through other arrangements such as caps or, where they are sufficient to limit the exchange rate risk, warnings.

- (31) The applicable legal framework should give consumers the confidence that creditors, credit intermediaries and appointed representatives take account of the interests of the consumer, based on the information available to the creditor, credit intermediary and appointed representative at that moment in time and on reasonable assumptions about risks to the consumer's situation over the term of the proposed credit agreement. It could imply, amongst other things, that creditors should not market the credit so that the marketing significantly impairs or is likely to impair the consumer's ability to carefully consider the taking of the credit, or that the creditor should not use the granting of the credit as a main method of marketing when marketing goods, services or immovable property to consumers. A key aspect of ensuring such consumer confidence is the requirement to ensure a high degree of fairness, honesty and professionalism in the industry, appropriate management of conflicts of interest including those arising from remuneration and to require advice to be given in the best interests of the consumer.
- (32) It is appropriate to ensure that the relevant staff of creditors, credit intermediaries and appointed representatives possess an adequate level of knowledge and competence in order to achieve a high level of professionalism. This Directive should, therefore, require relevant knowledge and competence to be proven at the level of the company, based on the minimum knowledge and competence requirements set out in this Directive. Member States should be free to introduce or maintain such requirements applicable to individual natural persons. Member States should be able to allow creditors, credit intermediaries and appointed representatives to differentiate between the levels of minimum knowledge requirements according to the involvement in carrying out particular services or processes. In this context, staff includes outsourced personnel, working for and within the creditor, credit intermediary or appointed representatives as well as their employees. For the purpose of this Directive, staff directly engaged in activities under this Directive should include both front- and back-office staff, including management, who fulfil an important role in the credit agreement process. Persons fulfilling support functions which are unrelated to the credit agreement process (for instance human resources and information and communications technology personnel) should not be considered as staff under this Directive.
- (33) Where a creditor or credit intermediary provides its services within the territory of another Member State under the freedom to provide services, the home Member State should be responsible for establishing the minimum knowledge and competence requirements applicable to the staff. However host Member States which deem it necessary should be able to establish their own competence requirements in certain specified areas applicable to creditors and credit intermediaries that provide services within the territory of that Member State under the freedom to provide services.
- (34) Given the importance of ensuring that knowledge and competence requirements are applied and complied with in practice, Member States should require competent authorities to supervise creditors, credit intermediaries and appointed representatives and empower them to obtain such evidence as they need to reliably assess compliance.
- (35) The way in which creditors, credit intermediaries and appointed representatives remunerate their staff should constitute one of the key aspects of ensuring consumer

confidence in the financial sector. This Directive provides rules for staff remuneration, with the aim of limiting mis-selling practices and of ensuring that the way in which staff are remunerated does not impede compliance with the obligation to take account of the interests of the consumer. In particular, creditors, credit intermediaries and appointed representatives should not design their remuneration policies in a way that would incentivise their staff to conclude a given number or type of credit agreements or to offer particular ancillary services to consumers with no explicit consideration of their interests and needs. In this context, Member States may find it necessary to decide that a particular practice, for example, tied intermediaries collecting fees, is against the interests of a consumer. Member States should also be able to specify that the remuneration received by staff is not dependent on the rate or the type of credit agreement concluded with the consumer.

- (36) This Directive provides for harmonised rules as regards the fields of knowledge and competence that creditors', credit intermediaries' and appointed representatives' staff should possess in relation to the manufacturing, offering, granting and intermediation of a credit agreement. This Directive does not provide for specific arrangements directly related to the recognition of professional qualifications obtained by an individual in one Member State in order to meet the knowledge and competence requirements in another Member State. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications<sup>(9)</sup> should therefore continue to apply concerning the conditions for recognition and the compensation measures that a host Member State may require from an individual whose qualification has not been issued within its jurisdiction.
- (37) Creditors and credit intermediaries frequently use advertisements, often featuring special terms and conditions, to attract consumers to a particular product. Consumers should, therefore, be protected against unfair or misleading advertising practices and should be able to compare advertisements. Specific provisions on the advertising of credit agreements and a list of items to be included in advertisements and marketing materials directed at consumers where such advertising specifies interest rates or any figures relating to the cost of credit, are necessary to enable them to compare different offers. Member States should remain free to introduce or maintain disclosure requirements in their national laws regarding advertising which does not indicate an interest rate or contain any figures relating to the cost of credit. Any such requirements should take into account the specificities of credit agreements relating to residential immovable property. In any event, it should be ensured in accordance with 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>(10)</sup> that advertising of credit agreements should not create a misleading impression of the product.
- (38) 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 that respect, general information plays an important role in educating the consumer in relation to the broad range of products and services available and the key features thereof. Consumers should therefore be able at all times to access general

information on credit products available. Where this requirement is not applicable to non-tied credit intermediaries, this should be without prejudice to their obligation to provide consumers with personalised pre-contractual information.

- (39) 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.
- (40) Consumers 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. Pursuant to Commission Recommendation 2001/193/EC of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans<sup>(11)</sup>, the Commission committed itself to monitoring compliance with the Voluntary Code of Conduct on pre-contractual information for home loans, which contains the ESIS which provides information, personalised for the consumer, on the credit agreement being provided. Evidence collected by the Commission 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 ESIS, 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 'flexible features', should be added. An illustrative amortisation table should be provided to a consumer as part of the ESIS where the credit is a deferred interest credit, in which the repayment of principal is deferred for an initial period or where the borrowing rate is fixed for the duration of the credit agreement. Member States should be able to provide that such an illustrative amortisation table in the ESIS is not compulsory for other credit agreements.
- (41) Consumer research has underlined the importance of using simple and understandable language in disclosures provided to consumers. For this reason, the terms used in the ESIS are not necessarily the same as the legal terms defined in this Directive but have the same meaning.
- (42) The information requirements on credit agreements contained in the ESIS should be without prejudice to Union or national information requirements for other products or services that might be offered with the credit agreement, as conditions for obtaining the credit agreement related to immovable property, or offered so as to obtain that agreement at a lower borrowing rate, such as fire or life insurance or investment products. Member States should be free to maintain or introduce national law where no harmonised provisions exist, for instance information requirements on the level of usury rates at the pre-contractual stage or information which might be useful for the purposes of financial education or for out-of-court settlements. Any additional information should, however, be given in a separate document which may be annexed to the ESIS.

Member States should be able, in their national languages, to use different vocabulary in the ESIS, without changing its contents and the order in which information is provided, when this is needed in order to employ a language which might be more easily understandable for consumers.

- (43) In order to ensure that the ESIS provides the consumer with all relevant information to make an informed choice, the creditor should follow the instructions set out in this Directive when completing the ESIS. Member States should be able to elaborate or further specify the instructions for completing the ESIS on the basis of the instructions set out in this Directive. For instance, Member States should be able to further specify the information to be given in order to describe the ‘type of borrowing rate’ in order to take into account the specificities of the national products and market. However, such further specifications should not be contrary to the instructions contained in this Directive nor imply any change in the text of the ESIS model, which should be reproduced as such by the creditor. Member States should be able to specify further warnings on credit agreements, adapted to their national market and practices, where such warnings are not already specifically included in the ESIS. Member States should be able to provide that the creditor is bound by the information provided for in the ESIS, provided that the creditor decides to grant the credit.
- (44) The consumer should receive information by means of the ESIS without undue delay after the consumer has delivered the necessary information on his needs, financial situation and preferences and in good time before the consumer is bound by any credit agreement or offer, in order to enable him to compare and reflect on the characteristics of credit products and obtain third party advice if necessary. In particular when a binding offer is made to the consumer, it should be accompanied by the ESIS, unless the ESIS has already been delivered to the consumer and the characteristics of the offer are consistent with the information previously provided. However, Member States should be able to provide for the obligatory provision of the ESIS both before the provision of any binding offer and together with the binding offer, where an ESIS containing the same information has not previously been given. While the ESIS should be personalised and reflect the preferences expressed by the consumer, the provision of such personalised information should not imply an obligation to provide advice. Credit agreements should only be concluded where the consumer has had sufficient time to compare offers, assess their implications, obtain third party advice if necessary and has taken an informed decision on whether to accept an offer.
- (45) Where the consumer has a secured credit agreement for the purchase of immovable property or land and the duration of the security is longer than that of the credit agreement, and where the consumer can decide to withdraw the repaid capital again subject to signature of a new credit agreement, a new ESIS disclosing the new APRC and based on the specific characteristics of the new credit agreement should be provided to the consumer before the signature of the new credit agreement.
- (46) At least where no right of withdrawal exists, the creditor or, where applicable, the credit intermediary or appointed representative should provide the consumer with a copy of the draft credit agreement, at the time of the provision of an offer binding on

the creditor. In other cases, the consumer should at least be offered a copy of the draft credit agreement at the time a binding offer is made.

- (47) In order to ensure the fullest possible transparency and to prevent abuses arising from possible conflicts of interest when consumers use the services of credit intermediaries, the latter should be subject to certain information disclosure obligations prior to the performance of their services. Such disclosures should include information on their identity and links with creditors, for instance whether they are considering products from a broad range of creditors or only from a more limited number of creditors. The existence of any commission or other inducement payable to the credit intermediary by the creditor or by third parties in relation to the credit agreement should be disclosed to consumers before the carrying out of any credit intermediation activities and consumers should be informed at that stage either of the amount of such payments, where that is known, or of the fact that the amount will be disclosed at a later pre-contractual stage in the ESIS and of their right to be given information on the level of such payments at that stage. Consumers should be informed of any fees they should pay to credit intermediaries in relation to their services. Without prejudice to competition law, Member States should be free to introduce or maintain provisions prohibiting the payment of fees by consumers to some or all categories of credit intermediary.
- (48) A consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Creditors and, where applicable, credit intermediaries should provide such assistance in relation to the credit products which they offer to the consumer by explaining the relevant information including in particular the essential characteristics of the products proposed to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. Creditors and, where applicable, credit intermediaries should adapt the way in which such explanations are given to the circumstances in which the credit is offered and the consumer's need for assistance, taking into account the consumer's knowledge and experience of credit and the nature of individual credit products. Such explanations should not in itself constitute a personal recommendation.
- (49) 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 uniformly ensure the comparability of information relating to the APRC throughout the Union.
- (50) The total cost of the credit to the consumer should comprise all the costs that the consumer has to pay in connection with the credit agreement and which are known to the creditor. It should therefore include interest, commissions, taxes, fees for credit intermediaries, the costs of property valuation for a mortgage and any other fees, except for notarial fees, required to obtain the credit, for example life insurance, or to obtain it on the terms and conditions marketed, for example fire insurance. The provisions of this Directive concerning ancillary products and services (for instance concerning the costs of opening and maintaining a bank account) should be without prejudice to Directive 2005/29/EC and Council Directive 93/13/EEC of 5 April 1993 on unfair terms

in consumer contracts<sup>(12)</sup>. The total cost of the credit to the consumer should exclude costs that the consumer pays in relation to the purchase of the immovable property or land, such as associated taxes and notarial costs or the costs of land registration. The creditor's actual knowledge of the costs should be assessed objectively, taking into account the requirements of professional diligence. In that respect, the creditor should be presumed to have knowledge of the costs of the ancillary services which he offers to the consumer himself, or on behalf of a third party, unless the price thereof depends on the specific characteristics or situation of the consumer.

- (51) If estimated information is used, the consumer should be made aware of this and that the information is expected to be representative of the type of agreement or practices under consideration. The additional assumptions for the calculation of the APRC aim to ensure that the APRC is calculated in a consistent way and to ensure comparability. Additional assumptions are necessary for specific types of credit agreement, such as where the amount, duration or cost of the credit are uncertain or vary depending on how the agreement is operated. Where the provisions in themselves do not suffice to calculate the APRC, the creditor should use the additional assumptions set out in Annex I. However, given that the calculation of the APRC will depend on the terms of the individual credit agreement, only those assumptions necessary and relevant to a given credit should be used.
- (52) In order to further ensure a high degree of comparability of the APRC between offers from different creditors, the intervals between dates used in the calculation should not be expressed in days where they can be expressed as a whole number of years, months or weeks. Implicit in that context is that if certain time intervals are used in the APRC formula, those intervals should be used to ascertain the amounts of interest and other charges used in the formula. For this reason, creditors should use the method of measurement of time intervals described in Annex I to obtain the figures for the payment of charges. However, that is only applicable for the purposes of calculation of the APRC and does not impact on the amounts actually charged by the creditor under the credit agreement. Where those numbers are different it may be necessary to explain them to the consumer in order to avoid misleading the consumer. That implies that in the absence of non-interest charges and assuming an identical method of calculation the APRC will be equal to the effective borrowing rate of the credit.
- (53) As the APRC can at the advertising 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. When determining the representative example, the prevalence of certain types of credit agreements in a specific market should be taken into account. It may be preferable for each creditor to base the representative example on an amount of credit which is representative of that creditor's own product range and expected customer base, as these may vary considerably among creditors. As regards the APRC disclosed in the ESIS, the preferences of and information provided by the consumer should where possible be taken into account and the creditor or credit intermediary should make it clear whether the information provided is illustrative or reflects the preferences and information given. In any event, the representative examples should

not be contrary to the requirements of Directive 2005/29/EC. It is important that in the ESIS it is made clear to the consumer, where applicable, that the APRC is based on assumptions and could change so that consumers can take this into account when comparing products. It is important that the APRC should take account of all drawdowns under the credit agreement, whether paid directly to the consumer or to a third party on the consumer's behalf.

- (54) In order to ensure consistency between the calculation of the APRC for different types of credit, the assumptions used for calculating similar forms of credit agreement should be generally consistent. In this respect, assumptions from Commission Directive 2011/90/EU of 14 November 2011 amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions for the calculation of the annual percentage rate of charge<sup>(13)</sup>, modifying the assumptions for calculating the APRC should be incorporated. While not all assumptions will necessarily apply to credit agreements available now, product innovation in this sector is active and so it is necessary to have the assumptions in place. Furthermore, for the purpose of calculating the APRC, the identification of the most common drawdown mechanism should be based on reasonable expectations of the drawdown mechanism most frequently used by consumers for the type of product offered by that specific creditor. For existing products, the expectation should be based on the previous 12 months.
- (55) It is essential that the consumer's ability and propensity to repay the credit is assessed and verified before a credit agreement is concluded. That assessment of creditworthiness should take into consideration all necessary and relevant factors that could influence a consumer's ability to repay the credit over its lifetime. In particular, the consumer's ability to service and fully repay the credit should include consideration of future payments or payment increases needed due to negative amortisation or deferred payments of principal or interest and should be considered in the light of other regular expenditure, debts and other financial commitments as well as income, savings and assets. Reasonable allowance should be made for future events during the term of the proposed credit agreement such as a reduction in income where the credit term lasts into retirement or, where applicable, an increase in the borrowing rate or negative change in the exchange rate. While the value of the immovable property is an important element in ascertaining the amount of the credit that may be granted to a consumer under a secured credit agreement, the assessment of creditworthiness should focus on the consumer's ability to meet their obligations under the credit agreement. Consequently, the possibility that the value of the immovable property could exceed the credit amount or could increase in the future should not generally be a sufficient condition for granting the credit in question. Nevertheless, where the purpose of a credit agreement is to construct or renovate an existing immovable property, the creditor should be able to consider this possibility. Member States should be able to issue additional guidance on those or additional criteria and on methods to assess a consumer's creditworthiness, for example by setting limits on loan-to-value or loan-to-income ratios and should be encouraged to implement the Financial Stability Board's Principles for Sound Residential Mortgage Underwriting Practices.



- (56) Specific provisions may be necessary for the different elements that may be taken into consideration in the creditworthiness assessment of certain types of credit agreements. For example, for credit agreements which relate to an immovable property which explicitly state that the immovable property is not to be occupied as a house, apartment or another place of residence by the consumer or a family member of the consumer (buy-to-let agreements), Member States should be able to specify that future rental income is taken into account when assessing the consumer's ability to repay the credit. In those Member States where such a specification is not set out by national provisions, creditors may decide to include a prudent assessment of future rental income. The assessment of creditworthiness should not imply the transfer of responsibility to the creditor for any subsequent non-compliance by the consumer with his obligations under the credit agreement.
- (57) The creditor's decision as to whether to grant the credit should be consistent with the outcome of the assessment of creditworthiness. For example, the capacity for the creditor to transfer part of the credit risk to a third party should not lead him to ignore the conclusions of the creditworthiness assessment by making a credit agreement available to a consumer who is likely not to be able to repay it. Member States should be able to transpose this principle by requiring competent authorities to take relevant actions as part of the supervisory activities and to monitor the compliance of creditors' creditworthiness assessment procedures. However, a positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit.
- (58) In line with the recommendations of the Financial Stability Board, the assessment of creditworthiness should be based on information on the financial and economic situation, including income and expenses, of the consumer. That information can be obtained from various sources including from the consumer, and the creditor should appropriately verify such information before granting the credit. In that respect consumers should provide information in order to facilitate the creditworthiness assessment, since failure to do so is likely to result in refusal of the credit they seek to obtain unless the information can be obtained from elsewhere. Without prejudice to private contract law, Member States should ensure that creditors cannot terminate a credit agreement because they realised, after the signature of the credit agreement, that the assessment of creditworthiness was incorrectly conducted due to incomplete information at the time of the creditworthiness assessment. However, this should be without prejudice to the possibility for Member States to allow creditors to terminate the credit agreement where it can be established that the consumer deliberately provided inaccurate or falsified information at the time of the creditworthiness assessment or intentionally did not provide information that would have led to a negative creditworthiness assessment or where there are other valid reasons compatible with Union law. While it would not be appropriate to apply sanctions to consumers for not being in a position to provide certain information or assessments or for deciding to discontinue the application process for getting a credit, Member States should be able to provide for sanctions where consumers knowingly provide incomplete or incorrect information in order to obtain a positive creditworthiness assessment, in

particular where the complete and correct information would have resulted in a negative creditworthiness assessment and the consumer is subsequently unable to fulfil the conditions of the agreement.

- (59) 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 be able to consult the credit database over the lifetime of the credit solely in order to identify and assess the potential for default. Such consultation of the credit database should be subject to appropriate safeguards to ensure that it is used for the early identification and resolution of credit risk in the interest of the consumer and not to inform commercial negotiations. 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>(14)</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.
- (60) 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 for creditors to be established as a credit institution. Access conditions, such as the costs of accessing the database or requirements to provide information to the database on the basis of reciprocity should continue to apply. Member States should be free to determine whether, within their jurisdictions, credit intermediaries may have access to such databases.
- (61) Where a decision to reject an application for credit is based on data obtained through the consultation of a database or the lack of data therein, the creditor should inform the consumer thereof, and provide the name of the database consulted and of any other elements required by Directive 95/46/EC so as to enable the consumer to exercise his right to access and, where justified, rectify, erase or block personal data concerning him and processed therein. Where a decision to reject an application for credit results from a negative creditworthiness assessment, the creditor should inform the consumer of the rejection without undue delay. Member States should be free to decide whether they require creditors to provide further explanations on the reasons of the rejection. However, the creditor should not be required to give such information when to do so would be prohibited by other Union law such as provisions on money laundering or the financing of terrorism. Such information should not be provided where to do so would be contrary to the objectives of public policy or public security such as the prevention, investigation, detection or prosecution of criminal offences.

- (62) This Directive addresses the use of personal data in the context of the assessment of a consumer's creditworthiness. In order to ensure the protection of personal data, Directive 95/46/EC should apply to the data processing activities carried out within the context of such assessments.
- (63) Providing advice in the form of a personalised recommendation is a distinct activity which may but need not be combined with other aspects of granting or intermediating credit. Therefore, in order to be in a position to understand the nature of the services provided to them, consumers should be made aware of whether advisory services are being or can be provided and when they are not and of what constitutes advisory services. Given the importance which consumers attach to the use of the terms 'advice' and 'advisors', it is appropriate that Member States should be allowed to prohibit the use of the those terms, or similar terms, when advisory services are being provided to consumers. It is appropriate to ensure that Member States impose safeguards where advice is described as independent to ensure that the range of products considered and remuneration arrangements are commensurate with consumers' expectations of such advice.
- (64) Those providing advisory services should comply with certain standards in order to ensure that the consumer is presented with products suitable for his needs and circumstances. Advisory services should be based on a fair and sufficiently wide-ranging analysis of the products offered, where the advisory services are provided by creditors and tied credit intermediaries, or, where the advisory services are provided by credit intermediaries that are not tied, of products available on the market. Those providing advisory services should be able to specialise in certain 'niche' products such as bridging finance, provided they consider a range of products within that particular 'niche' and 'their specialisation in those 'niche' products is made clear to the consumer. In any event, creditors and credit intermediaries should disclose to the consumer whether they are advising only on their own product range or a wide range from across the market to ensure that the consumer understands the basis for a recommendation.
- (65) Advisory services should be based on a proper understanding of the consumer's financial situation, preferences and objectives based on the necessary up-to-date information and reasonable assumptions about risks to the consumer's circumstances during the lifetime of the credit agreement. Member States should be able to clarify how the suitability of a given product is to be assessed in the context of the provision of advisory services.
- (66) A consumer's ability to repay the credit prior to the expiry of the credit agreement may play an important role in promoting competition in the internal market and the free movement of Union citizens as well as helping to provide the flexibility during the lifetime of the credit agreement needed to promote financial stability in line with the recommendations of the Financial Stability Board. However, substantial differences exist between the national principles and conditions under which consumers have the ability to repay their credit and the conditions under which such early repayment can take place. Whilst recognising the diversity in mortgage funding mechanisms and the range of products available, certain standards with regard to early repayment of credit

are essential at Union level in order to ensure that consumers have the possibility to discharge their obligations before the date agreed in the credit agreement and the confidence to compare offers in order to find the best products to meet their needs. Member States should therefore ensure, whether through law or other means such as contractual clauses, that consumers have a 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 or restrictions with regard to the circumstances under which the right may be exercised. Where 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 legitimate interest on the part of the consumer specified by the Member State. Such legitimate interest may for example occur in the event of divorce or unemployment. The conditions set by Member States may provide that the creditor is entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In the event where Member States provide that the creditor is entitled to compensation such compensation should be a fair and objectively justified compensation for potential costs directly linked to early repayment of the credit in accordance with the national rules on compensation. The compensation should not exceed the financial loss of the creditor.

- (67) It is important to ensure that sufficient transparency exists to provide clarity for consumers on the nature of the commitments made in the interests of preserving financial stability and on where there is flexibility during the term of the credit agreement. Consumers should be provided with information concerning the borrowing rate during the contractual relationship as well as at the pre-contractual stage. Member States should be able to maintain or introduce restrictions or prohibitions on unilateral changes to the borrowing rate by the creditor. Member States should be able to provide that where the borrowing rate changes the consumer is entitled to receive an updated amortisation table.
- (68) 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 internal 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.
- (69) Before being able to carry out their activities, credit intermediaries should be subject to an admission process by the competent authority of their home Member State and subject to ongoing supervision to ensure that they meet strict professional requirements at least in relation to their competence, good repute and professional indemnity cover. Such requirements should apply at least at the level of the institution. However, Member States may clarify whether such requirements for admission apply to individual

employees of the credit intermediary. The home Member State may provide for additional requirements, for instance that the credit intermediary's shareholders are of good repute or that a tied credit intermediary can only be tied to one creditor, where those are proportionate and compatible with other Union law. Relevant information about admitted credit intermediaries should be entered in a public register. Tied credit intermediaries who work exclusively with one creditor under its full and unconditional responsibility should have the possibility to be admitted by the competent authority under the auspices of the creditor on whose behalf they act. Member States should have the right to maintain or to impose restrictions regarding the legal form of certain credit intermediaries, whether they are allowed to act exclusively as legal or natural persons. Member States should be free to decide whether all credit intermediaries are entered into one register or whether different registers are required depending on whether the credit intermediary is tied or acts as independent credit intermediary. Furthermore Member States should be free to maintain or to impose restrictions on the possibility to charge any fees to consumers by the credit intermediaries tied to one or more creditors.

- (70) In some Member States, credit intermediaries may decide to use the services of appointed representatives to perform activities on their behalf. Member States should have the possibility to apply the specific regime laid down by this Directive for appointed representatives. However, Member States should be free not to introduce such a regime or to allow other entities to perform a role which is comparable to that of appointed representatives, provided that those entities are subject to the same regime as credit intermediaries. The rules on appointed representatives set out in this Directive do not oblige Member States to allow appointed representatives to operate in their jurisdiction unless such appointed representatives are considered credit intermediaries under this Directive.
- (71) In order to ensure the effective supervision of credit intermediaries by competent authorities, a credit intermediary which is a legal person should be admitted in the Member State in which it has its registered office. A credit intermediary which is not a legal person should be admitted in the Member State in which it has its head office. In addition, Member States should require that a credit intermediary's head office always be situated in its home Member State and that it actually operates there.
- (72) The requirements for admission 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 admit all individual staff within the credit intermediary, the notification of the intention to provide services should be made on the basis of the credit intermediary rather than the individual employee. However, while this Directive provides a framework for all admitted credit intermediaries, including credit intermediaries tied to only one creditor, to operate throughout the Union, this Directive does not provide such a framework for appointed representatives. In such instances, appointed representatives wishing to operate in another Member State would have to comply with the requirements for the admission of credit intermediaries set out in this Directive.

- (73) In some Member States, credit intermediaries can carry out their activities in respect of credit agreements offered by non-credit institutions and credit institutions. As a principle, admitted credit intermediaries should be allowed to operate in the entire territory of the Union. However, the admission by the competent authorities of the home Member States should not allow credit intermediaries to provide their services in relation to credit agreements offered by non-credit institutions to a consumer in a Member State where such non-credit institutions are not allowed to operate.
- (74) Member States should be able to provide that persons carrying out credit intermediation activities only on an incidental basis in the course of professional activity, such as lawyers or notaries, are not subject to the admission procedure set out in this Directive provided that such professional activity is regulated and the relevant rules do not prohibit the carrying out, on an incidental basis, of credit intermediation activities. Such an exemption from the admission procedure laid down in this Directive should however mean that such persons cannot benefit from the passport regime provided in this Directive. Persons who merely introduce or refer a consumer to a creditor or credit intermediary on an incidental basis in the course of their professional activity, for instance by indicating the existence of a particular creditor or credit intermediary to the consumer or a type of product with this particular creditor or credit intermediary to the consumer without further advertising or engaging in the presentation, offering, preparatory work or conclusion of the credit agreement, should not be regarded as credit intermediaries for the purposes of this Directive. Neither should borrowers who merely transfer a credit agreement to a consumer through a process of subrogation without carrying out any other credit intermediation activity be regarded as credit intermediaries for the purposes of this Directive.
- (75) 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 admission and supervision of non-credit institutions providing credit agreements relating to residential immovable property. In accordance with the principle of proportionality, this Directive should not lay down detailed conditions for the admission or supervision of creditors providing such credit agreements and that are not credit institutions as defined in Regulation (EU) No 575/2013 of the European Parliament and the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms<sup>(15)</sup>. The number of such institutions operating in the Union at present is limited as is their market share and the number of Member States in which they are active, particularly since the financial crisis. Nor should the introduction of a ‘passport’ for such institutions be provided for in this Directive for the same reason.
- (76) Member States should lay down rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of sanctions remains within the discretion of Member States, the sanctions provided for should be effective, proportionate and dissuasive.
- (77) 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 creditors and consumers as well as between credit intermediaries and consumers. Member States should ensure that participation in such alternative dispute resolution procedures is not optional for creditors and credit intermediaries. To ensure the smooth functioning of alternative dispute resolution procedures in cases of cross-border activity, Member States should require and encourage the bodies responsible for resolving out-of-court complaints and redress to cooperate. In that context, Member States' out-of-court complaint and redress bodies should be encouraged to participate in FIN-NET, a financial dispute resolution network of national out-of-court schemes that are responsible for handling disputes between consumers and financial services providers.

- (78) In order to ensure consistent harmonisation and to take account of developments in the markets for credit agreements or in the evolution of credit products or in economic conditions, and in order to further specify certain requirements in this Directive, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the standard wording or the instructions for completing the ESIS and amending the remarks or update the assumptions used to calculate the APRC. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (79) In order to facilitate the ability of credit intermediaries to provide their services on a cross-border basis, for the purposes of cooperation, information exchange and dispute resolution between competent authorities, the competent authorities responsible for the admission of credit intermediaries should be those acting under the auspices of the European Supervisory Authority (European Banking Authority) (EBA), as set out in 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>(16)</sup> or other national authorities provided that they cooperate with the authorities acting under the auspices of EBA in order to carry out their duties under this Directive.
- (80) Member States should designate competent authorities empowered to ensure enforcement of this Directive and ensure that they are granted investigation and enforcement powers and adequate resources necessary for the performance of their duties. Competent authorities could act for certain aspects of this Directive by application to courts competent to grant a legal decision, including, where appropriate, by appeal. This could enable Member States, in particular where provisions of this Directive were transposed into civil law, to leave the enforcement of these provisions to the abovementioned bodies and the courts. Member States should be able to designate different competent authorities in order to enforce the wide ranging obligations laid down in this Directive. For instance, for some provisions, Member States could designate competent authorities responsible for the enforcement of consumer protection, while for others, they could decide to designate prudential supervisors. The option to designate different competent authorities should not affect the obligations for

ongoing supervision and cooperation between the competent authorities, as provided for in this Directive.

- (81) 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 review should include, among other things, an assessment of compliance with and the impact of this Directive, an assessment of whether the scope of the Directive remains appropriate, an analysis of the provision of credit agreements by non-credit institutions, an assessment of the need for further measures, including a passport for non-credit institutions and examination of the necessity to introduce further rights and obligations with regard to the post-contractual stage of credit agreements.
- (82) 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 the objective of this Directive, namely the creation of an efficient and competitive internal market in credit agreements relating to residential immovable property whilst ensuring a high level of consumer protection, cannot be sufficiently achieved by Member States and can therefore, by reason of the effectiveness of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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 that objective.
- (83) Member States may decide to transpose certain aspects covered by this Directive in national law by prudential law, for example the creditworthiness assessment of the consumer, while others are transposed by civil or criminal law, for example the obligations relating to responsible borrowers.
- (84) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011<sup>(17)</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (85) The European Data Protection Supervisor delivered an opinion on 25 July 2011<sup>(18)</sup> based on Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(19)</sup>,

HAVE ADOPTED THIS DIRECTIVE:



- (1) OJ C 240, 18.8.2011, p. 3.
- (2) OJ C 318, 29.10.2011, p. 133.
- (3) Position of the European Parliament of 10 December 2013 (not yet published in the Official Journal) and decision of the Council of 28 January 2014.
- (4) OJ L 133, 22.5.2008, p. 66.
- (5) OJ L 271, 9.10.2002, p. 16.
- (6) OJ L 176, 27.6.2013, p. 338.
- (7) OJ L 9, 15.1.2003, p. 3.
- (8) OJ L 145, 30.4.2004, p. 1.
- (9) OJ L 255, 30.9.2005, p. 22.
- (10) OJ L 149, 11.6.2005, p. 22.
- (11) OJ L 69, 10.3.2001, p. 25.
- (12) OJ L 95, 21.4.1993, p. 29.
- (13) OJ L 296, 15.11.2011, p. 35.
- (14) OJ L 281, 23.11.1995, p. 31.
- (15) OJ L 176, 27.6.2013, p. 1.
- (16) OJ L 331, 15.12.2010, p. 12.
- (17) OJ C 369, 17.12.2011, p. 14.
- (18) OJ C 377, 23.12.2011, p. 5.
- (19) OJ L 8, 12.1.2001, p. 1.