

EUROPEAN BANKING AUTHORITY

Decision of the European Banking Authority specifying the benchmark rate under Annex II to Directive 2014/17/EU (Mortgage Credit Directive)

(2016/C 199/07)

THE BOARD OF SUPERVISORS OF THE EUROPEAN BANKING AUTHORITY

Having regard to 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ⁽¹⁾ (the 'Regulation' and 'the EBA'), in particular Article 8(1)(j) thereof,

Having regard to 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 ⁽²⁾, in particular Part B, Section 4, paragraph (2) and Section 6, paragraph (4) of Annex II thereto,

Whereas:

- (1) Pursuant to Article 14(2) of Directive 2014/17/EU the personalised pre-contractual information to be provided to consumers before being bound by any credit agreement or offer has to be provided by means of the European standardised information sheet ('ESIS'), as set out in Annex II thereto.
- (2) Pursuant to paragraph 2, Section 4, and paragraph 4, Section 6, of Part B of Annex II to Directive 2014/17/EU, where the borrowing rate is variable the ESIS must include an illustrative example of the annual percentage rate of charge and an illustration of a maximum instalment amount. Where there is no cap on the borrowing rate and the creditor does not use an external reference rate, the calculation of both of these illustrative examples must be based on a benchmark rate specified by a competent authority or the EBA (the 'EBA benchmark rate').
- (3) The EBA benchmark rate should be simple, easy to use and representative. The specification of the rate by way of a formula should ensure that the rate remains representative over time and should enable due account to be taken of national circumstances. The formula should be limited to a number of publicly available data in order to ensure that it is easy to use and simple.
- (4) The time periods for the underlying rate should follow the time periods set out in Annex II to Directive 2014/17/EU for those scenarios where an external reference rate is used for calculating the borrowing rate. Therefore, the EBA benchmark rate should be based on an underlying rate for the 20 years before the ESIS is provided by the creditor to the consumer.
- (5) To be representative, the formula should rely on an underlying rate relevant to the Member State in which the ESIS is provided to the consumer. The underlying rate should be the European Central Bank's ('ECB') main refinancing rate for Member States having the euro as their currency, and the national central bank's refinancing rate (or equivalent national central rate) for other Member States. These rates will produce a benchmark rate which is representative of the local mortgage market; and complete historical data on those rates are available for all Member States. However, since historical data on the ECB's main refinancing rate are only available from 1 January 1999, the earliest start date of the historical period should be set on 1 January 1999. This earliest start date should apply to ESISs provided in all Member States in order to ensure that the same historical time period will be used across the European Union.
- (6) The formula should acknowledge that the borrowing rate will in part reflect funding costs, which the refinancing rate information is a proxy for, by also taking into account the lowest underlying rate in the preceding 20 years.

⁽¹⁾ OJ L 331, 15.12.2010, p. 12.

⁽²⁾ OJ L 60, 28.12.2014, p. 34.

- (7) As the formula forms part of an illustrative example, it is sufficient that creditors update the underlying rate on an annual basis.
- (8) In order to ensure that, within each Member State, creditors use the same difference between the highest and the lowest values of the underlying rate, the calculation of the EBA benchmark rate should be done using the same reference date which should be the first working day of each year.
- (9) In order to ensure that the illustrative examples reflect local circumstances, the EBA benchmark rate should not be used, where a competent authority has specified a benchmark rate, the benchmark rate specified in this decision should not apply.
- (10) EBA has conducted open public consultation on the draft decision on an EBA benchmark rate, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS DECIDED AS FOLLOWS:

Article 1

The benchmark rate referred to in Part B, Section 4, paragraph (2) and Section 6, paragraph (4) of Annex II to Directive 2014/17/EU (EBA benchmark rate) specified by the EBA is set out in the Annex.

Article 2

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

Done at London, 21 March 2016.

Andrea ENRIA

Chairperson

For the Board of Supervisors

ANNEX

The EBA benchmark rate under Annex II to the Mortgage Credit Directive (2014/17/EU)

1. This document sets out the benchmark rate specified by the EBA referred to in Part B, Section 4, paragraph (2) and Section 6, paragraph (4) of Annex II to Directive 2014/17/EU ⁽¹⁾ ('EBA benchmark rate').
2. The EBA benchmark rate is to be used by creditors to calculate the illustrative example of the Annual Percentage Rate of Charge (APRC) and the illustration of a maximum instalment amount respectively, under the conditions set out in those paragraphs and for inclusion in Section 4 and Section 6 of the European standardised information sheet ('ESIS') as referred to in Annex II to Directive 2014/17/EU.
3. The EBA benchmark rate shall apply only where the competent authority of the Member State has not specified a benchmark rate.
4. The formula to calculate the EBA benchmark rate is:

$$\text{EBA benchmark rate} = (\text{HR} - \text{LR}) + \text{BR}$$

For credit agreements for which the ESIS is provided in Member States that have the euro as their currency:

HR = The highest value of the ECB Main Refinancing rate in the 20-year period (or the maximum period available if shorter) prior to the date that the creditor shall calculate the difference of (HR-LR) to be used in the formula as set out in paragraphs 6 and 7.

LR = The lowest value of the ECB Main Refinancing rate in the 20-year period (or the maximum period available if shorter) prior to the date that the creditor shall calculate the difference of (HR-LR) to be used in the formula as set out in paragraphs 6 and 7.

BR = The borrowing rate applicable to the credit agreement during the longest period known at the time of the provision of the ESIS.

For credit agreements for which the ESIS is provided in other Member States:

HR = The highest value of the national central bank refinancing rate (or equivalent national central bank rate) in the 20-year period (or the maximum period available if shorter) prior to the date that the creditor shall calculate the difference of (HR-LR) to be used in the formula as set out in paragraphs 6 and 7.

LR = The lowest value of the national central bank refinancing rate (or equivalent national central bank rate) in the 20-year period (or the maximum period available if shorter) prior to the date that the creditor shall calculate the difference of (HR-LR) to be used in the formula as set out in paragraphs 6 and 7.

BR = The borrowing rate applicable to the credit agreement during the longest period known at the time of the provision of the ESIS.

5. The 20-year period prior to the provision of the ESIS to the consumer shall begin, at the earliest, on 1 January 1999.
6. The calculation of (HR-LR) shall be carried out once every calendar year, on its first working day, with the exception of the year of the entry into force of the MCD, when the calculation shall be carried out on 21 March 2016. The calculation shall be used for the ESISs provided to consumers during the same calendar year.
7. The variables HR and LR are based on the underlying rates that apply in the Member State in which the creditor provides the ESIS to the consumer.

HR and LR — the relevant national central bank refinancing rates or the equivalent rates

⁽¹⁾ 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 (OJ L 60, 28.2.2014, p. 34).

8. For the purposes of calculating the EBA benchmark rate for an ESIS provided in a Member State, which has a currency other than the euro, the national central bank refinancing rates or the equivalent national central bank rates are as follows:

| Member State | Name of the relevant national central bank rate as at February 2016 |
|----------------|---|
| Bulgaria | Bulgarian National Bank Base Rate |
| Czech Republic | Czech National Bank Repo Rate |
| Denmark | Tomorrow/Next (T/N) Rate, as referenced on the website of the Danmarks Nationalbank |
| Croatia | Croatian National Bank Lombard Rate |
| Hungary | The Central Bank of Hungary Central Bank Base Rate |
| Poland | Narodowy Bank Polski Reference Rate |
| Romania | Banca Națională a României Monetary Policy Rate |
| Sweden | Sveriges Riksbank Reference Rate |
| United Kingdom | Bank of England Official Bank Rate |