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[1] Text with EEA relevance

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 165/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 4 February 2014

on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 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 Economic and Social Committee ([1]),

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) Council Regulation (EEC) No 3821/85 ([3]) lays down provisions concerning the construction, installation, use and testing of tachographs. It has been substantially amended on several occasions. In order to ensure greater clarity, its main provisions should therefore be simplified and re-structured.

(2) Experience has shown that, in order to ensure the effectiveness and efficiency of the tachograph system, certain technical elements and control procedures should be improved.

(3) Certain vehicles are subject to an exemption from the provisions of Regulation (EC) No 561/2006 of the European Parliament and of the Council ([4]). In order to ensure coherence, it should also be possible to exempt such vehicles from the scope of this Regulation.

(4) Tachographs should be installed in vehicles to which Regulation (EC) No 561/2006 applies. Certain vehicles should be excluded from the scope of that Regulation in order to introduce some flexibility, namely vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for carrying materials, equipment or machinery for the driver's use in the course of his work, and which are used only within a 100 km radius from the base of the undertaking, on condition that driving such vehicles does not constitute the driver's main activity. In order to ensure coherence between the relevant exemptions set out in Regulation (EC) No 561/2006, and to reduce the administrative burden on transport undertakings whilst respecting the objectives of that Regulation, certain maximum permissible distances set out in those exemptions should be revised.

([1]) OJ C 43, 15.2.2012, p. 79.

([2]) Position of the European Parliament of 3 July 2012 (OJ C 349 E, 29.11.2013, p. 105) and position of the Council at first reading of 15 November 2013 (OJ C 360, 10.12.2013, p. 66). Position of the European Parliament of 15 January 2014 (not yet published in the Official Journal).

([3]) Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8).

([4]) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

(5) The Commission will consider extending the period of validity of the adaptor for M1 and N1 vehicles until 2015 and give further consideration to a long-term solution for M1 and N1 vehicles before 2015.

(6) The Commission should consider the inclusion of weight sensors in heavy goods vehicles and should assess the potential for weight sensors to contribute to improved compliance with road transport legislation.

(7) The use of tachographs connected to a global navigation satellite system is an appropriate and cost-efficient means of recording automatically the position of a vehicle at certain points during the daily working period in order to support control officers during controls, and should therefore be provided for.

(8) In its judgment in Case C-394/92 *Michielsen and Geybels Transport Service* ([1]), the Court of Justice provided a definition of the term 'daily working period', and the control authorities should read the provisions of this Regulation in the light of that definition. The 'daily working period' commences at the time when the driver switches on the tachograph following a weekly or daily rest period, or, if the daily rest is divided into separate periods, following a rest period of at least nine hours' duration. It ends at the beginning of a daily rest period or, if the daily rest is divided into separate periods, at the beginning of a rest period extending over a minimum of nine consecutive hours.

(9) Directive 2006/22/EC of the European Parliament and of the Council ([2]) requires Member States to carry out a minimum number of checks at the roadside. Remote communication between the tachograph and control authorities for roadside control purposes facilitates targeted roadside checks, making it possible to reduce the administrative burden created by random checks on transport undertakings, and should therefore be provided for.

(10) Intelligent transport systems (ITS) can help to meet the challenges faced by the European transport policy, such as increasing road transport volumes and congestion, and rising energy consumption. Standardised interfaces should therefore be provided in tachographs in order to ensure their interoperability with ITS applications.

(11) Priority should be given to the development of applications which help drivers to interpret the data recorded in the tachograph in order to enable them to comply with social legislation.

([1]) [1994] ECR I-2497.

([2]) Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

(12) The security of the tachograph and its system is essential to ensure that trustworthy data is produced. Manufacturers should therefore design, test and continuously review the tachograph throughout its life cycle in order to prevent, detect and mitigate security vulnerabilities.

(13) Field tests of a tachograph that has not yet been type-approved allow equipment to be tested in real-life situations before it is widely introduced, thereby allowing faster improvements. Field tests should therefore be permitted, on condition that participation in such tests and compliance with Regulation (EC) No 561/2006 is effectively monitored and controlled.

(14) Given the importance of maintaining the highest possible security level, security certificates should be issued by a certification body recognised by the Management Committee within the framework of the 'Mutual Recognition Agreement of Information Technology Security Evaluation Certificates' of the Senior Officials Group on Information Systems Security (SOG-IS).

In the context of international relations with third countries, the Commission should not recognise any certification body for the purposes of this Regulation unless that body provides equivalent conditions of security evaluation as envisaged by the Mutual Recognition Agreement. In this respect, the advice of the Management Committee should be relied upon.

(15) Fitters and workshops play an important role in the security of tachographs. It is therefore appropriate to lay down certain minimum requirements for their reliability and for approving and auditing them. Moreover, Member States should take appropriate measures to ensure that conflicts of interest between fitters or workshops and transport undertakings are prevented. Nothing in this Regulation prevents Member States from ensuring their approval, control and certification through the procedures laid down in Regulation (EC) No 765/2008 of the European Parliament and of the Council ([3]), provided that the minimum criteria set out in this Regulation are fulfilled.

(16) In order to ensure more effective scrutiny and control of driver cards, and to facilitate the tasks of control officers, national electronic registers should be established, and provision should be made for the interconnection of those registers.

([3]) Regulation No (EC) 765/2008 of the European and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

(17) When checking the uniqueness of driver cards, Member States should use the procedures included in Commission Recommendation 2010/19/EU [1].

(18) Consideration should be given to the special situation in which a Member State should be able to provide a driver who does not have his normal residence in a Member State or in a country which is a contracting party to the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport of 1 July 1970 ('the AETR Agreement') with a temporary, non-renewable driver card. In such cases, the Member States concerned are to fully apply the relevant provisions of this Regulation.

(19) In addition, it should be possible for a Member State to issue driver cards to drivers resident on its territory even when the Treaties do not apply to certain parts thereof. In such cases, the Member States concerned are to fully apply the relevant provisions of this Regulation.

(20) Control officers face continuous challenges as a result of changes to the tachograph and new manipulation techniques. In order to ensure more effective control, and to enhance the harmonisation of control approaches throughout the Union, a common methodology should be adopted for the initial and continuing training of control officers.

(21) The recording of data by the tachograph, as well as developing technologies for the recording of position data, remote communication and the interface with ITS, will entail the processing of personal data. Therefore, the relevant Union rules, in particular those laid down in Directive 95/46/EC of the European Parliament and of the Council [2] and Directive 2002/58/EC of the European Parliament and of the Council [3], apply.

(22) In order to allow for fair competition in the development of applications related to the tachograph, intellectual property rights and patents related to the transmission of data in or out of the tachograph should be available to all on a royalty-free basis.

(23) Where applicable, the data exchanged during communication with the control authorities in the Member States should comply with relevant international standards, such as the suite of standards related to Dedicated Short-Range Communication established by the European Committee for Standardisation.

(24) To ensure fair competition in the internal road transport market and to send a clear signal to drivers and transport undertakings, Member States should impose, in compliance with the categories of infringements defined in Directive 2006/22/EC, effective, proportionate, dissuasive and non-discriminatory penalties, without prejudice to the principle of subsidiarity.

(25) Member States should ensure that the selection of vehicles for inspection is carried out without discrimination on grounds of the nationality of the driver, or of the country of registration or entry into service of the commercial vehicle.

(26) In the interests of the clear, effective, proportionate and uniform implementation of social rules in road transport, Member States' authorities should apply the rules in a uniform manner.

(27) Each Member State should inform the Commission of any discoveries it makes regarding the availability of fraudulent devices or installations to manipulate the tachograph, including those offered through the internet, and the Commission should inform all other Member States of those discoveries.

(28) The Commission should continue to maintain its internet-based helpdesk, which allows drivers, transport undertakings, control authorities and approved fitters, workshops and vehicle manufacturers to submit questions and concerns related to the digital tachograph, including regarding new types of manipulations or fraud.

(29) Through the adaptations of the AETR Agreement, the use of the digital tachograph has been made mandatory as regards vehicles registered in third countries which are signatories to the AETR Agreement. As those countries are directly affected by changes to the tachograph introduced by this Regulation, they should be able to participate in a dialogue on technical matters, including regarding the system for the exchange of information on driver cards and workshop cards. A Tachograph Forum should therefore be set up.

[1] Commission Recommendation 2010/19/EU of 13 January 2010 on the secure exchange of electronic data between Member States to check the uniqueness of driver cards that they issue (OJ L 9, 14.1.2010, p. 10).

[2] 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 (OJ L 281, 23.11.1995, p. 31).

[3] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

(30) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission relating to requirements, display and warning functions and type-approval of tachographs, as well as to detailed provisions for smart tachographs; the procedures to be followed for carrying out field tests and the forms to be used in order to monitor those field tests; the standard form for the written statement giving reasons for seal removal; the common procedures and specifications necessary for the interconnection of electronic registers; and the methodology specifying the content of the initial and continuing training of control officers. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council [1].

(31) The implementing acts adopted for the purpose of this Regulation, which will replace the provisions in Annex I B to Regulation (EEC) No 3821/85 and other implementing measures, should be adopted by 2 March 2016. However, if for some reason those implementing acts have not been adopted in time, transitional measures should safeguard the necessary continuity.

(32) Implementing acts referred to in this Regulation should not be adopted by the Commission where the committee referred to in this Regulation delivers no opinion on the draft implementing act presented by the Commission.

(33) In the context of the application of the AETR Agreement, references to Regulation (EEC) No 3821/85 should be understood as references to this Regulation. The Union will consider the appropriate steps to be taken within the United Nations Economic Commission for Europe to ensure the necessary coherence between this Regulation and the AETR Agreement.

(34) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council [2] and delivered an opinion on 5 October 2011 [3].

(35) Regulation (EEC) No 3821/85 should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

PRINCIPLES, SCOPE AND REQUIREMENTS

Article 1

Subject-matter and principles

1. This Regulation sets out obligations and requirements in relation to the construction, installation, use, testing and control of tachographs used in road transport, in order to verify compliance with Regulation (EC) No 561/2006, Directive 2002/15/EC of the European Parliament and of the Council [4] and Council Directive 92/6/EEC [5].

Tachographs shall, as regards their construction, installation, use and testing, comply with the requirements of this Regulation.

2. This Regulation sets out the conditions and requirements under which the information and data, other than personal data, recorded, processed or stored by tachographs may be used for purposes other than the verification of compliance with the acts referred to in paragraph 1.

Article 2

Definitions

1. For the purposes of this Regulation, the definitions set out in Article 4 of Regulation (EC) No 561/2006 shall apply.

2. In addition to the definitions referred to in paragraph 1, for the purposes of this Regulation the following definitions shall apply:

(a) 'tachograph' or 'recording equipment' means the equipment intended for installation in road vehicles to display, record, print, store and output automatically or semi-automatically details of the movement, including the speed, of such vehicles, in accordance with Article 4(3), and details of certain periods of activity of their drivers;

(b) 'vehicle unit' means the tachograph excluding the motion sensor and the cables connecting the motion sensor. The vehicle unit may be a single unit or several units distributed in the vehicle, provided that it complies with the security requirements of this Regulation; the vehicle unit includes, among other things, a processing unit, a data memory, a time measurement function, two smart card interface devices for driver and co-driver, a printer, a display, connectors and facilities for entering the user's inputs;

[1] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

[2] 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 (OJ L 8, 12.1.2001, p. 1).

[3] OJ C 37, 10.2.2012, p. 6.

[4] Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

[5] Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ L 57, 2.3.1992, p. 27).

(c) 'motion sensor' means a part of the tachograph providing a signal representative of vehicle speed and/or distance travelled;

(d) 'tachograph card' means a smart card, intended for use with the tachograph, which allows identification by the tachograph of the role of the cardholder and allows data transfer and storage;

(e) 'record sheet' means a sheet designed to accept and retain recorded data, to be placed in an analogue tachograph, and on which the marking devices of the analogue tachograph continuously inscribe the information to be recorded;

(f) 'driver card' means a tachograph card, issued by the authorities of a Member State to a particular driver, which identifies the driver and allows for the storage of driver activity data;

(g) 'analogue tachograph' means a tachograph using a record sheet in accordance with this Regulation;

(h) 'digital tachograph' means a tachograph using a tachograph card in accordance with this Regulation;

(i) 'control card' means a tachograph card issued by the authorities of a Member State to a national competent control authority which identifies the control body and, optionally, the control officer, and which allows access to the data stored in the data memory or in the driver cards and, optionally, in the workshop cards for reading, printing and/or downloading;

(j) 'company card' means a tachograph card issued by the authorities of a Member State to a transport undertaking needing to operate vehicles fitted with a tachograph, which identifies the transport undertaking and allows for the displaying, downloading and printing of the data, stored in the tachograph, which have been locked by that transport undertaking;

(k) 'workshop card' means a tachograph card issued by the authorities of a Member State to designated staff of a tachograph manufacturer, a fitter, a vehicle manufacturer or a workshop, approved by that Member State, which identifies the cardholder and allows for the testing, calibration and activation of tachographs, and/or downloading from them;

(l) 'activation' means the phase in which the tachograph becomes fully operational and implements all functions, including security functions, through the use of a workshop card;

(m) 'calibration' of a digital tachograph means updating or confirming vehicle parameters, including vehicle identification and vehicle characteristics, to be held in the data memory through the use of a workshop card;

(n) 'downloading' from a digital tachograph means the copying, together with the digital signature, of a part, or of a complete set, of data files recorded in the data memory of the vehicle unit or in the memory of a tachograph card, provided that this process does not alter or delete any stored data;

(o) 'event' means an abnormal operation detected by the digital tachograph which may result from a fraud attempt;

(p) 'fault' means an abnormal operation detected by the digital tachograph which may result from an equipment malfunction or failure;

(q) 'installation' means the mounting of a tachograph in a vehicle;

(r) 'non-valid card' means a card detected as faulty, or whose initial authentication failed, or whose start of validity date is not yet reached, or whose expiry date has passed;

(s) 'periodic inspection' means a set of operations performed to check that the tachograph works properly, that its settings correspond to the vehicle parameters, and that no manipulation devices are attached to the tachograph;

(t) 'repair' means any repair of a motion sensor or of a vehicle unit that requires the disconnection of its power supply, or its disconnection from other tachograph components, or the opening of the motion sensor or vehicle unit;

(u) 'type-approval' means a process to certify, by a Member State, in accordance with Article 13, that the tachograph, its relevant components or the tachograph card to be introduced to market fulfil the requirements of this Regulation;

(v) 'interoperability' means the capacity of systems and the underlying business processes to exchange data and to share information;

(w) 'interface' means a facility between systems which provides the media through which they can connect and interact;

(x) 'time measurement' means a permanent digital record of the coordinated universal date and time (UTC);

(y) 'time adjustment' means an automatic adjustment of current time at regular intervals and within a maximum tolerance of one minute, or an adjustment performed during calibration;

(z) 'open standard' means a standard set out in a standard specification document available freely or at a nominal charge which it is permissible to copy, distribute or use for no fee or for a nominal fee.

Article 3

Scope

1. Tachographs shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road and to which Regulation (EC) No 561/2006 applies.

2. Member States may exempt from the application of this Regulation the vehicles mentioned in Article 13(1) and (3) of Regulation (EC) No 561/2006.

3. Member States may exempt from the application of this Regulation vehicles used for transport operations which have been granted an exception in accordance with Article 14(1) of Regulation (EC) No 561/2006.

Member States may exempt from the application of this Regulation vehicles used for transport operations which have been granted an exception in accordance with Article 14(2) of Regulation (EC) No 561/2006; they shall immediately notify the Commission thereof.

4. 15 years after newly registered vehicles are required to have a tachograph as provided in Articles 8, 9 and 10, vehicles operating in a Member State other than their Member State of registration shall be fitted with such a tachograph.

5. In the case of national transport operations, Member States may require the installation and use of tachographs in accordance with this Regulation in any of the vehicles for which their installation and use are not otherwise required by paragraph 1.

Article 4

Requirements and data to be recorded

1. Tachographs, including external components, tachograph cards and record sheets shall fulfil stringent technical and other requirements such as to permit the proper implementation of this Regulation.

2. Tachographs and tachograph cards shall comply with the following requirements.

They shall:

— record data related to the driver, driver activity and the vehicle which shall be accurate and reliable;

— be secure, in particular guaranteeing the integrity and the origin of the source of data recorded by and retrieved from vehicle units and motion sensors;

— be interoperable as between the various generations of vehicle units and tachograph cards;

— allow for efficient verification of compliance with this Regulation and other applicable legal acts;

— be user-friendly.

3. Digital tachographs shall record the following data:

(a) the distance travelled, and the speed of the vehicle;

(b) time measurement;

(c) position points as referred to in Article 8(1);

(d) the identity of the driver;

(e) the activity of the driver;

(f) control, calibration and tachograph repair data, including the identity of the workshop;

(g) events and faults.

4. Analogue tachographs shall record at least the data referred to in points (a), (b) and (e) of paragraph 3.

5. Access to the data stored in the tachograph and the tachograph card may be granted at all times to:

(a) the competent control authorities;

(b) the relevant transport undertaking so that it can comply with its legal obligations, in particular as set out in Articles 32 and 33.

6. The downloading of data shall be performed with the minimum of delay to transport undertakings or drivers.

7. Data recorded by the tachograph which may be transmitted in or out of the tachograph, whether wirelessly or electronically, shall be in the form of publicly available protocols as defined in open standards.

8. To ensure that tachographs and tachograph cards comply with the principles and requirements of this Regulation, and in particular of this Article, the Commission shall, by means of implementing acts, adopt detailed provisions necessary for the uniform application of this Article, in particular provisions which provide for the technical means of how to fulfil those requirements. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(3).

9. The detailed provisions referred to in paragraph 8 shall, where appropriate, be based on standards and shall guarantee interoperability and compatibility between the various generations of vehicle units and all tachograph cards.

Article 5

Functions of the digital tachograph

Digital tachographs shall ensure the following functions:

— speed and distance measurement;

— monitoring driver activities and driving status;

— monitoring the insertion and withdrawal of tachograph cards;

— recording of drivers' manual entries;

— calibration;

— automatic recording of the position points referred to in Article 8(1);

— monitoring control activities;

— detection and recording of events and faults;

— reading from data memory and recording and storing in data memory;

— reading from tachograph cards and recording and storing in tachograph cards;

— displaying, warning, printing and downloading data to external devices;

— time adjustment and measurement;

— remote communication;

— company locks management;

— built-in and self-tests.

Article 6

Display and warning

1. Information contained in digital tachographs and tachograph cards relating to vehicle activities and to drivers and co-drivers shall be displayed in a clear, unambiguous and ergonomic way.

2. The following information shall be displayed:

(a) time;

(b) mode of operation;

(c) driver activity:

— if the current activity is driving, the driver's current continuous driving time and the current cumulative break time,

— if the current activity is availability/other work/rest or break, the current duration of that activity (since it was selected) and the current cumulative break time;

(d) data related to warnings;

(e) data related to menu access.

Additional information may be displayed, provided that it is clearly distinguishable from the information required in this paragraph.

3. Digital tachographs shall warn drivers when detecting any event and/or fault, and before and at the time of exceeding the maximum allowed continuous driving time, in order to facilitate compliance with the relevant legislation.

4. Warnings shall be visual and may also be audible. Warnings shall have a duration of at least 30 seconds, unless they are acknowledged by the user by pushing any key of the tachograph. The reason for the warning shall be displayed and shall remain visible until acknowledged by the user using a specific key or command of the tachograph.

5. To ensure that tachographs comply with the requirements of this Article concerning display and warnings, the Commission shall, by means of implementing acts, adopt detailed provisions necessary for the uniform application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(3).

Article 7

Data protection

1. Member States shall ensure that the processing of personal data in the context of this Regulation is carried out solely for the purpose of verifying compliance with this Regulation and with Regulation (EC) No 561/2006, in accordance with Directives 95/46/EC and 2002/58/EC and under the supervision of the supervisory authority of the Member State referred to in Article 28 of Directive 95/46/EC.

2. Member States shall, in particular, ensure that personal data are protected against uses other than those strictly linked to this Regulation and Regulation (EC) No 561/2006, in accordance with paragraph 1, in relation to:

— the use of a global navigation satellite system (GNSS) for the recording of location data as referred to in Article 8,

— the use of remote communication for control purposes as referred to in Article 9,

— the use of tachographs with an interface as referred to in Article 10,

— the electronic exchange of information on driver cards as referred to in Article 31, and in particular any cross-border exchanges of such data with third countries,

— the keeping of records by transport undertakings as referred to in Article 33.

3. Digital tachographs shall be designed in such a way as to ensure privacy. Only data necessary for the purposes of this Regulation shall be processed.

4. Owners of vehicles, transport undertakings and any other entity concerned shall comply, where applicable, with the relevant provisions on the protection of personal data.

CHAPTER II

SMART TACHOGRAPH

Article 8

Recording of the position of the vehicle at certain points during the daily working period

1. In order to facilitate the verification of compliance with the relevant legislation, the position of the vehicle shall be recorded automatically at the following points, or at the closest point to such places where the satellite signal is available:

— the starting place of the daily working period;

— every three hours of accumulated driving time;

— the ending place of the daily working period.

For that purpose, vehicles registered for the first time 36 months after the entry into force of the detailed provisions referred to in Article 11 shall be fitted with a tachograph connected to a positioning service based on a satellite navigation system.

2. As regards the connection of the tachograph to a positioning service based on a satellite navigation system, as referred to in paragraph 1, use shall be made only of service connections that exploit a positioning service free of charge. No position data other than those expressed, wherever possible, in geographical coordinates for determining the points referred to in paragraph 1, shall be permanently stored in the tachograph. Position data which need to be temporarily stored in order to allow for the automatic recording of the points referred to in paragraph 1 or to corroborate the motion sensor shall not be accessible to any user and shall automatically be deleted once they are no longer required for those purposes.

Article 9

Remote early detection of possible manipulation or misuse

1. In order to facilitate targeted roadside checks by the competent control authorities, tachographs installed in vehicles registered for the first time 36 months after the entry into force of the detailed provisions referred to in Article 11 shall be able to communicate to those authorities while the vehicle is in motion.

2. 15 years after newly registered vehicles are required to have a tachograph as provided for in this Article and in Articles 8 and 10, Member States shall equip their control authorities to an appropriate extent with remote early detection equipment necessary to permit the data communication referred to in this Article, taking into account their specific enforcement requirements and strategies. Until that time, Member States may decide whether to equip their control authorities with such remote early detection equipment.

3. The communication referred to in paragraph 1 shall be established with the tachograph only when so requested by the equipment of the control authorities. It shall be secured to ensure data integrity and authentication of the recording and control equipment. Access to the data communicated shall be restricted to control authorities authorised to check infringements of Regulation (EC) No 561/2006 and of this Regulation and to workshops in so far as it is necessary to verify the correct functioning of the tachograph.

4. The data exchanged during communication shall be limited to the data necessary for the purpose of targeted roadside checks of vehicles with a potentially manipulated or misused tachograph. Such data shall relate to the following events or data recorded by the tachograph:

— the latest security breach attempt,

— the longest power supply interruption,

— sensor fault,

— motion data error,

— vehicle motion conflict,

— driving without a valid card,

— card insertion while driving,

— time adjustment data,

— calibration data including the dates of the two latest calibrations,

— vehicle registration number,

— speed recorded by the tachograph.

5. The data exchanged shall be used for the sole purpose of verifying compliance with this Regulation. They shall not be transmitted to entities other than authorities controlling driving and rest periods and to judicial bodies, in the framework of an ongoing judicial procedure.

6. The data may only be stored by the control authorities for the duration of a roadside check, and shall be deleted at the latest three hours after their communication, unless the data indicate a possible manipulation or misuse of the tachograph. If, in the course of the ensuing roadside check, the manipulation or misuse is not confirmed, the data transmitted shall be deleted.

7. Transport undertakings which operate vehicles shall be responsible for informing drivers of the possibility of remote communication for the purpose of early detection of possible manipulation or misuse of tachographs.

8. In no case shall a remote early detection communication of the type described in this Article lead to automatic fines or penalties for the driver or transport undertaking. The competent control authority, on the basis of the data exchanged, may decide to carry out a check on the vehicle and the tachograph. The result of the remote communication shall not prevent control authorities from carrying out random roadside checks based on the risk rating system introduced by Article 9 of Directive 2006/22/EC.

Article 10

Interface with Intelligent Transport Systems

The tachographs of vehicles registered for the first time 36 months after the entry into force of the detailed provisions referred to in Article 11 may be equipped with standardised interfaces allowing the data recorded or produced by tachograph to be used in operational mode, by an external device, provided that the following conditions are met:

(a) the interface does not affect the authenticity and the integrity of the data of the tachograph;

(b) the interface complies with the detailed provisions of Article 11;

(c) the external device connected to the interface has access to personal data, including geopositioning data, only after the verifiable consent of the driver to whom the data relates.

Article 11

Detailed provisions for smart tachographs

In order to ensure that smart tachographs comply with the principles and requirements set out in this Regulation, the Commission shall, by means of implementing acts, adopt detailed provisions necessary for the uniform application of Articles 8, 9 and 10, excluding any provisions which would provide for the recording of additional data by the tachograph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(3).

The detailed provisions referred to in the first paragraph shall:

(a) in relation to the performance of the functions of the smart tachograph as referred to in this Chapter, include the necessary requirements to guarantee the security, accuracy and reliability of data as provided to the tachograph by the satellite positioning service and the remote communication technology referred to in Articles 8 and 9;

(b) specify the various conditions and requirements for the satellite positioning service and the remote communication technology referred to in Articles 8 and 9 to be either outside or embedded in the tachograph and, when outside, specify the conditions for the use of the satellite positioning signal as a second motion sensor;

(c) specify the necessary standards for the interface referred to in Article 10. Such standards may include a provision on the distribution of access rights for drivers, workshops and transport undertakings, and control roles for the data recorded by the tachograph, which control roles shall be based on an authentication/authorisation mechanism defined for the interface, such as a certificate for each level of access and subject to the technical feasibility thereof.

CHAPTER III

TYPE-APPROVAL

Article 12

Applications

1. Manufacturers or their agents shall submit an application for approval of a type of vehicle unit, motion sensor, model record sheet or tachograph card to the type-approval authorities designated to that effect by each Member State.

2. Member States shall communicate to the Commission by 2 March 2015 the name and contact details of the designated authorities referred to in paragraph 1, and shall provide updates thereafter as necessary. The Commission shall publish a list of designated type-approval authorities on its website and shall keep that list updated.

3. An application for type-approval shall be accompanied by the appropriate specifications, including necessary information regarding the seals, and by security, functionality and interoperability certificates. The security certificate shall be issued by a recognised certification body designated by the Commission.

Functionality certificates shall be issued to the manufacturer by the type-approval authority.

The interoperability certificate shall be issued by a single laboratory under the authority and responsibility of the Commission.

4. In respect of tachographs, their relevant components, and tachograph cards:

(a) the security certificate shall certify the following for the vehicle unit, tachograph cards, motion sensor, and connection to the GNSS receiver when the GNSS is not embedded in the vehicle units:

(i) compliance with security targets;

(ii) fulfilment of the following security functions: identification and authentication, authorisation, confidentiality, accountability, integrity, audit, accuracy and reliability of service;

(b) the functional certificate shall certify that the tested item fulfils the appropriate requirements in terms of functions performed, environmental characteristics, electromagnetic compatibility characteristics, compliance with physical requirements and compliance with other applicable standards;

(c) the interoperability certificate shall certify that the tested item is fully interoperable with the necessary tachographs or tachograph card models.

5. Any modification in software or hardware of the tachograph or in the nature of materials used for its manufacture shall, before being applied, be notified to the authority which granted type-approval for the equipment. That authority shall confirm to the manufacturer the extension of the type-approval, or may require an update or a confirmation of the relevant functional, security and/or interoperability certificates.

6. No application in respect of any one type of vehicle unit, motion sensor, model record sheet or tachograph card may be submitted to more than one Member State.

7. The Commission shall, by means of implementing acts, adopt detailed provisions for the uniform application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(3).

Article 13

Granting of type-approval

A Member State shall grant type-approval to any type of vehicle unit, motion sensor, model record sheet or tachograph card which complies with the requirements set out in Articles 4 and 11, provided that the Member State is in a position to check that production models conform to the approved type.

Any modifications or additions to an approved model must receive additional type-approval from the Member State which granted the original type-approval.

Article 14

Type-approval mark

Member States shall issue to the applicant a type-approval mark conforming to a pre-established model, for each type of vehicle unit, motion sensor, model record sheet or tachograph card which they approve pursuant to Article 13 and Annex II. Such models shall be adopted by the Commission through implementing acts in accordance with the examination procedure referred to in Article 42(3).

Article 15

Approval or refusal

The competent authorities of the Member State to which the application for type-approval has been submitted shall, in respect of each type of vehicle unit, motion sensor, model record sheet or tachograph card which they approve, send within one month a copy of the type-approval certificate accompanied by copies of the relevant specifications, including those relating to the seals, to the authorities of the other Member States. Where the competent authorities do not approve the application for type-approval, they shall notify the authorities of the other Member States that approval has been refused and shall communicate the reasons for their decision.

Article 16

Compliance of equipment with type-approval

1. If a Member State which has granted type-approval as provided for in Article 13 finds that any vehicle units, motion sensors, record sheets or tachograph cards bearing the type-approval mark issued by it do not conform to the type which it has approved, it shall take the necessary measures to ensure that production models conform to the approved type. The measures taken may, if necessary, extend to withdrawal of type-approval.

2. A Member State which has granted type-approval shall withdraw such approval if the vehicle unit, motion sensor, record sheet or tachograph card which has been approved is not in conformity with this Regulation or if it displays any general defect during use which makes it unsuitable for the purpose for which it is intended.

3. If a Member State which has granted type-approval is notified by another Member State of one of the cases referred to in paragraphs 1 or 2, it shall, after consulting the notifying Member State, take the steps laid down in those paragraphs, subject to paragraph 5.

4. A Member State which ascertains that one of the cases referred to in paragraph 2 has arisen may forbid until further notice the placing on the market and putting into service of the vehicle unit, motion sensor, record sheet or tachograph card concerned. The same applies in the cases referred to in paragraph 1 with respect to vehicle units, motion sensors, record sheets or tachograph cards which have been exempted from EU initial verification, if the manufacturer, after due warning, does not bring the equipment into line with the approved model or with the requirements of this Regulation.

In any event, the competent authorities of the Member States shall within one month notify one another and the Commission of any withdrawal of type-approval or of any other measures taken pursuant to paragraphs 1, 2 or 3, and shall specify the reasons for such action.

5. If a Member State which has granted a type-approval disputes the existence of any of the cases specified in paragraphs 1 or 2 notified to it, the Member States concerned shall endeavour to settle the dispute and the Commission shall be kept informed.

If talks between the Member States have not resulted in agreement within four months of the date of the notification referred to in paragraph 3, the Commission, after consulting experts from all Member States and having considered all the relevant factors, such as economic and technical factors, shall within six months of the expiry of that four-month period adopt a decision which shall be notified to the Member States concerned and communicated at the same time to the other Member States. The Commission shall in each case lay down the time-limit for implementation of its decision.

Article 17

Approval of record sheets

1. An applicant for type-approval of a model record sheet shall state on the application form the type or types of analogue tachograph on which the record sheet in question is designed to be used, and shall provide suitable equipment of such type or types for the purpose of testing the record sheet.

2. The competent authorities of each Member State shall indicate on the approval certificate for the model record sheet the type or types of analogue tachograph on which that model record sheet may be used.

Article 18

Justification of refusal decisions

All decisions pursuant to this Regulation refusing or withdrawing approval of a type of vehicle unit, motion sensor, model record sheet or tachograph card shall specify in detail the reasons on which they are based. A decision shall be communicated to the party concerned, who shall at the same time be informed of the remedies available under the law of the relevant Member State and of the time-limits for the exercise of such remedies.

Article 19

Recognition of type-approved tachographs

Member States shall not refuse to register any vehicle fitted with a tachograph, or prohibit the entry into service or use of such vehicle for any reason connected with the fact that the vehicle is fitted with such equipment, if the equipment bears the type-approval mark referred to in Article 14 and the installation plaque referred to in Article 22(4).

Article 20

Security

1. Manufacturers shall design, test and review vehicle units, motion sensors and tachograph cards put into production so as to detect vulnerabilities arising in all phases of the product life-cycle, and shall prevent or mitigate their possible exploitation. The frequency of tests shall be laid down by the Member State which granted the approval certificate, within a limit which shall not exceed two years.

2. For this purpose, manufacturers shall submit the documentation necessary for vulnerability analysis to the certification body referred to in Article 12(3).

3. For the purposes of paragraph 1, the certification body referred in Article 12(3) shall conduct tests on vehicle units, motion sensors and tachograph cards to confirm that known vulnerabilities cannot be exploited by individuals in possession of publicly available knowledge.

4. If, in the course of the tests referred to in paragraph 1, vulnerabilities in system elements (vehicle units, motion sensors and tachograph cards) are detected, those elements shall not be put on the market. If vulnerabilities are detected in the course of the tests referred to in paragraph 3 for elements already on the market, the manufacturer or the certification body shall inform the competent authorities of the Member State which granted the type-approval. Those competent authorities shall take all measures necessary to ensure that the problem is addressed, in particular by the manufacturer, and shall inform the Commission without delay of the vulnerabilities detected and of the measures envisaged or taken, including where necessary the withdrawal of type-approval in accordance with Article 16(2).

Article 21

Field tests

1. Member States may authorise field tests of tachographs which have not yet been type-approved. Member States shall mutually recognise such authorisations for field tests.

2. Drivers and transport undertakings participating in a field test shall comply with the requirements of Regulation (EC) No 561/2006. In order to demonstrate such compliance, drivers shall follow the procedure set out in Article 35(2) of this Regulation.

3. The Commission may adopt implementing acts to lay down the procedures to be followed for carrying out field tests and the forms to be used in order to monitor those field tests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(3).

CHAPTER IV

INSTALLATION AND INSPECTION

Article 22

Installation and repair

1. Tachographs may be installed or repaired only by fitters, workshops or vehicle manufacturers approved by the competent authorities of the Member States for that purpose in accordance with Article 24.

2. Approved fitters, workshops or vehicle manufacturers shall, in accordance with the specifications included in the type-approval certificate referred to in Article 15, seal the tachograph after having verified that it is functioning properly, and, in particular, in such a way as to ensure that no manipulation device can tamper with or alter the data recorded.

3. The approved fitter, workshop or vehicle manufacturer shall place a special mark on the seals which it affixes and, in addition, for digital tachographs, shall enter the electronic security data for carrying out authentication checks. The competent authorities of each Member State shall send to the Commission the register of the marks and electronic security data used and the necessary information related to the electronic security data used. The Commission shall give Member States access to that information upon request.

4. For the purpose of certifying that the installation of the tachograph took place in accordance with the requirements of this Regulation, an installation plaque shall be affixed in such a way as to be clearly visible and easily accessible.

5. Tachograph components shall be sealed as specified in the type-approval certificate. Any connections to the tachograph which are potentially vulnerable to tampering, including the connection between the motion sensor and the gearbox, and the installation plaque where relevant, shall be sealed.

A seal shall be removed or broken only:

— by fitters or workshops approved by the competent authorities under Article 24 for repair, maintenance or recalibration purposes of the tachograph, or by control officers properly trained and, where required authorised, for control purposes;

— for the purpose of vehicle repair or modification which affects the seal. In such cases, a written statement stating the date and time at which the seal was broken and giving the reasons for the seal removal shall be kept on board the vehicle. The Commission shall develop a standard form for the written statement through implementing acts.

In all cases, the seals shall be replaced by an approved fitter or workshop without undue delay and at the latest within seven days of their removal.

Before replacing seals, a check and calibration of the tachograph shall be performed by an approved workshop.

Article 23

Inspections of tachographs

1. Tachographs shall be subject to regular inspection by approved workshops. Regular inspections shall be carried out at least every two years.

2. The inspections referred to in paragraph 1 shall check at least the following:

— the tachograph is correctly fitted and appropriate for the vehicle;

— the tachograph is working properly;

— the tachograph carries the type-approval mark;

— the installation plaque is affixed;

— all seals are intact and effective;

— there are no manipulation devices attached to the tachograph or traces of the use of such devices;

— the tyre size and the actual circumference of the tyres.

3. Workshops shall draw up an inspection report in cases where irregularities in the functioning of the tachograph had to be remedied, whether as a result of a periodic inspection or of an inspection carried out at the specific request of the national competent authority. They shall keep a list of all inspection reports drawn up.

4. Inspection reports shall be retained for a minimum period of two years from the time the report was made. Member States shall decide whether inspection reports are to be retained or sent to the competent authority during that period. In cases where the inspection reports are kept by the workshop, upon request from the competent authority, the workshop shall make available the reports of inspections and calibrations carried out during that period.

Article 24

Approval of fitters, workshops and vehicle manufacturers

1. Member States shall approve, regularly control and certify the fitters, workshops and vehicle manufacturers which may carry out installations, checks, inspections and repairs of tachographs.

2. Member States shall ensure that fitters, workshops and vehicle manufacturers are competent and reliable. For that purpose, they shall establish and publish a set of clear national procedures and shall ensure that the following minimum criteria are met:

(a) the staff are properly trained;

(b) the equipment necessary to carry out the relevant tests and tasks is available;

(c) the fitters, workshops and vehicle manufacturers are of good repute.

3. Audits of approved fitters or workshops shall be carried out as follows:

(a) approved fitters or workshops shall be subject, at least every two years, to an audit of the procedures they apply when handling tachographs. The audit shall focus in particular on the security measures taken and the handling of workshop cards. Member States may carry out these audits without conducting a site visit;

(b) unannounced technical audits of approved fitters or workshops shall also take place in order to check the calibrations, inspections and installations carried out. Those audits shall cover at least 10 % of the approved fitters and workshops annually.

4. Member States and their competent authorities shall take appropriate measures to prevent conflicts of interests between fitters or workshops and transport undertakings. In particular, where there is a serious risk of a conflict of interests, additional specific measures shall be taken to ensure that the fitter or workshop complies with this Regulation.

5. The competent authorities of the Member States shall forward to the Commission, if possible electronically, on an annual basis, the lists of approved fitters and workshops and the cards issued to them. The Commission shall publish those lists on its website.

6. The competent authorities in Member States shall withdraw approvals, either temporarily or permanently, from fitters, workshops and vehicle manufacturers which fail to meet their obligations under this Regulation.

Article 25

Workshop cards

1. The period of validity of workshop cards shall not exceed one year. When renewing the workshop card, the competent authority shall ensure that the criteria listed in Article 24(2) are met by the fitter, workshop or vehicle manufacturer.

2. The competent authority shall renew a workshop card within 15 working days after receipt of a valid renewal request and all the necessary documentation. If a workshop card is damaged, malfunctions, or is lost or stolen, the competent authority shall supply a replacement card within five working days of receiving a detailed request to that effect. Competent authorities shall maintain a register of lost, stolen or defective cards.

3. If a Member State withdraws the approval of a fitter, workshop or vehicle manufacturer as provided for in Article 24, it shall also withdraw the workshop cards issued thereto.

4. Member States shall take all necessary measures to prevent the workshop cards distributed to approved fitters, workshops and vehicle manufacturers from being falsified.

CHAPTER V

DRIVER CARDS

Article 26

Issuing of driver cards

1. Driver cards shall be issued, at the request of the driver, by the competent authority of the Member State where the driver has his normal residence. They shall be issued within one month of the receipt by the competent authority of the request and all necessary documentation.

2. For the purposes of this Article, 'normal residence' means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a place different from their personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of their personal ties, provided that such person returns there regularly. This last condition need not be complied with where the person is living in a Member State in order to carry out a fixed-term assignment.

3. Drivers shall give proof of their normal residence by any appropriate means, such as their identity card or any other valid document. Where the competent authorities of the Member State issuing the driver card have doubts as to the validity of a statement as to normal residence, or for the purpose of certain specific controls, they may request any additional information or evidence.

4. In duly justified and exceptional cases, Member States may issue a temporary and non-renewable driver card valid for a maximum period of 185 days to a driver who does not have his normal residence in a Member State or in a State which is a Contracting Party to the AETR Agreement, provided that such driver is in a labour law relationship with an undertaking established in the issuing Member State and, in so far as Regulation (EC) No 1072/2009 of the European Parliament and of the Council [1] applies, presents a driver attestation as referred to in that Regulation.

The Commission shall, on the basis of data provided by Member States, closely monitor the application of this paragraph. It shall report its findings every two years to the European Parliament and to the Council, and shall examine in particular whether temporary driver cards produce any negative impact on the labour market, and whether temporary cards are issued to named drivers ordinarily on more than one occasion. The Commission may make an appropriate legislative proposal to revise this paragraph.

5. The competent authorities of the issuing Member State shall take appropriate measures to ensure that an applicant does not already hold a valid driver card and shall personalise the driver card, ensuring that its data are visible and secure.

6. The driver card shall not be valid for more than five years.

7. A valid driver card shall not be withdrawn or suspended unless the competent authorities of a Member State find that the card has been falsified, or the driver is using a card of which he is not the holder, or the card held has been obtained on the basis of false declarations and/or forged documents. If such suspension or withdrawal measures are taken by a Member State other than the issuing Member State, the former shall return the card to the authorities of the Member State which issued it, as soon as possible, indicating the reasons for the withdrawal or suspension. If the return of the card is expected to take longer than two weeks, the suspending or withdrawing Member State shall inform the issuing Member State within those two weeks of the reasons for suspension or withdrawal.

8. Member States shall take all necessary measures to prevent driver cards from being falsified.

9. This Article shall not prevent a Member State from issuing a driver card to a driver who has his normal residence in a part of that Member State's territory, to which the Treaty on European Union and the Treaty on the Functioning of the European Union do not apply, provided that the relevant provisions of this Regulation are applied in such cases.

Article 27

Use of driver cards

1. The driver card is personal.

2. A driver may hold no more than one valid driver card, and is only authorised to use his own personalised driver card. A driver shall not use a driver card which is defective or which has expired.

Article 28

Renewal of driver cards

1. Where a driver wishes to renew his driver card, he shall apply to the competent authorities of the Member State of his normal residence not later than 15 working days before the expiry date of the card.

[1] Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

2. Where, in the case of renewals, the Member State of the driver's normal residence is different from that which issued his current card, and where the authorities of the former Member State are requested to renew the driver card, they shall inform the authorities which issued the earlier card of the reasons for its renewal.

3. In the event of a request for the renewal of a card which is imminently about to expire, the competent authority shall supply a new card before the expiry date, provided that the request was sent within the time-limits laid down in paragraph 1.

Article 29

Stolen, lost or defective driver cards

1. Issuing authorities shall keep records of issued, stolen, lost or defective driver cards for a period at least equivalent to their period of validity.

2. If a driver card is damaged or if it malfunctions, the driver shall return it to the competent authority of the Member State of his normal residence. Theft of the driver card shall be formally declared to the competent authorities of the State where the theft occurred.

3. Any loss of the driver card shall be reported in a formal declaration to the competent authorities of the issuing Member State and to the competent authorities of the Member State of the driver's normal residence if this is different.

4. If the driver card is damaged, malfunctions or is lost or stolen, the driver shall, within seven calendar days, apply for its replacement to the competent authorities of the Member State of his normal residence. Those authorities shall supply a replacement card within eight working days after their receipt of a detailed request to that effect.

5. In the circumstances set out in paragraph 4, the driver may continue to drive without a driver card for a maximum period of 15 calendar days or for a longer period if this is necessary for the vehicle to return to the premises where it is based, provided that the driver can prove the impossibility of producing or using the card during that period.

Article 30

Mutual recognition and exchange of driver cards

1. Driver cards issued by Member States shall be mutually recognised.

2. Where the holder of a valid driver card issued by a Member State has established his normal residence in another Member State, he may ask for his card to be exchanged for an equivalent driver card. It shall be the responsibility of the Member State which carries out the exchange to verify whether the card produced is still valid.

3. Member States carrying out an exchange shall return the old card to the authorities of the issuing Member State and indicate the reasons for so doing.

4. Where a Member State replaces or exchanges a driver card, the replacement or exchange, and any subsequent replacement or exchange, shall be registered in that Member State.

Article 31

Electronic exchange of information on driver cards

1. In order to ensure that an applicant does not already hold a valid driver card as referred to in Article 26, Member States shall maintain national electronic registers containing the following information on driver cards, including on those referred to in Article 26(4), for a period at least equivalent to the period of validity of those cards:

— surname and first name of the driver,

— birth date and, if available, place of birth of the driver,

— valid driving licence number and country of issue of the driving licence (if applicable),

— status of the driver card,

— driver card number.

2. The Commission and the Member States shall take all necessary measures to ensure that the electronic registers are interconnected and accessible throughout the Union, using the TACHOnet messaging system referred to in Recommendation 2010/19/EU or a compatible system. In the case of the use of a compatible system, the exchange of electronic data with all other Member States shall be possible through the TACHOnet messaging system.

3. When issuing, replacing and, where necessary, renewing a driver card, Member States shall verify through electronic data exchange that the driver does not already hold another valid driver card. The data exchanged shall be limited to the data necessary for the purpose of this verification.

4. Control officers may have access to the electronic register in order to check the status of a driver card.

5. The Commission shall adopt implementing acts to lay down the common procedures and specifications necessary for the interconnection referred to in paragraph 2, including the format for the data exchanged, the technical procedures for electronic consultation of the national electronic registers, access procedures and security mechanisms. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(3).

CHAPTER VI

USE OF EQUIPMENT

Article 32

Correct use of tachographs

1. Transport undertakings and drivers shall ensure the correct functioning and proper use of digital tachographs and driver cards. Transport undertakings and drivers using analogue tachographs shall ensure their correct functioning and the proper use of record sheets.

2. Digital tachographs shall not be set in such a way that they automatically switch to a specific category of activity when the vehicle's engine or ignition is switched off, unless the driver remains able to choose manually the appropriate category of activity.

3. It shall be forbidden to falsify, conceal, suppress or destroy data recorded on the record sheet or stored in the tachograph or on the driver card, or print-outs from the tachograph. Any manipulation of the tachograph, record sheet or driver card which could result in data and/or printed information being falsified, suppressed or destroyed shall also be prohibited. No device which could be used to this effect shall be present on the vehicle.

4. Vehicles shall not be fitted with more than one tachograph, except for the purposes of the field tests referred to in Article 21.

5. Member States shall forbid the production, distribution, advertising and/or selling of devices constructed and/or intended for the manipulation of tachographs.

Article 33

Responsibility of transport undertakings

1. Transport undertakings shall be responsible for ensuring that their drivers are properly trained and instructed as regards the correct functioning of tachographs, whether digital or analogue, shall make regular checks to ensure that their drivers make correct use thereof, and shall not give to their drivers any direct or indirect incentives that could encourage the misuse of tachographs.

Transport undertakings shall issue a sufficient number of record sheets to drivers of vehicles fitted with analogue tachographs, taking into account the fact that record sheets are personal in character, the length of the period of service and the possible need to replace record sheets which are damaged or have been taken by an authorised control officer. Transport undertakings shall issue to drivers only record sheets of an approved model suitable for use in the equipment installed in the vehicle.

Where a vehicle is fitted with a digital tachograph, the transport undertaking and the driver shall ensure that, taking into account the length of the period of service, the printing of data from the tachograph at the request of a control officer can be carried out correctly in the event of an inspection.

2. Transport undertakings shall keep record sheets and printouts, whenever printouts have been made to comply with Article 35, in chronological order and in a legible form, for at least a year after their use, and shall give copies to the drivers concerned who request them. Transport undertakings shall also give copies of data downloaded from driver cards to the drivers concerned who request them, together with printed paper versions of those copies. Record sheets, printouts and downloaded data shall be produced or handed over at the request of any authorised control officer.

3. Transport undertakings shall be liable for infringements of this Regulation committed by their drivers or by drivers at their disposal. However, Member States may make such liability conditional on the transport undertaking's infringement of the first subparagraph of paragraph 1 of this Article and Article 10(1) and (2) of Regulation (EC) No 561/2006.

Article 34

Use of driver cards and record sheets

1. Drivers shall use record sheets or driver cards every day on which they are driving, starting from the moment they take over the vehicle. The record sheet or driver card shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised. No record sheet or driver card may be used to cover a period longer than that for which it is intended.

2. Drivers shall adequately protect the record sheets or driver cards, and shall not use dirty or damaged record sheets or driver cards.

3. When, as a result of being away from the vehicle, a driver is unable to use the tachograph fitted to the vehicle, the periods of time referred to in points (ii), (iii) and (iv) of paragraph 5(b) shall:

(a) if the vehicle is fitted with an analogue tachograph, be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the record sheet; or

(b) if the vehicle is fitted with a digital tachograph, be entered onto the driver card using the manual entry facility provided for in the tachograph.

Member States shall not impose on drivers a requirement to present forms attesting to their activities while away from the vehicle.

4. Where there is more than one driver on board a vehicle fitted with a digital tachograph, each driver shall ensure that his driver card is inserted into the correct slot in the tachograph.

Where there is more than one driver on board a vehicle fitted with an analogue tachograph, the drivers shall amend the record sheets as necessary, so that the relevant information is recorded on the record sheet of the driver who is actually driving.

5. Drivers shall:

(a) ensure that the time recorded on the record sheet corresponds to the official time in the country of registration of the vehicle;

(b) operate the switch mechanisms enabling the following periods of time to be recorded separately and distinctly:

(i) under the sign  : driving time,

(ii) under the sign  : 'other work', which means any activity other than driving, as defined in point (a) of Article 3 of Directive 2002/15/EC, and also any work for the same or another employer within or outside of the transport sector,

(iii) under the sign  : 'availability', as defined in point (b) of Article 3 of Directive 2002/15/EC,

(iv) under the sign  : breaks or rest.

6. Each driver of a vehicle fitted with an analogue tachograph shall enter the following information on his record sheet:

(a) on beginning to use the record sheet — his surname and first name;

(b) the date and place where use of the record sheet begins and the date and place where such use ends;

(c) the registration number of each vehicle to which the driver is assigned, both at the start of the first journey recorded on the record sheet and then, in the event of a change of vehicle, during use of the record sheet;

(d) the odometer reading:

(i) at the start of the first journey recorded on the record sheet,

(ii) at the end of the last journey recorded on the record sheet,

(iii) in the event of a change of vehicle during a working day, the reading on the first vehicle to which the driver was assigned and the reading on the next vehicle;

(e) the time of any change of vehicle.

7. The driver shall enter in the digital tachograph the symbols of the countries in which the daily working period started and finished. However, a Member State may require drivers of vehicles engaged in transport operations inside its territory to add more detailed geographic specifications to the country symbol, provided that the Member State notified those detailed geographic specifications to the Commission before 1 April 1998.

It shall not be necessary for drivers to enter the information referred to in the first sentence of the first subparagraph if the tachograph is automatically recording location data in accordance with Article 8.

Article 35

Damaged driver cards and record sheets

1. In the event of damage to a record sheet bearing recordings or to a driver card, drivers shall keep the damaged record sheet or driver card together with any spare record sheet used to replace it.

2. Where a driver card is damaged, malfunctions, or is lost or stolen, the driver shall:

(a) at the start of his journey, print out the details of the vehicle he is driving, and enter on that printout:

(i) details that enable the driver to be identified (name, driver card or driving licence number), including his signature;

(ii) the periods referred to in points (ii), (iii) and (iv) of Article 34(5)(b);

(b) at the end of the journey, print out the information relating to periods of time recorded by the tachograph, record any periods of other work, availability and rest taken since the printout made at the start of the journey, where not recorded by the tachograph, and mark on that document details enabling the driver to be identified (name, driver card or driving licence number), including the driver's signature.

Article 36

Records to be carried by the driver

1. Where a driver drives a vehicle fitted with an analogue tachograph, he shall be able to produce, whenever an authorised control officer so requests:

(i) the record sheets for the current day and those used by the driver in the previous 28 days,

(ii) the driver card, if one is held, and

(iii) any manual records and printouts made during the current day and the previous 28 days as required under this Regulation and Regulation (EC) No 561/2006.

2. Where the driver drives a vehicle fitted with a digital tachograph, he shall be able to produce, whenever an authorised control officer so requests:

(i) his driver card,

(ii) any manual records and printouts made during the current day and the previous 28 days as required under this Regulation and Regulation (EC) No 561/2006,

(iii) the record sheets corresponding to the same period as that referred to in point (ii) during which he drove a vehicle fitted with an analogue tachograph.

3. An authorised control officer may check compliance with Regulation (EC) No 561/2006 by analysis of the record sheets, of the displayed, printed or downloaded data which have been recorded by the tachograph or by the driver card or, failing that, of any other supporting document that justifies non-compliance with a provision, such as Articles 29(2) and 37(2) of this Regulation.

Article 37

Procedures in the event of malfunctioning equipment

1. In the event of the breakdown or faulty operation of a tachograph, the transport undertaking shall have it repaired by an approved fitter or workshop, as soon as circumstances permit.

If the vehicle is unable to return to the transport undertaking's premises within a period of one week calculated from the day of the breakdown or of the discovery of defective operation, the repair shall be carried out en route.

Measures taken by Member States pursuant to Article 41 shall give the competent authorities power to prohibit the use of the vehicle in cases where the breakdown or faulty operation has not been remedied as provided in the first and the second subparagraphs of this paragraph in so far as this is in accordance with the national legislation in the Member State concerned.

2. While the tachograph is unserviceable or malfunctioning, the driver shall mark data enabling him to be identified (name, driver card or driving licence number), including a signature, as well as the information for the various periods of time which are no longer recorded or printed out correctly by the tachograph:

(a) on the record sheet or sheets, or

(b) on a temporary sheet to be attached to the record sheet or to be kept together with the driver card.

CHAPTER VII

ENFORCEMENT AND SANCTIONS

Article 38

Control officers

1. In order to monitor effectively compliance with this Regulation, sufficient equipment and appropriate legal powers shall be made available to authorised control officers to enable them to carry out their duties in accordance with this Regulation. That equipment shall include, in particular:

(a) control cards allowing access to data recorded in tachographs and in tachograph cards, and optionally in workshop cards;

(b) the tools necessary to download data files from vehicle units and tachograph cards and to be able to analyse such data files and printouts from digital tachographs in combination with record sheets or charts from analogue tachographs.

2. If, after having carried out a check, control officers find sufficient evidence leading to reasonable suspicion of fraud, they shall be empowered to direct the vehicle to an authorised workshop to perform further tests in order to check, in particular, that the tachograph:

(a) works properly;

(b) records and stores data correctly, and that the calibration parameters are correct.

3. Control officers shall be empowered to request authorised workshops to perform the tests referred to in paragraph 2 and specific tests designed to detect the presence of manipulation devices. If manipulation devices are detected, the equipment, including the device itself, the vehicle unit or its components, and the driver card, may be removed from the vehicle and may be used as evidence in accordance with national rules of procedure relating to the handling of such evidence.

4. Control officers shall, where appropriate, make use of the possibility to check tachographs and driver cards which are on site during a check of the premises of undertakings.

Article 39

Training of control officers

1. Member States shall ensure that control officers are appropriately trained for the analysis of the data recorded and the checking of tachographs in order to achieve efficient and harmonised control and enforcement.

2. Member States shall inform the Commission of the training requirements for their control officers by 2 September 2016.

3. The Commission shall, by means of implementing acts, adopt measures specifying the content of the initial and continuing training of control officers, including training in relation to techniques to target controls and to detect manipulation devices and fraud. Those measures shall include guidelines to facilitate the implementation of the relevant provisions of this Regulation and of Regulation (EC) No 561/2006. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(3).

4. Member States shall include the content specified by the Commission in the training given to control officers.

Article 40

Mutual assistance

Member States shall assist each other in applying this Regulation and in checking compliance therewith.

Within the framework of that mutual assistance, the competent authorities of the Member States shall, in particular, regularly send to each other all available information concerning infringements of this Regulation by fitters and workshops, types of manipulation practices, and any penalties imposed for such infringements.

Article 41

Penalties

1. Member States shall, in accordance with national constitutional arrangements, lay down rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory, and shall be in compliance with the categories of infringements set out in Directive 2006/22/EC.

2. The Member States shall notify the Commission of those measures and the rules on penalties by 2 March 2016. They shall inform the Commission of any subsequent change to those measures.

CHAPTER VIII

FINAL PROVISIONS

Article 42

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the committee is to be obtained by a written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Article 43

Tachograph Forum

1. A Tachograph Forum shall be set up in order to support dialogue on technical matters concerning tachographs among Member States' experts, members of the committee referred to in Article 42, and experts from third countries which are using the tachograph under the AETR Agreement.

2. Member States should delegate as experts to the Tachograph Forum the experts participating in the committee referred to in Article 42.

3. The Tachograph Forum shall be open to participation by experts from interested third countries which are Contracting Parties to the AETR Agreement.

4. Stakeholders, representatives of vehicle manufacturers, tachograph manufacturers, social partners and the European Data Protection Supervisor shall be invited to the Tachograph Forum.

5. The Tachograph Forum shall adopt its rules of procedure.

6. The Tachograph Forum shall meet at least once a year.

Article 44

Communication of national measures

Member States shall communicate to the Commission the text of the laws, regulations and administrative provisions which they adopt in the field governed by this Regulation no later than 30 days after their date of adoption and for the first time by 2 March 2015.

Article 45

Amendment of Regulation (EC) No 561/2006

Regulation (EC) No 561/2006 is hereby amended as follows:

(1) in Article 3, the following point is inserted after point (a):

'(aa) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for carrying materials, equipment or machinery for the driver's use in the course of his work, and which are used only within a 100 km radius from the base of the undertaking and on the condition that driving the vehicle does not constitute the driver's main activity;';

(2) Article 13(1) is amended as follows:

(a) in points (d), (f) and (p), the words '50 kilometre' or '50 km' are replaced by the words '100 km';

(b) the first subparagraph of point (d) is replaced by the following:

'(d) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used by universal service providers as defined in Article 2(13) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (*) to deliver items as part of the universal service.

(*) OJ L 15, 21.1.1998, p. 14.'.

Article 46

Transitional measures

In so far as the implementing acts referred to in this Regulation have not been adopted so that they may be applied at the time of application of this Regulation, the provisions in Regulation (EEC) No 3821/85, including in Annex IB thereto, shall continue to apply, on a transitional basis, until the date of application of the implementing acts referred to in this Regulation.

Article 47

Repeal

Regulation (EEC) No 3821/85 is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation.

Article 48

Entry into force

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

It shall, subject to the transitional measures in Article 46, apply with effect from 2 March 2016. However, Articles 24, 34 and 45 shall apply with effect from 2 March 2015.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 4 February 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
E. VENIZELOS

ANNEX I

REQUIREMENTS FOR CONSTRUCTION, TESTING, INSTALLATION AND INSPECTION FOR ANALOGUE TACHOGRAPHS

I. DEFINITIONS

In this Annex:

(a) 'recording equipment' or 'analogue tachograph' means:

equipment intended for installation in road vehicles to show and record automatically or semi-automatically details of the movement of such vehicles and details of certain periods of activity of their drivers;

(b) 'constant of the recording equipment' means:

the numerical characteristic giving the value of the input signal required to show and record a distance travelled of one kilometre; this constant must be expressed either in revolutions per kilometre (k = … rev/km), or in impulses per kilometre (k = … imp/km);

(c) 'characteristic coefficient' means:

the numerical characteristic giving the value of the output signal emitted by the part of the vehicle linking it with the recording equipment (gearbox output shaft or axle) while the vehicle travels a distance of one measured kilometre under normal test conditions (see point 4 of Part VI of this Annex). The characteristic coefficient is expressed either in revolutions per kilometre (w = … rev/km) or in impulses per kilometre (w = … imp/km);

(d) 'effective circumference of wheel tyres' means:

the average of the distances travelled by the several wheels moving the vehicle (driving wheels) in the course of one complete rotation. The measurement of these distances must take place under normal test conditions (see point 4 of Part VI of this Annex) and is expressed in the form: l = … mm.

II. GENERAL CHARACTERISTICS AND FUNCTIONS OF RECORDING EQUIPMENT

The equipment must be able to record the following:

1. distance travelled by the vehicle;

2. speed of the vehicle;

3. driving time;

4. other periods of work or of availability;

5. breaks from work and daily rest periods;

6. opening of the case containing the record sheet;

7. for electronic recording equipment which is equipment operating by signals transmitted electrically from the distance and speed sensor, any interruption exceeding 100 milliseconds in the power supply of the recording equipment (except lighting), in the power supply of the distance and speed sensor and any interruption in the signal lead to the distance and speed sensor.

For vehicles used by two drivers, the equipment must be capable of recording simultaneously but distinctly and on two separate record sheets details of the periods listed under points 3, 4 and 5 of the first paragraph.

III. CONSTRUCTION REQUIREMENTS FOR RECORDING EQUIPMENT

(a) General points

1. Recording equipment shall include the following:

1.1. Visual instruments showing:

— distance travelled (distance recorder),

— speed (speedometer),

— time (clock).

1.2. Recording instruments comprising:

— a recorder of the distance travelled,

— a speed recorder,

— one or more time recorders satisfying the requirements laid down in point (c)(4).

1.3. A means of marking showing on the record sheet individually:

— each opening of the case containing that record sheet,

— for electronic recording equipment, as defined in point 7 of the first paragraph of Part II, any interruption exceeding 100 milliseconds in the power supply of the recording equipment (except lighting), not later than at switching-on the power supply again,

— for electronic recording equipment, as defined in point 7 of the first paragraph of Part II, any interruption exceeding 100 milliseconds in the power supply of the distance and speed sensor and any interruption in the signal lead to the distance and speed sensor.

2. Any inclusion in the equipment of devices additional to those listed in point 1 must not interfere with the proper operation of the mandatory devices or with the reading of them.

The equipment must be submitted for approval complete with any such additional devices.

3. Materials

3.1. All the constituent parts of the recording equipment must be made of materials with sufficient stability and mechanical strength and stable electrical and magnetic characteristics.

3.2. Any modification in a constituent part of the equipment or in the nature of the materials used for its manufacture must, before being applied in manufacture, be submitted for approval to the authority which granted type-approval for the equipment.

4. Measurement of distance travelled

The distances travelled may be measured and recorded either:

— so as to include both forward and reverse movement, or

— so as to include only forward movement.

Any recording of reversing movements must on no account affect the clarity and accuracy of the other recordings.

5. Measurement of speed

5.1. The range of speed measurement shall be as stated in the type-approval certificate.

5.2. The natural frequency and the damping of the measuring device must be such that the instruments showing and recording the speed can, within the range of measurement, follow acceleration changes of up to 2 m/s^2, within the limits of accepted tolerances.

6. Measurement of time (clock)

6.1. The control of the mechanism for resetting the clock must be located inside a case containing the record sheet; each opening of that case must be automatically recorded on the record sheet.

6.2. If the forward movement mechanism of the record sheet is controlled by the clock, the period during which the latter will run correctly after being fully wound must be greater by at least 10 % than the recording period corresponding to the maximum sheet-load of the equipment.

7. Lighting and protection

7.1. The visual instruments of the equipment must be provided with adequate non-dazzling lighting.

7.2. For normal conditions of use, all the internal parts of the equipment must be protected against damp and dust. In addition, they must be made proof against tampering by means of casings capable of being sealed.

(b) Visual instruments

1. Distance travelled indicator (distance recorder)

1.1. The value of the smallest grading on the instrument showing distance travelled must be 0,1 kilometres. Figures showing hectometres must be clearly distinguishable from those showing whole kilometres.

1.2. The figures on the distance recorder must be clearly legible and must have an apparent height of at least 4 mm.

1.3. The distance recorder must be capable of reading up to at least 99 999,9 kilometres.

2. Speed indicators (speedometer)

2.1. Within the range of measurement, the speed scale must be uniformly graduated by 1, 2, 5 or 10 kilometres per hour. The value of a speed graduation (space between two successive marks) must not exceed 10 % of the maximum speed shown on the scale.

2.2. The range indicated beyond that measured need not be marked by figures.

2.3. The length of each space on the scale representing a speed difference of 10 kilometres per hour must not be less than 10 millimetres.

2.4. On an indicator with a needle, the distance between the needle and the instrument face must not exceed three millimetres.

3. Time indicator (clock)

The time indicator must be visible from outside the equipment and must give a clear, plain and unambiguous reading.

(c) Recording instruments

1. General points

1.1. All equipment, whatever the form of the record sheet (strip or disc), must be provided with a mark enabling the record sheet to be inserted correctly, in such a way as to ensure that the time shown by the clock and the time-marking on the record sheet correspond.

1.2. The mechanism moving the record sheet must be such as to ensure that the latter moves without play and can be freely inserted and removed.

1.3. For record sheets in disc form, the forward movement device must be controlled by the clock mechanism. In this case, the rotating movement of the record sheet must be continuous and uniform, with a minimum speed of seven millimetres per hour measured at the inner border of the ring marking the edge of the speed recording area. In equipment of the strip type, where the forward movement device of the record sheets is controlled by the clock mechanism, the speed of rectilinear forward movement must be at least 10 millimetres per hour.

1.4. Recording of the distance travelled, of the speed of the vehicle and of any opening of the case containing the record sheet or sheets must be automatic.

2. Recording distance travelled

2.1. Every kilometre of distance travelled must be represented on the record by a variation of at least one millimetre on the corresponding coordinate.

2.2. Even at speeds reaching the upper limit of the range of measurement, the record of distances must still be clearly legible.

3. Recording speed

3.1. Whatever the form of the record sheet, the speed recording stylus must normally move in a straight line and at right angles to the direction of travel of the record sheet. However, the movement of the stylus may be curvilinear, provided the following conditions are satisfied:

— the trace drawn by the stylus must be perpendicular to the average circumference (in the case of record sheets in disc form) or to the axis (in the case of record sheets in strip form) of the area reserved for speed recording,

— the ratio between the radius of curvature of the trace drawn by the stylus and the width of the area reserved for speed recording must be not less than 2,4 to 1, whatever the form of the record sheet,

— the markings on the time-scale must cross the recording area in a curve of the same radius as the trace drawn by the stylus. The spaces between the markings on the time-scale must represent a period not exceeding one hour.

3.2. Each variation in speed of 10 kilometres per hour must be represented on the record by a variation of at least 1,5 millimetres on the corresponding coordinate.

4. Recording time

4.1. Recording equipment must be so constructed that the period of driving time is always recorded automatically and that it is possible, through the operation where necessary of a switch device, to record separately the other periods of time as indicated in points (ii), (iii) and (iv) of Article 34(5)(b) of this Regulation.

4.2. It must be possible, from the characteristics of the traces, their relative positions and if necessary the signs laid down in Article 34 of this Regulation, to distinguish clearly between the various periods of time. The various periods of time should be differentiated from one another on the record by differences in the thickness of the relevant traces, or by any other system of at least equal effectiveness from the point of view of legibility and ease of interpretation of the record.

4.3. In the case of vehicles with a crew consisting of more than one driver, the recordings provided for in point 4.1 must be made on separate record sheets, each record sheet being allocated to one driver. In this case, the forward movement of the separate record sheets must be effected either by a single mechanism or by separate synchronised mechanisms.

(d) Closing device

1. The case containing the record sheet or sheets and the control of the mechanism for resetting the clock must be fitted with a lock.

2. Each opening of the case containing the record sheet or sheets and the control of the mechanism for resetting the clock must be automatically recorded on the record sheet or sheets.

(e) Markings

1. The following markings must appear on the instrument face of the equipment:

— close to the figure shown by the distance recorder, the unit of measurement of distance, indicated by the abbreviation 'km',

— near the speed scale, the marking 'km/h',

— the measurement range of the speedometer, in the form 'Vmin … km/h, Vmax … km/h'. This marking is not necessary if it is shown on the descriptive plaque of the equipment.

However, these requirements shall not apply to recording equipment approved before 10 August 1970.

2. The descriptive plaque must be built into the equipment and must show the following markings, which must be visible on the equipment when installed:

— name and address of the manufacturer of the equipment,

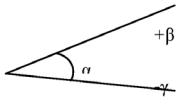
— manufacturer's number and year of construction,

— approval mark for the equipment type,

— the constant of the equipment in the form 'k = … rev/km' or 'k = … imp/km',

— optionally, the range of speed measurement, in the form indicated in point 1,

— should the sensitivity of the instrument to the angle of inclination be capable of affecting the readings given by the equipment beyond the permitted tolerances, the permissible angle expressed as:



where α is the angle measured from the horizontal position of the front face (fitted the right way up) of the equipment for which the instrument is calibrated, while β and γ represent respectively the maximum permissible upward and downward deviations from the angle of calibration α.

(f) Maximum tolerances (visual and recording instruments)

1. On the test bench before installation:

(a) distance travelled:

1 % more or less than the real distance, where that distance is at least one kilometre;

(b) speed:

3 km/h more or less than the real speed;

(c) time:

± two minutes per day with a maximum of 10 minutes per seven days in cases where the running period of the clock after rewinding is not less than that period.

2. On installation:

(a) distance travelled:

2 % more or less than the real distance, where that distance is at least one kilometre;

(b) speed:

4 km/h more or less than the real speed;

(c) time:

± two minutes per day, or

± 10 minutes per seven days.

3. In use:

(a) distance travelled:

4 % more or less than the real distance, where that distance is at least one kilometre;

(b) speed:

6 km/h more or less than the real speed;

(c) time:

± two minutes per day, or

± 10 minutes per seven days.

4. The maximum tolerances set out in points 1, 2 and 3 are valid for temperatures between 0 °C and 40 °C, temperatures being taken in close proximity to the equipment.

5. Measurement of the maximum tolerances set out in points 2 and 3 shall take place under the conditions laid down in Part VI.

IV. RECORD SHEETS

(a) General points

1. The record sheets must be such that they do not impede the normal functioning of the instrument and that the records which they contain are indelible and easily legible and identifiable.

The record sheets must retain their dimensions and any records made on them under normal conditions of humidity and temperature.

In addition it must be possible to write on the record sheets, without damaging them and without affecting the legibility of the recordings, the information referred to in Article 34 of this Regulation.

Under normal conditions of storage, the recordings must remain clearly legible for at least one year.

2. The minimum recording capacity of the record sheets, whatever their form, must be 24 hours.

If several discs are linked together to increase the continuous recording capacity which can be achieved without intervention by staff, the links between the various discs must be made in such a way that there are no breaks in or overlapping of recordings at the point of transfer from one disc to another.

(b) Recording areas and their graduation

1. The record sheets shall include the following recording areas:

— an area exclusively reserved for data relating to speed,

— an area exclusively reserved for data relating to distance travelled,

— one or more areas for data relating to driving time, to other periods of work and availability, to breaks from work and to rest periods for drivers.

2. The area for recording speed must be scaled off in divisions of 20 kilometres per hour or less. The speed corresponding to each marking on the scale must be shown in figures against that marking. The symbol 'km/h' must be shown at least once within the area. The last marking on the scale must coincide with the upper limit of the range of measurement.

3. The area for recording distance travelled must be set out in such a way that the number of kilometres travelled may be read without difficulty.

4. The area or areas reserved for recording the periods referred to in point 1 must be so marked that it is possible to distinguish clearly between the various periods of time.

(c) Information to be printed on the record sheets

Each record sheet must bear, in printed form, the following information:

— name and address or trade name of the manufacturer,

— approval mark for the model of the record sheet,

— approval mark for the type or types of equipment in which the record sheet may be used,

— upper limit of the speed measurement range, printed in kilometres per hour.

By way of minimal additional requirements, each record sheet must bear, in printed form, a time-scale graduated in such a way that the time may be read directly at intervals of fifteen minutes while each five-minute interval may be determined without difficulty.

(d) Free space for handwritten insertions

A free space must be provided on the record sheets such that drivers may as a minimum write in the following details:

— surname and first name of the driver,

— date and place where use of the record sheet begins and date and place where such use ends,

— the registration number or numbers of the vehicle or vehicles to which the driver is assigned during the use of the record sheet,

— odometer readings from the vehicle or vehicles to which the driver is assigned during the use of the record sheet,

— the time at which any change of vehicle takes place.

V. INSTALLATION OF RECORDING EQUIPMENT

1. Recording equipment must be positioned in the vehicle in such a way that the driver has a clear view from his seat of the speedometer, distance recorder and clock while at the same time all parts of those instruments, including driving parts, are protected against accidental damage.

2. It must be possible to adapt the constant of the recording equipment to the characteristic coefficient of the vehicle by means of a suitable device, to be known as an adaptor.

Vehicles with two or more rear axle ratios must be fitted with a switch device whereby those various ratios may be automatically brought into line with the ratio for which the equipment has been adapted to the vehicle.

3. After the equipment has been checked on installation, an installation plaque must be affixed to the vehicle beside the equipment or in the equipment itself and in such a way as to be clearly visible. After every inspection by an approved fitter or workshop requiring a change in the setting of the installation itself, a new installation plaque must be affixed in place of the previous one.

The installation plaque must show at least the following details:

— name, address or trade name of the approved fitter, workshop or vehicle manufacturer,

— characteristic coefficient of the vehicle, in the form ‘w = … rev/km’ or ‘w = … imp/km’,

— effective circumference of the wheel tyres, in the form ‘l = … mm’,

— the dates on which the characteristic coefficient of the vehicle was determined and the effective circumference of the wheel tyres was measured.

4. Sealing

The following parts must be sealed:

(a) the installation plaque, unless it is attached in such a way that it cannot be removed without the markings thereon being destroyed;

(b) the two ends of the link between the recording equipment proper and the vehicle;

(c) the adaptor itself and the point of its insertion into the circuit;

(d) the switch mechanism for vehicles with two or more axle ratios;

(e) the links joining the adaptor and the switch mechanism to the rest of the equipment;

(f) the casings required under point (a)(7.2) of Part III;

(g) any cover giving access to the means of adapting the constant of the recording equipment to the characteristic coefficient of the vehicle.

In particular cases, further seals may be required on approval of the equipment type and a note of the positioning of those seals must be made on the approval certificate.

The seals mentioned in points (b), (c) and (e) of the first paragraph are authorised to be removed:

— in cases of emergency,

— in order to install, adjust or repair a speed limitation device or any other device contributing to road safety,

provided that the recording equipment continues to function reliably and correctly and is resealed by an approved fitter or workshop immediately after fitting the speed limitation device or any other device contributing to road safety or within seven days in other cases. For each occasion that those seals are broken, a written statement giving the reasons for such action must be prepared and made available to the competent authority.

5. The cables connecting the recording equipment to the transmitter must be protected by a continuous plastic-coated rust-protected steel sheath with crimped ends, except where an equivalent protection against manipulation is guaranteed by other means (for example by electronic monitoring such as signal encryption) capable of detecting the presence of any device which is unnecessary for the correct operation of the recording equipment and the purpose of which is to prevent the accurate operation of the recording equipment by short circuiting or interruption or by modification of the electronic data from the speed and distance sensor. A joint, comprised of sealed connections, is deemed to be continuous within the meaning of this Regulation.

The aforementioned electronic monitoring may be replaced by an electronic control which ensures that the recording equipment is able to record any movement of the vehicle, independent from the signal of the speed and distance sensor.

For the purposes of the application of this point, M 1 and N 1 vehicles are those defined in Part A of Annex II to Directive 2007/46/EC of the European Parliament and of the Council [1]. For those vehicles that are equipped with tachographs in compliance with this Regulation and are not designed to be fitted with an armoured cable between the distance and speed sensors and the recording equipment, an adaptor shall be fitted as close as possible to the distance and speed sensors.

The armoured cable shall be fitted from the adaptor to the recording equipment.

VI. CHECKS AND INSPECTIONS

The Member States shall nominate the bodies which shall carry out the checks and inspections.

1. Certification of new or repaired instruments

Every individual device, whether new or repaired, shall be certified in respect of its correct operation and the accuracy of its readings and recordings, within the limits laid down in point (f)(1) of Part III, by means of sealing in accordance with point (f) of the first paragraph of point 4 of Part V.

For this purpose, the Member States may stipulate an initial verification, consisting of a check on, and confirmation of, the conformity of a new or repaired device with the type-approved model and/or with the requirements of this Regulation, or may delegate the power to certify to the manufacturers or to their authorised agents.

[1] Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ L 263, 9.10.2007, p. 1).

2. Installation

When being fitted to a vehicle, the equipment and the whole installation must comply with the provisions relating to maximum tolerances laid down in point (f)(2) of Part III.

The inspection tests shall be carried out by the approved fitter or workshop on its own responsibility.

3. Periodic inspections

(a) Periodic inspections of the equipment fitted to vehicles shall take place at least every two years and may be carried out in conjunction with roadworthiness tests of vehicles.

Those inspections shall include the following checks:

— that the equipment is working correctly,

— that the equipment carries the type-approval mark,

— that the installation plaque is affixed,

— that the seals on the equipment and on the other parts of the installation are intact,

— the actual circumference of the tyres.

(b) An inspection to ensure compliance with point (f)(3) of Part III on the maximum tolerances in use shall be carried out at least once every six years, although each Member State may stipulate a shorter inspection interval for vehicles registered in its territory. Such inspections must include replacement of the installation plaque.

4. Measurement of errors

The measurement of errors on installation and during use shall be carried out under the following conditions, which are to be regarded as constituting standard test conditions:

— vehicle unladen, in normal running order,

— tyre pressures in accordance with the manufacturer's instructions,

— tyre wear within the limits allowed by law,

— movement of the vehicle: the vehicle must proceed, driven by its own engine, in a straight line and on a level surface, at a speed of 50 ± 5 km/h. Provided that it is of comparable accuracy, the test may also be carried out on an appropriate test bench.

ANNEX II

APPROVAL MARK AND CERTIFICATE

I. APPROVAL MARK

1. The approval mark shall be made up of:

(a) a rectangle, within which shall be placed the letter 'e' followed by a distinguishing number or letter for the country which has issued the approval in accordance with the following conventional signs:

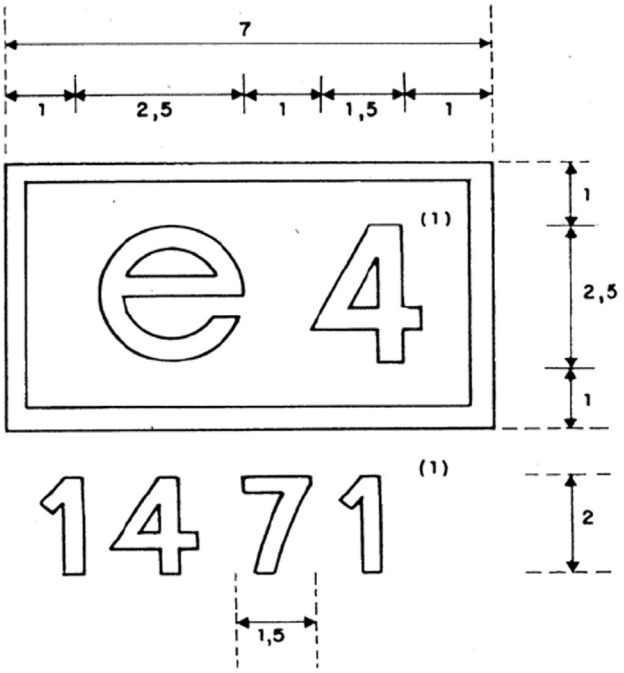
Belgium	6,
Bulgaria	34,
Czech Republic	8,
Denmark	18,
Germany	1,
Estonia	29,
Ireland	24,
Greece	23,
Spain	9,
France	2,
Croatia	25,
Italy	3,
Cyprus	CY,
Latvia	32,
Lithuania	36,
Luxembourg	13,
Hungary	7,
Malta	MT,
Netherlands	4,
Austria	12,
Poland	20,
Portugal	21,
Romania	19,
Slovenia	26,
Slovakia	27,
Finland	17,
Sweden	5,
United Kingdom	11,

and

(b) an approval number corresponding to the number of the approval certificate drawn up for the prototype of the recording equipment or the record sheet or to the number of a tachograph card, placed at any point within the immediate proximity of that rectangle.

2. The approval mark shall be shown on the descriptive plaque of each set of equipment and on each record sheet and on each tachograph card. It must be indelible and must always remain clearly legible.

3. The dimensions of the approval mark drawn below ([1]) are expressed in millimetres, these dimensions being minima. The ratios between the dimensions must be maintained.



([1]) These figures are shown for guidance only.

II. APPROVAL CERTIFICATE FOR ANALOGUE TACHOGRAPHS

A Member State which has granted approval shall issue the applicant with an approval certificate, the model of which is given below. When informing other Member States of approvals issued or, if the occasion should arise, withdrawn, a Member State shall use copies of that certificate.

APPROVAL CERTIFICATE

Name of competent administration .....

Notification concerning [1]:

— approval of a type of recording equipment

— withdrawal of approval of a type of recording equipment

— approval of a model record sheet

— withdrawal of approval of a model record sheet

.....

Approval No .....

1. Trade mark or name .....
2. Name of type or model .....
3. Name of manufacturer .....
4. Address of manufacturer .....
5. Submitted for approval on .....
6. Tested at .....
7. Date and number of the test(s) .....
8. Date of approval .....
9. Date of withdrawal of approval .....
10. Type or types of recording equipment in which sheet is designed to be used .....
11. Place .....
12. Date .....
13. Descriptive documents annexed .....
14. Remarks (including the position of seals if applicable)

.....

(Signature)

[1] Delete items not applicable.

III. APPROVAL CERTIFICATE FOR DIGITAL TACHOGRAPHS

A Member State which has granted approval shall issue the applicant with an approval certificate, the model of which is given below. When informing other Member States of approvals issued or, if the occasion should arise, withdrawn, a Member State shall use copies of that certificate.

APPROVAL CERTIFICATE FOR DIGITAL TACHOGRAPHS

Name of competent administration .....

Notification concerning [1]:

☐ approval of: ☐ withdrawal of approval of:

- ☐ recording equipment model
- ☐ recording equipment component [2]
- ☐ a driver's card
- ☐ a workshop card
- ☐ a company card
- ☐ a controller's card

.....

Approval No .....

1. Manufacturing brand or trademark .....
2. Name of model .....
3. Name of manufacturer .....
4. Address of manufacturer .....
5. Submitted for approval for .....
6. Laboratory(-ies) .....
7. Date and number of test report .....
8. Date of approval .....
9. Date of withdrawal of approval .....
10. Model of recording equipment(s) with which the component is designed to be used .....
11. Place .....
12. Date .....
13. Descriptive documents annexed .....
14. Remarks

.....

(Signature)

[1] Tick the relevant boxes.
[2] Specify the component dealt with in the notification.

DIRECTIVES

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)

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 [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Acting in accordance with the ordinary legislative procedure [3],

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

[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.

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 [1]. 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

[1] OJ L 133, 22.5.2008, p. 66.

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 [1] 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.

[1] OJ L 271, 9.10.2002, p. 16.

(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 [1]. 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

[1] OJ L 176, 27.6.2013, p. 338.

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 ([1]) and Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ([2]). 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.

([1]) OJ L 9, 15.1.2003, p. 3.
([2]) OJ L 145, 30.4.2004, p. 1.

(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 misselling 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 [1] 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 [2] 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

[1] OJ L 255, 30.9.2005, p. 22.

[2] OJ L 149, 11.6.2005, p. 22.

2001/193/EC of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans [1], 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.

[1] OJ L 69, 10.3.2001, p. 25.

(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 [1]. 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

[1] OJ L 95, 21.4.1993, p. 29.

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 [1], 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.

[1] OJ L 296, 15.11.2011, p. 35.

(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 [1], 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.

[1] OJ L 281, 23.11.1995, p. 31.

(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 ([1]). 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) ([2]) 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.

([1]) OJ L 176, 27.6.2013, p. 1.

([2]) OJ L 331, 15.12.2010, p. 12.

(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 [1], 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 [2] 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 [3],

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

SUBJECT MATTER, SCOPE, DEFINITIONS AND COMPETENT AUTHORITIES

Article 1

Subject matter

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

Article 2

Level of harmonisation

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

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

Article 3

Scope

1. This Directive shall apply to:

(a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property; and

(b) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

[1] OJ C 369, 17.12.2011, p. 14.
[2] OJ C 377, 23.12.2011, p. 5.
[3] OJ L 8, 12.1.2001, p. 1.

2. This Directive shall not apply to:

(a) Equity release credit agreements where the creditor:

(i) contributes a lump sum, periodic payments or other forms of credit disbursement in return for a sum deriving from the future sale of a residential immovable property or a right relating to residential immovable property; and

(ii) will not seek repayment of the credit until the occurrence of one or more specified life events of the consumer, as defined by Member States, unless the consumer breaches his contractual obligations which allows the creditor to terminate the credit agreement;

(b) credit agreements where the credit is granted by an employer to his employees as a secondary activity where such a credit agreement is offered free of interest or at an APRC lower than those prevailing on the market and not offered to the public generally;

(c) credit agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;

(d) credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;

(e) credit agreements which are the outcome of a settlement reached in court or before another statutory authority;

(f) credit agreements which relate to the deferred payment, free of charge, of an existing debt and which do not fall within the scope of point (a) of paragraph 1.

3. Member States may decide not to apply:

(a) Articles 11 and 14 and Annex II to credit agreements for consumers, secured by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property, the purpose of which is not to acquire or retain the right to residential immovable property, provided that the Member States apply to such credit agreements Articles 4 and 5 of and Annexes II and III to Directive 2008/48/EC;

(b) this Directive to credit agreements which relate to an immovable property where the credit agreement provides that the immovable property cannot at any time be occupied as a house, apartment or another place of residence by the consumer or a family member of the consumer and is to be occupied as a house, apartment or another place of residence on the basis of a rental agreement;

(c) this Directive to credit agreements which relate to credits granted to a restricted public under a statutory provision with a general interest purpose, free of interest or at lower borrowing rates than those prevailing on the market or on other terms which are more favourable to the consumer than those prevailing on the market and at borrowing rates not higher than those prevailing on the market;

(d) this Directive to bridging loans;

(e) this Directive to credit agreements where the creditor is an organisation within the scope of Article 2(5) of Directive 2008/48/EC.

4. Member States which use the option referred to in point (b) of paragraph 3 shall ensure the application of an appropriate framework at a national level for this type of credit.

5. Member States which use the option referred to in point (c) or (e) of paragraph 3 shall ensure the application of adequate alternative arrangements to ensure consumers receive timely information on the main features, risks and costs of such credit agreements at the pre-contractual stage and that advertising of such credit agreements is fair, clear and not misleading.

Article 4

Definitions

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

(1) 'Consumer' means a consumer as defined in point (a) of Article 3 of Directive 2008/48/EC.

(2) 'Creditor' means a natural or legal person who grants or promises to grant credit falling within the scope of Article 3 in the course of his trade, business or profession.

(3) 'Credit agreement' means an agreement whereby a creditor grants or promises to grant, to a consumer, a credit falling within the scope of Article 3 in the form of a deferred payment, loan or other similar financial accommodation.

(4) 'Ancillary service' means a service offered to the consumer in conjunction with the credit agreement.

(5) 'Credit intermediary' means a natural or legal person who is not acting as a creditor or notary and not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary, and who, in the course of his trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration:

(a) presents or offers credit agreements to consumers;

(b) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to in point (a); or

(c) concludes credit agreements with consumers on behalf of the creditor.

(6) 'Group' means a group of creditors which are to be consolidated for the purposes of drawing up consolidated accounts, as defined in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings [1].

(7) 'Tied credit intermediary' means any credit intermediary who acts on behalf of and under the full and unconditional responsibility of:

(a) only one creditor;

(b) only one group; or

(c) a number of creditors or groups which does not represent the majority of the market.

(8) 'Appointed representative' means a natural or legal person who performs activities referred to in point 5 that is acting on behalf of and under the full and unconditional responsibility of only one credit intermediary.

(9) 'Credit institution' means credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013.

(10) 'Non-credit institution' means any creditor that is not a credit institution.

(11) 'Staff' means:

(a) any natural person working for the creditor, or credit intermediary who is directly engaged in the activities covered by this Directive or who has contacts with consumers in the course of activities covered by this Directive;

(b) any natural person working for an appointed representative who has contacts with consumers in the course of activities covered by this Directive;

(c) any natural person directly managing or supervising the natural persons referred to in points (a) and (b).

(12) 'Total amount of credit' means the total amount of credit as defined in point (l) of Article 3 of Directive 2008/48/EC.

(13) 'Total cost of the credit to the consumer' means the total cost of the credit to the consumer as defined in point (g) of Article 3 of Directive 2008/48/EC including the cost of valuation of property where such valuation is necessary to obtain the credit but excluding registration fees for the transfer of ownership of the immovable property. It excludes any charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement.

(14) 'Total amount payable by the consumer' means the total amount payable by the consumer as defined in point (h) of Article 3 of Directive 2008/48/EC.

(15) 'Annual percentage rate of charge' (APRC) means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in Article 17(2) and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the consumer.

(16) 'Borrowing rate' means the borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC.

(17) 'Creditworthiness assessment' means the evaluation of the prospect for the debt obligation resulting from the credit agreement to be met.

(18) 'Durable medium' means durable medium as defined in point (m) of Article 3 of Directive 2008/48/EC.

(19) 'Home Member State' means:

(a) where the creditor or credit intermediary is a natural person, the Member State in which his head office is situated;

[1] OJ L 182, 29.6.2013, p. 19.

(b) where the creditor or credit intermediary is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated.

(20) 'Host Member State' means the Member State, other than the home Member State, in which the creditor or credit intermediary has a branch or provides services.

(21) 'Advisory services' means the provision of personal recommendations to a consumer in respect of one or more transactions relating to credit agreements and constitutes a separate activity from the granting of a credit and from the credit intermediation activities set out in point 5.

(22) 'Competent authority' means an authority designated as competent by a Member State in accordance with Article 5.

(23) 'Bridging loan' means a credit agreement either of no fixed duration or which is due to be repaid within 12 months, used by the consumer as a temporary financing solution while transitioning to another financial arrangement for the immovable property.

(24) 'Contingent liability or guarantee' means a credit agreement which acts as a guarantee to another separate but ancillary transaction, and where the capital secured against an immovable property is only drawn down if an event or events specified in the contract occur.

(25) 'Shared equity credit agreement' means a credit agreement where the capital repayable is based on a contractually set percentage of the value of the immovable property at the time of the capital repayment or repayments.

(26) 'Tying practice' means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.

(27) 'Bundling practice' means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.

(28) 'Foreign currency loan' means a credit agreement where the credit is:

(a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; or

(b) denominated in a currency other than that of the Member State in which the consumer is resident.

Article 5

Competent authorities

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

The authorities referred to in the first subparagraph shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be creditors, credit intermediaries or appointed representatives.

2. Member States shall ensure that competent authorities, all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. No confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form, without prejudice to cases covered by criminal law or by this Directive. This shall not, however, prevent the competent authorities from exchanging or transmitting confidential information in accordance with national and Union law.

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

(a) competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010;

(b) authorities other than the competent authorities referred to in point (a) provided that national laws, regulations or administrative provisions require those authorities to cooperate with the competent authorities referred to in point (a) whenever necessary in order to carry out their duties under this Directive, including for the purposes of cooperating with the European Supervisory Authority (European Banking Authority) (EBA) as required under this Directive.

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

5. The competent authorities shall exercise their powers in conformity with national law either:

(a) directly under their own authority or under the supervision of the judicial authorities; or

(b) by application to courts which are competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful, except for Articles 9, 29, 32, 33, 34 and 35.

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

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

CHAPTER 2

FINANCIAL EDUCATION

Article 6

Financial education of consumers

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

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

CHAPTER 3

CONDITIONS APPLICABLE TO CREDITORS, CREDIT INTERMEDIARIES AND APPOINTED REPRESENTATIVES

Article 7

Conduct of business obligations when providing credit to consumers

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

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

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

(a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the creditor;

(b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the creditor, and incorporates measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of applications accepted.

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

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

Article 8

Obligation to provide information free of charge to consumers

Member States shall ensure that, when information is provided to consumers in compliance with the requirements set out in this Directive, such information is provided without charge to the consumer.

Article 9

Knowledge and competence requirements for staff

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

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

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

(i) through a branch, the host Member State shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff of a branch;

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

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

5. For the effective supervision of creditors and credit intermediaries providing their services within the territory of other Member States under the freedom to provide services, the competent authorities of the host and the home Member States shall cooperate closely for the effective supervision and enforcement of the minimum knowledge and competence requirements of the host Member State. For that purpose they may delegate tasks and responsibilities to each other.

CHAPTER 4

INFORMATION AND PRACTICES PRELIMINARY TO THE CONCLUSION OF THE CREDIT AGREEMENT

Article 10

General provisions applicable to advertising and marketing

Without prejudice to Directive 2005/29/EC, Member States shall require that any advertising and marketing communications concerning credit agreements are fair, clear and not misleading. In particular, wording that may create false expectations for a consumer regarding the availability or the cost of a credit shall be prohibited.

Article 11

Standard information to be included in advertising

1. Member States shall ensure that any advertising concerning credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer includes the standard information in accordance with this Article.

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

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

(a) the identity of the creditor or, where applicable, the credit intermediary or appointed representative;

(b) where applicable, that the credit agreement will be secured by a mortgage or another comparable security commonly used in a Member State on residential immovable property or by a right related to residential immovable property;

(c) the borrowing rate, indicating whether this is fixed or variable or a combination of both, together with particulars of any charges included in the total cost of the credit to the consumer;

(d) the total amount of credit;

(e) the APRC which shall be included in the advertisement at least as prominently as any interest rate;

(f) where applicable, the duration of the credit agreement;

(g) where applicable, the amount of the instalments;

(h) where applicable, the total amount payable by the consumer;

(i) where applicable, the number of instalments;

(j) where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the consumer.

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

4. Where the conclusion of a contract regarding an ancillary service, in particular insurance, is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed, and the cost of that service cannot be determined in advance, the obligation to enter into that contract shall be stated in a clear, concise and prominent way, together with the APRC.

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

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

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

Article 12

Tying and bundling practices

1. Member States shall allow bundling practices but shall prohibit tying practices.

2. Notwithstanding paragraph 1, Member States may provide that creditors can request the consumer or a family member or close relation of the consumer to:

(a) open or maintain a payment or a savings account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default;

(b) purchase or keep an investment product or a private pension product, where such product which primarily offers the investor an income in retirement serves also to provide additional security for the creditor in the event of default or to accumulate capital to repay the credit, to service the credit or to pool resources to obtain the credit;

(c) conclude a separate credit agreement in conjunction with a shared-equity credit agreement to obtain the credit.

3. Notwithstanding paragraph 1, Member States may allow tying practices when the creditor can demonstrate to its competent authority that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the consumers taking due account of the availability and the prices of the relevant products offered on the market. This paragraph shall only apply to products which are marketed after 20 March 2014.

4. Member States may allow creditors to require the consumer to hold a relevant insurance policy related to the credit agreement. In such cases Member States shall ensure that the creditor accepts the insurance policy from a supplier different to his preferred supplier where such policy has a level of guarantee equivalent to the one the creditor has proposed.

Article 13

General information

1. Member States shall ensure that clear and comprehensible general information about credit agreements is made available by creditors or, where applicable, by tied credit intermediaries or their appointed representatives at all times on paper or on another durable medium or in electronic form. In addition, Member States may provide that general information is made available by non-tied credit intermediaries.

Such general information shall include at least the following:

(a) the identity and the geographical address of the issuer of the information;

(b) the purposes for which the credit may be used;

(c) the forms of security, including, where applicable, the possibility for it to be located in a different Member State;

(d) the possible duration of the credit agreements;

(e) types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;

(f) where foreign currency loans are available, an indication of the foreign currency or currencies, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;

(g) a representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC;

(h) an indication of possible further costs, not included in the total cost of the credit to the consumer, to be paid in connection with a credit agreement;

(i) the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments;

(j) where applicable, a clear and concise statement that compliance with the terms and conditions of the credit agreement does not guarantee repayment of the total amount of credit under the credit agreement;

(k) a description of the conditions directly relating to early repayment;

(l) whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the consumer;

(m) indication of ancillary services the consumer is obliged to acquire in order to obtain the credit or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor; and

(n) a general warning concerning possible consequences of non-compliance with the commitments linked to the credit agreement.

2. Member States may oblige the creditors to include other types of warnings which are relevant in a Member State. They shall notify those requirements to the Commission without delay.

Article 14

Pre-contractual information

1. Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, provides the consumer with the personalised information needed to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a credit agreement:

(a) without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 20; and

(b) in good time before the consumer is bound by any credit agreement or offer.

2. The personalised information referred to in paragraph 1, on paper or on another durable medium, shall be provided by means of the ESIS, as set out in Annex II.

3. Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be provided on paper or on another durable medium and accompanied by an ESIS where:

(a) no ESIS has been provided to the consumer previously; or

(b) the characteristics of the offer are different from the information contained in the ESIS previously provided.

4. Member States may provide for the obligatory provision of the ESIS before the provision of an offer binding on the creditor. Where a Member State so provides, it shall require that the ESIS shall only be required to be provided again where point (b) of paragraph 3 is met.

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

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

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

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

(a) the offer shall be binding on the creditor for the duration of the reflection period; and

(b) the consumer may accept the offer at any time during the reflection period.

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

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

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

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

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

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

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

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

Article 15

Information requirements concerning credit intermediaries and appointed representatives

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

(a) the identity and the geographical address of the credit intermediary;

(b) the register in which he has been included, the registration number, where applicable, and the means for verifying such registration;

(c) whether the credit intermediary is tied to or works exclusively for one or more creditors. Where the credit intermediary is tied to or works exclusively for one or more creditors, it shall provide the names of the creditors for which it is acting. The credit intermediary may disclose that it is independent where it meets the conditions laid down in accordance with Article 22(4);

(d) whether the credit intermediary offers advisory services;

(e) the fee, where applicable, payable by the consumer to the credit intermediary for its services or where this is not possible, the method for calculating the fee;

(f) the procedures allowing consumers or other interested parties to register complaints internally about credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;

(g) where applicable, the existence and where known the amount of commissions or other inducements, payable by the creditor or third parties to the credit intermediary for their services in relation to the credit agreement. Where the amount is not known at the time of disclosure the credit intermediary shall inform the consumer that the actual amount will be disclosed at a later stage in the ESIS.

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

3. Where the credit intermediary charges a fee to the consumer and additionally receives commission from the creditor or a third party, the credit intermediary shall explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.

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

5. Member States shall require credit intermediaries to ensure that in addition to the disclosures required by this Article, their appointed representative discloses to the consumer the capacity in which he is acting and the credit intermediary he is representing when contacting or before dealing with any consumer.

Article 16

Adequate explanations

1. Member States shall ensure that creditors and, where applicable, credit intermediaries or appointed representatives provide adequate explanations to the consumer on the proposed credit agreements and any ancillary services, in order to place the consumer in a position enabling him to assess whether the proposed credit agreements and ancillary services are adapted to his needs and financial situation.

The explanations shall, where applicable, include in particular:

(a) the pre-contractual information to be provided in accordance with:

(i) Article 14 in the case of creditors;

(ii) Articles 14 and 15 in the case of credit intermediaries or appointed representatives;

(b) the essential characteristics of the products proposed;

(c) the specific effects the products proposed may have on the consumer, including the consequences of default in payment by the consumer; and

(d) where ancillary services are bundled with a credit agreement, whether each component of the bundle can be terminated separately and the implications for the consumer of doing so.

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

CHAPTER 5

ANNUAL PERCENTAGE RATE OF CHARGE

Article 17

Calculation of the APRC

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

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

3. The calculation of the APRC shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.

4. In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, in the charges contained in the APRC but unquantifiable at the time of calculation, the APRC shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the level set at the conclusion of the contract.

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

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

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

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

CHAPTER 6

CREDITWORTHINESS ASSESSMENT

Article 18

Obligation to assess the creditworthiness of the consumer

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

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

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

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

5. Member States shall ensure that:

(a) the creditor only makes the credit available to the consumer where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement;

(b) in accordance with Article 10 of Directive 95/46/EC, the creditor informs the consumer in advance that a database is to be consulted;

(c) where the credit application is rejected the creditor informs the consumer without delay of the rejection and, where applicable, that the decision is based on automated processing of data. Where the rejection is based on the result of the database consultation, the creditor shall inform the consumer of the result of such consultation and of the particulars of the database consulted.

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

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

Article 19

Property valuation

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

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

Article 20

Disclosure and verification of consumer information

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

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

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

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

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

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

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

CHAPTER 7

DATABASE ACCESS

Article 21

Database access

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

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

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

CHAPTER 8

ADVISORY SERVICES

Article 22

Standards for advisory services

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

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

(a) whether the recommendation will be based on considering only their own product range in accordance with point (b) of paragraph 3 or a wide range of products from across the market in accordance with point (c) of paragraph 3 so that the consumer can understand the basis on which the recommendation is made;

(b) where applicable, the fee payable by the consumer for the advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.

The information referred to in points (a) and (b) of the first subparagraph may be provided to the consumer in the form of additional pre-contractual information.

3. Where advisory services are provided to consumers, Member States shall ensure, in addition to the requirements set out in Articles 7 and 9, that:

(a) creditors, credit intermediaries or appointed representatives obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives so as to enable the recommendation of suitable credit agreements. Such an assessment shall be based on information that is up to date at that moment in time and shall take into account reasonable assumptions as to risks to the consumer's situation over the term of the proposed credit agreement;

(b) creditors, tied credit intermediaries or appointed representatives of tied credit intermediaries consider a sufficiently large number of credit agreements in their product range and recommend a suitable credit agreements or several suitable credit agreements from among their product range for the consumer's needs, financial situation and personal circumstances;

(c) non-tied credit intermediaries or appointed representatives of non-tied credit intermediaries consider a sufficiently large number of credit agreements available on the market and recommend a suitable credit agreement or several suitable credit agreements available on the market for the consumer's needs, financial situation and personal circumstances;

(d) creditors, credit intermediaries or appointed representatives act in the best interests of the consumer by:

(i) informing themselves about the consumer's needs and circumstances; and

(ii) recommending suitable credit agreements in accordance with points (a), (b) and (c); and

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

4. Member States may prohibit the use of the term 'advice' and 'advisor' or similar terms when the advisory services are being provided to consumers by creditors, tied credit intermediaries or appointed representatives of tied credit intermediaries.

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

(a) creditors, credit intermediaries or appointed representatives shall consider a sufficiently large number of credit agreements available on the market; and

(b) creditors, credit intermediaries or appointed representatives shall not be remunerated for those advisory services by one or more creditors.

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

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

5. Member States may provide for an obligation for creditors, credit intermediaries and appointed representatives to warn a consumer when, considering the consumer's financial situation, a credit agreement may induce a specific risk for the consumer.

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

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

(a) carrying out the credit intermediation activities set out in point 5 of Article 4 or providing advisory services where those activities are carried out or services are provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude carrying out of those activities or the provision of those services;

(b) providing advisory services in the context of managing existing debt which are insolvency practitioners where that activity is regulated by legal or regulatory provisions or public or voluntary debt advisory services which do not operate on a commercial basis; or

(c) providing advisory services who are not creditors, credit intermediaries or appointed representatives where such persons are admitted and supervised by competent authorities in accordance with the requirements for credit intermediaries under this Directive.

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

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

CHAPTER 9

FOREIGN CURRENCY LOANS AND VARIABLE RATE LOANS

Article 23

Foreign currency loans

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

(a) the consumer has a right to convert the credit agreement into an alternative currency under specified conditions; or

(b) there are other arrangements in place to limit the exchange rate risk to which the consumer is exposed under the credit agreement.

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

(a) the currency in which the consumer primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the credit agreement was made; or

(b) the currency of the Member State in which the consumer either was resident at the time the credit agreement was concluded or is currently resident.

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

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

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

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

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

Article 24

Variable rate credits

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

(a) any indexes or reference rates used to calculate the borrowing rate are clear, accessible, objective and verifiable by the parties to the credit agreement and the competent authorities; and

(b) historical records of indexes for calculating the borrowing rates are maintained either by the providers of these indexes or the creditors.

CHAPTER 10

SOUND EXECUTION OF CREDIT AGREEMENTS AND RELATED RIGHTS

Article 25

Early repayment

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

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

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

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

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

Article 26

Flexible and reliable markets

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

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

Article 27

Information concerning changes in the borrowing rate

1. Member States shall ensure that the creditor informs the consumer of any change in the borrowing rate, on paper or another durable medium, before the change takes effect. The information shall at least state the amount of the payments to be made after the new borrowing rate takes effect and, in cases where the number or frequency of the payments changes, particulars thereof.

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

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

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

Article 28

Arrears and foreclosure

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

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

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

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

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

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

CHAPTER 11

REQUIREMENTS FOR ESTABLISHMENT AND SUPERVISION OF CREDIT INTERMEDIARIES AND APPOINTED REPRESENTATIVES

Article 29

Admission of credit intermediaries

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

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

(a) Credit intermediaries shall hold professional indemnity insurance covering the territories in which they offer services, or some other comparable guarantee against liability arising from professional negligence. However, for tied credit intermediaries, the home Member State may provide that such insurance or comparable guarantee can be provided by a creditor for which the credit intermediary is empowered to act.

Powers are delegated to the Commission to adopt and, where necessary amend, regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to in the first paragraph of this point. Those regulatory technical standards shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

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

(b) A natural person established as a credit intermediary, the members of the board of a credit intermediary established as a legal person and natural persons performing equivalent tasks within a credit intermediary which is a legal person but does not have a board shall be of good repute. As a minimum they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

(c) A natural person established as a credit intermediary, the members of the board of a credit intermediary established as a legal person and natural persons performing equivalent tasks within a credit intermediary which is a legal person but does not have a board shall possess the appropriate level of knowledge and competence in relation to credit agreements. The home Member State shall establish the appropriate level of knowledge and competence in accordance with the principles set out in Annex III.

3. Member States shall ensure that the criteria established in order for credit intermediaries' or creditors' staff to meet their professional requirements are made public.

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

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

(a) the names of the persons within the management who are responsible for the intermediation business. Member States may require the registration of all natural persons who exercise a client-facing function in an undertaking that pursues the activity of credit intermediation;

(b) the Member States in which the credit intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services and of which the credit intermediary has informed the competent authority of the home Member State in accordance with Article 32(3);

(c) whether the credit intermediary is tied or not.

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

Member States that decide to avail themselves of the option referred to in Article 31 shall ensure that the register indicates the credit intermediary or in the case of an appointed representative of a tied credit intermediary, the creditor on whose behalf the appointed representatives acts.

5. Member States shall ensure that:

(a) any credit intermediary which is a legal person has its head office in the same Member State as its registered office if under its national law it has a registered office;

(b) any credit intermediary which is not a legal person or any credit intermediary which is a legal person but under its national law has no registered office has its head office in the Member State in which it actually carries on its main business.

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

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

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

8. Member States may decide not to apply this Article to persons carrying out the credit intermediation activities set out in point 5 of Article 4 where those activities are carried out in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the carrying out of those activities.

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

Article 30

Credit intermediaries tied to only one creditor

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

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

2. Without prejudice to Article 34, creditors shall monitor the activities of tied credit intermediaries specified in point (a) of point 7 of Article 4 in order to ensure that they continue to comply with this Directive. In particular, the creditor shall be responsible for monitoring compliance with the knowledge and competence requirements of the tied credit intermediary and its staff.

Article 31

Appointed representatives

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

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

2. The credit intermediaries shall ensure that their appointed representatives comply at least with the professional requirements set out in Article 29(2). However, the home Member State may provide that the professional indemnity insurance or a comparable guarantee can be provided by a credit intermediary for which the appointed representative is empowered to act.

3. Without prejudice to Article 34, credit intermediaries shall monitor the activities of their appointed representatives in order to ensure full compliance with this Directive. In particular, the credit intermediaries shall be responsible for monitoring compliance with the knowledge and competence requirements of the appointed representatives and their staff.

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

Article 32

Freedom of establishment and freedom to provide services by credit intermediaries

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

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

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

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

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

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

Article 33

Withdrawal of admission of credit intermediaries

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

(a) expressly renounces the admission or has carried out neither credit intermediation activities set out in point 5 of Article 4 nor provided advisory services for the preceding six months, unless the Member State concerned has provided for admission to lapse in such cases;

(b) has obtained the admission through false or misleading statements or any other irregular means;

(c) no longer fulfils the requirements under which admission was granted;

(d) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal;

(e) has seriously or systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for credit intermediaries.

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

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

Article 34

Supervision of credit intermediaries and appointed representatives

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

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

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

2. The competent authorities of the Member States in which a credit intermediary has a branch shall be responsible for ensuring that the services provided by the credit intermediary within its territory comply with the obligations laid down in Article 7(1) and Articles 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 and in measures adopted pursuant thereto.

Where the competent authorities of a host Member State ascertain that a credit intermediary that has a branch within its territory is in breach of the measures adopted in that Member State pursuant to Article 7(1) and Articles 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39, those authorities shall require the credit intermediary concerned to put an end to its irregular situation.

If the credit intermediary concerned fails to take the necessary steps, the competent authorities of the host Member State shall take all appropriate action to ensure that the credit intermediary concerned puts an end to its irregular situation. The nature of that action shall be communicated to the competent authorities of the home Member State.

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

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

3. The competent authorities of the Member States in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to fulfil its responsibilities under paragraph 2 and to enable the competent authorities of the home Member State to enforce the obligations under Article 7(2), (3) and (4) and measures adopted pursuant thereto with respect to the services provided by the branch.

4. Where the competent authority of the host Member State has clear and demonstrable grounds for concluding that a credit intermediary acting within its territory under the freedom to provide services is in breach of the obligations arising from the measures adopted pursuant to this Directive or that a credit intermediary that has a branch within its territory is in breach of the obligations arising from the measures adopted pursuant to this Directive, other than those specified in paragraph 2, it shall refer those findings to the competent authority of the home Member State which shall take the appropriate action.

Where the competent authority of the home Member State fails to take any action within one month from obtaining those findings or where, despite the action taken by the competent authority of the home Member State, a credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of the host Member State consumers or orderly functioning of the markets, the competent authority of the host Member State:

(a) shall, after having informed the competent authority of the home Member State, take all appropriate action needed to protect consumers and ensure the proper functioning of the markets, including by preventing the offending credit intermediary from initiating any further transactions within its territory. The Commission and EBA shall be informed of such action without undue delay;

(b) may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case EBA may act in accordance with the powers conferred on it by that Article.

5. Member States shall provide that, where a credit intermediary admitted in another Member State has established a branch within its territory, the competent authorities of the home Member State, in the exercise of their responsibilities and after having informed the competent authorities of the host Member State, may carry out on-site inspections in that branch.

6. The allocation of tasks between Member States specified in this Article shall be without prejudice to the Member States' competences in relation to fields not covered by this Directive in conformity with their obligations under Union law.

CHAPTER 12

ADMISSION AND SUPERVISION OF NON-CREDIT INSTITUTIONS

Article 35

Admission and supervision of non-credit institutions

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

CHAPTER 13

COOPERATION BETWEEN COMPETENT AUTHORITIES OF DIFFERENT MEMBER STATES

Article 36

Obligation to cooperate

1. Competent authorities of different Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive, making use of their powers, whether set out in this Directive or in national law.

Competent authorities shall render assistance to competent authorities of the other Member States. In particular, they shall exchange information and cooperate in any investigation or supervisory activities.

In order to facilitate and accelerate cooperation, and more particularly the exchange of information, Member States shall designate one single competent authority as a contact point for the purposes of this Directive. Member States shall communicate to the Commission and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph.

2. Member States shall take the necessary administrative and organisational measures to facilitate assistance provided for in paragraph 1.

3. Competent authorities of Member States having been designated as contact points for the purposes of this Directive in accordance with paragraph 1 shall without undue delay supply one another with the information required for the purposes of carrying out the duties of the competent authorities, designated in accordance with Article 5, set out in the measures adopted pursuant to this Directive.

Competent authorities exchanging information with other competent authorities under this Directive may indicate at the time of communication that such information must not be disclosed without their express agreement, in which case such information may be exchanged solely for the purposes for which those authorities gave their agreement.

The competent authority having been designated as the contact point may transmit the information received to the other competent authorities, however it shall not transmit the information to other bodies or natural or legal persons without the express agreement of the competent authorities which disclosed it and solely for the purposes for which those authorities gave their agreement, except in duly justified circumstances in which case it shall immediately inform the contact point that supplied the information.

4. A competent authority may refuse to act on a request for cooperation in carrying out an investigation or supervisory activity or to exchange information as provided for in paragraph 3 only where:

(a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of the Member State addressed;

(b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Member State addressed;

(c) final judgement has already been delivered in the Member State addressed in respect of the same persons and the same actions.

In the event of such a refusal, the competent authority shall notify the requesting competent authority accordingly, providing as detailed information as possible.

Article 37

Settlement of disagreements between competent authorities of different Member States

The competent authorities may refer the situation to EBA where a request for cooperation, in particular the exchange of information, has been rejected or has not been acted upon within a reasonable time, and request EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In such cases, EBA may act in accordance with the powers conferred on it by that Article and any binding decision made by EBA in accordance with that Article shall be binding on the competent authorities concerned regardless of whether those competent authorities are members of EBA or not.

CHAPTER 14

FINAL PROVISIONS

Article 38

Sanctions

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

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

Article 39

Dispute resolution mechanisms

1. Member States shall ensure that appropriate and effective complaints and redress procedures are established for the out-of-court settlement of consumer disputes with creditors, credit intermediaries and appointed representatives in relation to credit agreements, using existing bodies where appropriate. Member States shall ensure that such procedures are applicable to creditors and credit intermediaries and cover the activities of appointed representatives.

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

Article 40

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

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

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

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 14(9) and 17(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 41

Imperative nature of this Directive

Member States shall ensure that:

(a) consumers may not waive the rights conferred on them by national law transposing this Directive;

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

Article 42

Transposition

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

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

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

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

Article 43

Transitional provisions

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

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

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

Article 44

Review clause

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

The review shall include the following:

(a) an assessment of the use and consumer understanding of and satisfaction with the ESIS;

(b) an analysis of other pre-contractual disclosures;

(c) an analysis of cross-border business by credit intermediaries and creditors;

(d) an analysis of the evolution of the market for non-credit institutions providing credit agreements relating to residential immovable property;

(e) an assessment on the need for further measures, including a passport for non-credit institutions providing credit agreements relating to residential immovable property;

(f) an examination of the need to introduce additional rights and obligations with regard to the post-contractual stage of credit agreements;

(g) an assessment of whether the scope of this Directive remains appropriate, taking account of its impact on other, substitutable forms of credit;

(h) an assessment of whether additional measures are necessary to ensure the traceability of credit agreements secured against residential immovable property;

(i) an assessment of the availability of data on trends in prices of residential immovable property and on the extent to which data are comparable;

(j) an assessment of whether it continues to be appropriate to apply Directive 2008/48/EC to unsecured credits the purpose of which is the renovation of a residential immovable property involving a total amount of credit above the maximum amount specified in point (c) of Article 2(2) of that Directive;

(k) an assessment of whether the arrangements for the publication of sanctions under Article 38(2) provide sufficient transparency;

(l) an assessment of the proportionality of warnings referred to in Articles 11(6) and 13(2) and the potential for further harmonisation of risk warnings.

Article 45

Further initiatives on responsible lending and borrowing

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

Article 46

Amendment of Directive 2008/48/EC

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

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

Article 47

Amendment of Directive 2013/36/EU

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

'*Article 54a*

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

Article 48

Amendment of Regulation (EU) No 1093/2010

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

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

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

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

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

Article 49

Entry into force

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

Article 50

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 4 February 2014.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	E. VENIZELOS

ANNEX I

CALCULATION OF THE ANNUAL PERCENTAGE RATE OF CHARGE (APRC)

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

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

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

where:

— X is the APRC

— m is the number of the last drawdown

— k is the number of a drawdown, thus $1 \leq k \leq m$

— C_k is the amount of drawdown k

— t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$

— m' is the number of the last repayment or payment of charges

— l is the number of a repayment or payment of charges

— D_l is the amount of a repayment or payment of charges

— s_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:

(a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.

(b) The starting date shall be that of the first drawdown.

(c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30,41666 days (i.e. 365/12) regardless of whether or not it is a leap year.

Where intervals between dates used in the calculations cannot be expressed as a whole number of weeks, months or years, the intervals shall be expressed as a whole number of one of those periods in combination with a number of days. Where using days:

(i) every day shall be counted, including weekends and holidays;

(ii) equal periods and then days shall be counted backwards to the date of the initial drawdown;

(iii) the length of the period of days shall be obtained excluding the first day and including the last day and shall be expressed in years by dividing this period by the number of days (365 or 366 days) of the complete year counted backwards from the last day to the same day of the previous year.

(d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at the preceding decimal place shall be increased by one.

(e) The equation can be rewritten using a single sum and the concept of flows (A_k), which will be positive or negative, in other words either paid or received during periods 1 to n, expressed in years, i.e.:

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

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

II. Additional assumptions for the calculation of the APRC

(a) If a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full.

(b) If a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement.

(c) If a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the credit agreement and in accordance with those drawdown limits.

(d) If different borrowing rates and charges are offered for a limited period or amount, the highest borrowing rate and charges shall be deemed to be the borrowing rate and charges for the whole duration of the credit agreement.

(e) For credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate the calculation of the APRC shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculation of the APRC, based on the value of the agreed indicator or internal reference rate at that time, but is not less than the fixed borrowing rate.

(f) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 170 000. In the case of credit agreements — other than contingent liabilities or guarantees — the purpose of which is not to acquire or retain a right in immovable property or land, overdrafts, deferred debit cards or credit cards this ceiling is assumed to be EUR 1 500.

(g) In the case of credit agreements other than overdrafts, bridging loans, shared equity credit agreements, contingent liabilities or guarantees and open-ended credit agreements as referred to in the assumptions set out in points (i), (j), (k), (l) and (m):

(i) if the date or amount of a repayment of capital to be made by the consumer cannot be ascertained, it shall be assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides;

(ii) if the interval between the date of initial drawdown and the date of the first payment to be made by the consumer cannot be ascertained, it shall be assumed to be the shortest interval.

(h) Where the date or amount of a payment to be made by the consumer cannot be ascertained on the basis of the credit agreement or the assumptions set out in points (g), (i), (j), (k), (l) and (m) it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown:

(i) interest charges are paid together with the repayments of the capital;

(ii) non-interest charges expressed as a single sum are paid at the date of the conclusion of the credit agreement;

(iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;

(iv) the final payment clears the balance of capital, interest and other charges, if any.

(i) In the case of an overdraft facility, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the overdraft facility is not known, the APRC shall be calculated on the assumption that the duration of the credit is three months.

(j) In the case of a bridging loan, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the credit agreement is not known the APRC shall be calculated on the assumption that the duration of the credit is 12 months.

(k) In the case of an open ended credit agreement, other than an overdraft facility and bridging loan, it shall be assumed that:

(i) for credit agreements, the purpose of which is to acquire or retain rights in immovable property the credit is provided for a period of 20 years starting from the date of the initial drawdown, and that the final payment made by the consumer clears the balance of capital, interest and other charges, if any; in the case of credit agreements the purpose of which is not to acquire or retain rights in immovable property or which are drawn down by deferred debit cards or credit cards, this period shall be of one year;

(ii) the capital is repaid by the consumer in equal monthly payments, commencing one month after the date of the initial drawdown. However, in cases where the capital must be repaid only in full, in a single payment, within each payment period, successive drawdowns and repayments of the entire capital by the consumer shall be assumed to occur over the period of one year. Interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the credit agreement.

For the purposes of this point, an open-ended credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

(l) In the case of contingent liabilities or guarantees, the total amount of credit shall be deemed to be drawn down in full as a single amount at the earlier of:

(a) the latest draw down date permitted under the credit agreement being the potential source of the contingent liability or guarantee; or

(b) in the case of a rolling credit agreement at the end of the initial period prior to the rollover of the agreement.

(m) In the case of shared equity credit agreements:

(i) the payments by consumers shall be deemed to occur at the latest date or dates permitted under the credit agreement;

(ii) percentage increases in value of the immovable property which secures the shared equity credit agreement, and the rate of any inflation index referred to in the agreement, shall be assumed to be a percentage equal to the higher of the current central bank target inflation rate or the level of inflation in the Member State where the immovable property is located at the time of conclusion of the credit agreement or 0 % if those percentages are negative.

ANNEX II

EUROPEAN STANDARDISED INFORMATION SHEET (ESIS)

PART A

The text in this model shall be reproduced as such in the ESIS. Indications between square brackets shall be replaced with the corresponding information. Instructions for the creditor or, where applicable, credit intermediary on how to complete the ESIS are provided in Part B.

Wherever the words 'where applicable' are indicated, the creditor shall provide the information required if it is relevant to the credit agreement. Where the information is not relevant, the creditor shall delete the information in question or the entire section (for example, in cases where the section is not applicable). Where the entire section is deleted, the numbering of the ESIS sections shall be adjusted accordingly.

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

ESIS Model

(Introductory text)
This document was produced for [name of consumer] on [current date]. This document was produced on the basis of the information that you have provided so far and on the current financial market conditions. The information below remains valid until [validity date], (where applicable) apart from the interest rate and other costs. After that date, it may change in line with market conditions. (Where applicable) This document does not constitute an obligation for [name of creditor] to grant you a loan.
1. Lender
[Name] [Telephone number] [Geographical address] (Optional) [E-mail address] (Optional) [Fax number] (Optional) [Web address] (Optional) [Contact person/point] (Where applicable information as to whether advisory services are being provided:) [(We recommend, having assessed your needs and circumstances, that you take out this mortgage./We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.)]
2. (Where applicable) Credit intermediary
[Name] [Telephone number] [Geographical address]

(Optional) [E-mail address]

(Optional) [Fax number]

(Optional) [Web address]

(Optional) [Contact person/point]

(Where applicable [information as to whether advisory services are being provided]) [(We recommend, having assessed your needs and circumstances, that you take out this mortgage./We are not recommending a particular mortgage for you. However, based on your answers to some questions, we are giving you information about this mortgage so that you can make your own choice.)]

[Remuneration]

3. Main features of the loan

Amount and currency of the loan to be granted: [value][currency]

(Where applicable) This loan is not in [national currency of the borrower].

(Where applicable) The value of your loan in [national currency of the borrower] could change.

(Where applicable) For example, if the value of [national currency of the borrower] fell by 20 % relative to [credit currency], the value of your loan would increase to [insert amount in national currency of the borrower]. However, it could be more than this if the value of [national currency of the borrower] falls by more than 20 %.

(Where applicable) The maximum value of your loan will be [insert amount in national currency of the borrower]. (Where applicable) You will receive a warning if the credit amount reaches [insert amount in national currency of the borrower]. (Where applicable) You will have the opportunity to [insert right to renegotiate foreign currency loan or right to convert loan into [relevant currency] and conditions].

Duration of the loan: [duration]

[Type of loan]

[Type of applicable interest rate]

Total amount to be reimbursed:

This means that you will pay back [amount] for every [unit of the currency] borrowed.

(Where applicable) [This/Part of this] is an interest-only loan. You will still owe [insert amount of loan on an interest-only basis] at the end of the mortgage term.

(Where applicable) Value of the property assumed to prepare this information sheet: [insert amount]

(Where applicable) Maximum available loan amount relative to the value of the property [insert ratio] or Minimum value of the property required to borrow the illustrated amount [insert amount]

(Where applicable) [Security]

4. Interest rate and other costs

The annual percentage rate of charge (APRC) is the total cost of the loan expressed as an annual percentage. The APRC is provided to help you to compare different offers.

The APRC applicable to your loan is [APRC].

It comprises:

Interest rate [value in percentage or, where applicable, indication of a reference rate and percentage value of creditor's spread]

[Other components of the APRC]

Costs to be paid on a one-off basis

(Where applicable) You will need to pay a fee to register the mortgage. [Insert amount of fee where known or basis for calculation.]

Costs to be paid regularly

(Where applicable) This APRC is calculated using assumptions regarding the interest rate.

(Where applicable) Because [part of] your loan is a variable interest rate loan, the actual APRC could be different from this APRC if the interest rate for your loan changes. For example, if the interest rate rose to [scenario as described in Part B], the APRC could increase to [insert illustrative APRC corresponding to the scenario].

(Where applicable) Please note that this APRC is calculated on the basis that the interest rate remains at the level fixed for the initial period throughout the duration of the contract.

(Where applicable) The following costs are not known to the lender and are therefore not included in the APRC: [Costs]

(Where applicable) You will need to pay a fee to register the mortgage.

Please make sure that you are aware of all other taxes and costs associated with your loan.

5. Frequency and number of payments

Repayment frequency: [frequency]

Number of payments: [number]

6. Amount of each instalment

[Amount] [currency]

Your income may change. Please consider whether you will still be able to afford your [frequency] repayment instalments if your income falls.

(Where applicable) Because [this/part of this] is an interest-only loan you will need to make separate arrangements to repay the [insert amount of loan on an interest-only basis] you will owe at the end of the mortgage term. Remember to add any extra payments you will need to make to the instalment amount shown here.

(Where applicable) The interest rate on [part of] this loan can change. This means the amount of your instalments could increase or decrease. For example, if the interest rate rose to [scenario as described in Part B] your payments could increase to [insert instalment amount corresponding to the scenario].

(Where applicable) The value of the amount you have to pay in [national currency of the borrower] each [frequency of instalment] could change. (Where applicable) Your payments could increase to [insert maximum amount in national currency of the borrower] each [insert period]. (Where applicable) For example, if the value of [national currency of the borrower] fell by 20 % relative to [credit currency] you would have to pay an extra [insert amount in national currency of the borrower] each [insert period]. Your payments could increase by more than this.

(Where applicable) The exchange rate used for converting your repayment in [credit currency] to [national currency of the borrower] will be the rate published by [name of institution publishing exchange rate] on [date] or will be calculated on [date] using [insert name of benchmark or method of calculation].

(Where applicable) [Details on tied savings products, deferred-interest loans]
7. (Where applicable) Illustrative repayment table
This table shows the amount to be paid every [frequency]. The instalments (column [relevant no.]) are the sum of interest to be paid (column [relevant no.]), where applicable, capital paid (column [relevant no.]) and, where applicable, other costs (column [relevant no.]). (Where applicable) The costs in the other costs column relate to [list of costs]. Outstanding capital (column [relevant no.]) is the amount of the loan that remains to be reimbursed after each instalment. [Table]
8. Additional obligations
The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document. [Obligations] (Where applicable) Please note that the lending conditions described in this document (including the interest rate) may change if these obligations are not complied with. (Where applicable) Please note the possible consequences of terminating at a later stage any of the ancillary services relating to the loan: [Consequences]
9. Early repayment
You have the possibility to repay this loan early, either fully or partially. (Where applicable) [Conditions] (Where applicable) Exit charge: [insert amount or, where not possible, the method of calculation] (Where applicable) Should you decide to repay this loan early, please contact us to ascertain the exact level of the exit charge at that moment.
10. Flexible features
(Where applicable) [Information on portability/subrogation] You have the possibility to transfer this loan to another [lender][or] [property]. [Insert conditions] (Where applicable) You do not have the possibility to transfer this loan to another [lender] [or] [property]. (Where applicable) Additional features: [insert explanation of additional features listed in Part B and, optionally, any other features offered by the lender as part of the credit agreement not referred to in previous sections].
11. Other rights of the borrower
(Where applicable) You have [length of reflection period] after [point in time when the reflection period begins] to reflect before committing yourself to taking out this loan. (Where applicable) Once you have received the credit contract from the lender, you may not accept it before the end of [length of reflection period]. (Where applicable) For a period of [length of withdrawal period] after [point in time when the withdrawal period begins] you may exercise your right to cancel the agreement. [Conditions] [Insert procedure]

(Where applicable) You may lose your right to cancel the agreement if, during that period, you buy or sell a property connected to this credit agreement. (Where applicable) Should you decide to exercise your right of withdrawal [from the credit agreement], please verify whether you will remain bound by your other obligations relating to the loan [including the ancillary services relating to the loan] [, referred to in Section 8].
12. Complaints
If you have a complaint please contact [insert internal contact point and source of information on procedure]. (Where applicable) Maximum time for handling the complaint [period of time] (Where applicable) [If we do not resolve the complaint to your satisfaction internally,] you can also contact: [insert name of external body for out-of-court complaints and redress] (Where applicable) or you can contact FIN-NET for details of the equivalent body in your own country.
13. Non-compliance with the commitments linked to the loan: consequences for the borrower
[Types of non-compliance] [Financial and/or legal consequences] Should you encounter difficulties in making your [frequency] payments, please contact us straight away to explore possible solutions. (Where applicable) As a last resort, your home may be repossessed if you do not keep up with payments.
(Where applicable) 14. Additional information
(Where applicable) [Indication of the law applicable to the credit contract]. (Where the lender intends to use a language different from the language of the ESIS) Information and contractual terms will be supplied in [language]. With your consent, we intend to communicate in [language/s] during the duration of the credit agreement. [Insert statement on right to be provided with or offered, as applicable, a draft credit agreement]
15. Supervisor
This lender is supervised by [Name(s), and web address(es) of supervisory authority/ies] (Where applicable) This credit intermediary is supervised by [Name and web address of supervisory authority].

PART B

Instructions to complete the ESIS

In completing the ESIS, at least the following instructions shall be followed. Member States may however elaborate or further specify the instructions for completing the ESIS.

Section 'Introductory text'

(1) The validity date shall be properly highlighted. For the purpose of this section, the 'validity date' means the length of time the information, e.g. the borrowing rate, contained in the ESIS will remain unchanged and will apply should the creditor decide to grant the credit within this period of time. Where the determination of the applicable borrowing rate and other costs depends on the results of the selling of underlying bonds, the eventual borrowing rate and other costs may be different from those stated. In those circumstances only, it shall be stipulated that the validity date does not apply to the borrowing rate and other costs by adding the words: 'apart from the interest rate and other costs'.

Section '1. Lender'

(1) Name, telephone number, and geographical address of the creditor shall refer to the contact information that the consumer may use for future correspondence.

(2) Information on the e-mail address, fax number, web address and contact person/point is optional.

(3) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the creditor shall indicate, where applicable, the name and geographical address of its representative in the Member State of residence of the consumer. Indication of the telephone number, e-mail address and web address of the representative of the credit provider is optional.

(4) Where Section 2 is not applicable, the creditor shall inform the consumer whether advisory services are being provided and on what basis using the wording in Part A.

(Where applicable) Section '2. Credit intermediary'

Where the product information is being provided to the consumer by a credit intermediary, that intermediary shall include the following information:

(1) Name, telephone number and geographical address of the credit intermediary shall refer to the contact information that the consumer may use for future correspondence.

(2) Information on the e-mail address, fax number, web address and contact person/point is optional.

(3) The credit intermediary shall inform the consumer whether advisory services are being provided and on what basis using the wording in Part A.

(4) An explanation of how the credit intermediary is being remunerated. Where it is receiving commission from a creditor, the amount and, where different from the name in Section 1, the name of the creditor shall be provided.

Section '3. Main features of the loan'

(1) This section shall clearly explain the main characteristics of the credit, including the value and currency and the potential risks associated with the borrowing rate, including the ones referred to in point (8), and amortisation structure.

(2) Where the credit currency is different from the national currency of the consumer, the creditor shall indicate that the consumer will receive a regular warning at least when the exchange rate fluctuates by more than 20 %, where applicable the right to convert the currency of the credit agreement or to the possibility to renegotiate the conditions and any other arrangements available to the consumer to limit their exposure to exchange rate risk. Where there is a provision in the credit agreement to limit the exchange rate risk, the creditor shall indicate the maximum amount the consumer could have to pay back. Where there is no provision in the credit agreement to limit the exchange rate risk to which the consumer is exposed to a fluctuation in the exchange rate of less than 20 %, the creditor shall indicate an illustration of the effect of a 20 % fall in the value of consumer's national currency relative to the credit currency on the value of the credit.

(3) The duration of the credit shall be expressed in years or months, whichever is the most relevant. Where the duration of the credit can vary during the lifetime of the contract, the creditor shall explain when and under which conditions this can occur. Where the credit is open-ended, for example, for a secured credit card, the creditor shall clearly state that fact.

(4) The type of credit shall be clearly indicated (e.g. mortgage credit, home loan, secured credit card). The description of the type of credit shall clearly indicate how the capital and the interest shall be reimbursed during the life of the credit (i.e. the amortisation structure), specifying clearly whether the credit agreement is on capital repayment or interest-only basis, or a mixture of the two.

(5) Where all or part of the credit is an interest-only credit, a statement clearly indicating that fact shall be inserted prominently at the end of this section using the wording in Part A.

(6) This section shall explain whether the borrowing rate is fixed or variable and, where applicable, the periods during which it will remain fixed; the frequency of subsequent revisions and the existence of limits to the borrowing rate variability, such as caps or floors.

The formula used to revise the borrowing rate and its different components (e.g. reference rate, interest rate spread) shall be explained. The creditor shall indicate, e.g. by means of a web address, where further information on the indices or rates used in the formula can be found, e.g. Euribor or central bank reference rate.

(7) If different borrowing rates apply in different circumstances, the information shall be provided on all applicable rates.

(8) The 'total amount to be reimbursed' corresponds to the total amount payable by the consumer. It shall be shown as the sum of the credit amount and the total cost of the credit to the consumer. Where the borrowing rate is not fixed for the duration of the contract, it shall be highlighted that this amount is illustrative and may vary in particular in relation with the variation in the borrowing rate.

(9) Where the credit will be secured by a mortgage on the immovable property or another comparable security or by a right related to immovable property, the creditor shall draw the consumer's attention to this. Where applicable the creditor shall indicate the assumed value of the immovable property or other security used for the purpose of preparing this information sheet.

(10) The creditor shall indicate, where applicable, either:

a) 'maximum available loan amount relative to the value of the property', indicating the loan-to-value ratio. This ratio is to be accompanied by an example in absolute terms of the maximum amount that can be borrowed for a given property value; or

b) the 'minimum value of the property required by the creditor to lend the illustrated amount'.

(11) Where credits are multi-part credits (e.g. concurrently part fixed rate, part variable rate), this shall be reflected in the indication of the type of credit and the required information shall be given for each part of the credit.

Section '4. Interest rate' and other costs

(1) The reference to 'interest rate' corresponds to the borrowing rate or rates.

(2) The borrowing rate shall be mentioned as a percentage value. Where the borrowing rate is variable and based on a reference rate the creditor may indicate the borrowing rate by stating a reference rate and a percentage value of creditor's spread. The creditor shall however indicate the value of the reference rate valid on the day of issuing the ESIS.

Where the borrowing rate is variable the information shall include: (a) the assumptions used to calculate the APRC; (b) where relevant, the applicable caps and floors and (c) a warning that the variability could affect the actual level of the APRC. In order to attract the consumer's attention the font size used for the warning shall be bigger and shall figure prominently in the main body of the ESIS. The warning shall be accompanied by an illustrative example on the APRC. Where there is a cap on the borrowing rate, the example shall assume that the borrowing rate rises at the earliest possible opportunity to the highest level foreseen in the credit agreement. Where there is no cap the example shall illustrate the APRC at the highest borrowing rate in at least the last 20 years, or where the underlying data for the calculation of the borrowing rate is available for a period of less than 20 years the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the borrowing rate where applicable or the highest value of a benchmark rate specified by a competent authority or EBA where the creditor does not use an external reference rate. Such requirement shall not apply to credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the creditor and the consumer. For credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the creditor and the consumer, the information shall include a warning that the APRC is calculated on the basis of the borrowing rate for the initial period. The warning shall be accompanied by an additional, illustrative APRC calculated in accordance with Article 17(4). Where credits are multi-part credits (e.g. concurrently part fixed rate, part variable rate), the information shall be given for each part of the credit.

(3) In the section on 'other components of the APRC' all the other costs contained in the APRC shall be listed, including one-off costs such as administration fees, and regular costs, such as annual administration fees. The creditor shall list each of the costs by category (costs to be paid on a one-off basis, costs to be paid regularly and included in the instalments, costs to be paid regularly but not included in the instalments), indicating their amount, to whom they are to be paid and when. This does not have to include costs incurred for breaches of contractual obligations. Where the amount is not known, the creditor shall provide an indication of the amount if possible, or if not possible, how the amount will be calculated and specify that the amount provided is indicative only. Where certain costs are not included in the APRC because they are unknown to the creditor, this shall be highlighted.

Where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall, where possible, use those components; if a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumptions set out in Part II of Annex I, it shall indicate that other drawdown mechanisms for this type of credit agreement may result in a higher APRC. Where the conditions for drawdown are used for calculating the APRC, the creditor shall highlight the charges associated with other drawdown mechanisms that are not necessarily the ones used in calculating the APRC.

(4) Where a fee is payable for registration of the mortgage or comparable security that shall be disclosed in this section with the amount, where known, or where this is not possible the basis for determining the amount. Where the fees are known and included in the APRC the existence and amount of the fee shall be listed under 'Costs to be paid on a one-off basis'. Where the fees are not known to the creditor and therefore not included in the APRC the existence of the fee shall be clearly mentioned in the list of costs which are not known to the creditor. In either case the standardised wording in Part A shall be used under the appropriate heading.

Section '5. Frequency and number of payments'

(1) Where payments are to be made on a regular basis, the frequency of payments shall be indicated (e.g. monthly). Where the frequency of payments will be irregular, this shall be clearly explained to the consumer.

(2) The number of payments indicated shall cover the whole duration of the credit.

Section '6. Amount of each instalment'

(1) The credit currency and currency of the instalments shall be clearly indicated.

(2) Where the amount of the instalments may change during the life of the credit, the creditor shall specify the period during which that initial instalment amount will remain unchanged and when and how frequently afterwards it will change.

(3) Where all or part of the credit is an interest-only credit, a statement clearly indicating that fact, shall be inserted prominently at the end of this section using the wording in Part A.

If there is a requirement for the consumer to take out a tied savings product as a condition for being granted an interest-only credit secured by a mortgage or another comparable security, the amount and frequency of any payments for this product shall be provided.

(4) Where the borrowing rate is variable the information shall include a statement indicating that fact, using the wording in Part A and an illustration of a maximum instalment amount. Where there is a cap, the illustration shall show the amount of the instalments if the borrowing rate rises to the level of the cap. Where there is no cap, the worst case scenario shall illustrate the level of instalments at the highest borrowing rate in the last 20 years, or where the underlying data for the calculation of the borrowing rate is available for a period of less than 20 years the longest period for which such data is available, based on the highest value of any external reference rate used in calculating the borrowing rate where applicable, or the highest value of a benchmark rate specified by a competent authority or EBA where the creditor does not use an external reference rate. The requirement to provide an illustrative example shall not apply to credit agreements where the borrowing rate is fixed for a material initial period of several years and may then be fixed for a further period following negotiation between the creditor and the consumer. Where credits are multi-part credits (e.g. concurrently part fixed rate, part variable rate), the information shall be given for each part of the credit, and in total.

(5) (Where applicable) Where the credit currency is different from the consumer's national currency or where the credit is indexed to a currency which is different from the consumer's national currency, the creditor shall include a numerical example clearly showing how changes to the relevant exchange rate may affect the amount of the instalments using the wording in Part A. That example shall be based on a 20 % reduction in the value of the consumer's national currency together with a prominent statement that the instalments could increase by more than the amount assumed in that example. Where there is a cap which limits that increase to less than 20 %, the maximum value of the payments in the consumer's currency shall be given instead and the statement on the possibility of further increases omitted.

(6) Where the credit is fully or partly a variable rate credit and point 3 applies, the illustration in point 5 shall be given on the basis of the instalment amount referred to in point 1.

(7) Where the currency used for the payment of instalments is different from the credit currency or where the amount of each instalment expressed in the consumer's national currency depends on the corresponding amount in a different currency, this section shall indicate the date at which the applicable exchange rate is calculated and either the exchange rate or the basis on which it will be calculated and the frequency of their adjustment. Where applicable such indication shall include the name of institution publishing the exchange rate.

(8) Where the credit is a deferred-interest credit under which interest due is not fully repaid by the instalments and is added to the total amount of credit outstanding, there shall be an explanation of: how and when deferred interest is added to the credit as a cash amount; and what the implications are for the consumer in terms of their remaining debt.

Section '7. Illustrative repayment table'

(1) This section shall be included where the credit is a deferred interest credit under which interest due is not fully repaid by the instalments and is added to the total amount of credit outstanding or where the borrowing rate is fixed for the duration of the credit agreement. Member States may provide that the illustrative amortisation table is compulsory in other cases.

Where the consumer has the right to receive a revised amortisation table, this shall be indicated along with the conditions under which the consumer has that right.

(2) Member States may require that where the borrowing rate may vary during the lifetime of the credit, the creditor shall indicate the period during which that initial borrowing rate will remain unchanged.

(3) The table to be included in this section shall contain the following columns: 'repayment schedule' (e.g. month 1, month 2, month 3), 'amount of the instalment', 'interest to be paid per instalment', 'other costs included in the instalment' (where relevant), 'capital repaid per instalment' and 'outstanding capital after each instalment'.

(4) For the first repayment year the information shall be given for each instalment and a subtotal shall be indicated for each of the columns at the end of that first year. For the following years, the detail can be provided on an annual basis. An overall total row shall be added at the end of the table and shall provide the total amounts for each column. The total cost of the credit paid by the consumer (i.e. the overall sum of the 'amount of the instalment' column) shall be clearly highlighted and presented as such.

(5) Where the borrowing rate is subject to revision and the amount of the instalment after each revision is unknown, the creditor may indicate in the amortisation table the same instalment amount for the whole credit duration. In such a case, the creditor shall draw that fact to the attention of the consumer by visually differentiating the amounts which are known from the hypothetical ones (e.g. using a different font, borders or shading). In addition, a clearly legible text shall explain for which periods the amounts represented in the table may vary and why.

Section '8. Additional obligations'

(1) The creditor shall refer in this section to obligations such as the obligation to insure the immovable property, to purchase life insurance, to have a salary paid into an account with the creditor or to buy any other product or service. For each obligation, the creditor shall specify towards whom and by when the obligation needs to be fulfilled.

(2) The creditor shall specify the duration of the obligation, e.g. until the end of the credit agreement. The creditor shall specify for each obligation any costs to be paid by the consumer, which are not included in the APRC.

(3) The creditor shall state whether it is compulsory for the consumer to hold any ancillary services to obtain the credit on the stated terms, and if so whether the consumer is obliged to purchase them from the creditor's preferred supplier or whether they may be purchased from a provider of consumer's choice. Where such possibility is conditional on the ancillary services meeting certain minimum characteristics, such characteristics shall be described in this section.

Where the credit agreement is bundled with other products the creditor shall state the key features of those other products and clearly state whether the consumer has a right to terminate the credit agreement or the bundled products separately, the conditions for and implications of doing so, and, where applicable, of the possible consequences of terminating the ancillary services required in connection with the credit agreement.

Section '9. Early repayment'

(1) The creditor shall indicate under what conditions the consumer can repay the credit early, either fully or partially.

(2) In the section on exit charges the creditor shall draw the consumer's attention to any exit charge or other costs payable on early repayment in order to compensate the creditor and where possible indicate their amount. In cases where the amount of compensation would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the creditor shall indicate how the compensation will be calculated and provide the maximum amount that the charge might be, or where this is not possible, an illustrative example in order to demonstrate to the consumer the level of compensation under different possible scenarios.

Section '10. Flexible features'

(1) Where applicable, the creditor shall explain the possibility to and conditions for transferring the credit to another creditor or immovable property.

(2) (Where appropriate) Additional features: Where the product contains any of the features listed in point 5, this section must list these features and provide a brief explanation of: the circumstances in which the consumer can use the feature; any conditions attached to the feature; if the feature being part of the credit secured by a mortgage or comparable security means that the consumer loses any statutory or other protections usually associated with the feature; and the firm providing the feature (if not the creditor).

(3) If the feature contains any additional credit, then this section must explain to the consumer: the total amount of credit (including the credit secured by the mortgage or comparable security); whether the additional credit is secured or not; the relevant borrowing rates; and whether it is regulated or not. Such additional credit amount shall either be included in the original creditworthiness assessment or, if it is not, this section shall make clear that the availability of the additional amount is dependent on a further assessment of the consumer's ability to repay.

(4) If the feature involves a savings vehicle, the relevant interest rate must be explained.

(5) The possible additional features are: 'Overpayments/Underpayments' [paying more or less than the instalment ordinarily required by the amortisation structure]; 'Payment holidays' [periods where the consumer is not required to make payments]; 'Borrow back' [ability for the consumer to borrow again funds already drawn down and repaid]; 'Additional borrowing available without further approval'; 'Additional secured or unsecured borrowing' [in accordance with point 3 above]; 'Credit card'; 'Linked current account'; and 'Linked savings account'.

(6) The creditor may include any other features offered by the creditor as part of the credit agreement not mentioned in previous sections.

Section '11. Other rights of the borrower'

(1) The creditor shall clarify the right(s) of e.g. withdrawal or reflection and where applicable other rights such as, portability (including subrogation) that exist, specify the conditions to which this/these right(s) is subject, the procedure that the consumer will need to follow in order to exercise this/these right(s), inter alia, the address to which the notification of withdrawal shall be sent, and the corresponding fees (where applicable).

(2) Where a reflection period or right of withdrawal for the consumer applies this shall be clearly mentioned.

(3) In line with Article 3 of Directive 2002/65/EC, where the transaction is being offered at a distance, the consumer shall be informed of the existence or absence of a right of withdrawal.

Section '12. Complaints'

(1) This Section shall indicate the internal contact point [name of the relevant department] and a means of contacting them to complain [Geographical address] or [Telephone number] or [Contact person:] [contact details] and a link to the complaints procedure on the relevant page of a website or similar information source.

(2) It shall indicate the name of the relevant external body for out-of-court complaints and redress and where using the internal complaint procedure is a precondition for access to that body, indicate that fact using the wording in Part A.

(3) In the case of credit agreements with a consumer who is resident in another Member State, the creditor shall refer to the existence of FIN-NET (http://ec.europa.eu/internal_market/fin-net/).

Section '13. Non-compliance with the commitments linked to the credit: consequences for the borrower'

(1) Where non-observance of any of the consumer's obligations linked to the credit may have financial or legal consequences for the consumer, the creditor shall describe in this section the different main cases (e.g. late payments/default, failure to respect the obligations set out in Section 8 'Additional obligations') and indicate where further information could be obtained.

(2) For each of those cases, the creditor shall specify, in clear, easy comprehensible terms, the sanctions or consequences to which they may give rise. Reference to serious consequences shall be highlighted.

(3) Where the immovable property used to secure the credit may be returned or transferred to the creditor, if the consumer does not comply with the obligations, this section shall include a statement indicating that fact, using the wording in Part A.

Section '14. Additional information'

(1) In the case of distance marketing, this section will include any clause stipulating the law applicable to the credit agreement or the competent court.

(2) Where the creditor intends to communicate with the consumer during the life of the contract in a language different from the language of the ESIS that fact shall be included and the language of communication named. This is without prejudice to point (g) of point 3 of paragraph 1 of Article 3 of Directive 2002/65/EC.

(3) The creditor or credit intermediary shall state the consumer's right to be provided with or offered, as applicable, a copy of the draft credit agreement at least once an offer binding on the creditor has been made.

Section '15. Supervisor'

(1) The relevant authority or authorities for the supervision of the pre-contractual stage of lending shall be indicated.

ANNEX III

MINIMUM KNOWLEDGE AND COMPETENCE REQUIREMENTS

1. The minimum knowledge and competence requirements for creditors', credit intermediaries' and appointed representatives' staff referred to in Article 9 and for persons involved in the management of credit intermediaries or appointed representatives referred to in point (c) of Article 29(2) and Article 31(2) need to include at least:

   (a) appropriate knowledge of credit products within the scope of Article 3 and the ancillary services typically offered with them;

   (b) appropriate knowledge of the laws related to the credit agreements for consumers, in particular consumer protection;

   (c) appropriate knowledge and understanding of the immovable property purchasing process;

   (d) appropriate knowledge of security valuation;

   (e) appropriate knowledge of organisation and functioning of land registers;

   (f) appropriate knowledge of the market in the relevant Member State;

   (g) appropriate knowledge of business ethics standards;

   (h) appropriate knowledge of the consumer's creditworthiness assessment process or where applicable, competence in assessing consumers' creditworthiness;

   (i) appropriate level of financial and economic competency.

2. When establishing minimum knowledge and competence requirements Member States may differentiate between the levels and types of requirements applicable to the staff of creditors, the staff of credit intermediaries or appointed representatives and the management of credit intermediaries or appointed representatives.

3. Member States shall determine the appropriate level of knowledge and competence on the basis of:

   (a) professional qualifications, e.g. diplomas, degrees, training, competency tests; or

   (b) professional experience, which may be defined as a minimum number of years working in areas related to the origination, distribution or intermediation of credit products.

   After 21 March 2019, the determination of the appropriate level of knowledge and competence shall not be based solely on the methods listed in point (b) of the first subparagraph.

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