



STATUTORY INSTRUMENTS.

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EUROPEAN UNION (CONSUMER MORTGAGE CREDIT
AGREEMENTS) REGULATIONS 2016

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EUROPEAN UNION (CONSUMER MORTGAGE CREDIT AGREEMENTS) REGULATIONS 2016

I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, hereby make the following regulations:

PART 1**PRELIMINARY***Citation*

1. These Regulations may be cited as the European Union (Consumer Mortgage Credit Agreements) Regulations 2016.

Commencement

2. These Regulations come into operation on 21 March 2016.

Interpretation

3. (1) In these Regulations—

“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 credit intermediation activities;

“ancillary service” means a service offered to the consumer in conjunction with the credit agreement;

“annual percentage rate of charge” or “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 Regulation 18(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;

“authorisation” means a mortgage credit intermediary’s authorisation granted under Regulation 30;

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 25th March, 2016.

“borrowing rate”, in relation to a credit agreement, means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

“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 during the course of taking steps to enter into another financial arrangement for the immovable property;

“bundling practice” means the offering or the selling of a credit agreement in a package with other distinct financial products or services in circumstances 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;

“Central Bank” means the Central Bank of Ireland;

“consumer” means a natural person who is acting, in the course of a transaction to which these Regulations apply, for purposes outside his or her trade, business or profession;

“contingent liability or guarantee” means a credit agreement which acts as a guarantee to another separate but ancillary transaction, and in circumstances where the capital secured against an immovable property is only drawn down if an event or events specified in the contract occur;

“contravene” includes fail to comply;

“credit agreement” means an agreement under which a creditor grants or promises to grant to a consumer credit falling within Regulation 5 in the form of a deferred payment, loan or other similar financial accommodation;

“credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

“creditor” means a natural or legal person who grants or promises to grant credit falling within Regulation 5 in the course of his or her trade, business or profession;

“creditworthiness assessment” means the evaluation of the prospect for the debt obligation resulting from the credit agreement to be met;

“Directive” means 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;

“durable medium” means any medium that enables a consumer to store information addressed personally to the consumer in a way that renders it accessible for future reference for a period of time adequate for the purposes of the information and allows the unchanged reproduction of the information;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

“EEA Member State” means a state which is a contracting party to the EEA Agreement;

“enactment” includes an instrument made under an enactment;

“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 EEA Member State in which the consumer is resident;

“group” means a parent undertaking and all its subsidiary undertakings;

“home EEA Member State” means:

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

“host EEA Member State” means the EEA Member State, other than the home EEA Member State, in which the creditor or credit intermediary has a branch or provides services;

“mortgage credit intermediary” has the meaning given to it by Regulation 4;

“non-credit institution” means any creditor who is not a credit institution;

“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;

“staff” means:

- (a) any natural person working for the creditor, or mortgage credit intermediary who is directly engaged in the activities to which these Regulations relate or who has contacts with consumers in the course of activities to which these Regulations relate,
- (b) any natural person directly managing or supervising the natural persons referred to in paragraph (a);

“tied credit intermediary” means any mortgage credit intermediary who acts on behalf of and under the full and unconditional responsibility of:

- (a) only one creditor, or
- (b) only one group;

“total amount of credit”, in relation to a credit agreement, means the limit of the credit, or the total sum, made available under the credit agreement;

“total amount payable by the consumer”, in relation to a credit agreement, means the sum of the total amount of the credit and the total cost of the credit to the consumer;

“total cost of the credit to the consumer”, in relation to a credit agreement, means all the costs that the consumer is required to pay in connection with the credit agreement and that are known to the creditor concerned, including—

- (a) interest, commissions, taxes and any other kind of fees, including the cost of valuation of the property where such valuation is necessary to obtain credit, but excluding registration fees for the transfer of ownership of the immovable property and any charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement,
- (b) where the conclusion of a service contract is compulsory to obtain the credit or to obtain it on the terms and conditions marketed, costs in respect of ancillary services relating to the credit agreement (in particular, insurance premiums);

“tying practice” means the offering or the selling of a credit agreement in a package with other distinct financial products or services in circumstances where the credit agreement is not made available to the consumer separately.

(2) A word or expression that is used in these Regulations and is also used in the Directive has the meaning in these Regulations that it has in the Directive.

“Mortgage credit intermediary” — definition

4. (1) In these Regulations “mortgage credit intermediary” means a person (including a firm, within the meaning of the Partnership Act 1890 (53 & 54 Vict.c.39)), being a person who—

- (a) is not acting as a creditor, and
- (b) is not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary,

and who—

- (i) in the course of his or her trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of

financial consideration, carries on any of the activities referred to in paragraph (2), and

- (ii) either is the holder of an authorisation granted under Regulation 30 or stands admitted, pursuant to Article 29 of the Directive, in another EEA Member State.

(2) The following are the activities referred to in paragraph (1)(i)—

- (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 subparagraph (a);
- (c) concludes credit agreements with consumers on behalf of the creditor.

Application of these Regulations

5. (1) These Regulations apply to:

- (a) a credit agreement which is secured by a charge, a mortgage or by another comparable security used in an EEA Member State on residential immovable property or secured by a right related to residential immovable property, and where the person to whom the credit is provided is a consumer;
- (b) a credit agreement the purpose of which is to acquire or retain property rights in land or in an existing or projected building, and where the person to whom the credit is provided is a consumer.

(2) These Regulations shall not apply to the following:

- (a) an equity release credit agreement 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 than one life event that is specified in the credit agreement, being a life event falling within a category specified in paragraph (3), unless the consumer breaches his or her contractual obligations in circumstances which allow the creditor to terminate the credit agreement;
- (b) a credit agreement where the credit is granted by an employer to an employee or employees as a secondary activity in circumstances where such credit is offered free of interest or at an annual percentage rate of charge lower than that prevailing in the market and not offered to the public generally;

- (c) a credit agreement 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) a credit agreement in the form of an overdraft facility and where the credit has to be repaid within one month;
 - (e) a credit agreement that is the outcome of a settlement reached in court proceedings or in proceedings before another statutory authority;
 - (f) a credit agreement, not secured on residential immovable property, which relates to the deferred payment free of charge of an existing debt;
 - (g) a housing loan made by a local authority, or any other loan not secured by a mortgage made by a local authority for the purposes of carrying out improvement works to a house.
- (3) Each of the following is a category of life event referred to in paragraph (2)(a)(ii)—
- (a) the death of the consumer (or a surviving dependant of the consumer, or a nominated person residing in the property);
 - (b) permanent vacation of the property (for example, the consumer ceasing to reside in the property and with no reasonable prospect of return);
 - (c) sale of the property;
 - (d) the consumer acquires another property as an alternative principal residence.

Competent authority

6. The Central Bank is designated as the competent authority in the State that performs the functions provided for in the Directive.

PART 2

FINANCIAL EDUCATION

Financial education of consumers

7. (1) Having regard to its statutory function to promote the development of financial education and capability, the Competition and Consumer Protection Commission 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.

(2) In addition to the preceding matters, the foregoing Commission shall, in conjunction with any other body it considers appropriate, ensure that clear and general information on the credit granting process is made available in order

to guide consumers, especially those who take out a mortgage credit for the first time.

PART 3

CONDITIONS APPLICABLE TO CREDITORS AND MORTGAGE CREDIT INTERMEDIARIES

Conduct of business obligations when providing credit to consumers

8. (1) A creditor or mortgage credit intermediary shall act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumer, when—

- (a) devising or otherwise creating credit products,
- (b) granting or acting as an intermediary or providing advisory services on credit (and where appropriate ancillary services) to consumers, or
- (c) executing a credit agreement.

(2) In relation to carrying on of any activity referred to paragraph (1)(b), the activity shall be based on:

- (a) information about the consumer's circumstances,
- (b) any specific requirement made known by the consumer,
- (c) reasonable assumptions about risks to the consumer's situation over the term of the credit agreement, and
- (d) where the activity is the provision of advisory services, the activity shall in addition be based on the information required under Regulation 23(4)(a).

(3) Creditors shall remunerate their staff and mortgage credit intermediaries, and mortgage credit intermediaries shall remunerate their staff, in a manner that does not impede compliance with the obligation set out in paragraphs (1) and (2).

(4) When establishing and applying remuneration policies for their staff responsible for the assessment of creditworthiness, a creditor shall comply with the following principles in a way and to the extent that is appropriate to the creditor's size, internal organisation and the nature, scope and complexity of the creditor's 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 credit applications accepted.

(5) Where a creditor or mortgage credit intermediary provides advisory services, the remuneration structure of the staff involved shall not prejudice their ability to act in the consumer's best interest and in particular shall not be contingent on sales targets.

(6) Where a creditor or mortgage credit intermediary intends to require the making of a payment in respect of advisory services or credit intermediate services, and it is proposed that this payment be incorporated into the amount advanced to the consumer, the creditor or mortgage credit intermediary shall, prior to concluding the credit agreement:

- (a) inform the consumer, on paper or on another durable medium, that the consumer has the right to make such a payment separately and not include it in the credit agreement; and
- (b) provide the following information to the consumer on paper or on another durable medium:
 - (i) the amount of the payment; and
 - (ii) the overall cost of making the payment over the term of the loan.

(7) A creditor or mortgage credit intermediary who contravenes a provision of this Regulation commits an offence.

Obligation to provide information free of charge to consumers

9. Information provided to consumers in compliance with the requirements of these Regulations shall be provided free of charge to the consumer.

Knowledge and competence requirements for staff

10. (1) Creditors and mortgage credit intermediaries shall require their staff to possess and to keep up-to-date an appropriate level of knowledge and competence in relation to:

- (a) devising or otherwise creating credit products, or the offering or granting of credit agreements,
- (b) the carrying out of credit intermediation activities as set out in the definition of "mortgage credit intermediary" in Regulation 4, or
- (c) the provision of advisory services.

(2) Where the conclusion of a credit agreement includes an ancillary service, creditors and mortgage credit intermediaries shall require their staff to possess appropriate knowledge and competence in relation to that ancillary service.

(3) The Central Bank shall establish, and publish in a form considered appropriate by it, minimum knowledge and competence requirements for the staff of

creditors and mortgage credit intermediaries and those requirements shall at least be in accordance with the principles and other provisions set out in Schedule 1.

(4) Where a creditor or mortgage credit intermediary provides its services in the State through a branch, the Central Bank shall be responsible for establishing the minimum knowledge and competence requirements applicable to the staff of such a branch.

(5) Where a creditor or mortgage credit intermediary provides its services in the State under the freedom to provide services, the Central Bank shall establish minimum knowledge and competence requirements for those requirements referred to in paragraph 1(b), (c), (e) and (f) of Schedule 1.

(6) In relation to the effective supervision of creditors and mortgage credit intermediaries who are providing their services within the territory of one or more other EEA Member States under the freedom to provide services, the Central Bank shall cooperate with the competent authorities of other EEA Member States for the effective supervision and enforcement of the minimum knowledge and competence requirements of the host EEA Member State. For that purpose, the Central Bank may delegate tasks and responsibilities to the competent authorities of other EEA Member States and shall perform or fulfil tasks and responsibilities delegated to it, under Article 9(5) of the Directive, by such competent authorities

PART 4

INFORMATION AND PRACTICES PRELIMINARY TO THE CONCLUSION OF THE CREDIT AGREEMENT

General provisions applicable to advertising and marketing and provision concerning Consumer Credit Act 1995's application

11. (1) Without prejudice to the Consumer Protection Act 2007 (No.19 of 2007), any advertising or marketing communications concerning credit agreements shall be fair, clear and not misleading.

(2) In particular, wording shall not be used in advertising or marketing communications that may create false expectations for a consumer regarding the availability or the cost of a credit.

(3) To the extent that a provision of Part II of the Consumer Credit Act 1995 (No.24 of 1995) is inconsistent with a provision of this Part, that provision of that Part II shall not apply as respects credit agreements to which these Regulations apply.

Standard information to be included in advertising

12. (1) Any advertising concerning credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer shall, in a clear, concise and prominent way, specify—

- (a) the identity of the creditor or, where applicable, the mortgage credit intermediary;
- (b) where applicable, that the credit agreement will be secured by a mortgage or another comparable security commonly used in an EEA 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 annual percentage rate of charge 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.

(2) The information referred to in paragraph (1), other than that referred to in subparagraph (a), (b) or (j) thereof, shall be specified by means of a representative example and shall adhere to that representative example throughout. The Central Bank shall set out, and publish in a form considered appropriate by it, the criteria to be adhered to by a creditor or mortgage credit intermediary, as the case may be, in determining, for that purpose, a representative example and those criteria shall be adhered to by the creditor or mortgage credit intermediary for that purpose accordingly.

(3) Where the conclusion of a contract regarding an ancillary service, in particular insurance, is mandatory 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 annual percentage rate of charge.

(4) The information referred to in paragraphs (1) and (3) shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising.

(5) This Regulation is without prejudice to any enactment concerning financial services that imposes, or enables the Bank to impose, requirements in

relation to credit agreements and, in particular, sections 8H, 128, 133 and 135 of the Consumer Credit Act 1995, section 117 of the Central Bank Act 1989 (No.16 of 1989), Parts 7 and 8 of the Central Bank (Supervision and Enforcement) Act 2013 (No.26 of 2013) and the provisions of the Consumer Protection Act 2007.

(6) However paragraph (5) shall not be construed as meaning that anything inconsistent with a provision of this Regulation contained in a direction for the time being in force under section 135 of the Consumer Credit Act 1995 overrides that provision.

(7) A creditor or mortgage credit intermediary who contravenes a provision of this Regulation commits an offence.

Tying and bundling practices

13. (1) Subject to the provisions of this Regulation, a creditor or mortgage credit intermediary shall not sell, or offer to sell, to a consumer a credit agreement to which these Regulations apply in a package with other distinct financial products or services or conveyancing services, auctioneering services or other services relating to land which that person may require whether or not in connection with the loan where that credit agreement is not made available to the consumer separately.

(2) A creditor may request a consumer to 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.

(3) A creditor may offer or sell to the consumer a credit agreement to which these Regulations apply in the manner described in paragraph (1) provided the creditor can demonstrate to the Central Bank that the tied products or categories of products offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the consumer taking due account of the availability and the prices of the relevant products offered on the market.

(4) The Central Bank may, in order to protect the interests of consumers, specify that there shall be complied with such conditions, including time limits, as it considers appropriate in relation to the making available by a creditor of the products or categories of products (or the creditor's offering to make available such products or categories) referred to in paragraph (3) and a creditor shall comply with such conditions accordingly.

(5) Paragraphs (3) and (4) shall only apply to products which are marketed after 20 March 2014.

(6) The Central Bank shall publish, in a form considered appropriate by it, conditions that are the subject of a specification made by it under paragraph (4).

(7) If a creditor requires a consumer to hold a policy of insurance related to the credit agreement, the creditor shall accept a policy selected by the consumer

(and which can be from an insurance provider different to the preferred supplier of the creditor) provided that such a policy has a level of guarantee equivalent to the one the creditor has proposed and in any event shall be no greater than an amount that would be required to guarantee repayment of the outstanding credit or to insure the value of the security. This is without prejudice to the requirements of sections 124, 126 and 127 of the Consumer Credit Act 1995.

(8) A creditor who contravenes a provision of this Regulation commits an offence.

General information

14. (1) Clear and comprehensible general information about credit agreements shall be made available by creditors, or where applicable by tied credit intermediaries at all times on paper or on another durable medium or in electronic form. 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 another EEA 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 annual percentage rate of charge;
- (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) an 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) This Regulation is without prejudice to any enactment concerning financial services that imposes, or enables the Central Bank to impose, requirements in relation to credit agreements and, in particular, sections 8H, 128 and 133 of the Consumer Credit Act 1995, section 117 of the Central Bank Act 1989 and Parts 7 and 8 of the Central Bank (Supervision and Enforcement) Act 2013.

Pre-contractual information

15. (1) A creditor, and where applicable a mortgage credit intermediary, shall-

- (a) without undue delay after the consumer has given the necessary information on his or her needs, financial situation and preferences in accordance with Regulation 21, and
- (b) in good time before the consumer is bound by any credit agreement or offer,

provide the consumer with the personalised information needed to enable the consumer to compare the credits available on the market, to assess their implications and to make an informed decision on whether to conclude a credit agreement.

(2) The personalised information referred to in paragraph (1) shall be provided, on paper or on another durable medium, by means of the European Standardised Information Sheet (ESIS) specified in Schedule 2.

(3) When an offer binding on the creditor is provided to the consumer, it shall be provided on paper or on another durable medium and shall be accompanied by an ESIS and by a copy of the draft credit agreement.

(4) For a period of 30 days after the making of the offer of credit (the “reflection period”), the consumer shall be permitted to decide whether to accept the offer. During the reflection period, the offer of credit shall be binding on the creditor and the consumer may accept the offer at any time during the reflection period.

(5) Where the borrowing rate or other costs applicable to the offer of credit are determined on the basis of the selling of underlying bonds or other long-term funding instruments, 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.

(6) The creditor and, where applicable, the mortgage credit intermediary 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 contained in Directive 2002/65/EC and shall be deemed to satisfy the requirements of Article 5(1) of that Directive only where the creditor or mortgage credit intermediary, as the case may be, has at least supplied the ESIS prior to the conclusion of the contract.

(7) The creditor, or where applicable the mortgage credit intermediary, shall not modify the ESIS as set out in Schedule 2 other than as provided for in that Schedule.

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

(9) 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 the ESIS set out in Schedule 2.

(10) A creditor or mortgage credit intermediary who contravenes a provision of this Regulation commits an offence.

Information requirements concerning mortgage credit intermediaries

16. (1) In good time before the carrying out of the credit intermediary activities set out in the definition of “mortgage credit intermediary” in Regulation 4, the mortgage credit intermediary shall provide the consumer with at least the following information on paper or another durable medium:

- (a) the identity and the geographical address of the mortgage credit intermediary;
- (b) the register in which he or she has been included, the registration number, where applicable, and the means for verifying such registration;
- (c) whether the mortgage credit intermediary is tied to or works exclusively for one creditor and paragraph (2) supplements this subparagraph;
- (d) whether the mortgage credit intermediary offers advisory services;

- (e) the fee, where applicable, payable by the consumer to the mortgage 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 mortgage 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 mortgage credit intermediary for their services in relation to the credit agreement and paragraph (3) supplements this subparagraph.

(2) For the purposes of paragraph (1)(c), where the mortgage credit intermediary is tied to or works exclusively for one creditor, it shall provide the name of the creditor for which it is acting. The mortgage credit intermediary may disclose that it is independent where it meets the conditions specified in Regulation 23(5).

(3) For the purposes of paragraph (1)(g), where the amount referred to in that provision is not known at the time of disclosure, the mortgage credit intermediary shall inform the consumer that the actual amount will be disclosed at a later stage in the ESIS.

(4) A mortgage credit intermediary who is not tied but who receives 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 or she has the right to request such information.

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

(6) A mortgage credit intermediary shall inform the creditor whether or not a fee is payable by the consumer to the mortgage credit intermediary for its services and, if so, the amount of the fee that is payable, and the creditor shall take this into account for the purpose of calculating the annual percentage rate of charge.

(7) A mortgage credit intermediary who contravenes a provision of this Regulation commits an offence.

Adequate explanations

17. (1) A creditor and, where applicable a mortgage credit intermediary, shall provide adequate explanations to the consumer on the proposed credit agreement and any ancillary services, in order to place the consumer in a position

enabling him or her to assess whether the proposed credit agreement and ancillary services are adapted to his or her needs and financial situation; this and the next following paragraph are subject to paragraph (3).

(2) The explanations shall, where applicable, include:

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

- (i) in the case of creditors, the information specified in Regulation 15;
- (ii) in the case of mortgage credit intermediaries, the information specified in Regulations 15 and 16;

and

(b) in all cases—

- (i) the essential characteristics of the products proposed;
- (ii) the specific effects the products proposed may have on the consumer, including the consequences of default in payment by the consumer; and
- (iii) 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.

(3) The Central Bank may, if it considers it appropriate, give one or more directions in writing adapting the manner by which and the extent to which the adequate explanations referred to in paragraphs (1) and (2) is given, as well as by whom the explanations are 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 and, for so long as directions given under this paragraph are in force, paragraphs (1) and (2) shall be construed and have effect in accordance with those directions.

PART 5

ANNUAL PERCENTAGE RATE OF CHARGE

Calculation of the annual percentage rate of charge (APRC)

18. (1) The APRC shall be calculated in accordance with the mathematical formula set out in Schedule 3.

(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, the consumer shall be 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.

(7) Paragraph (6) 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.

(8) Where applicable, the additional assumptions set out in Schedule 3 shall be used in calculating the APRC.

(9) For the avoidance of doubt, the requirements of paragraphs (1) to (5) and (8) shall operate to the exclusion of any requirement imposed by or under any other enactment that would otherwise govern the calculation of the APRC.

(10) A creditor or mortgage credit intermediary who contravenes a provision of this Regulation commits an offence.

PART 6

CREDITWORTHINESS ASSESSMENT

Obligation to assess the creditworthiness of consumer

19. (1) Before concluding a credit agreement, a creditor shall make a thorough assessment of the consumer's creditworthiness. That assessment shall take

appropriate account of factors relevant to verifying the prospect of the consumer being able to meet his or her obligations under the credit agreement.

(2) A creditor 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) 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 Regulation 21.

(5) A creditor shall only make credit available to the consumer where the result of the creditworthiness assessment indicates that the consumer's obligations resulting from the credit agreement are likely to be met in the manner required under that agreement.

(6) Where a creditor consults a database as part of the creditworthiness assessment, the creditor shall inform the consumer in advance that a database is to be consulted.

(7) Where the credit application is refused, the creditor shall inform the consumer without delay of the refusal and, where applicable, that the decision is based on automated processing of data. Where the refusal 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.

(8) Before any significant increase in the total amount of credit is granted after the conclusion of the credit agreement, a creditor shall ensure that the consumer's creditworthiness is re-assessed on the basis of updated information unless such additional credit was envisaged and included in the original creditworthiness assessment.

(9) This Regulation is without prejudice to the provisions of the Data Protection Act 1988 (No.25 of 1988).

(10) A creditor who contravenes a provision of this Regulation commits an offence.

Property valuation

20. (1) A creditor shall use reliable standards, such as those developed by the International Valuation Standards Council, the European Group of Valuers' Associations or the Royal Institution of Chartered Surveyors, when carrying out a property valuation of residential immovable property for credit purposes, or

take reasonable steps to ensure that reliable standards are applied where a valuation is conducted by a third party.

(2) A creditor 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.

Disclosure and verification of consumer information

21. (1) The assessment of creditworthiness referred to in Regulation 19 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 mortgage credit intermediary during the credit application process. The information shall be appropriately verified, including through reference to independently verifiable documentation when necessary.

(2) A mortgage credit intermediary shall accurately submit the necessary information obtained from the consumer to the relevant creditor to enable the creditworthiness assessment to be carried out.

(3) A creditor shall 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 a request for information shall be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment.

(4) A creditor may seek clarification of the information received in response to that request where necessary to enable the assessment of creditworthiness.

(5) A creditor may not terminate the credit agreement on the grounds that the information provided by the consumer before the conclusion of the credit agreement was incomplete, unless it can be demonstrated that the consumer knowingly withheld or falsified information.

(6) The creditor, or mortgage credit intermediary as appropriate, shall inform the consumer of the need to provide correct information in response to the request referred to in paragraph (3) and that such information needs to be as complete as necessary in order to conduct a proper creditworthiness assessment. The creditor, or mortgage credit intermediary as appropriate, 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.

(7) This Regulation is without prejudice to—

(a) any enactment concerning financial services that imposes, or enables the Central Bank to impose, requirements in relation to credit agreements and, in particular, sections 8H, 128 and 133 of the Consumer Credit Act 1995, section 117 of the Central Bank Act 1989 and Parts 7 and 8 of the Central Bank (Supervision and Enforcement) Act 2013, and

(b) the Data Protection Act 1988 and, in particular sections 2 to 2D, thereof.

(8) A creditor or mortgage credit intermediary who contravenes a provision of this Regulation commits an offence.

PART 7

DATABASE ACCESS

Database access

22. (1) The operator of a database used for assessing the creditworthiness of consumers shall, for the sole purpose of enabling the monitoring of consumer compliance with the credit obligations over the life of the credit agreement, ensure access to the database for all creditors from all EEA Member States; any conditions imposed with respect to such access shall be non-discriminatory.

(2) Paragraph (1) applies both to—

(a) databases which are operated by private credit bureaux or credit reference agencies; and

(b) public registers.

(3) This Regulation is without prejudice to the application of the Data Protection Act 1988.

PART 8

ADVISORY SERVICES

Standards for advisory services

23. (1) A creditor or mortgage credit intermediary shall, in the context of a given transaction, state to the consumer, in language that is unambiguous, whether advisory services are being or can be provided to the consumer.

(2) Before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor or mortgage credit intermediary shall provide 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 paragraph (4)(b) or a wide

range of products from across the market in accordance with paragraph (4)(c) 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.
- (3) The information referred to in paragraph (2)(a) and (b) may be provided to the consumer in the form of additional pre-contractual information.
- (4) In addition to the requirements of Regulations 8 and 10, where advisory services are provided to consumers—
- (a) a creditor or mortgage credit intermediary shall obtain the necessary information regarding the consumer’s personal and financial situation, his or her preferences and objectives so as to enable the recommendation of suitable credit agreements and 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) a creditor or tied credit intermediary shall consider a sufficiently large number of credit agreements in his or her product range and recommend a suitable credit agreement or several suitable credit agreements from among his or her product range for the consumer’s needs, financial situation and personal circumstances;
 - (c) a non-tied credit intermediary shall 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) a creditor and a mortgage credit intermediary shall each 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 subparagraphs (a), (b) and (c); and
 - (e) a creditor or mortgage credit intermediary shall give the consumer a record on paper or on another durable medium of the recommendation provided.
- (5) A creditor or mortgage credit intermediary shall not use the term “independent advice” or “independent advisor” in the course of providing advisory services unless:

- (a) the creditor or mortgage credit intermediary considers a sufficiently large number of credit agreements available on the market; and
- (b) if the number of creditors considered is less than a majority of the market, the creditor or mortgage credit intermediary is not remunerated for those advisory services by one or more creditors.

(6) The Central Bank may, if it considers it appropriate, require creditors or mortgage credit intermediaries to warn a consumer when, considering the consumer's financial situation, a credit agreement may induce a specific risk for the consumer.

(7) Advisory services shall only be provided by-

- (a) a creditor;
- (b) a mortgage credit intermediary;
- (c) a barrister, solicitor or accountant providing advisory services if—
 - (i) he or she is subject to regulation by a professional body, and
 - (ii) those services are provided in an incidental manner in the course of a professional activity;
- (d) any of the following (but only in the context of managing existing debt)—
 - (i) an approved intermediary authorised under section 47 of the Personal Insolvency Act 2012 (No.44 of 2012) acting as such or a personal insolvency practitioner authorised under Chapter 1 of Part 5 of that Act carrying on practice as such;
 - (ii) a debt management firm authorised by the Central Bank;
 - (iii) a charitable organisation within the meaning of section 2(1) of the Charities Act 2009 (No.6 of 2009);
 - (iv) the Money Advice and Budgeting Service;
 - (v) a person who is a party to the “Protocol for Independent Advice to Borrowers Availing of Long Term Mortgage Forbearance” made on 2 August 2012 (as amended from time to time) and provides advice in accordance with that Protocol.

(8) A person referred to in subparagraph (c), or clause (i), (ii), (iii), (iv) or (v) of subparagraph (d), of paragraph (7) shall not benefit from the right referred to in Regulation 33(1) to provide services for the entire European Economic Area.

(9) This Regulation is without prejudice to Regulation 17 and the need 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.

(10) A creditor or mortgage credit intermediary or other person who contravenes a provision of this Regulation commits an offence.

PART 9

FOREIGN CURRENCY LOANS AND VARIABLE RATE LOANS

Foreign currency loans

24. (1) Where a credit agreement relates to a foreign currency loan, a creditor shall, at the time the credit agreement is concluded, at least ensure that—

- (a) the consumer has a right, if conditions specified by the creditor are met, to convert the credit agreement into an alternative currency, 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 creditor may specify the alternative currency referred to in paragraph (1), but it shall be either—

(a) one of the following—

- (i) 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
- (ii) the currency of the EEA Member State in which the consumer either was resident at the time the credit agreement was concluded or is currently resident,

or

(b) both of what is referred to in subparagraph (a)(i) and (ii), that is to say the creditor may specify that the consumer shall be allowed choose which of them shall apply for the purposes of paragraph (1).

(3) The reference in paragraph (1)(b) to other arrangements shall be construed as including a reference to—

- (a) a limit on the amounts that the consumer has to pay under the credit agreement, or
- (b) a risk warning, where such a warning would be sufficient to limit the exchange rate risk to which the consumer is exposed.

(4) Where a consumer has a right to convert the credit agreement into an alternative currency in accordance with paragraph (1)(a), the exchange rate at

which the conversion is carried out shall be the market exchange rate applicable on the day of application for conversion, unless otherwise specified in the credit agreement.

(5) The creditor shall warn the consumer who is a party to a foreign currency loan, on a regular basis on paper or on another durable medium, at least where—

- (a) the value of the total amount payable by the consumer which remains outstanding or
- (b) the regular instalments,

varies by more than 20 per cent from what it would be if the exchange rate between the currency of the credit agreement and the currency of the State applicable at the time of the conclusion of the credit agreement were applied.

(6) The warning provided for in paragraph (5) shall—

- (a) inform the consumer of a rise in the total amount payable by the consumer,
- (b) set out, where applicable, the right to convert to an alternative currency and the conditions for doing so, and
- (c) explain any other applicable mechanism for limiting the exchange rate risk to which the consumer is exposed.

(7) The arrangements applicable under this Regulation 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 per cent, the ESIS shall include an illustrative example of the impact of a 20 per cent fluctuation in the exchange rate.

(8) A creditor who contravenes a provision of this Regulation commits an offence.

Variable rate credits

25. (1) Where the credit agreement is a variable rate credit, the creditor 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 Central Bank; and
- (b) historical records of indexes for calculating the borrowing rates are maintained by the creditor.

(2) A creditor who contravenes a provision of this Regulation commits an offence.

PART 10**SOUND EXECUTION OF CREDIT AGREEMENTS AND RELATED RIGHTS***Early repayment*

26. (1) A consumer has a right to discharge fully or partially his or her 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) A creditor shall be 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, and any such compensation shall not exceed the financial loss of the creditor.

(3) Notwithstanding paragraph (2) and without prejudice to paragraph (4), a creditor's entitlement to compensation under this Regulation shall arise only in the circumstances where the borrowing rate provided for in the credit agreement:-

(a) may not be changed, or

(b) may not be changed over a period of at least one year, or

(c) may not, for a period of at least five years, exceed the rate applicable on the date of the making of the credit agreement by more than two percent.

(4) A creditor shall not in any event be entitled to compensation under this Regulation in respect of—

(a) subject to subparagraph (b), any period of the credit agreement that remains after early repayment,

(b) if the case is one falling within subparagraph (b) or (c) of paragraph (3) and the early repayment occurs before the expiry of the period referred to in that subparagraph, any period of the credit agreement that remains after the expiry of the period so referred to.

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

(6) A creditor who contravenes a provision of this Regulation commits an offence.

Flexible and reliable markets

27. (1) A creditor shall keep appropriate records concerning the types of immovable property accepted by the creditor as security, as well as the related mortgage underwriting policies used.

(2) A creditor who contravenes paragraph (1) commits an offence.

Information concerning changes in the borrowing rate

28. (1) Subject to paragraph (2), a creditor shall inform 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) 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.

(3) A creditor who contravenes a provision of this Regulation commits an offence.

Arrears and proceedings for possession

29. (1) A creditor shall exercise reasonable forbearance before possession proceedings are initiated and shall, at a minimum, comply with the provisions of any code or similar measure put in place by the Central Bank on the handling of arrears.

(2) Any charge that a creditor may impose on a consumer arising from the consumer's default, subject to the provisions of section 149 of the Consumer Credit Act 1995 and any requirements that may be imposed by the Central Bank from time to time, shall be no greater than is necessary to compensate the creditor for the costs it has incurred as a result of the default.

(3) For the avoidance of doubt, the parties to a credit agreement are not prevented from expressly agreeing that the return or transfer to the creditor of the security, or proceeds from the sale of the security, is sufficient to repay the credit.

(4) Where the price obtained for the secured immovable property affects the amount owed by the consumer under the credit agreement, the creditor shall ensure as far as is reasonably practicable that the secured immovable property is sold at the best price reasonably obtainable.

(5) Where, after possession proceedings, an outstanding debt remains, the creditor shall, in order to protect the consumer, put in place measures to facilitate repayment of the outstanding debt by the consumer.

(6) At a minimum, any such measure shall have regard to guidelines on a reasonable standard of living and reasonable living expenses for debtors as issued by the Insolvency Service of Ireland under section 23 of the Personal Insolvency Act 2012, and shall also be such as to not reduce the debtor's assets to a level below that set out in section 26 of that Act.

(7) A creditor who contravenes a provision of this Regulation commits an offence.

PART 11

REQUIREMENTS FOR ESTABLISHMENT AND SUPERVISION OF MORTGAGE CREDIT INTERMEDIARIES

Authorisation of mortgage credit intermediaries

30. (1) This Regulation and Regulations 31 to 34 give effect to—

(a) Article 29 of the Directive with respect to the admission by the Central Bank of a person to carry out the credit intermediation activities referred to in the definition of “mortgage credit intermediary” in Regulation 4 (being the expression, in these Regulations, that corresponds to the expression, “credit intermediary”, set out in point 5 of Article 4 of the Directive), and

(b) certain other Articles of the Directive related to that Article 29.

(2) A person, other than a person—

(a) referred to in Regulation 31(13), or

(b) admitted pursuant to Article 29 of the Directive in another EEA Member State,

shall not carry out the credit intermediation activities referred to in the definition of “mortgage credit intermediary” in Regulation 4 or provide advisory services unless-

(i) the person is the holder of an authorisation (“mortgage credit intermediary’s authorisation”) granted for that purpose by the Central Bank, and

(ii) the person holds an appointment in writing from each undertaking for which the person is an intermediary.

(3) In addition to the requirements provided for in Regulation 10, the authorisation of a mortgage credit intermediary under this Regulation shall be subject to fulfilment of the following professional requirements-

(a) the mortgage credit intermediary shall hold professional indemnity insurance covering the territories in which the intermediary offers services, or some other comparable guarantee against liability arising from professional negligence in accordance with the Directive;

(b) each of the following—

- (i) a natural person established as a mortgage credit intermediary,
- (ii) the members of the board of a mortgage credit intermediary established as a legal person, and
- (iii) natural persons performing equivalent tasks within a mortgage credit intermediary which is a legal person but does not have a board,

shall be of good repute and, in the opinion of the Central Bank, a fit and proper person to act as a mortgage credit intermediary or, as the case may be, to be a member of the foregoing board or to perform the foregoing tasks, and

(c) each of the following—

- (i) a natural person established as a mortgage credit intermediary,
- (ii) the members of the board of a mortgage credit intermediary established as a legal person, and
- (iii) natural persons performing equivalent tasks within a mortgage 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 as stipulated by the Central Bank in accordance with the principles set out in Schedule 1.

(4) The requirements specified in paragraph (3) shall be complied with on a continuing basis, that is to say they shall be complied with at the time of the grant of the authorisation and during its continuance in force and Regulation 34(1)(e) accordingly enables the Central Bank to revoke the authorisation if any of those requirements is not complied with.

(5) For the purposes of paragraph (3)(a), but only in respect of a tied credit intermediary, the insurance or comparable guarantee referred to in that provision may be provided by a creditor for which the mortgage credit intermediary is empowered to act.

(6) For the purposes of paragraph (3)(b), the persons referred to in that provision shall, as a minimum—

- (a) not have been convicted of any offence (other than a summary offence not involving force against the person, damage to property, theft or dishonesty and not relating to any financial activity); and
- (b) not have previously been declared bankrupt, unless they have been rehabilitated or discharged in accordance with law of the jurisdiction in which they were declared bankrupt,

and subparagraph (a) is without prejudice to Regulation 31(5)(b) (which confers a power on the Central Bank to refuse to grant an authorisation in the case of a conviction for an offence, whether an indictable one or not).

(7) The matters that are stipulated by the Central Bank by way of the appropriate level of knowledge and competence, referred to in paragraph (3)(c), in relation to credit agreements for mortgage credit intermediaries' or creditors' staff shall be published by it.

(8) A holder of an authorisation shall only engage in credit intermediation activities or provide advisory services in the name specified in the holder's authorisation.

(9) An application for an authorisation shall be in writing and in such form as the Central Bank may determine and shall contain-

- (a) the true name of the applicant,
- (b) the name under which the applicant trades,
- (c) the name of any undertaking for which the applicant acts or intends to act as a mortgage credit intermediary,
- (d) the address of any business premises of the applicant to which the application relates, and
- (e) such other information that the Central Bank may require.

(10) An application for an authorisation must be accompanied by the fee (if any) prescribed under section 32E of the Central Bank Act 1942 (No.22 of 1942) for the purposes of this Regulation.

(11) The Central Bank may attach such conditions to an authorisation as it thinks appropriate.

(12) A person shall not wilfully give any information which is false or misleading in respect of an application for an authorisation; a person who contravenes this paragraph or any other provision of this Regulation commits an offence.

Supplemental provisions in relation to Regulation 30 (duration of authorisation, amendment of it, grounds for refusing its grant, etc.)

31. (1) Except as provided by paragraph (2), an authorisation remains in force for 12 months from the date specified in the authorisation.

(2) In the case of a particular applicant, or an applicant of a particular class designated by the Bank for the purposes of this paragraph, the Central Bank may, if it so chooses, grant an authorisation for a period longer than 12 months, subject to such conditions or requirements as the Bank specifies. If the Central Bank grants an authorisation for a period longer than 12 months, the authorisation remains in force for that period from the date specified in the authorisation.

(3) The Central Bank may from time to time amend an authorisation-

- (a) by varying any of its conditions, or
- (b) by replacing or revoking an existing condition, or
- (c) by adding a new condition,

but only after giving to that holder a notice in writing of its intention to do so and an opportunity to be heard by, or to make written representations to, the Central Bank in relation to the proposed amendment.

(4) An authorisation shall state-

- (a) the true name of the holder,
- (b) the name under which the holder is authorised to engage in the business of being a mortgage credit intermediary,
- (c) the address of the business premises of the holder, and
- (d) the name of any undertaking for which the holder acts as a mortgage credit intermediary.

(5) The Central Bank may refuse to grant an authorisation on any of the following grounds:

- (a) the applicant does not satisfy the requirements specified in Regulation 30 or does not hold an appointment in writing from each undertaking for which the applicant is an intermediary;
- (b) the applicant, or any business with which the applicant is or has been associated, has, during the previous 5 years, been convicted of an offence that, if committed by a natural person, would be punishable by imprisonment;
- (c) the applicant is the holder of-
 - (i) a bookmaker's licence issued under the Betting Act 1931 (No.27 of 1931), or
 - (ii) a licence for the sale of intoxicating liquor granted under the Licensing Acts 1833 to 1994, or

(iii) a gaming licence issued under the Gaming and Lotteries Act 1956 (No.2 of 1956), or

(iv) a pawnbroker's licence granted under the Pawnbrokers Act 1964 (No.31 of 1964), or

(v) a moneylender's licence;

(d) the applicant has failed to provide a tax clearance certificate (within the meaning of section 1094 of the Taxes Consolidation Act 1997), in respect of the applicant or the applicant's business, that is in force.

(6) Where in relation to an authorisation-

(a) an application in accordance with section 1094 of the Taxes Consolidation Act 1997 (No.39 of 1997) for a tax clearance certificate has been made-

(i) not less than 4 months prior to the commencement date of such authorisation, and

(ii) a tax clearance certificate has not yet been issued or refused,

or

(b) a tax clearance certificate has been refused and an appeal against such refusal has been made in accordance with subsection (7) of that section 1094,

and in either case, the authorisation could, but for the provisions relating to a tax clearance certificate, have been issued, then-

(i) in a case where an authorisation has been granted in respect of the previous authorisation period, such authorisation may continue in force beyond its latest expiry date pending-

(I) the issue or refusal of a tax clearance certificate, or

(II) in the case of an appeal, the final determination of that appeal,

and

(ii) in a case where an authorisation has not been granted in respect of the previous authorisation period, an authorisation may be issued temporarily and remain in force pending-

(I) the issue or refusal of a tax clearance certificate, or

(II) in the case of an appeal, the final determination of that appeal:

Provided that the amount of the fee that would be payable on the application for the authorisation is duly deposited with the Central Bank.

(7) Every authorisation issued temporarily or continued in force in accordance with paragraph (6) shall, while it remains in force, be deemed to be an authorisation within the meaning of these Regulations.

(8) Where—

- (a) a determination is made to issue a tax clearance certificate, in respect of an application referred to in subparagraph (a) of paragraph (6), or
- (b) the final determination of an appeal referred to in subparagraph (b) of that paragraph is to the effect that the application for a tax clearance certificate in relation to an authorisation is an acceptable application,

and where the tax clearance certificate has been issued, the authorisation continued in force or issued temporarily under that paragraph shall expire upon the grant of an authorisation under Regulation 30 and the fee deposited shall be set against the appropriate fee payable on the grant of the authorisation.

(9) Where—

- (a) a determination is made to refuse a tax clearance certificate, in respect of an application referred to in subparagraph (a) of paragraph (6), or
- (b) the final determination of an appeal under subparagraph (b) of that paragraph is to the effect that the refusal of an application for a tax clearance certificate in relation to an authorisation is a valid refusal,

the authorisation continued in force or issued temporarily under that paragraph shall expire not later than seven days after such refusal or after the determination of such appeal, and the amount of any fee deposited in excess of the proportion of that fee attributable to the period when the authorisation was temporarily in force shall be repaid.

(10) Mortgage credit intermediaries authorised under Regulation 30, whether established as natural or legal persons, shall be entered into a register which shall be established and maintained by the Central Bank. That register, which shall be kept up to date and made publicly available on the Internet, shall contain at least the following information—

- (a) the names of the persons within the management who are responsible for the intermediation business;
- (b) the EEA Member States in which the mortgage credit intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services and of which the mortgage credit intermediary has informed the Central Bank in accordance with Regulation 33(4);
- (c) whether the mortgage credit intermediary is tied or not, and if the mortgage credit intermediary is tied, the creditor on whose behalf the tied credit intermediary acts.

(11) The following provisions have effect as regards the head office of a mortgage credit intermediary authorised under Regulation 30:

- (a) in case the mortgage credit intermediary is a legal person, the mortgage credit intermediary shall have its head office and registered office in the State;
- (b) in case the mortgage credit intermediary is not a legal person or the mortgage credit intermediary is a legal person but has no registered office, the mortgage credit intermediary shall have its head office in the State.

(12) The Central Bank shall establish a single information point to allow quick and easy public access to information from the register of mortgage credit intermediaries referred to in paragraph (10), which shall be compiled electronically and kept constantly updated. This single information point shall also provide the identification details of the competent authorities of each EEA Member State.

(13) Neither Regulation 30 nor this Regulation shall apply to a regulated financial service provider (within the meaning of the Central Bank Act 1942) authorised by—

- (a) the Central Bank, or
- (b) an authority that performs functions in an EEA Member State that are comparable to the functions performed by the Central Bank,

to enter into a credit agreement in the State.

(14) For the purposes of these Regulations, a regulated financial service provider, within the meaning aforesaid, authorised (whether before or after the commencement of these Regulations) by the Central Bank or an authority referred to in paragraph (13)(b) to enter into credit agreements in the State, is taken to be authorised to carry on the business of a mortgage credit intermediary.

Credit intermediaries tied to only one creditor

32. (1) In respect of the authorisation by the Central Bank of a tied credit intermediary specified in paragraph (a) of the definition of that expression in Regulation 3(1), the following provisions of this Regulation shall apply.

(2) The authorisation by the Central Bank of such a tied credit intermediary shall be effected by means of—

- (a) an application under Regulation 30, by the creditor on whose behalf the tied credit intermediary is exclusively acting, for the grant of an authorisation under that Regulation to the creditor in respect of that intermediary, and

- (b) subject to the requirements under, or referred to in, that Regulation and Regulation 31 being complied with, the grant by the Bank of such an authorisation,

and, notwithstanding that that application is made by the creditor, references in Regulations 30 and 31, express or implied, to the applicant shall be construed as references to the tied credit intermediary.

(3) If such an authorisation is granted, 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 any area to which these Regulations apply and the creditor shall ensure that the tied credit intermediary complies with, at least, the professional requirements specified in Regulation 30 (3) and (6).

(4) Without prejudice to Regulation 35, a creditor shall monitor the activities of a tied credit intermediary specified in paragraph (1) in order to ensure that the intermediary continues to comply with these Regulations. In particular, the creditor shall be responsible for monitoring compliance with the knowledge and competence requirements of the tied credit intermediary and its staff.

Freedom of establishment and freedom to provide services by mortgage credit intermediaries

33. (1) The authorisation of a mortgage credit intermediary by the Central Bank under Regulation 30 shall be effective for the entire territory of the European Economic Area; accordingly there is no requirement for further admission (pursuant to Article 29 of the Directive) by the competent authorities of the host EEA Member States for the carrying out of the activities and provision of services covered by the authorisation, provided that the activities a mortgage credit intermediary intends to carry out in the host EEA Member States are covered by the authorisation.

(2) However, mortgage credit intermediaries shall not be allowed to provide their services in relation to credit agreements offered by non-credit institutions to consumers in an EEA Member State where such non-credit institutions are not allowed to operate.

(3) An appointed representative appointed in another EEA Member State shall not be allowed to carry out credit intermediation activities or to provide advisory services.

(4) Any mortgage credit intermediary authorised by the Central Bank under Regulation 30 intending to carry out business for the first time in one or more EEA Member States under the freedom to provide services, or when establishing a branch, shall inform the Central Bank.

(5) Within a period of one month after being so informed, the Central Bank shall notify the competent authorities of the host EEA Member States concerned of the intention of the mortgage credit intermediary and shall at the same time inform the mortgage credit intermediary concerned of that notification. It shall also notify the competent authorities of the host EEA Member States

concerned of the creditors to which the mortgage credit intermediary is tied, and whether the creditors take full and unconditional responsibility for the mortgage credit intermediary's activities

(6) The mortgage credit intermediary may start business one month after the date on which he or she has been informed by the Central Bank of the notification referred to in paragraph (5).

(7) Where the Central Bank receives a notification of the type referred to in paragraph (5) from another EEA Member State, it shall enter the necessary information into its register of mortgage credit intermediaries as provided for under Regulation 31(10).

(8) Before the branch of a mortgage credit intermediary commences its activities, or within two months after the date of receiving the notification referred to in paragraph (5), the Central Bank shall prepare for the supervision of the mortgage credit intermediary in accordance with Regulation 35 and, if necessary, indicate to the mortgage credit intermediary the conditions under which, in areas not harmonised in European Union law, those activities are to be carried out in the State.

Revocation of authorisation and provisions concerning appeals against such revocations or refusals to grant authorisations or decisions to amend them

34. (1) The Central Bank may, if it is satisfied that it is appropriate to do so, suspend the operation of, or revoke, the authorisation of a mortgage credit intermediary where the mortgage credit intermediary:

- (a) expressly renounces the authorisation or has carried out neither credit intermediation activities referred to in the definition of "mortgage credit intermediary" in Regulation 4 nor provided advisory services for the preceding 6 months;
- (b) has obtained the authorisation through false or misleading statements or any other irregular means;
- (c) no longer fulfils the requirements under which authorisation was granted;
- (d) has seriously or on a systematic basis contravened the provisions of these Regulations that govern the operating conditions for mortgage credit intermediaries;
- (e) no longer satisfies a condition specified in these Regulations for authorisation as a mortgage credit intermediary.

(2) Whenever the Central Bank proposes to refuse to grant, or proposes to suspend the operation of, or revoke, an authorisation it shall notify the applicant or the holder of the authorisation, as the case may be, of its proposal and shall, if any representations are made to it in writing by such applicant or holder within 14 days after the notification, consider the representations.

(3) If, having considered any representations that may have been made under paragraph (2), the Central Bank decides to refuse to grant an authorisation, it shall, by notice in writing, inform the applicant of the decision. The notice shall specify the grounds for the decision.

(4) If, having considered any representations that may have been made under paragraph (2), the Central Bank decides to suspend the operation of, or revoke, an authorisation, or to vary any term or condition of an authorisation, it shall notify the decision to the holder of the authorisation, together with the grounds for the decision.

(5) The Central Bank shall deliver a notice referred to in paragraph (3) or (4) personally or send it by prepaid registered post to the business address of the applicant for an authorisation or the holder of the authorisation concerned, as the case requires.

(6) The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:

- (a) a decision to refuse to grant an authorisation;
- (b) a decision suspending the operation of, or revoking, an authorisation;
- (c) a decision varying any term or condition of an authorisation.

(7) If a notice under this Regulation relates to a decision of the Central Bank—

- (a) suspending the operation of, or revoking, an authorisation, or
- (b) varying the terms or conditions of an authorisation,

the decision takes effect at the end of the period allowed for appealing against the decision under Part VIIA of the Central Bank Act 1942 unless an appeal against the decision is lodged under that Part within that period.

(8) If an appeal is lodged under Part VIIA of the Central Bank Act 1942 by a holder of an authorisation against a decision of the Central Bank—

- (a) suspending the operation of, or revoking, an authorisation, or
- (b) varying the terms or conditions of an authorisation,

the decision does not take effect unless it is confirmed by the Irish Financial Services Appeals Tribunal or the appeal is withdrawn.

(9) In respect of the authorisation by the Central Bank of a tied credit intermediary as specified in paragraph (a) of the definition of that expression in Regulation 3(1), that authorisation may be revoked upon application by the creditor on whose behalf the tied credit intermediary is exclusively acting.

(10) Where the authorisation of a mortgage credit intermediary has been revoked by the Central Bank, the Central Bank shall notify the competent authorities of host EEA Member States of such revocation as soon as possible and at the latest within 14 working days after the date of the revocation becoming effective and the Central Bank shall remove the person from the register.

(11) The entry in the register of a mortgage credit intermediary whose authorisation has been revoked or who no longer carries out business in the State under the freedom to provide services or freedom of establishment as mentioned in Regulation 33, shall be deleted therefrom, without undue delay, by the Central Bank.

Supervision of mortgage credit intermediaries

35. (1) As part of its functions under the Central Bank Acts 1942 to 2015 to monitor the provision of financial services to consumers, the Central Bank shall take such steps as it considers appropriate to supervise the ongoing activities of mortgage credit intermediaries, and, accordingly, the powers conferred on it (by those Acts) in respect of the foregoing functions are exercisable by it in that behalf.

(2) The Central Bank shall ensure that tied credit intermediaries are subject to supervision directly, or as part of the supervision of the creditor on behalf of which they act if the creditor is a regulated financial service provider referred to in Regulation 31(13)(a) or (b). However, if the tied credit intermediary provides services in an EEA Member State other than the State, then the tied credit intermediary shall be subject to supervision directly.

(3) The Central Bank shall be responsible for ensuring, in a case where a mortgage credit intermediary is admitted in another EEA Member State, being the home EEA Member State, but which has a branch in the State, being the host EEA Member State, that the services provided by the mortgage credit intermediary within the State comply with Regulations 8 (1) and (2), 9, 10, 11, 12, 14, 15, 16, 17, 18, 21, 23 and 40.

(4) Where the Central Bank ascertains, in case where a mortgage credit intermediary is admitted in another EEA Member State, being the home EEA Member State, but which has a branch in the State, being the host EEA Member State, that the services provided by the mortgage credit intermediary within the State have not been in compliance with any of Regulations 8 (1) and (2), 9, 10, 11, 12, 14, 15, 16, 17, 18, 21, 23 and 40, the Central Bank shall require the mortgage credit intermediary concerned to take the necessary steps so as to ensure that that non-compliance ceases.

(5) If the mortgage credit intermediary concerned fails to take the necessary steps referred to in paragraph (4), the Central Bank shall take all appropriate action to ensure that the non-compliance by the mortgage credit intermediary ceases. The nature of that action shall be communicated to the competent authorities of the home EEA Member State.

(6) If, despite the action taken by the Central Bank, the mortgage credit intermediary persists in his or her failure to comply with any of the provisions referred to in paragraph (4), the Central Bank may, after informing the competent authorities of the home EEA Member State, take appropriate action to prevent further instances of such non-compliance by the mortgage credit intermediary and, in so far as necessary, to prevent the mortgage credit intermediary from initiating any further transactions within the State. The Central Bank shall inform the European Commission of any such action without undue delay.

(7) Where the competent authority of another EEA Member State takes an action of the type referred to in paragraph (6) in respect of a mortgage credit intermediary registered in the State, and if the Central Bank disagrees with such an action, the Central Bank may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(8) The Central Bank shall have, in respect of a branch located in the State, the right to examine branch arrangements and to request such changes as are necessary to fulfil its responsibilities under paragraphs (3) to (7) and to enable the competent authorities of the home EEA Member State to enforce the obligations under Regulation 8(3), (4) and (5) with respect to the services provided by the branch.

(9) Where the Central Bank has clear and demonstrable grounds for concluding that a mortgage credit intermediary acting within the State under the freedom to provide services has failed to comply with the relevant provisions of these Regulations or that a mortgage credit intermediary that has a branch within the State has failed to comply with the relevant provisions of these Regulations, other than those specified in paragraphs (3) to (7), it shall refer those findings to the competent authority of the home EEA Member State.

(10) Where the competent authority of the home EEA Member State fails to take any action within one month from receiving the findings referred to in paragraph (9) or where, despite the action taken by that competent authority, a mortgage credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of the consumers in the State or the orderly functioning of the markets, the Central Bank:

(a) shall, after having informed the competent authority of the home EEA Member State, take all appropriate action needed to protect consumers and ensure the proper functioning of the markets, including by preventing the mortgage credit intermediary referred to in this paragraph from initiating any further transactions within the State and shall inform the European Commission and the European Banking Authority of such action without undue delay;

(b) may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(11) If the Central Bank, as the home EEA Member State in relation to a mortgage credit intermediary, receives a finding of the type referred to Article 34(4) of the Directive from a host EEA Member State in respect of the mortgage credit intermediary's activities, the Central Bank shall take the appropriate action.

(12) Where a mortgage credit intermediary admitted in another EEA Member State has established a branch within the State, the competent authorities of the home EEA Member State, in the exercise of their responsibilities and after having informed the Central Bank, may, and there is (by virtue of this paragraph) conferred on such authorities power to, carry out on-site inspections in that branch.

(13) For the avoidance of doubt, the allocation of tasks specified in this Regulation between the competent authorities of EEA Member States shall be without prejudice to the Member States' competences in relation to fields not covered by the Directive in conformity with their obligations under European Union law.

PART 12

ADMISSION AND SUPERVISION OF NON-CREDIT INSTITUTIONS

Admission and supervision of non-credit institutions

36. (1) The Central Bank shall ensure that non-credit institutions are subject to an adequate admission process and to supervision arrangements, including entering the non-credit institution in a register.

(2) In the case retail credit firms (within the meaning of Part V of the Central Bank Act 1997 (No.8 of 1997)), compliance with the enactments for the time being in force that relate to, retail credit firms shall constitute sufficient compliance with paragraph (1).

PART 13

COOPERATION BETWEEN COMPETENT AUTHORITIES OF DIFFERENT MEMBER STATES

Obligation to cooperate

37. (1) The Central Bank shall cooperate with the competent authorities of other EEA Member States whenever necessary for the purpose of performing its functions under these Regulations, making use of the powers available to it, whether those contained in these Regulations or the Central Bank Acts 1942 to 2015 or otherwise in any enactment.

(2) The Central Bank shall render assistance to competent authorities of the other EEA Member States. In particular, it shall exchange information and cooperate in any investigation or supervisory activities.

(3) In order to facilitate and accelerate cooperation, and more particularly the exchange of information, the Central Bank shall be the single designated contact in the State for the purposes of the Directive.

(4) The Central Bank shall communicate to any other body that it considers relevant that it is the designated competent authority for the State for the purpose of receiving requests for exchange of information or cooperation pursuant to Article 36 of the Directive.

(5) The Central Bank shall without undue delay supply the designated single competent authorities in other EEA Member States with the information that may be required for the purposes of carrying out the duties of the competent authorities pursuant to the Directive.

(6) The Central Bank, when exchanging information with other competent authorities of other EEA Member States pursuant to the Directive, may indicate at the time of communication that such information must not be disclosed without its express agreement, in which case such information may be exchanged solely for the purposes for which the Central Bank gave its agreement.

(7) The Central Bank may receive information of the type referred to in paragraph (2) from the single designated competent authority of other EEA Member States and may do so subject to limitations of the type referred to in paragraph (6) and, where such a limitation is put on the information, it shall respect that limitation.

(8) The Central Bank 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 circumstances that, on objective grounds, the Central Bank considers that it is justified in doing so in which case it shall immediately inform the contact point that supplied the information.

(9) The Central Bank 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 this Regulation only where:

- (a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty or security of the State or acceding to the request would be manifestly inconsistent with public policy;
- (b) judicial proceedings have already been initiated in respect of the same actions and the same persons before a court in the State;
- (c) final judgement has already been delivered in the State in respect of the same persons and the same actions.

(10) In the event of such a refusal, the Central Bank shall notify the requesting competent authority accordingly, providing as detailed information as possible.

Settlement of disagreements between competent authorities of different Member States

38. (1) The Central Bank may refer the situation to the European Banking Authority 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 the European Banking Authority's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) Any binding decision made in such cases by the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 shall be binding on the Central Bank.

PART 14

MISCELLANEOUS

Penalties and sanctions

39. (1) A person who is guilty of an offence under these Regulations is liable—

(a) on summary conviction, to a Class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 3 years or both.

(2) Where a person is convicted of an offence under these Regulations and there is a continuation of the offence by the person after his or her conviction, the person commits a further offence on every day on which the contravention continues and for each such offence is liable—

(a) on summary conviction, to a Class D fine, or

(b) on conviction on indictment, to a fine not exceeding €10,000.

(3) Where an offence referred to in paragraph (1) or (2) is proved to have been committed by a body corporate with the consent, connivance or approval of, or to be attributable to the wilful neglect on the part of, any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(4) Summary proceedings in relation to an offence under these Regulations may be prosecuted by the Central Bank.

(5) Part 2 of Schedule 2 (as amended by Regulation 185 of the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No.289 of 2015)) to the Central Bank Act 1942 is amended by inserting after the last item the following:

“64 S.I. No. 142 European Union (Consumer Mortgage Credit Agreements) Regulations 2016 The whole instrument.”.

(6) The Central Bank may publically disclose any administrative sanction that it imposes under the Central Bank Act 1942 for any contravention of the provisions of these Regulations, unless it considers that such a disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Dispute resolution mechanisms

40. (1) The Financial Services Ombudsman has the authority to adjudicate on any dispute between a consumer and a creditor or mortgage credit intermediary that is alleged by the consumer to arise by virtue of the operation of any of the provisions of these Regulations.

(2) As necessary, the Financial Services Ombudsman shall cooperate with the designated body or bodies in another EEA Member State which has responsibility for out-of-court settlement of consumer disputes within the scope of the Directive.

Anti-avoidance

41. (1) A provision of any agreement that purports to disapply to the agreement any provision of these Regulations, or to alter in any respect the operation of any provision of these Regulations in relation to the agreement, is of no effect.

(2) Without limiting the generality of paragraph (1), if it appears that an agreement has been cast in a form for the purpose of avoiding the application of these Regulations to it, a court or other authority having jurisdiction in the matter shall have regard to the commercial reality of the transaction for the purpose of determining whether or not these Regulations apply to the agreement.

Transitional provisions

42. (1) These Regulations shall not apply to a credit agreement that comes into effect before 21 March 2016.

(2) As respects—

(a) a mortgage intermediaries authorisation granted under section 116 of the Consumer Credit Act 1995 and in force immediately before 21 March 2016, and

(b) the holder of such an authorisation that is so in force,

the following apply—

(i) the authorisation shall, notwithstanding Regulation 30, continue in force for the remainder of the period for which, under that section 116, it is provided it shall be in force, but this is subject to paragraph (3);

- (ii) the holder of the authorisation shall be deemed to be a holder of a mortgage credit intermediary's authorisation and the provisions of these Regulations shall accordingly apply to the holder, but this is subject to paragraphs (3) to (6).

(3) The application of the provisions of these Regulations to a holder referred to in paragraph (2)(b) includes the application to the holder of the provisions of Regulation 34 but the grounds on which the powers under that Regulation may be exercised in relation to such a holder do not include a ground the invocation of which would be inconsistent with paragraph (4) or (6).

(4) Notwithstanding anything in paragraph (2), a holder referred to in paragraph (2)(b) is not required to comply with paragraphs (3) to (7) of Regulation 30 until 21 March 2017.

(5) Notwithstanding anything in paragraph (2), a holder referred to in paragraph (2)(b) shall not act as a mortgage credit intermediary outside the State at any time before 21 March 2017, unless the holder satisfies the necessary legal requirements of the host EEA Member State.

(6) Notwithstanding anything in Regulation 2 or paragraph (2), the requirement to have done all the necessary things so as to be in compliance with Regulation 10 shall not take effect, in the case of a creditor or mortgage credit intermediary who has been performing activities to which these Regulations relate before 20 March 2014, until 21 March 2017.

(7) As respects a tied mortgage branch agent within the meaning of the Consumer Credit Act 1995 (Section 120) Regulations 1996 (S.I. No. 247 of 1996) who is acting as such before 21 March 2016, the following apply—

- (a) such a tied mortgage branch agent shall be deemed to be a holder of a mortgage credit intermediary's authorisation, and
- (b) the provisions of these Regulations shall accordingly apply to such an agent,

but, with any necessary modification of those paragraphs' terms for the purpose of qualifying subparagraph (b) as next provided, subparagraph (b) of this paragraph is subject to paragraphs (3) to (6).

PART 15

AMENDMENTS OF OTHER ENACTMENTS

Amendment of European Communities (Consumer Credit Agreements) Regulations 2010

43. Regulation 3 of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010) is amended—

- (a) in paragraph (6)(c), by inserting “subject to paragraph (10),” before “to a credit agreement”, and

(b) by inserting after paragraph (9) the following:

“(10) Paragraph (6)(c) shall not apply to unsecured credit agreements the purpose of which is the renovation of a residential immovable property involving a total amount of credit more than €75,000.”.

Amendment of Consumer Credit Act 1995

44. (1) The Consumer Credit Act 1995 is amended—

(a) in section 116, by substituting, in subsection (1), “Subject to section 116A (inserted by the European Union (Consumer Mortgage Credit Agreements) Regulations 2016) a person shall not engage” for “A person shall not engage”, and

(b) by inserting, after section 116, the following:

“Non-application of section 116 and deemed application of certain provisions

116A. (1) Section 116 shall not apply to a person required to hold a mortgage credit intermediary’s authorisation under Regulation 30 of the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (in subsection (2) referred to as a ‘relevant authorisation’).

(2) Notwithstanding subsection (1), a person who is the holder for the time being of a relevant authorisation shall, for the purposes, and the purposes only, of sections 117 to 119, be deemed to be the holder of a mortgage intermediaries authorisation.”.

(2) The Consumer Credit Act 1995 is further amended by inserting the following after subsection (2) of section 129:

“(3) This section shall not apply to a credit agreement to which the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 apply.”.

Amendment of Central Bank Act 1942

45. Section 2(2A) of the Central Bank Act 1942 is amended—

(a) in paragraph (v), by substituting “29 April 2015;” for “29 April 2015, and”, and

(b) by inserting the following after paragraph (v):

“(va) Commission Delegated Regulation No 1125/2014 of 19 September 2014 supplementing Directive 2014/17/EU of the European Parliament and of the Council with regard to regulatory technical standards on the minimum monetary amount of the professional indemnity insurance or comparable guarantee to be held by credit intermediaries¹, and”.

¹OJ L 305, 24.10.2014, p.1

SCHEDULE 1**MINIMUM KNOWLEDGE AND COMPETENCE REQUIREMENTS**

1. The minimum knowledge and competence requirements for creditors' and mortgage credit intermediaries' staff referred to in Regulation 10 and for persons involved in the management of mortgage credit intermediaries referred to in Regulation 30(3)(c) need to include at least:

(a) appropriate knowledge of credit products falling within Regulation 5 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 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 the Central Bank may differentiate between the levels and types of requirements applicable to the staff of creditors, the staff of mortgage credit intermediaries and the management of mortgage credit intermediaries.

3. The Central Bank 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 subparagraph (b).

SCHEDULE 2

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)
<p>This document was produced for [name of consumer] on [current date].</p> <p>This document was produced on the basis of the information that you have provided so far and on the current financial market conditions.</p> <p>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.</p> <p>(Where applicable) This document does not constitute an obligation for [name of creditor] to grant you a loan.</p>
1. Lender
<p>[Name]</p> <p>[Telephone number]</p> <p>[Geographical address]</p> <p>(Optional) [E-mail address]</p> <p>(Optional) [Fax number]</p> <p>(Optional) [Web address]</p> <p>(Optional) [Contact person/point]</p> <p>(Where applicable information as to whether advisory services are being provided:)</p> <p>[(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.)]</p>

2. (Where applicable) Credit intermediary
<p>[Name]</p> <p>[Telephone number]</p> <p>[Geographical address]</p> <p>(Optional) [E-mail address]</p> <p>(Optional) [Fax number]</p> <p>(Optional) [Web address]</p> <p>(Optional) [Contact person/point]</p> <p>(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.)]</p> <p>[Remuneration]</p>
3. Main features of the loan
<p>Amount and currency of the loan to be granted: [value][currency]</p> <p>(Where applicable) This loan is not in [national currency of the borrower].</p> <p>(Where applicable) The value of your loan in [national currency of the borrower] could change.</p> <p>(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 %.</p> <p>(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].</p> <p>Duration of the loan: [duration]</p> <p>[Type of loan]</p> <p>[Type of applicable interest rate]</p> <p>Total amount to be reimbursed:</p> <p>This means that you will pay back [amount] for every [unit of the currency] borrowed.</p> <p>(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.</p> <p>(Where applicable) Value of the property assumed to prepare this information sheet: [insert amount]</p> <p>(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]</p> <p>(Where applicable) [Security]</p>

4. Interest rate and other costs
<p>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.</p> <p>The APRC applicable to your loan is [APRC].</p> <p>It comprises:</p> <p>Interest rate [value in percentage or, where applicable, indication of a reference rate and percentage value of creditor's spread]</p> <p>[Other components of the APRC]</p> <p>Costs to be paid on a one-off basis</p> <p>(Where applicable) You will need to pay a fee to register the mortgage. [Insert amount of fee where known or basis for calculation.]</p> <p>Costs to be paid regularly</p> <p>(Where applicable) This APRC is calculated using assumptions regarding the interest rate.</p> <p>(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].</p> <p>(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.</p> <p>(Where applicable) The following costs are not known to the lender and are therefore not included in the APRC: [Costs]</p> <p>(Where applicable) You will need to pay a fee to register the mortgage.</p> <p>Please make sure that you are aware of all other taxes and costs associated with your loan.</p>
5. Frequency and number of payments
<p>Repayment frequency: [frequency]</p> <p>Number of payments: [number]</p>
6. Amount of each instalment
<p>[Amount] [currency]</p> <p>Your income may change. Please consider whether you will still be able to afford your [frequency] repayment instalments if your income falls.</p> <p>(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.</p> <p>(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].</p> <p>(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.</p> <p>(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].</p> <p>(Where applicable) [Details on tied savings products, deferred-interest loans]</p>

7. (Where applicable) Illustrative repayment table
<p>This table shows the amount to be paid every [frequency].</p> <p>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.</p> <p>[Table]</p>
8. Additional obligations
<p>The borrower must comply with the following obligations in order to benefit from the lending conditions described in this document.</p> <p>[Obligations]</p> <p>(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.</p> <p>(Where applicable) Please note the possible consequences of terminating at a later stage any of the ancillary services relating to the loan:</p> <p>[Consequences]</p>
9. Early repayment
<p>You have the possibility to repay this loan early, either fully or partially.</p> <p>(Where applicable) [Conditions]</p> <p>(Where applicable) Exit charge: [insert amount or, where not possible, the method of calculation]</p> <p>(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.</p>
10. Flexible features
<p>(Where applicable) [Information on portability/subrogation] You have the possibility to transfer this loan to another [lender][or] [property]. [Insert conditions]</p> <p>(Where applicable) You do not have the possibility to transfer this loan to another [lender] [or] [property].</p> <p>(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].</p>
11. Other rights of the borrower
<p>(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].</p> <p>(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]</p> <p>(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.</p> <p>(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].</p>

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.

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 Regulation 6 of the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, 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 EEA 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'¹

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.

¹In this Schedule, that expression shall be construed as including a reference to a mortgage credit intermediary authorised under Regulation 30.

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 the Central Bank (or, where such a benchmark rate has not been specified by the Central Bank, by the EBA) if 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 Regulation 18(5). 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 Schedule 3, 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 the Central Bank (or, where such a benchmark rate has not been specified by the Central Bank, by the EBA) if 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.

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) In a case where the borrowing rate may vary during the lifetime of the credit, (Where Applicable) 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 Regulation 6 of the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, 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 paragraphs (u) and (v) of Schedule 1 to the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.

(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.

SCHEDULE 3

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.:

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

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 paragraphs (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 paragraphs (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 paragraph, 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 EEA Member State where the immovable property is located at the time of conclusion of the credit agreement or 0 % if those percentages are negative.



GIVEN under my Official Seal,
22 March 2016.

MICHAEL NOONAN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations transpose into domestic law the provisions of Directive 2014/17/EU of the European Parliament and of the Council 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 (the “Mortgage Credit Directive”).

The objective of the Mortgage Credit Directive, as outlined in Recital 6, is to develop a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to residential immovable property, while promoting sustainable lending and borrowing and financial inclusion, and hence providing a high level of consumer protection.

The main elements of the Regulations are:—

- Part 1 covers preliminary matters including important definitions and the type of credit agreements falling within the scope of the Regulations. It also designates the Central Bank of Ireland as the competent authority in Ireland for matters covered in the Regulations and the Directive.
- Part 2 contains a measure in relation to the financial education of consumers.
- Part 3 provides for certain measures, including conduct of business obligations, which will apply to creditors and mortgage credit intermediaries and their staff.
- Part 4 provides for certain pre-contractual information and practices in relation to the advertising of credit agreements, the provision of pre-contractual information and measures for the provision of adequate explanations to consumers. In particular, it provides for the mandatory provision of standardised pre-contractual information to consumers through the use of the European Standardised Information Sheet (ESIS) and for a “reflection period” to enable a consumer to compare offers of mortgage credit and to make an informed decision.
- Part 5 provides for a mandatory formula and requirements for the calculation of the annual percentage rate of charge (APRC).
- Part 6 provides for creditor requirements in relation to the carrying out of a creditworthiness assessment and the valuation of property.
- Part 7 addresses access to credit databases.
- Part 8 provides for certain controls in the provision of advisory services in relation to credit agreements within the scope of the Regulations.

- Part 9 provides for certain measures in relation to foreign currency loans and places a requirement on creditors where a reference rate or index is used to set a variable interest rate.
- Part 10 provides for certain measures which will apply during the period of an agreement including giving the consumer the right to repay a mortgage before the expiry of the term of the agreement and provisions which will be applicable in the event of default.
- Part 11 deals with the authorisation and supervision of mortgage credit intermediaries.
- Part 12 deals with the admission and supervision of non-credit institutions.
- Part 13 sets out measures to ensure appropriate cooperation between the competent authorities of EEA Member States, including the Central Bank of Ireland.
- Part 14 covers certain miscellaneous matters such as penalties and transitional provisions. It also provides that the consumer protection provisions contained in these Regulations cannot be dis-applied in agreements.
- Part 15 amends some other enactments.

The Regulations also contain three schedules which

- (i) provide for certain “minimum knowledge and competence requirements” for creditors and mortgage credit intermediaries (Schedule 1),
- (ii) the details of the ESIS sheet to be provided to consumers before entering into a relevant credit agreement (Part A of the Schedule 2), and
- (iii) the mathematical formula and additional assumptions to be used to calculate the APRC (Schedule 3).

Points (ii) and (iii) above (together with the other relevant parts of these Regulations) have a “maximum harmonisation” effect and will therefore apply in a consistent way across EEA Member States. No provision of Irish national law may diverge from these particular provisions.

Although it is not required to be provided for in these Regulations, it should be noted that Article 44 of the Mortgage Credit Directive provides that the EU Commission shall review the effectiveness and appropriateness of the Directive’s provisions on consumers and the internal market by 21 March 2019.

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