



Conseil européen des Professions immobilières  
European Council of Real Estate Professions



## A Guide to Directive 2014/17/EU on Credit Agreements for Consumers Relating to Residential Immovable Property (the “Mortgage Credit Directive”)

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*This guide has been prepared for CEPI member associations  
to assist them in monitoring the implementation of the Mortgage Credit Directive.  
It highlights points of practical importance for real estate professionals.*

*Brussels, April 2014*



## What kind of legislation is Directive 2014/17/EU?

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***European directives are pieces of EU legislation that must be transposed into national law.***

- Member States have until 21 March 2016 to implement the Directive. It does not apply to credit agreements existing before 21 March 2016. Any existing credit intermediaries will have to comply with its terms by March 2017.
- The Directive has to be reviewed by the Commission by March 2019. By that date the Commission has to submit a comprehensive report assessing the wider challenges of private over-indebtedness directly linked to credit activity. It will also examine the need for the supervision of credit registers and the possibility for the development of more flexible and reliable markets.

***Directive 2014/17/EU requires minimum harmonization in the Member States.***

- A Member State may go further than the minimum requirements of the Directive and maintain or introduce more stringent provisions.
- The minimum harmonization applies except for two of the requirements of this directive which are:
  1. To provide standard pre-contractual information for borrowers through a European Standardised Information Sheet (ESIS) which is contained in Annex II of the Directive;
  2. To apply a consistent EU standard for the calculation of the annual percentage rate of charge (APRC) the rules for which are set out in Annex I of the Directive.



## What are the objectives of Directive 2014/17/EU?

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***The Mortgage Credit Directive is intended to ensure that responsible lending becomes the norm across Europe with better information for borrowers to reduce the risk of over-indebtedness and better protection in the event of default. The main objective of the new rules therein is to ensure that borrowers are informed of the real cost of taking on a mortgage and in particular to provide:***

- better information, more time to decide, heightened credit worthiness assessment standards;
- business conduct rules including standards for advisory services;
- early repayment of loans as a general right for consumers;
- a passport regime for credit intermediaries who will be subject to principles for their authorisation and registration subject to maintaining an appropriate level of knowledge and skills, holding professional indemnity insurance and being of good repute;
- high level principles to encourage lenders to apply reasonable forbearance when confronted by consumers in serious payment difficulties.



## What credit agreements are covered by Directive 2014/17/EU?

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- Credit agreements secured by a mortgage (or comparable security) on residential immovable property or a right related to residential immovable property; and
- Credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

### **But not:**

- Equity release credit agreements;
- Credit agreements where the credit is granted by an employer to his employees as a secondary activity free of interest or at lower than market rate;
- Credit agreements free of interest and without other charges except for those to recover costs directly related to the securing of the credit;
- Credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;
- Credit agreements which are the outcome of a court settlement;
- Credit agreements which relate to the deferred payment, free of charge, of an existing debt.

In addition a Member State may decide not to apply the Directive to certain other products including credit agreements related to a purchase for rental (rather than own residential) use, credits granted to a restricted public free of interest or at lower than market rates and bridging loans (Article 3).



## Does Directive 2014/17/EU apply to real estate professionals?

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***The Directive applies to a creditor or credit intermediary, whether a legal or natural person, and appointed representatives for credit agreements concluded with consumers. The definition of consumer covers natural persons who are acting outside their trade, business or profession (as a whole or if the trade or business activity is very limited).***

However.....

- Member States may provide that persons carrying out credit intermediation activities only on an incidental basis in the course of professional activity are not subject to the admission procedure set out in the Directive provided that the professional activity is regulated and the relevant rules do not prohibit the carrying out, on an incidental basis, of credit intermediation activities.
- Also persons who merely introduce or refer a consumer to a creditor or credit intermediary on an incidental basis in the course of their professional activity, for instance by indicating the existence of a particular creditor or credit intermediary to the consumer or a type of product without further advertising or engaging in the presentation, offering, preparatory work or conclusion of the credit agreement *should not be regarded as credit intermediaries for the purposes of the Directive.*

***Therefore, those real estate professionals who provide services relating to mortgages beyond a mere introduction or reference of a consumer to a creditor or credit intermediary may be treated as credit intermediaries and need to comply with the requirements of the Directive.***



## What are the requirements to conduct activities as a credit intermediary? (1)

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### **1. Admission in the home country:**

Member States must make sure that the admission of credit intermediaries is subject to the following requirements:

- professional indemnity insurance;
- a natural person established as a credit intermediary and board members of a credit intermediary must be of good repute (as a minimum having a clean police record and not having been declared bankrupt);
- the appropriate level of knowledge and competence in relation to credit agreements.

All admitted credit intermediaries must be registered with a competent authority in their home Member State. The register must contain as a minimum:

- the names of persons within the management who are responsible for the intermediation business;
- the Member States in which the credit intermediary conducts business;
- whether the credit intermediary is tied or not.

A single information point will be established in each Member States to allow quick and easy public access to the register.

If credit intermediaries are tied to only one creditor they may be allowed to be admitted by competent authorities through the creditor on whose behalf the tied credit intermediary is acting.



## What are the requirements to conduct activities as a credit intermediary? (2)

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### ***2. Recognition in other EU Member States:***

Admission as a credit intermediary is effective in another EU Member State provided that the activities in the host Member State are covered by the admission in the home Member State. When business is conducted in another Member State for the first time the credit intermediary has to inform the authorities in its home Member State which will in turn notify the authorities in the host Member State. The credit intermediary may start business one month after the date on which its home Member State authorities inform it of the notification. The host Member State will then supervise the credit intermediary and if necessary indicate any conditions for the activities to be carried out (Article 32).



## What are the obligations imposed on creditors, credit intermediaries and their appointed representatives? (1)

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### **Article 6 : Financial education of consumers**

Member States shall promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements. The Commission will publish an assessment of the financial education available to consumers in the Member States and identify examples of best practices which could be further developed in order to increase the financial awareness of consumers.

### **Article 7 : Conduct of business obligations when providing credit to consumers**

Member States may ban commissions paid by the creditor to the credit intermediary and may prohibit or impose restrictions on payments from a consumer to a creditor or credit intermediary prior to the conclusion of a credit agreement.



## What are the obligations imposed on creditors, credit intermediaries and their appointed representatives? (2)

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### Article 14 : Pre-contractual requirements

The consumer must be given personalised information (by way of the ESIS) without undue delay (after the consumer has supplied information on his needs, financial situation and preferences) and in good time before he is bound by any credit agreement or offer. A Member State may provide for it to be obligatory to provide the ESIS before the provision of an offer binding on the creditor.

Consumers must be given sufficient time (at least seven days) to consider the implications of the agreement they are being asked to enter into. But Member States are given flexibility to provide this sufficient time either:

- as a period of reflection before the credit agreement is concluded;
- or as a period of withdrawal after the conclusion of the credit agreement;
- or as a combination of the two.

Where a Member State chooses to specify a reflection period before the conclusion of a credit agreement the offer is binding on the creditor for the duration of the reflection period and may be accepted by the consumer at any time during the reflection period. However Member States may provide that consumers cannot accept the offer for a period of up to ten days. If the consumer takes any action resulting in the creation or transfer of a property right related to funds obtained through the credit agreement, or transfers the funds to a third party, the reflection period or right of withdrawal should cease.



## What are the obligations imposed on creditors, credit intermediaries and their appointed representatives? (3)

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### Article 17 : Calculation of the Annual Percentage Rate of Charge (APRC)

The APRC is to be calculated in accordance with the mathematical formula set out in Annex I based on the assumption that the credit agreement is to remain valid for the period agreed.

### Article 18 : Obligation to assess the creditworthiness of the consumer

Before concluding a credit agreement a creditor must make a thorough assessment of the consumer's creditworthiness taking into account relevant factors to verify the prospect of the consumer meeting his obligations under the credit agreement.



## What are the obligations imposed on creditors, credit intermediaries and their appointed representatives? (4)

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### Article 19 : Property valuation

The Directive contains particular requirements about the valuation of residential property. Member States must ensure that reliable valuation standards are in place and are required to be used by creditors in the event of a property valuation carried out by the creditor or a third party. Such standards should take into account internationally recognised valuation standards, in particular those developed by the International Valuation Standards Committee, the European Group of Valuers' Associations or the Royal Institution of Chartered Surveyors.

Member States shall ensure that internal and external appraisers conducting property valuations are professionally competent and sufficiently independent from the credit underwriting process in order to provide an impartial and objective valuation. This may be ensured through law or self-regulation.

### Article 22 : Standards for advisory services

The Directive provides for harmonised rules as regards the fields of knowledge and competence that creditors, credit intermediaries and appointed representatives' staff should possess in relation to a credit agreement.



## What are the obligations imposed on creditors, credit intermediaries and their appointed representatives? (5)

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### Article 23 : Foreign currency loans

If a credit agreement relates to a foreign currency loan Member States must ensure that the consumer has the right to convert the credit agreement into an alternative currency under specified conditions, or that there are other arrangements in place to limit the exchange rate risk to which the consumer is exposed.

### Article 25 : Early repayment

Member States should ensure that consumers have a right to early repayment according to conditions which may include time limitations on the exercise of the right, different treatment according to the type of borrowing rate or restrictions with regard to the circumstances under which the right may be exercised. Where the early repayment falls within a period for which the borrowing rate is fixed exercise of the right may be made subject to the existence of a legitimate interest on the part of the consumer specified by the Member State (for example divorce or unemployment). The conditions may provide that the creditor is entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit.



## What are the obligations imposed on creditors, credit intermediaries and their appointed representatives? (6)

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### **Article 26 : Flexible and reliable markets**

As well as ensuring that the claim against the security is enforceable by creditors who must keep appropriate records, Member States must take the necessary measures to ensure an appropriate statistical monitoring of the residential property market. Where appropriate this should include the development and use of specific price indexes (public or private).

### **Article 28: Arrears and foreclosures**

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



## What are the obligations imposed on creditors, credit intermediaries and their appointed representatives? (7)

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### Article 29 : Admission of credit intermediaries

Credit intermediaries (natural or legal persons not acting as a creditor or notary and not merely introducing a consumer to a creditor or credit intermediary) must be duly admitted to provide advisory services by a competent authority in their home Member State or to carry out all or part of the credit intermediation activities set out in point 5 of Article 4 of the Directive which (in the course of a trade, business or profession for remuneration) are to:

- present or offer credit agreements to consumers;
- assist consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to above;
- conclude credit agreements with consumers on behalf of the creditor.



## What are the rules in case of infringement and dispute?

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### **In case of infringement:**

Member States should impose rules on sanctions applicable to infringements of national rules adopted pursuant to the Directive which sanctions should be effective, proportionate and dissuasive (Article 38).

### **In case of dispute:**

Consumers should have access to alternative dispute resolution procedures which Member States should ensure are not optional for creditors and credit intermediaries (Article 39).



## Conclusion

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***The Directive makes some important changes which will affect the property market because of their impact on the availability of mortgage credit. Therefore it is important to pay close attention to the way in which these measures are implemented. CEPI member associations are encouraged to consider carefully how best the measures can be adapted to their particular national circumstances and are of course invited to direct any questions they may have about the European legislation to the CEPI Secretariat.***

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## Useful sources of information

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***Full text of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property***

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32014L0017:EN:NOT>

***European Commission webpage on mortgage credit***

[http://ec.europa.eu/internal\\_market/finservices-retail/credit/mortgage/index\\_en.htm](http://ec.europa.eu/internal_market/finservices-retail/credit/mortgage/index_en.htm)