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ACT 16/2011, OF 24 JUNE,  
ON CONSUMER CREDIT CONTRACTS

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STARTUL, S.L.

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**ACT 16/2011, OF 24 JUNE, ON  
CONSUMER CREDIT CONTRACTS**

**LEY 16/2011, DE 24 DE JUNIO, DE CONTRATOS  
DE CRÉDITO AL CONSUMO**

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## **ACT 16/2011, OF 24 JUNE, ON CONSUMER CREDIT CONTRACTS**

JUAN CARLOS I

KING OF SPAIN,

To all whom this Act shall be seen and understood, be it known that:

The Spanish Parliament has approved this Act and I do enact the same as follows:

### **PREAMBLE**

#### **I**

During the last three decades, the consumer credit market has grown significantly, while its agents and financial techniques have evolved rapidly.

The first Community actions in terms of consumer credit mainly pursued the harmonisation of distortions of competition in the common market, although they also addressed the social protection of credit legislation. The result of this work was the Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, which was modified by the Council Directive 90/88/EEC of 22 February 1990, mainly in what refers to the mathematical formula for calculating the annual percentage rate of charge.

Back in 1995, the Commission, in the report on the implementation of Directive 87/102/EEC, proposed amending this rule in order to adapt it to the evolving financial techniques and increase the level of consumer protection to the average of Member States. With this purpose the Commission carried out an extensive consultation with the interested parties.

From the reports and consultations on the implementation of this Community legislation we can gather that there are substantial differences between the legislations of the Member States of the European Union as far as consumer credit is concerned, since they not only use the consumer protection mechanisms provided for in the Directive, but also other mechanism according to different national legal or financial circumstances. These differences hamper the functioning of the internal market and reduce the chances of consumers directly benefiting from cross-border consumer credit.

In addition to the above mentioned considerations on the homogeneity of national economic legislations, it is necessary to develop a more transparent and effective

credit market within the European area in order to promote cross-border activities and to ensure the trust of consumers by means of mechanisms that provide them with sufficient protection.

Since there are many changes that should be made to Directive 87/102/EEC as a consequence of the evolution of the credit consumption sector, and in the interests of clarity of Community legislation, it has been decided to repeal that directive and replace it by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on consumer credit contracts and repealing Council Directive 87/102/EEC.

## II

In the drafting of this Act, which aims to add Directive 2008/48/EC to the domestic legislation and which repeals Consumer Credit Act 7/1995 of 23 March, the following two criteria have been decisive:

On the one hand, we have to respect the aim of the Directive, which imposes a total harmonisation, so that Member States are not allowed not maintain or introduce national provisions other than the harmonised provisions laid down in this European standard, although such a restriction does not apply to the maintenance or adoption of national standards if no harmonised disposition exist. Standard European consumer credit information and, in particular, the annual percentage rate of charge corresponding to the credit - which is calculated in the same way throughout the European Union - give the credit market a greater transparency, allow the comparison of the various offers and increase the possibilities for consumers to benefit from cross-border consumer credit.

It also intends to preserve those provisions of our domestic Law offering greater protection in terms of consumer credit despite not being required by Community rules. Therefore, this Act sets out the provisions of Act 7/1995 relating to binding offers, the effectiveness of contracts linked to the obtaining of a credit, the improper collection and penalties due to lack of form and by omission of mandatory contractual clauses. In addition, it maintains the partial application of the Act to credit contracts the total amount of which exceeds 75,000 Euros.

## III

The Act applies to those contracts in which the creditor grants or promises to grant to a consumer a credit in the form of deferred payment, loan, opening of credit or any equivalent financing source. Consideration of consumers is limited to persons acting in a field unrelated to their business or professional activity.

The delimitation of the objective scope of application of this Act, as well as the definition of the concepts used in it, seek to adapt the standard to the constant evolution of financial techniques and the convenience that its provisions can accommodate future forms of credit.

With the aim of improving information for consumers, the Act affects actions taken prior to the hiring of credit. In particular, it regulates in detail the basic information that shall be included in the advertising and commercial communications and in the

announcements of deals that are displayed at business premises offering credits or intermediary services for the conclusion of a credit contract.

Furthermore, it provides a list of the characteristics of the credit about which the creditor, and, if applicable, the credit intermediary must inform the consumer before the latter assumes any obligation under a credit contract or offer. This pre-contractual information must be provided through a standardised form according the terms provided for in the Directive. In addition, it obliges creditors, and, where appropriate, intermediaries, to help consumers in their decision on the credit contract that best meets their needs and financial situation among other products available. This assistance focuses on the obligation to explain consumers in a personalised way the features of the products offered as well as the relevant pre-contractual information, and to warn them of the risks in the event of non-payment or excessive indebtedness, so that they can understand the impact that the credit contract may have on their economic situation.

Of particular interest is the introduction of new responsible practices at this stage of the credit relationship, namely the creditors' obligation to assess the credit-worthiness of the borrowers prior to the conclusion of the credit contract, for which purpose they may use the information obtained by their own means and the information provided by the future borrowers, including the consultation of databases. Although this assessment is always compulsory, its scope is at the discretion of the creditors based on the business relationship between them and their client. The provisions of this Act are limited to the consumer credit contract according to the Directive being transposed, without prejudice to the sectorial legislation, in particular to Act 2/2011 of 4 March on Sustainable Economy, that credit institutions must observed with regard to the responsibility on credit and the protection of users of financial services.

To ensure free competition between creditors, the conditions of access to the databases to check the patrimonial solvency of consumers must be the same for all creditors established in the European Union. These databases are governed by the regulations on the protection of personal data, with the particularity of the right of applicants to whom credits have been denied upon consultation of data to know the results of the consultation carried out immediately afterwards and at no cost.

The increased demand for information to consumers about their rights and obligations is reflected in the regulation of the contents of the contracts, which adapts to the specificity of the different types of credit contract.

In the phase of contract execution, the Act regulates the right of the parties to end an open-end contract, as well as the consumer's right to early credit repayment and the borrower's position regarding the transfer of the creditor's rights arising from a credit contract. While these last two points are already covered in Act 7/1995, they now have its antecedent in the directive being transposed. It also introduces the consumer's right to withdraw from the credit contract, for which the criteria governing the exercise of this right in distance marketing of financial services have been followed.

The mathematical formula for the calculation of the annual percentage rate of charge aims to define in a clear and comprehensive way the total cost of a credit to the

consumer and to ensure that this percentage is fully comparable in all States of the European Union. The right of the Ministry of the Economy and Finance to establish additional assumptions for the calculation of the annual percentage rate facilitates the adjustment of these provisions to further amendments that the Commission determines in the course of the exercise of its powers.

As for the penalties, the non-observance by credit institutions of the obligations imposed by this Act shall be punishable in accordance with the regulation on discipline and intervention of credit institutions. The non-compliance by other natural and legal persons constitutes a breach in terms of the protection of consumers and users.

Although the penalties aim to guarantee the implementation of the entire Act, in order to promote responsible practices in the phase prior to the contract, they put special emphasis on the compliance with the obligations concerning pre-contractual information and evaluation of the consumer's creditworthiness.

The challenge system opens the way for extrajudicial claim for the resolution of disputes between consumers and creditors, as well as credit intermediaries, and incorporates the regulation of injunctions against conducts contrary to this Act.

## **CHAPTER I**

### **General provisions**

#### **Article 1.** *Consumer Credit Contract.*

1. By way of a consumer credit contract a creditor grants or promises to grant to a consumer a credit in the form of deferred payment, loan, opening of credit or any equivalent financing source.
2. According to this Act, contracts for the supply of goods of the same type or the ongoing service provision shall not be regarded as credit contracts, provided that the consumer has the right to pay for such goods or services in instalments during the term of the contract.

#### **Article 2.** *Parties of the credit contract.*

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

1. «Consumer» means a natural person who, in transactions covered by this Act, is acting for purposes which are outside his trade, business or profession;
- 2.«Creditor» means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;
- 3.«Credit intermediary» means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:
  - (i) Presents or offers credit agreements to consumers;
  - (ii) Assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (i); or
  - (iii) Concludes credit agreements with consumers on behalf of the creditor;



**Article 3. Excluded contracts.**

This Act excludes the following contracts:

- a) Credit contracts secured with real estate mortgages.
- b) Credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.
- c) Credit agreements involving a total amount of credit less than EUR 200.

For this purpose, a credit shall only have one amount, even if that amount is distributed between different contracts that have been concluded by the same parties and for the acquisition of the same good or service, even if such credits have been granted by different members of a group (be it legal or not).

- d) Hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement; such an obligation shall be deemed to exist if it is so decided unilaterally by the creditor.

- e) Credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month, without prejudice to the provisions contained in Article 12 (9) and in Article 19.

- f) Credit agreements where the credit is granted free of interest and without any other charges and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable. For this purpose, the minimum expenses may not exceed altogether, excluding tax, 1 per cent of the total amount of credit, defined in Article 6 (c).

As for contracts related to what is referred to in Article 29 of this Act, unless otherwise agreed it shall be presumed that the creditor and the supplier of goods or services have negotiated a compensation by which the former shall pay a certain amount to the latter for concluding a loan agreement. In this case, the consumer credit contract shall not be deemed free of charge.

- g) Credit agreements where the credit is granted by an employer to his employees as a secondary activity free of interest or at annual percentage rates of charge lower than those prevailing on the market and which are not offered to the public generally.

It shall be presumed that the annual percentage rates of charge that are lower than those prevailing on the market are equivalent to those rates that are lower than the legal interest rate of the money.

- h) Credit agreements which are concluded with investment firms or with credit institutions for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Article 2 of Act 24/1988 of 28 July on the Stock Market, where the investment firm or credit institution granting the credit is involved in such transaction.

- i) Credit agreements which are the outcome of a settlement reached in court or before another statutory authority.

j) Credit agreements which relate to the deferred payment, free of charge, of an existing debt.

k) Credit agreements upon the conclusion of which the consumer is requested to deposit an item as security in the creditor's safe-keeping and where the liability of the consumer is strictly limited to that pledged item.

**Article 4. *Partial application of the Act.***

**1.** An «overdraft facility» is an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account.

Regarding contracts in which the credit is granted in the form of an overdraft facility and that must be repaid upon request or within a maximum period of three months, only the following articles shall apply: Articles 1 to 7, section 1 and letters a) and b) of section 2 of Article 9, Articles 12 to 15, Article 16 (1) and (4) and Articles 17, 19, 29, and 31 to 36.

**2.** «Overrunning» means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility.

In the case of tacit overrun contracts, only Articles 1 to 7, 20, and 34 to 36 shall apply.

**3.** A «tacit excess» means a tacitly accepted excess whereby a creditor makes available to a consumer funds which exceed the agreed limit in the consumer's current account.

In the case of contracts for tacit excesses, only Articles 1 to 7, 20, and 34 to 36 shall apply.

**4.** Credit contracts that establish that the creditor and the consumer can reach agreements concerning the deferred payment or repayment methods when the consumer already is in a non-payment situation of the contract's initial credit, provided that such agreements avoid possible legal proceedings due to the non-payment and the consumer is not subject to conditions less favourable than those laid down in the initial credit contract. In this case, only following articles shall apply: Articles 1 to 7, 9, 12, 13 and 15, Article 16 (1), letters a) to i), l) and r) of Article 16 (2), Article 16 (4), Articles 18, 20, 27 and 30, and Articles 32 to 36.

However, if the contract falls within the scope of Section 1 of this Article, only the provisions laid down in that paragraph shall apply.

**5.** In credits the total amount of which is greater than 75,000 Euros only Articles 1 to 11, 14, 15, and 32 to 36 shall apply.

**Article 5. *Imperative nature of this Act.***

**1.** Consumers may not waive the rights conferred on them by this Act.

**2.** The waiver of the rights conferred on consumers by this Act and the acts that are contrary to it shall be regarded as void. Illegal acts shall be punished as such according to the provisions of Article 6 of the Civil Code.

3. The consumer protection rules contained in this Act shall apply not only when the corresponding credit agreement is governed by the Spanish legislation or any other applicable legislation, but also when the parties intend the contract to be governed by the law of a third State, provided that the contract is closely linked with the territory of a Member State of the European Economic Area.

In particular, the contract shall be deemed as closely linked when the creditor or credit intermediary carries out his activities in one or several Member States of the European Economic Area or when he, through any advertising or communication means, aims such activities at one or several Member States and the credit contract falls within the scope of these activities.

**Article 6. *Economic content of the contract.***

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

- a) «Total cost of the credit to the consumer» means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit on the terms and conditions marketed.
- (b) «Total amount payable by the consumer» means the sum of the total amount of the credit and the total cost of the credit to the consumer.
- (c) «Total amount of credit» means the maximum amount or the total sums made available to the consumer under a credit agreement;
- (d) «Annual percentage rate of charge» means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 32 (2).
- (e) «Borrowing rate» means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down.
- (f) «Fixed borrowing rate» means that the creditor and the consumer agree in the credit agreement on one borrowing rate for the entire duration of the credit agreement or on several borrowing rates for partial periods using exclusively a fixed specific percentage. If not all borrowing rates are determined in the credit agreement, the borrowing rate shall be deemed to be fixed only for the partial periods for which the borrowing rates are determined exclusively by a fixed specific percentage agreed on the conclusion of the credit agreement.

## **Article 7. Information requirements.**

**1.** The information that pursuant to this Act has to be provided to the consumer, either prior to the contract, during its term or upon its termination, shall be provided on paper or on another durable medium. «Durable medium» means any instrument that allows information to be addressed personally to the consumer, enables the recipient to store information in a way that is accessible for future reference and for a period of time adequate for the purposes of the information and that allows the unchanged reproduction of the information stored.

**2.** The non-compliance with the requirements relating to pre-contractual information and to how it is laid down in Articles 10 and 12, will lead to the voidability of the contract. Should the effectiveness of the contract remain unaltered, the agreement will be subject to the consolidated text of the General Law for the Defence of Consumers and Users and other complementary acts, approved by Royal Legislative Decree 1/2007 of 16 November and other applicable regulations.

**3.** The provisions contained in this Act, in particular in Articles 10 and 12, should be without prejudice to the necessary compliance with information obligations established in the Organic Law 15/1999 of 13 December on the Protection of Personal Data and its implementing regulations.

## **CHAPTER II**

### **Information and practices preliminary to the conclusion of the credit agreement**

#### **Article 8. Binding offer.**

Before the conclusion of the contract, creditors offering a credit to consumers are obliged —if so required by the consumers— to hand over to the consumer a document containing all the terms and conditions of the proposed agreement (in identical terms to Article 10 regarding pre-contractual information), which will qualify as a binding offer of the creditor for at least 14 calendar days except in case of extraordinary circumstances or circumstances not attributable to him.

If such an offer is made at the same time as the pre-contractual information provided for in Article 10 is communicated, it should be provided to the consumer in a separate document which may be annexed to the Standard European Consumer Credit Information.

#### **Article 9. Standard information to be included in advertising.**

**1.** Any standard information provided for by this Article shall be included in the advertising and commercial communications, as well as in ads and promotions displayed at business premises offering a credit or intermediation services for the conclusion of a credit contract, as long as they indicate the interest rate or any amount related to the cost of credits for consumers.

**2.** Standard information shall specify in a clear, concise and prominent way by means of a representative example:

- a) The borrowing rate, fixed or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer;
- b) The total amount of credit.
- c) The annual percentage rate of charge, except for contracts in which the credit is granted in the form of an overdraft facility and the credit has to be reimbursed on request or within the three months, as stated in section 2 of Article 4 (1).
- d) Where appropriate, the duration of the credit agreement.
- e) In the case of a credit in the form of deferred payment for a specific good or service, the cash price and the amount of any advance payment; and
- f) If applicable, the total amount payable by the consumer and the amount of the instalments.

Standard information shall be published in a legible font and with an adequate print contrast.

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

#### **Article 10. Pre-contractual information.**

**1.** In good time before the consumer is bound by any credit agreement or offer, the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement.

**2.** Such information, on paper or on another durable medium, shall be provided by means of the Standard European Consumer Credit Information form set out in Annex II.

The information in question shall specify:

- a) The type of credit;
- b) The identity and the geographical address of the creditor as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- c) The total amount of credit and the conditions governing the drawdown;
- d) The duration of the credit agreement;
- e) In the case of a credit in the form of deferred payment for a specific good or service and linked credit agreements, that good or service and its cash price;
- f) The borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate.

If different borrowing rates apply in different circumstances, the above mentioned information on all the applicable rates.

g) The annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example mentioning all the assumptions used in order to calculate that rate.

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 take those components into account.

If a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumption set out in letter (b) of Part II of Annex I, he shall indicate that other drawdown mechanisms for this type of credit agreement may result in higher annual percentage rates of charge;

h) The amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;

i) Where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

j) Where applicable, the existence of costs payable by the consumer to a notary on conclusion of the credit agreement;

k) The obligation, if any, to enter into an ancillary service contract relating to the credit agreement, in particular an insurance policy, where the conclusion of such a contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed. The conditions that would alternatively apply to the consumer credit contract shall be also provided in the case the ancillary service contract and, in particular, an insurance policy is not hired;

l) The interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;

m) A warning regarding the consequences of missing payments;

n) Where applicable, the sureties required;

o) The existence or absence of a right of withdrawal;

p) The right of early repayment, and, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined in accordance with Article 30;

q) The consumer's right to be informed immediately and free of charge, pursuant to Article 15 (2), of the result of a database consultation carried out for the purposes of assessing his creditworthiness;

r) The consumer's right to be supplied, on request and free of charge, with a copy of the draft credit agreement. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer; and

s) If applicable, the period of time during which the creditor is bound by the pre-contractual information.

**4.** Any additional information which the creditor may provide to the consumer shall be given in a separate document which may be annexed to the Standard European Consumer Credit Information form.

**5.** The creditor shall be deemed to have met the information requirements laid down in sections 1, 2 and 3 of this Article and in sections 1 and 2 of Article 7 of Act 22/2017 of 11 July on distance marketing of financial services as long as he has provided the Standard European Consumer Credit Information form.

**6.** However, in the case of voice telephony communications, as referred to in Act 22/2017 of 11 July on distance marketing of financial services for consumers, the description of the main characteristics of the financial service to be provided shall include at least the items referred to in letters (c), (d), (e), (f), (h) and (k) of Section 3 of this Article, together with the annual percentage rate of charge illustrated by means of a representative example and the total amount payable by the consumer.

**7.** If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with Section 3, in particular in the case referred to in Section 6, the creditor shall provide the consumer with the full pre-contractual information using the Standard European Consumer Credit Information form immediately after the conclusion of the credit agreement.

**8.** Upon request, the consumer shall, in addition to receiving the Standard European Consumer Credit Information, be supplied with a free copy of the draft credit agreement. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.

**9.** In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the pre-contractual information shall also include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

**Article 11.** *Assistance to the consumer prior to the contract.*

Creditors and, where applicable, credit intermediaries shall provide adequate explanations to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation, where appropriate by explaining the pre-contractual information, the essential characteristics of the products proposed and the specific effects they

may have on the consumer, including the consequences of default in payment by the consumer.

**Article 12.** *Pre-contractual information requirements for certain credit agreements.*

**1.** In good time before the consumer becomes bound by any credit agreement or offer concerning a credit agreement as referred to in Paragraph 2 of Section 1 and in Article 4 (4), the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement.

**2.** The information in question shall specify:

- a) The type of credit;
- b) The identity and geographical address of the creditor as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- c) The total amount of credit;
- d) The duration of the credit agreement;
- e) The borrowing rate; the conditions governing the application of that rate, any index or reference rate applicable to the initial borrowing rate, the charges applicable from the time the credit agreement is concluded, and, where applicable, the conditions under which those charges may be changed;
- f) The conditions and procedure for terminating the credit agreement;
- g) In the case of credit agreements as referred to in Paragraph 2 of Article 4 (1), where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time;
- h) The interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;
- i) The consumer's right to be informed immediately and free of charge, pursuant to Article 15 (2), of the result of a database consultation carried out for the purposes of assessing his creditworthiness;
- j) In the case of credit agreements as referred to in Article 4 (1), information about the charges applicable from the time such agreements are concluded and, if applicable, the conditions under which those charges may be changed;
- k) If applicable, the period of time during which the creditor is bound by the pre-contractual information.

**3.** Such information shall be provided on paper or on another durable medium and all information shall be equally prominent. It may be provided by means of the European Consumer Credit Information form set out in Annex III.

**4.** The creditor shall be deemed to have fulfilled the information requirements in the preceding sections and in Article 7 (1) and (2) of Act 22/2007 of 11 July concerning the distance marketing of consumer financial services if he has supplied the European Consumer Credit Information.



**5.** In the case of a credit agreement as referred to in Article 4 (4), the information provided to the consumer in accordance with sections 1 and 2 of this Article shall also include:

- a) The annual percentage rate of charge illustrated by means of a representative example mentioning all the assumptions used for calculating it;
- b) The amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement; and
- c) The right of early repayment, and, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined.

However, if the credit agreement falls within the scope of Paragraph 2 of Article 4 (1), only the provisions of sections 1 and 2 of this Article shall apply.

**6.** In the case of voice telephony communications and where the consumer requests that the overdraft facility be made available with immediate effect, the description of the main characteristics of the financial service shall include at least:

- a) In credit agreements of the kind referred to in Paragraph 2 of Article 4 (1), the items mentioned in letters (c), (e) and (g) of Section 2 of this Article.
- b) In credit agreements of the kind referred to in Article 4 (4), the items mentioned in letters (c) and (e) of Section 2 of this Article, the item mentioned in letter (a) of Section 5 of this Article and a specification of the duration of the credit agreement.

**7.** In credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month, the description of the main characteristics of the financial service shall include the items referred to in letters (c), (e) and (g) of Section 2.

**8.** Upon request, the consumer shall, in addition to receiving the information referred to in sections 1 to 6 of this Article, be supplied with a copy of the draft credit agreement containing the contractual information provided for by Article 16 insofar as that Article is applicable.

This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.

**9.** If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with sections 1, 2 and 5, including in the cases referred to in Section 6, the creditor shall immediately after the conclusion of the credit agreement fulfil his obligations under sections 1 and 5 by providing the contractual information pursuant to Article 16 insofar as that Article is applicable.

**10.** If according to the creditor the obtaining of a credit on the terms and conditions marketed is subject to ancillary services, in particular an insurance policy, the creditor shall find out about this circumstance and the costs related to it as well as about the conditions that would alternatively apply to the consumer credit contract if the ancillary service contract and, in particular, an insurance policy is not taken out.

**Article 13.** *Exceptions from the pre-contractual information requirements.*

Articles 10, 11 and 12 shall not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity. This is without prejudice to the creditor's obligation to ensure that the consumer receives the pre-contractual information and assistance referred to in those Articles, without which the consumer credit agreement may not be concluded.

For the purposes of this Article, suppliers of goods and services are considered to act as credit intermediaries in an ancillary capacity if their activity as intermediaries does not constitute the main purpose of their trade, business or professional activity.

**Article 14.** *Obligation to assess the creditworthiness of the consumer.*

1. Before the conclusion of the credit agreement, the creditor shall assess the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer upon request of the creditor or intermediary once the credit has been granted. The creditor may also consult the records on the consumer's creditworthiness referred to in Article 29 of Organic Law 15/1999 of 13 December on the Protection of Personal Data according to the terms, the requirements and guarantees provided for both in the Organic Law and its implementation regulations.

In the case of credit institutions, for the assessment of the consumer's creditworthiness all specific rules on risk management and internal control to which they are subject according to their specific legislation shall also be taken into account.

2. If the parties agree to change the total amount of credit after the conclusion of the credit agreement, the creditor shall update the financial information that he has on the consumer and assess his creditworthiness before significantly increasing the total amount of the credit.

## CHAPTER III

### Database access

**Article 15.** *Database access.*

1. Records on the consumer's creditworthiness are subject to the Organic Law 15/1999 of 13 December on the Protection of Personal Data, to the rules that govern it and to the provisions contained in this Article.

2. If the credit application is rejected on the basis of consultation of a database, the creditor shall inform the consumer immediately and without charge of the result of such consultation and of the particulars of the database consulted.

3. The information mentioned in the previous section shall be provided unless the provision of such information is prohibited by other Community legislations or is contrary to objectives of public policy or public security.

4. The individuals responsible for the databases referred to in this Article shall ensure access for creditors from other Member States of the European Union to databases for assessing the creditworthiness of consumers. The conditions for access shall be non-discriminatory with respect to Spanish creditors.

## CHAPTER IV

### Information and rights concerning credit agreements.

#### **Article 16.** *Form and content of contracts.*

**1.** Credit agreements subject to this Act shall be drawn up on paper or on another durable medium and be drafted with a font that is readable and with an adequate print contrast.

All the contracting parties shall receive a copy of the credit agreement.

**2.** In addition to the basic terms of the contract, the credit agreement shall specify in a clear and concise manner:

- a) The type of credit;
- b) The identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- c) The duration of the credit agreement;
- d) The total amount of credit and the conditions governing the drawdown;
- e) in the case of a credit in the form of deferred payment for a specific good or service or in the case of linked credit agreements, that good or service and its cash price;
- f) The borrowing rate, the conditions governing the application of that rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;
- g) The annual percentage rate of charge and the total amount payable by the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate shall be mentioned;
- h) The amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;
- i) Where capital amortisation of a credit agreement with a fixed duration is involved, the right of the consumer to receive, on request and free of charge, at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table.

The amortisation table shall indicate the payments owing and the periods and conditions relating to the payment of such amounts. The table shall contain a breakdown of each repayment showing capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, any additional costs.

Where the interest rate is not fixed or the additional costs may be changed under the credit agreement, the amortisation table shall indicate, clearly and concisely, that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the credit agreement;

j) If charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the interest and of any associated recurrent and non-recurrent charges;

k) Where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, and any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

l) The interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement and the arrangements for its adjustment and, where applicable, any charges payable for default;

m) A warning regarding the consequences of missing payments;

n) Where applicable, a statement, that notarial fees will be payable;

o) The sureties and insurance required, if any, being subject to their specific legislation;

p) The existence or absence of a right of withdrawal, the period during which that right may be exercised and other conditions governing the exercise thereof, including information concerning the obligation of the consumer to pay the capital drawn down and the interest in accordance with Article 28 (2)(b) and the amount of interest payable per day;

q) Information concerning the rights resulting from Article 29 as well as the conditions for the exercise of those rights;

r) The right of early repayment, the procedure for early repayment, as well as, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined. In the case of early repayment and if the credit agreement is linked to an insurance, the right of the borrower to the refund of the part of the premium that has not been used as laid down in the policy.

s) The procedure to be followed in exercising the right of termination of the credit agreement;

(t) Whether or not there is an out-of-court complaint and redress mechanism for the consumer and, if so, the methods for having access to it;

(u) Where applicable, other contractual terms and conditions;

(v) Where applicable, the name and address of the competent supervisory authority.

**3.** Where Section 2 (i) applies, the creditor shall make available to the consumer, free of charge and at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table.

**4.** In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the information required under Section 2 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

**Article 17.** *Information to be included in credit agreements in the form of an overdraft facility.*

In the case of credit agreements in the form of overdraft facilities as referred to in the Paragraph 2 of Article 4 (1), the following shall be specified in a clear and concise manner:

- a) The type of credit;
- b) The identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- c) The duration of the credit agreement;
- d) The total amount of the credit and the conditions governing the drawdown;
- e) The borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;
- f) The total cost of the credit to the consumer, calculated at the time the credit agreement is concluded and according to Article 6 (a);
- g) An indication that the consumer may be requested to repay the amount of credit in full on demand at any time;
- h) Conditions governing the exercise of the right of withdrawal from the credit agreement; and
- i) Information concerning the charges applicable from the time such agreements are concluded and, if applicable, the conditions under which those charges may be changed.

**Article 18.** *Information concerning the borrowing rate.*

1. Where applicable, the consumer shall be informed of any change in the borrowing rate before the change enters into force. The information shall state the amount of the payments to be made after the entry into force of the new borrowing rate and, if the number or frequency of the payments changes, particulars thereof.

2. However, the parties may agree in the credit agreement that the information referred to in Section 1 is to be given to the consumer periodically in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is officially published by the Ministry of the Economy and Finance or the Bank of Spain and the information concerning the new reference rate is also kept available in the premises of the creditor.

**Article 19.** *Obligations in connection with credit agreement in the form of an overdraft facility.*

1. Where a credit agreement covers credit in the form of an overdraft facility, the creditor shall also inform the consumer at least on a quarterly basis by means of a statement of account, on paper or on another durable medium, containing the following particulars:

- a) The precise period to which the statement of account relates;
- b) The amounts and dates of drawdowns;
- c) The balance from the previous statement, and the date thereof;
- d) The new balance;
- e) The dates and amounts of payments made by the consumer;
- f) The borrowing rate applied;
- g) Any charges that have been applied;
- h) Where applicable, the minimum amount to be paid.

2. In addition, the consumer shall be informed of increases in the borrowing rate, or in any charges payable, before the change in question enters into force.

However, the parties may agree in the credit agreement that information concerning changes in the borrowing rate is to be given in the manner provided for in Section 1 in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is officially published by the Ministry of the Economy and Finance or the Bank of Spain and the information concerning the new reference rate is also kept available in the premises of the creditor.

**Article 20.** *Overrunning.*

1. In the case of an agreement to open a current account, where there is a possibility that the consumer is allowed an overrun, the agreement shall contain the information referred to in Article 12 (2)(e).

2. The creditor shall in any case provide that information on a regular basis.

3. In the event of a significant overrunning exceeding a period of one month, the creditor shall inform the consumer without delay:

- a) Of the overrunning;
- b) Of the amount involved;
- c) Of the borrowing rate;
- d) Of any penalties, charges or interest on arrears applicable.

4. In no case may an interest rate resulting in an annual percentage rate exceeding 2.5 times the legal interest of the money be applied to credits granted in the form of an overdraft facility.

**Article 21.** *Penalties for lack of form and omission of mandatory clauses.*

1. Failure to comply with the written form referred to in section 1 of Article 16 (1) will result in the voidability of the contract.

2. In the event that the document of the contract does not contain any reference to the annual percentage rate of charge mentioned in letter g) of Article 16 (2), the consumer will only be subject to the obligation of paying the legal interest rate within the agreed deadlines.

3. In the event that the document of the contract does not contain any mention to letter h) of Article 16 (2), and provided that there is no omission or inaccuracy in the deadline, the consumer will only be subject to the obligation of paying the cash price or the nominal value of the credit within the agreed deadlines.

In case of omission or inaccuracy of deadlines, such payment may not be demanded to the consumer before the contract terminates.

4. In the event that the information required in Article 16 (2) and Article 17 is contained in the contractual document but it is inaccurate, the consequences provided for in the previous sections 2 and 3 will be modulated according to the damage caused to the consumer as a result of such inaccuracy.

**Article 22.** *Modification of the total cost of credit.*

1. The total cost of credit may not be amended to the detriment of the consumer, unless it is so agreed by the parties in written. These modifications are subject to the provisions of the following sections.

2. The variation in the cost of credit will adjust, either upward or downward, to that of a certain reference rate, without prejudice to Article 85 (3) of the consolidated text of the General Law for the Defence of Consumers and Users and other complementary acts and other additional acts, approved by Royal Legislative Decree 1/2007 of 16 November.

3. The agreement reached by the parties shall contain at least:

- a) The rights that contractually correspond to the parties for the modification of the total cost of the credit that was initially agreed and the method applicable to that modification.

b) The differential that will be applied, where appropriate, to the reference rate used to determine the new cost.

c) The identification of the index used or, alternatively, a clear definition of the rate and the method used for its calculation. The data that serve as a basis for the index must be added in accordance with an objective procedure.

**4.** The changes made to the total cost of credit other than those referred to in Article 18 and in Article 19 (2) must be notified by the creditor to the consumer on an individual basis. Such notification, which must be given in advance, shall include the detailed computation, according to the calculation method agreed upon, giving rise to such a modification, and include a description of the procedure that the consumer may use for making claims against the creditor in the event that he doesn't agree with the calculation made.

**Article 23.** *Liquidations by inefficiency or termination of the purchase contract.*

In credits granted for the acquisition of specific assets, when the creditor or the seller recovers the asset as a result of the nullity or termination of contracts for the acquisition or financing of such assets, the payments made by each one of the parties shall be returned to the other party. In any case, the entrepreneur or creditor to whom the nullity of the contract is not attributable has the right to deduct:

a) 10 % of the amount of the instalments paid in compensation for the possession of items by the buyer.

b) An amount equal to the initial outlay for the devaluation of the market value of the item. When this amount is higher than the fifth part of the selling price, the deduction will be reduced to the latter.

In case of deterioration of the items that are sold, the seller may also claim compensation in accordance with the Law.

**Article 24.** *Foreign exchange obligations.*

When in the acquisition of goods or services the circumstances provided for in Article 29 (1) apply, if the consumer and the guarantor are bound by bills of exchange or promissory notes, they may raise plea against the holder who has been affected by the above mentioned circumstances based on his relationship with the supplier of the corresponding good or service.

**Article 25.** *Undue payments.*

**1.** All undue payments related to a credit agreement will immediately accrue legal interest. If the contractual interest rate exceeds the legal interest rate, the former will immediately accrue interests.

**2.** If undue payment is caused due to the deceit or negligence of the creditor, the consumer will have the right to compensation for the damages caused. Compensation shall in no case be smaller than the legal interest increased by five points or the contract also increased by five points, provided that it is higher than the legal interest rate.



## **Article 26. Effectiveness of consumer contracts linked to the obtaining of a credit.**

1. The effectiveness of consumer contracts the goal of which is the acquisition of goods or services by a consumer, and in which the consumer and the supplier have agreed to fund part or all of the amount payable by the consumer through a credit agreement, is subject to the obtaining of that credit. Should the credit not be granted, all agreements reached in the consumer contract with regard to the consumer's obligation to pay in cash or through other forms of payment shall be regarded as void.

Clauses in which the supplier demands the credit to be exclusively granted by a specific creditor shall not be considered.

2. Without prejudice to the provisions of Article 29, the ineffectiveness of the consumer contract will also determine the ineffectiveness of the credit agreement, with the effects provided for in Article 23.

3. In any case, the identity of the supplier of the goods or services shall be included in the consumer contract, while the identity of the creditor shall be included in the credit agreement, so that they both appear before the consumer as the persons behind the transactions linked to the agreements in which he acts as a contracting party.

The consumer may at all times decide not to conclude the credit agreement, making the payment in the form agreed with the provider of the consumer contract.

## **Article 27. Open-end credit agreements.**

1. The consumer may effect standard termination of an open-end credit agreement free of charge at any time unless the parties have agreed on a period of notice. Such a period may not exceed one month.

2. If agreed in the credit agreement, the creditor may effect standard termination of an open-end credit agreement by giving the consumer at least two months' notice drawn up on paper or on another durable medium.

3. If agreed in the credit agreement, the creditor may, for objectively justified reasons, terminate the consumer's right to draw down on an open-end credit agreement.

The creditor shall inform the consumer of the termination and the reasons for it on paper or on another durable medium, where possible before the termination and at the latest immediately thereafter.

The creditor shall give notice to the consumer as established in the previous section unless the provision of such information is prohibited by other Community legislation or is contrary to objectives of public policy or public security.

4. In the event that the parties have taken out an insurance policy in addition to the credit agreement, both contracts will terminate simultaneously and the consumer will have the right to the refund of the corresponding unearned premium.

## **Article 28. Right of withdrawal.**

1. The consumer shall have a period of 14 calendar days in which to withdraw from the credit agreement without penalty and without giving any reason.

That period of withdrawal shall begin either from the day of the conclusion of the credit agreement or from the day on which the consumer receives the contractual terms and conditions and information in accordance with Article 16.

**2.** If the consumer exercises his right of withdrawal, he shall:

(a) in order to give effect to the withdrawal before the expiry of the deadline referred to in Section 1, notify this to the creditor in line with the information given by the creditor pursuant to Article 16 (2)(p) by means which can be proven in accordance with national law.

The deadline shall be deemed to have been met if that notification, if it is on paper or on another durable medium that is available and accessible to the creditor, is dispatched before the deadline expires; and

(b) Pay to the creditor the capital and the interest accrued thereon from the date the credit was drawn down until the date the capital is repaid, without any undue delay and no later than 30 calendar days after the dispatch by him to the creditor of notification of the withdrawal.

The interest shall be calculated on the basis of the agreed borrowing rate.

The creditor shall not be entitled to any other compensation from the consumer in the event of withdrawal, except compensation for any non-returnable charges paid by the creditor to any public administrative body.

**3.** If an ancillary service relating to the credit agreement is provided by the creditor or by a third party on the basis of an agreement between the third party and the creditor, the consumer shall no longer be bound by the ancillary service contract if the consumer exercises his right of withdrawal from the credit agreement in accordance with this Article. If the ancillary service is a life insurance contract, the right of withdrawal will be subject to the provisions contained in Article 83 (a) of Insurance Contract Act 50/1980 of 8 October, while in all other cases the consumer will be entitled to the reimbursement of the corresponding unearned premium.

**4.** If the consumer has a right of withdrawal under the previous sections, Articles 10 and 11 of the Act 22/2007 of 11 July concerning distance marketing of consumer financial services and Article 110 of the consolidated text of the General Law for the Defence of Consumers and Users and other complementary acts, approved by Royal Legislative Decree 1/2007 of 16 November and other applicable regulations shall not apply.

**Article 29. Linked credit agreements. Exercisable rights.**

**1.** «Linked credit agreement» means a credit agreement where the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, those two agreements form, from an objective point of view, a commercial unit.

**2.** Where the consumer has exercised a right of withdrawal from an agreement for the supply of goods or the provision of services that has been partially or entirely financed by a linked credit agreement, he shall no longer be bound by the latter without being subject to any penalty.

3. Besides being entitled to exercise his rights against the provider of the goods or services acquired through a linked credit agreement, the consumer shall also have the right to pursue remedies against the creditor provided that the following requirements are met:

- a) If the goods or services covered by a linked credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for the supply thereof.
- b) If the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled according to the law or the contract for the supply of goods or services.

**Article 30. Early repayment.**

1. The consumer shall be entitled at any time to discharge fully or partially his obligations under a credit agreement. In such cases, he shall be entitled to a reduction in the total cost of the credit, such reduction consisting of the interest and the costs (even if they have already been paid) for the remaining duration of the contract.

2. In the event of early repayment of credit the creditor shall be entitled to fair and objectively justified compensation for possible costs directly linked to early repayment of credit, provided that the early repayment falls within a period for which the borrowing rate is fixed.

Such compensation may not exceed 1 % of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. If the period does not exceed one year, the compensation may not exceed 0.5 % of the amount of credit repaid early.

3. Compensation for early repayment shall not be claimed:

- a) If the repayment has been made under an insurance contract intended to provide a credit repayment guarantee;
- b) In the case of overdraft facilities; or
- c) If the repayment falls within a period for which the borrowing rate is not fixed.

4. The creditor may exceptionally claim higher compensation if he can prove that the loss he suffered from early repayment exceeds the amount determined under Section 2.

If the compensation claimed by the creditor exceeds the loss actually suffered, the consumer may claim a corresponding reduction.

In this case, the loss shall consist of the difference between the initially agreed interest rate and the interest rate at which the creditor can lend out the amount repaid early on the market at the time of early repayment, and shall take into account the impact of early repayment on administrative costs. The interest rate shall be considered as the EURIBOR for the term that is closer to the expiry date of the loan.

5. Any compensation shall not exceed the amount of interest the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.

6. The early repayment of credits with an insurance linked to the amortisation of the credit or that has been acquired in order to obtain the credit or to obtain it on the terms and conditions marketed, will result in the refund by the insurance company to the consumer of the corresponding unearned premium.

**Article 31.** *Assignment of rights.*

1. In the event of assignment to a third party of the creditor's rights under a credit agreement or the agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to him against the original creditor, including set-off.

2. The consumer shall be informed of the assignment referred to in the section above except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the consumer.

## CHAPTER V

### Annual percentage rate of charge

**Article 32.** *Calculation of the annual percentage rate of charge.*

1. The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments, future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Annex I.

The commitments referred to in the previous paragraph include the drawdowns, repayments and charges listed in Article 6 (a).

2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined, with the exception of any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is effected in cash or on credit.

The costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

3. The calculation of the annual percentage rate of charge 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, charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of

charge shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the credit agreement.

5. Where necessary, the additional assumptions set out in Annex I may be used in calculating the annual percentage rate of charge.

## CHAPTER VI

### Credit intermediaries

**Article 33.** *Obligations of credit intermediaries of vis-à-vis consumers.*

1. The obligations of credit intermediaries are:

- a) To indicate in advertising and documentation intended for consumers the extent of his powers, in particular whether he works exclusively with one or more creditors or as an independent broker;
- b) To disclose the fee, if any, payable by the consumer to the credit intermediary for his services, and negotiate with the consumer the amount thereof, either on paper or another durable medium before the conclusion of the credit agreement;
- c) To communicate to the creditor the fee, if any, payable by the consumer to the credit intermediary for his services for the purpose of calculation of the annual percentage rate of charge.

2. The provisions contained in the preceding paragraph shall be without prejudice to the obligations laid down in Act 2/2009 of 31 March, which regulates loans or mortgages and intermediation services for the conclusion of credit agreements, and without prejudice to the obligations listed in Act 26/2006 of 17 July on insurance and reinsurance mediation provided that the credit is granted under the terms of an insurance contract.

## CHAPTER VII

### Penalties

**Article 34.** *Offences and administrative penalties.*

1. Failure to comply with the provisions of this Act by natural and legal persons other than those mentioned in Section 2 shall be sanctioned as a consumer violation, being therefore subject to the provisions of the general penalty regime regarding the protection of consumers and users contained in Title IV of Book I of the consolidated text of the General Law for the Defence of Consumers and Users and other complementary acts, approved by Royal Legislative Decree 1/2007 of 16 November, as well as the corresponding regional regulations.

However, the non-observance of the provisions related to pre-contractual information as set forth in Article 10, and the obligation to assess the consumer's creditworthiness as established in Article 14, and provided that they are occasional or isolated, shall be considered as serious infringements and even as extremely serious offences according to the criteria laid down in Article 50 of the before mentioned consolidated text.

2. As for credit institutions, the provisions contained in Chapter I (except Article 5), Chapter II, Chapter III (except Section 1 of Article 15), Chapter V, Chapter VI (except Section 2 of Article 33) and in Articles 16 to 20 and in Article 35 of this Act are to be regarded as organisational and disciplinary rules. Any breach, provided it is not occasional or isolated, shall be punished as a serious infringement in accordance with the Act 26/1988 of 29 July on discipline and intervention of credit institutions.

3. Civil or commercial matters arising from the non-compliance of the provisions of this Act may not be resolved by any infringement proceeding.

4. When the breach of the information requirements referred to in Article 7 (3) of this Act constitutes an infringement punishable under Organic Law 15/1999 of 13 December on the Protection of Personal Data, the regime of the latter shall apply and the competence to exercise sanctioning power shall lie with the Spanish Data Protection Agency.

## **CHAPTER VIII**

### **Disputes**

#### **Article 35. *Out-of-court dispute resolution.***

1. The creditor, the credit intermediary and the consumer may solve their conflicts through consumer arbitration by using the Arbitration System Governing Consumer Affairs or other out-of-court dispute settlement systems that appear on the list published by the European Commission for alternative dispute resolution and according to European legislation. They may also solve their disputes by using the mechanisms set out in the legislation on the protection of consumers of financial services provided that the creditor or the credit intermediary is subject to the mechanism provided therein.

2. Consumer arbitration bodies or bodies provided for in the legislation on the protection of customers of financial services that participate in the resolution of these claims shall cooperate in the resolution of cross-border disputes that occur at intra-Community level through the Cross-Border Out-of-Court Complaints Network for Financial Services or any other mechanism provided for this purpose.

#### **Article 36. *Default action.***

The parties may start an injunction procedure against conducts that are contrary to this Act in accordance with Article 53, Article 54 (1)(2), Article 55 and Article 56 of the consolidated text of the General Law for the Defence of Consumers and Users and other complementary acts, approved by Royal Legislative Decree 1/2007 of 16 November. However, Act 1/2000 of 7 January on Civil Procedure shall apply for matters that are not covered by the before mentioned regulations.

In addition to the injunction procedure against the clauses or behaviour that fall under this Act, an additional procedure may also be started regarding the reimbursement of the amounts obtained during the implementation of this Act as well as regarding the compensation for damages caused by them.

### **Transitional provision. *Pre-existing contracts.***

This Act shall not apply to credit agreements existing already on the date when they enter into force.

Notwithstanding the foregoing, Articles 18, 19, 27 and 31, as well as Article 20 (2) and (3) of this Act shall apply to open-end credit agreements that have been concluded before the entry into force of this Act.

These contracts must meet the requirements provided for in this Act within twelve months from the date of entry into force. To do so, institutions shall send to customers, through the means of communication agreed for that purpose, the contractual modifications resulting from the implementation of this Act, so that they can give their consent to the changes made. Should the means of communication not have been agreed in advance, the notification shall be given by using a reliable and independent method of the notifying institutions in order to be able to prove that the communication has been sent.

If the customer had expressed no objection to such changes within three months from the receipt of the communication, this consent will be deemed as tacitly granted. This circumstance, together with that indicated in the following paragraph, shall be included and highlighted in the personal communication that the institution sends to the client.

If the client manifests his disagreement with the new terms, he may terminate the contracts existing until then with no cost whatsoever.

### **Repealing provision.**

The following provisions are hereby repealed:

- a) Consumer Credit Act 7/1995 of 23 March.
- b) All regulations of equal or lower rank that are contrary to this Act.

### **First final provision. *Sectorial regulations.***

The provisions contained in this Act shall apply to credit institutions, without prejudice to the sectorial rules that are applicable to them as long as they are not contrary to the provisions contained herein.

### **Second final provision. *Modification of Act 28/1998 of 13 July on the sale of movable property by instalments.***

The following terms of Article 2 and Article 7 (7) of Act 28/1998 of 13 July on the sale of movable property by instalments have been modified:

1. Article 2 shall have the following wording:

«Contracts subject to this Act that also fall under the scope of application of the Consumer Credit Contract Act shall be governed by the provisions of the latter.

This Act shall apply on a supplementary basis to the contracts referred to in the preceding paragraph.»

2. Article 7 (7) shall have the following wording:

«The indication of the annual percentage rate of charge defined in Article 32 of the Consumer Credit Contract Act.»

**Third final provision.** *Modification of Act 1/2000 of 7 January on Civil Procedure.*

Article 519 of Act 1/2000 of 7 January on Civil Procedure will have the following wording:

**«Article 519. Executive actions of consumers and users based on conviction without individual determination of beneficiaries.**

When convictions referred to in the first rule of Article 221 had not determined the consumers or individuals who may benefit from it, the court in charge of the execution, upon request of one or more interested parties and after hearing the convicted person, shall issue an order determining if the applicants are recognised as the beneficiaries of the conviction based on the facts, features and requirements established in the sentence. Once the order has been issued, the individuals who have been recognised as beneficiaries may request enforcement of the judgement. The Public Prosecution Service may request enforcement of the judgement in favour of the consumers and users affected.»

**Fourth final provision.** *Modification of the assumptions for the calculation of the annual percentage rate of charge.*

If the assumptions set out in Article 32 and in Part II of Annex I of this Act do not suffice to calculate the annual percentage rate of charge in a uniform manner or are not adapted any more to the commercial situation at the market, the Ministry of the Economy and Finance may determine the necessary additional assumptions for the calculation of the annual percentage rate of charge, or modify the existing ones. These measures shall be adopted in accordance with Article 19 (5) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

**Fifth final provision.** *Competence.*

This Act has been written pursuant to Article 149.1 (6), (8), (11) and (13) of the Spanish Constitution.

**Sixth final provision.** *Incorporation of the European Union law.*

Through this Act, Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC are incorporated into the Spanish legislation.



**final disposition. Entry *into force*.**

This Act shall enter into force three months following its full publication in the Official State Journal.

Therefore,

I hereby order all Spaniards, private individuals and authorities to abide by and enforce this Act.

Madrid, 24th of June of 2011.

KING JUAN CARLOS

Prime Minister

JOSÉ LUIS RODRÍGUEZ ZAPATERO

## ANNEX I

### I. The 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 (APR), 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.:

m			m'	
$\Sigma$	$C_k (1 + X)^{-t_k}$	=	$\Sigma$	$D_\ell (1 + X)^{-s_\ell}$
k=1			$\ell = 1$	

Where:

—X is the APR.

—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,

— $\ell$  is the number of a repayment or payment of charges,

— $D_\ell$  is the amount of a repayment or payment of charges,

— $s_\ell$  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.

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 that particular decimal place shall be increased by one.

e) The equation can be rewritten using a single sum and the concept of flows ( $A_1$ ), which will be positive or negative, in other words either paid or received during periods 1 to  $k$ , expressed in years, i.e.:

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

$S$  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 annual percentage rate of charge

The additional assumptions for the calculation of the annual percentage rate of charge are:

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 and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the agreement and in accordance with those drawdown limits;

d) 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 credit agreement is not known the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is three months;

e) In the case of open-end credits not in the form of overdraft facilities, it shall be assumed that:

1. The credit is provided for a period of one year following the date of the initial drawdown and that the final payment by the consumer pays off the capital balance, the interests and other charges; and

2. The credit will be repaid by the consumer in 12 equal instalments starting one month following the date of the initial drawdown. However, if the consumer has to repay the capital entirely as a one-off payment, it shall be assumed that the consumer will carry out all subsequent drawdowns and

repayments within one year. Interests and other charges will be applied according to these drawdowns and repayments and according to the provisions of the credit agreement.

To that effect, open-end credit contracts are indefinite-term credit agreements that include credits that must be repaid in full before or after a specific date but that are available for a new drawdown upon repayment.

f) In the case of credit agreements different to those credits in the form of overdraft facilities and open-end credits referred to in letter (d) and (e):

1. If the date of the amount of a repayment by the consumer cannot be determined, it shall be presumed that the repayment will be made on the earliest date and according to the lowest amount provided for in the agreement;

2. If the date of conclusion of the credit agreement is unknown, it shall be deemed that the date of the initial drawdown is the date equal to the smallest interval between that date and the date of the first payment to be made by the consumer;

g) If the date or amount of a payment by the consumer cannot be determined in accordance with the credit agreement or the assumptions provided for in letters (d), (e) or (f), the payment shall be carried out according to the date and requirements established by the creditor. In the case the date and terms are not known:

1. The interests shall be paid together with the repayments,

2. The expenses different to the interests described as a one-off amount shall be paid on the date of conclusion of the credit agreement,

3. The expenses different to the interests described as several instalments shall be paid at irregular intervals, starting on the date of the first repayment. In the case the amount of such payments is not known, the different instalments shall be presumed to have the same amount,

4. The final payments shall pay off the capital balance, the interests and other charges;

h) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 1.500;

(i) If different borrowing rates and charges are offered for a limited period or amount, the borrowing rate and the charges shall be deemed to be the highest rate for the whole duration of the credit agreement;

j) For consumer 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, the calculation of the annual percentage rate 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 calculating the annual percentage rate, based on the value of the agreed indicator at that time.

## ANNEX II

### Standard European Consumer Credit Information

#### 1. Identity and contact details of the creditor/credit intermediary

Creditor Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
If applicable Credit intermediary Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]

(\*) This information is optional for the creditor.

Wherever «if applicable» is indicated, the creditor must fill in the box if the information is relevant to the credit product or delete the respective information or the entire row if the information is not relevant for the type of credit considered.

Indications between square brackets provide explanations for the creditor and must be replaced with the corresponding information.

#### 2. Description of the main features of the credit product.

Type of credit	
Total amount of credit	
This means the ceiling or the total sums made available under the credit agreement.	
Conditions governing the drawdown. This means how and when you will obtain the money.	
The duration of the credit agreement	

Instalments and, where appropriate, the order in which instalments will be allocated.	You will have to pay the following: [Amount, number and frequency of payments to be made by the consumer] Interest and/or charges will be payable in the following manner:
Total amount you will have to pay This means the amount of borrowed capital plus interest and possible costs related to your credit.	[Sum of total amount of credit and total cost of credit]
If applicable: The credit is granted in the form of a deferred payment for a good or service or is linked to the supply of specific goods or the provision of a service. Name of good/service Cash price	
If applicable: Sureties required This is a description of the security to be provided by you in relation to the credit agreement.	[Kind of sureties]
If applicable: Repayments do not give rise to immediate amortisation of the capital.	

### 3. Cost of the credit.

The borrowing rate or, if applicable, different borrowing rates which apply to the credit agreement	[% — fixed or, — variable (with the index or reference rate applicable to the initial borrowing rate), — periods]
Annual Percentage Rate of Charge (APR) This is the total cost expressed as an annual percentage of the total amount of credit. The APR is there to help you compare different offers.	[% A representative example mentioning all the assumptions used for calculating the rate to be set out here]

Is it compulsory, in order to obtain the credit or to obtain it on the terms and conditions marketed, to take out — an insurance policy securing the credit, or — another ancillary service contract? If the costs of these services are not known by the creditor, they are not included in the APR.	Yes/no [if Yes, specify the kind of insurance]  Yes/no [if Yes, specify the kind of ancillary service]
Related costs	
If applicable Maintaining one or more accounts is required for recording both payment transactions and drawdowns	
If applicable: Amount of costs for using a specific means of payment (e.g. a credit card)	
If applicable: Any other costs deriving from the credit agreement	
If applicable: Conditions under which the abovementioned costs related to the credit agreement can be changed	
If applicable: Obligation to pay notarial fees	
Costs in the case of late payments Missing payments could have severe consequences for you (e.g. forced sale) and make obtaining credit more difficult.	You will be charged [...] (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments.

#### 4. Other important legal aspects.

Right of withdrawal You have the right to withdraw from the credit agreement within a period of 14 calendar days.	Yes/No
Early repayment You have the right to repay the credit early at any time in full or partially.	
If applicable The creditor is entitled to compensation in the case of early repayment	[Determination of the compensation (calculation method) in accordance with the provisions implementing Article 30 of Consumer Credit Contract Act]

<p>Consultation of a database</p> <p>The creditor must inform you immediately and without charge of the result of a consultation of a database, if a credit application is rejected on the basis of such a consultation.</p> <p>This does not apply if the provision of such information is prohibited by European Community law or is contrary to objectives of public policy or public security.</p>	
<p>Right to a draft credit agreement</p> <p>You have the right, upon request, to obtain a copy of the draft credit agreement free of charge. This provision does not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with you.</p>	
<p>If applicable</p> <p>The period of time during which the creditor is bound by the pre-contractual information.</p> <p>If applicable</p>	<p>This information is valid from... to...</p>

##### 5. Additional information in the case of distance marketing of financial services.

a) concerning the creditor	
<p>If applicable:</p> <p>Representative of the creditor in your Member State of residence</p> <p>Address</p> <p>Telephone number (*)</p> <p>E-mail address (*)</p> <p>Fax number (*)</p> <p>Web address (*)</p>	<p>[Identity]</p> <p>[Geographical address to be used by the consumer]</p>
<p>If applicable:</p> <p>Registration</p>	<p>[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register]</p>
<p>If applicable:</p> <p>The supervisory authority</p>	
b) concerning the credit agreement	
<p>If applicable:</p> <p>Exercise of the right of withdrawal</p>	<p>[Practical instructions for exercising the right of withdrawal indicating, inter alia, the period for exercising the right, the address to which notification of exercise of the right of withdrawal should be sent and the consequences of non-exercise of that right]</p>



If applicable: The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract	
If applicable: Clause stipulating the governing law applicable to the credit agreement and/or the competent court	[Relevant clause to be set out here]
If applicable: Language regime	Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language/languages]
	during the duration of the credit agreement.
c) concerning redress	
Existence of and access to out-of-court complaint and redress mechanism	[Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it]

(\*) This information is optional for the creditor

## ANNEX III

### European Consumer Credit Information

For:

1) Overdrafts

2) Consumer credit offered by certain credit organisations (Article 2 (5) of Directive 2008/48/EC)

3) Debt conversion

**1. Identity and contact details of the creditor/credit intermediary.**

Creditor Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[identity] [Geographical address to be used by the consumer]
If applicable Credit intermediary Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[identity] [Geographical address to be used by the consumer]

(\*) This information is optional for the creditor

Wherever «if applicable» is indicated, the creditor must fill in the box if the information is relevant to the credit product or delete the respective information or the entire row if the information is not relevant for the type of credit considered.

Indications between square brackets provide explanations for the creditor and must be replaced with the corresponding information.

**2. Description of the main features of the credit product.**

Type of credit
The total amount of credit
This means the ceiling or the total sums made available under the credit agreement.
The duration of the credit agreement

If applicable  
You may be requested to repay the amount of credit in full on demand at any time.

### 3. Cost of credit.

The borrowing rate or, if applicable, different borrowing rates which apply to the credit agreement	[% — fixed or, — variable (with the index or reference rate applicable to the initial borrowing rate)]
If applicable The annual percentage rate of charge (APR) (*) This is the total cost of credit expressed as an annual percentage of the total amount of credit. The APR is there to help you compare different offers.	[% A representative example mentioning all the assumptions used for calculating the rate to be set out here]
If applicable Costs If applicable The conditions under which those costs may be changed	[The costs applicable from the time the credit agreement is concluded]
Costs in the case of late payments	You will be charged [... (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments.

(\*) Not applicable to credit agreements in the form of an overdraft facility and that must be repaid upon request or within a maximum period of three months.

### 4. Other important legal aspects.

Termination of the credit agreement	[The conditions and procedure for terminating the credit agreement]
Consultation of a database The creditor must inform you immediately and without charge of the result of a consultation of a database if a credit application is rejected on the basis of such a consultation. This does not apply if the provision of such information is prohibited by European Community law or is contrary to objectives of public policy or public security.	
If applicable The period of time during which the creditor is bound by the pre-contractual information If applicable	This information is valid from... to...

5. Additional information to be given where the pre-contractual information is provided by certain credit organisations (Article 2 (5) of Directive 2008/48/EC) or relates to a consumer credit for debt conversion

Instalments and, where appropriate, the order in which instalments will be allocated	You will have to pay the following: [Representative example of an instalment table including the amount, number and frequency of payments to be made by the consumer]
The total amount you will have to pay	
Early repayment You have the right to repay the credit early at any time in full or partially. If applicable The creditor is entitled to compensation in the case of early repayment If applicable	[Determination of the compensation (calculation method) in accordance with the provisions implementing Article 30 of Consumer Credit Contract Act]

6. Additional information to be given in the case of distance marketing of financial services

a) concerning the creditor	
If applicable: Representative of the creditor in your Member State of residence Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[identity] [Geographical address to be used by the consumer]
If applicable: Registration	[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register]
If applicable: The supervisory authority	
b) concerning the credit agreement	

<p>Right of withdrawal</p> <p>You have the right to withdraw from the credit agreement within a period of 14 calendar days.</p> <p>If applicable</p> <p>Exercise of the right of withdrawal</p>	<p>Yes/no</p> <p>[Practical instructions for exercising the right of withdrawal indicating, inter alia, the address to which notification of exercise of the right of withdrawal should be sent and the consequences of non-exercise of that right]</p>
<p>If applicable:</p> <p>The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract</p>	
<p>If applicable:</p> <p>Clause stipulating the law applicable to the credit agreement and/or the competent court</p>	<p>[Relevant clause to be set out here]</p>
<p>If applicable:</p> <p>Language regime</p>	<p>Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language/languages] during the duration of the credit agreement.</p>
<p>c) concerning redress</p>	
<p>Existence of and access to out-of-court complaint and redress mechanism</p>	<p>[Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it]</p>

(\*) This information is optional for the creditor.



