THE IMPACT OF THE MORTGAGE CREDIT DIRECTIVE 2014/17 IN THE REPUBLIC OF IRELAND

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Summary

Part I. General overview of consumer credit secured on immovables

The Republic of Ireland has been distinguished internationally by high rates of homeownership and to a lesser extent by low rates of private renting and social renting.[1] The high rates of homeownership which characterised the Irish housing sector during much of the latter half of the twentieth century derived substantial momentum from extensive State support. This was expressed through various direct and indirect subsidies, taxation schemes and the operation of mass tenant purchase schemes.[2] The role of the private rented and social rented sectors, while recognised as being of value, were nonetheless clearly subservient to owner occupation as a form of tenure for much of the 20th century.[3] Homeownership rates peaked during the late 1980s/early 1990s at roughly 80% of all households, however since then rates of homeownership have fallen due largely to a resurgence in private renting. In 2011, almost seventy percent of Irish households were owner occupiers while about twenty percent rented from a private landlord and about eight percent were social renters. The number of Irish households owning their dwelling with the aid of a mortgage has increased consistently. In 1971 just a fifth of Irish households had residential mortgages, however by 2011 just over fifty per cent of owner occupiers held their property with the aid of a mortgage or loan.[4]

During the 1990s a housing bubble developed in Ireland with property prices and rates of housing construction increasing rapidly. Between 1997 and 2007 residential and commercial property prices increased almost four-fold.[5] This was made possible by a dramatic extension in the availability of credit.[6] However, in 2007 the housing bubble burst leading to rapid falls in property prices, rates of construction and mortgage

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[1] Central Statistics Office, *Census 2011*: *Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011), p. 12.

[2] P. Kenna, 'Housing Law, Rights and Policy' (Clarus Press 2011); chapter 2. T. Fahey & B. Maitre, 'Home Ownership and Social Inequality in Ireland', in K. Kurz & H. Blossfeld (eds.), *Homeownership and Social Inequality in Comparative Perspective* (Palo Alto, CA: Stanford University Press, 2004), p.284. It has been estimated that the result of such sales was the addition of roughly twenty five per cent to the owner occupier rate.

[3] P. Kenna, 'Housing Law, Rights and Policy' (Clarus Press 2011); chapter 2. Also see N. Maddox, *Mortgages, Law and Practice* (Dublin, Round Hall, 2007); J. Wylie, *Irish Land Law* 4th edn (Bloomsbury, 2010).

[4] P. Kenna, 'Housing Law, Rights and Policy' (Clarus Press 2011); 7-07; See Central Statistics Office, *Census 2011*: *Profile 4 The Roof over our Heads - Housing in Ireland* (Dublin: Stationery Office, 2011), p. 12.

[5] Central Bank of Ireland, *Address by Deputy Governor Stefan Gerlach at the Berlin Finance Lecture, Berlin, 14 January 2013, Ireland: From Crisis to Recovery* (Dublin, Stationery office, 2013), p. 3.

[6] P. Honohan, *The Irish Banking Crisis – Regulatory and Financial Stability Policy 2003-2008, - A Report to the Minister for Finance by the Government of the Central Bank,* (Central Bank, 2010).

lending. According to the Irish Banking Federation (now the Banking and Payment Federation of Ireland) mortgage lending in Ireland fell from a peak of in excess of 200,000 residential loans in 2008 to less than 15,000 in 2011.[7] The balance sheets of Irish banks declined, access to international finance markets effectively came to an end and Bank share prices fell dramatically. In 2008 the Government guaranteed Irish bank liabilities. This overreached the public finances and ultimately led to a bailout of the State by the Troika. The ensuing financial, social and economic crises were severe. With the onset of the recession the number of households falling into arrears or calling upon the State social welfare support scheme for indebted homeowners, i.e. mortgage interest supplement, increased dramatically,[8] as did applications for social housing support. Between 2005 and 2011, the number of households assessed as being in need of housing doubled to almost 100,000 households. This increase was largely due to a dramatic rise in the number of households unable to meet the cost of their accommodation, two thirds of those needing housing in 2011 for reasons of affordability.[9]

At the end of 2013 Ireland exited the bailout program and since then the Irish economy began to grow once again. Indeed, house prices began to increase rapidly – rising in Dublin by about 50% from trough in 2010.[10] In spite of popular opposition, the Central Bank of Ireland have introduced a range of macro prudential measures in 2015 aimed at restricting risky lending and dampening property price speculation. Limits have been set on loan to value and loan to income ratios.[11] In spite of the turnaround of the economy, there remain considerable difficulties in the mortgage market. In particular, long term arrears remain at extremely high levels. This has led to a range of policy measures including the development of a mortgage to rent scheme as well as broader reform of regulation of lenders. It is in the context that the Mortgage Credit Directive has been introduced.

[7] 'Mortgage Market Profile - Data Series 2005-2012' (Dublin: IBF/PwC, 2012). Data for 2013 was taken from 'IBF PwC Mortgage Market Profile Q4 2013'' (Dublin: IBF/PwC, 2014), p. 2.

[8] Department of Social Protection, *Annual SWS Statistical Information Report 2012* (Dublin: Stationery Office, 2012), Section G.

[9] Department of the Environment, *Housing Needs Assessment 2011* (Dublin: Stationery Office, 2011), p. 1.

[10] S. Gerlach, *The Return of Ireland's housing bubble* (2016).

[11] S. Gerlach, The Central Bank of Ireland's macro prudential policy (Oct, 2015).

Credits and securities in the Irish mortgage market

Table 1: Snapshot of the Irish mortgage market 2016

	% of total market lending in the first six months of 2016[12]	Standard variable rate (SVR)*
Allied Irish Bank	34	3.40%
Bank of Ireland	29	4.24%
Ulster Bank	19	4.00%.
KPC	12	4.25%
Permanent TSB	9	4.50%

*Applying to existing customers at August 2016.

Credits and securities available on the Irish mortgage market

There are a wide variety of credits and securities available in the Irish mortgage market. The number and variety of mortgage products increased considerably during the housing bubble. At peak in 2007, the range of mortgage products included a number of fixed rate mortgage products differentiated by the duration of the fixed term i.e. 1-3 years, 3-5 years and 5 years or more, and a range of variable rate mortgage products. Broadly speaking there are two types of variable rate loans – those that track the ECB base rate at an agreed margin (trackers) and those that do not.[13] While there are various versions of non-tracker mortgages, in general, lenders who offer non-tracker mortgages offer no specific link to an underlying market or wholesale rate and can choose to increase or decrease the rate at its discretion.[14]

[12] Irish Times (12 August 2016). Available at http://www.irishtimes.com/business/financial-services/ulster-bank-gets-larger-share-of-irish-mortgage-market-1.2753985?mode=sample&auth-failed=1&pw-origin=http%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ffinancial-services%2Fulster-bank-gets-larger-share-of-irish-mortgage-market-1.2753985 (last accessed 29 August 2016).

[13] J. Goggin, The financial crisis and the pricing of interest rates in the Irish mortgage market: 2003-2011 (Central Bank, Research Technical Paper 1/RT/12, 2012), p. 4.

[14] J. Goggin, The financial crisis and the pricing of interest rates in the Irish mortgage market: 2003-2011 (Central Bank, Research Technical Paper 1/RT/12, 2012), p. 4.

The main variable rate mortgage products included standard variable mortgages, tracker mortgages as well as current saver account, discount and 3-in-1 mortgages.[15] In recent years variable rate mortgages have proved highly popular in Ireland. From 1999 to 2007, the share of variable rate loans in Irish mortgages increased considerably rising from about half of outstanding mortgages to over three quarters of mortgages by end 2007.[16] The majority of these are tracker mortgages (60%) which has allowed consumers to avail of unprecedentedly low ECB interest rates.[17] However, with the onset of the financial crisis interest only and tracker mortgages were effectively withdrawn.[18] Nevertheless there remain a considerable variety of mortgage products including annuity mortgages, interest only mortgages, deferred start mortgages, offset mortgages and cash back mortgages.

A recent innovation in the Irish mortgage market is the 'cash back' mortgage. Under this mortgage the creditor gives a one-off lump sum payment, in some case 2% of the value of the mortgage, to new borrowers at the beginning of a mortgage. This is often marketed as 'free cash' however the sum is actually funded by mortgage interest payments. These loans are heavily marketed towards first time buyers who may have a cash shortfall immediately after taking out the mortgage and so may struggle to afford to furnish the dwelling. Initially banks sought to attach a 'claw back' condition such that in the event that the borrower pays of the mortgage or switches the mortgage within 5 years of drawdown the bank could reclaim the fee. However, in light of the introduction of the MCD, banks dropped the condition in favour of a loyalty payment after five years. Cash bank mortgages tend to require as a condition that the borrower has a current account with the bank.[19]

With respect to annuity or repayment mortgages, which are the most common mortgage, monthly repayments contribute to the capital and interest payment on the loan. The interest rate may be fixed for a period, usually one to three years although longer periods are possible, or it may be variable or indeed it may combine the characteristics of both fixed and variable i.e. a split mortgage.

There are a number of variable rates in the Irish mortgage market including a standard variable rate pinned to the European Central Bank rate. In addition, there are also loan-to-value rates, which depends on the size of the mortgage compared to the value of the home and tracker mortgages, which are set as a fixed percentage above the ECB

[15] N. Doyle, "Housing Finance Development in Ireland", *Central Bank Quarterly Bulletin,* October 2009, p.81.
[16] Doyle 2009: p. 48.
[17] P. Kenna, 'Housing Law, Rights and Policy' (Clarus Press 2011), para. 7-13.
[18] P. Kenna, 'Housing Law, Rights and Policy' (Clarus Press 2011), para. 7-12.
[19] http://www.independent.ie/business/personal-finance/latest-news/bank-of-ireland-to-pay-customers-4500-to-take-out-150000-mortgage-35003874.html (last accessed August 2016).

rate. Discounted rates which allow a temporary rate that lowers repayments over an initial period (e.g. 1 year) after which the borrower has the option to go onto a fixed or variable rate are also available, as are capped rates which but cannot go beyond an upper limit. Under a split rate mortgage, part of the mortgage is on a fixed rate while the remainder is on a variable rate.

There continue to be a considerable number of interest only mortgages in Ireland.[20] These come in two main forms – pension mortgages and endowment mortgages.[21] Some basic features are common to both. In particular, the borrower’s monthly repayments only go towards paying the interest payment on the loan. It is at the end of the term that the capital amount of the loan falls due. How this is repaid depends on the form of the interest only mortgage at issue. For instance, where a pension policy or endowment policy is taken out then the alongside the monthly interest payment, the borrower will also pay into one of these policies. At the end of the term, the policy is cashed out and the proceeds are used to discharge the capital amount borrowed. There is greater risk for the borrower in such mortgages as the end of the term there may be a shortfall between the proceeds of sale of the policy and the capital value of the loan outstanding. In this case the borrower will be responsible for meeting any shortfall. A variant on the interest only mortgage may require the property to be sold at the end of the term to cover the costs of the original loan. Given the greater risk involved, interest only mortgages tended to be more difficult to access and were generally out of the reach of first time buyers.

There are also a number of other mortgage products including deferred start mortgages, repayment holidays and offset mortgages. Under deferred start mortgages the repayments on the mortgage do not start for a number of months. The lender will charge interest on the mortgage for these months and add it to the original loan. With repayment holiday mortgages the repayment schedule is spread out over 10 or 11 months instead of the usual 12. Thus there will be one or two months a year where the borrower will not make a repayment. However, repayments will be higher to cover the cost of these ‘holiday’ monhts.

Finally, offset mortgages or current account mortgages have been used in the Irish mortgage market. Under this mortgage, a variable interest rate is combined with a current account. The borrower pays their salary into the current account which is accessable throughout in the usual way i.e. to deposit, withdraw money. If the borrower wishes to pay ahead of schedule, he may pay in extra amounts if he wishes.

[20] J. Kelly, “Interest only mortgages in Ireland” (Central Bank, 2014).

[21] Clams of negligence misrepresentation by banks in the selling of endowment mortgages, where policy holders suffered loss. Cases taken in 2010 were not statute barred where the policy holders became aware of the losses in the previous six years (Kenna 2011: 7-14).

Where the account is in credit, the borrower will be charged mortgage interest on the difference between the balance on the mortgage and the balance in the current accout. Thus the balance in the current account can reduces the amount of interest due.[22]

Equity release schemes

Equity release schemes operate in the Irish mortgage market and come in two forms – home reversion schemes and equity release schemes. A home reversion involves a sale of part of the value of the property and leads to a co-ownership arrangement rather than a mortgage type transaction. By contrast under an equity release schemes the borrower, usually an elderly person, takes out a mortgage over their home or part of the value of the dwelling to release some equity from their home. The loan is not repaid until the borrower permanently moves out or dies, so it grows over time as interest is added to the balance. These 'lifetime loans' may be fixed rate or variable rate in the usual way. There were a number of schemes in Ireland including the Bank of Ireland "Life Loan" Mortgage, the S.H.I.P 'Seniors Finance" Mortgage Scheme, and the Seniors Money 60plus Loan however while such loans remain legal, the Central Bank states that none are being provided at present. Any new loans would be caught by the Central Bank's Consumer Protection Code 20012 now applies to any new loans. [23] Although these schemes have been withdrawn there are about 3,100 customers owing approx. €320m under life loan products.[24]

Serious concerns about the operation of such schemes have been expressed by the Law Society of Ireland as well as others.[25] In particular, the Law Society have drawn attention to a number of industry practices including the requirement as a condition of the loan that the borrower make a will and disclose the name of the executor, any beficiairies, etc, raising questons over the potential for intrustion into the privacy rights of the borrowers. Furthermore, in some mortgages the bank reserves the right to call for repayment of the loan or to sell the house during the borrowers lifetime if another bank forecloses on a different property of the borrower which is in no way connected with the life loan mortgage or if an undertakings given by solicitor has not been complied with (even if not relation to security). The Law Society have also drawn attention to the penalisation of borrowers by way of redemption fee for early

[22] Above derived from http://www.consumerhelp.ie/types-of-mortgages (last accessed 26 August 2016).
[23] https://www.fiannafail.ie/life-loan-customers-need-to-be-vigilant-as-liability-grows-dramatically-mcgrath/ (last accessed 26 August 2016)
[24] https://www.fiannafail.ie/life-loan-customers-need-to-be-vigilant-as-liability-grows-dramatically-mcgrath/ (last accessed 26 August 2016).
[25] Proposed regulation of home revirsion and lifetime mortgages (Law Society of Ireland, 2007). Available at https://www.lawsociety.ie/documents/committees/conveyancing/submissions/Equity%20Release%20FINAL%20Submission.pdf

repayment. Such conditions while set out in accordance with the CCA 1995, may nonetheless be excessive and expressed in intellible language.[26]

Foreign consumers buying/investing in residential immoveable property

There is a limited amount of research on this issue in Ireland.[27] Prior to the establishment of a new property transactions database in 2010, there were no robust national data on housing transactions in the Irish market. Unfortunately, this new register does not record the nationality of the purchaser. However, rates of immigration suggest that a wide range of international households make their home in Ireland. In particular, a considerable number of EU citizens, most notable British and to a lesser extent eastern Europeans, make their home in Ireland. Census data reveals that tenure varies considerably according to nationality. For instance, there are about 32,000 UK nationals resident in the State who own their own home – half of whom own with the aid of a mortgage. This equates to about 60% of all UK households living in Ireland.[28] By contrast 2000 Polish households were homeowners, this equated to just under 5% of all Polish households living in Ireland.[29] However, unlike UK nationals, the vast majority of Polish households own their home with the aid of a mortgage. For the rest of the EU, there were roughly 6,000 home owning households from EU 15 (excluding Ireland and the UK), which corresponds to roughly a third of all EU 15 households living in Ireland. With respect to EU15 to EU27 (excluding Poland) households. In this case about 3000 households were homeowners, representing about 8% of total EU 15-EU27 households living in Ireland.[30]

Default and arrears

The financial, economic and ensuing mortgage arrears crises in Ireland have been among the most severe in the OECD. The Irish experience has also been particularly unusual in that, due to legal and political uncertainty, home foreclosures were rare by international standards.[31] This has led to an unprecedented increase in mortgages arrears, particularly long term arrears (over one year in arrears).[32] By March 2016, some 8% of residential mortgage accounts were in arrears of more than ninety days.[33]

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[26] Proposed regulation of home revirsion and lifetime mortgages (Law Society of Ireland, 2007).

[27] P. Sparkes, Cross Border Acquisition of Residential Property in the EU: Problems Encountered by Citizens (European Parliament, 2016).

[28] Census 2011 profile 4: Roof over our heads (CSO, 2012), p. 19.

[29] Census 2011 profile 4: Roof over our heads (CSO, 2012), pp 60-61

[30] Census 2011 profile 4: Roof over our heads (CSO, 2012), pp 60-61.

[31] R. Kelly & F. McCann, (2015) *Some defaults are deeper than others: understanding long-term mortgage arrears*, research technical paper, 5/RT/15, p. 3.

[32] R. Kelly & F. McCann, (2015) *Some defaults are deeper than others: understanding long-term mortgage arrears*, research technical paper, 5/RT/15, p. 3.

[33] Section 3(a) of the Code of Conduct on Mortgage Arrears states “a mortgage arrears problem arises as soon as the borrower fails to make a mortgage repayment by the due date”.

This number has fallen consistently in recent years – from a high water mark of 13% in 2013 – with the latest figures marking the tenth consecutive decline in arrears over 90 days. While the number of short term arrears has reduced consistently, long term arrears have remained stubbornly high. In 2016, accounts in arrears over 720 days constituted over 40 per cent of all accounts in arrears and 86 per cent of arrears outstanding. [34] It is no surprise to find that since the economic crisis, beginning in 2007, the group most likely to be in greatest debt are first time buyers who bought at the top of the market (2005-2007) and particularly first time buyers living in Dublin.[35] Many first time buyers in Dublin took on 100% mortgages so that the subsequent collapse of house prices led to negative equity, with increased risk of default.

While there has been a sharp increase in the mortgage arrears this was not accompanied by a comparable increase in repossessions. Instead, many non-performing mortgages have been restructured by private agreement between lender and borrower.[36] By the end of March 2016 roughly 120,000 private dwelling houses mortgages had been restructured – the vast majority (over 90%) of which have been successful.[37] Restructuring has taken a variety of different forms. About a third of arrangments involved arrears capitalisation, where some or all of the arrears are added to the remaining principal balance to be repaid over the term of the mortgage. A fifth of restructure arrangements were split mortgages, a sixth involved term extension while the remainder comprised a variety of temporary interest rate reductions (6%), deferred interest and interest only (4%), reduced payment (8.5%), payment moratorium (1%) as well as a range of others (15%).[38]

The absence of a sharp increase in repossession is due to combination of legal and policy measures. In the first place the Land and Conveyancing Law Reform Act 2009 played a significant role in reducing the amount of repossessions in Ireland. By inadvertently repealing certain legislation the Act made it more difficult for a lender to secure a court order for possession.[39] In addition to this measure a one year moratorium on possession on primary residences was introduced in 2010. The

[34] *Mortgage Arrears and Repossessions Statistics: Q1 2016*, p 1.
[35] In 2006, 74% of this group borrowed over €250,000 compared to 38%of first time buyers in the country as a whole, and 64% of repeat homebuyers and property investors in Dublin: Norris and Winston, ''Transforming Irish Home Ownership' *International Journal of Housing Policy*, 11(1) (2011): p. 13.
[36] *Mortgage Arrears and Repossessions Statistics: Q1 2016*, p 3.
[37] *Mortgage Arrears and Repossessions Statistics: Q1 2016*, p 3.
[38] *Mortgage Arrears and Repossessions Statistics: Q1 2016*, p 4-5.
[39] The Land and Conveyancing Law Reform Act 2009 (LCLRA) repealed or amended provisions of the Conveyancing Act 1881 and the Registration of Title Act 1964. The lacuna was originally identified in *Start Mortgages Ltd & Ors v Gunn & Ors* [2011] IEHC 275.

introduction of the Code of Conduct on Mortgage Arrears further encumbering the ability of the lender to take possession.[40]

The lacuna in Irish law which benefited struggling householders was closed by the Land and Conveyancing Law Reform Act 2013[41] and revisions to the Code of Conduct on Mortgage Arrears in July 2013, by which the law on repossession was returned to the pre-2009 reform. These changes have led to an increase in legal proceedings and repossessions. In the first nine months of 2015 over 1,100 possession orders were made by the Irish courts representing an increase of almost 70% on the same period in 2014. When set against the same period in 2013, the increase is a remarkable 350%.[42]

The increased rate of repossession has raised the threat of homelessness for many households in arrears.[43] This has prompted a number of proposals including extending financial supports for households in arrears, expanding the mortgage to rent scheme, increasing protection of households which are co-operating with their lender and extending the availability of Personal Insolvency Arrangement schemes.[44] Under the mortgage to rent scheme, the borrower surrenders possession to the mortgage lender who immediately sells it to a housing association. The housing association then rents it to the borrower. The scheme is only available to borrowers under a certain income threshold and only to those borrowers who are engaging with the lender under the Mortgage Arrears Resolution Protocol. The borrower may have the option to buy back their home after a period of 5 years if their situation improves.

Why did the legal system regarding securities over immovables fail consumers?

The mortgage market was at the centre of the financial and economic crisis which engulfed Ireland following the collapse of the housing bubble in 2007. The bubble was made possible by a dramatic expansion in credit available in the Irish mortgage market. This expansion was the product of a number of factors including deregulation of the Irish credit market since the mid-1980s,[45] the innovation of mortgage products and the development of cross border lending.[46] The subsequent collapse of the Irish mortgage market has been attributed to a wide range of factors including Government fiscal and

[40] See R. Waldron & D. Redmond, 'The Extent of the Mortgage Crisis in Ireland and Policy Responses' 29(1) (2014): 149-165.
[41] Land and Conveyancing Law Reform Act 2013.
[42] *Mortgage Arrears and Repossessions Statistics: Q1 2016*, p 5-6.
[43] Housing and Homelessness Committee (2016), p. 70.
[44] Housing and Homelessness Committee (2016), p. 76. Some of these have been incorporated in the Programme for Government (2016)

[45] J. Kelly & M. Everett, Financial Liberalisation and Economic Growth in Ireland (Central Bank, 2013), p. 94-97.
[46] Y. McCarthy & K. McQuinn, Credit conditions in a boom and bust property market (Central Bank, 2013), p. 4.

housing policy in the years preceding the crash, the complicity of directors and senior bank managers in the development of irresponsible lending practices and, crucially, the ineffective regulatory oversight of those lending institutions.[47]

In the years leading up the crisis there was an acute Government fiscal and housing policy focus on addressing perceived supply side constraints within the Irish housing market during the 1990s and 2000s.[48] This was in spite of the fact that the house market was already recording record levels of house price growth and housing construction since the 1990s.[49] Adopting pro-cyclical policies contributed to the already rapid expansion in the housing market.[50]

Irresponsible lending practices also played a major role in the development of the housing bubble.[51] These included various lending practices such as lending at high multiples of income and sub-prime lending.[52] In 1995 the average first-time buyer took out a mortgage equal to three years' average industrial earnings, and the average house cost four years' earnings. By the bubble peak in late 2006, the average first-time buyer mortgage had risen to eight times average earnings, and the average new house cost ten times average earnings but the multiple was seventeen in Dublin.[53] Mortgage lending at high multiples of income was one of the main causes of increases in property prices during the early 2000s and was a significant reason for the sharp contraction in the downturn.[54] Studies commissioned by the Central Bank have shown a positive relationship between higher loan-to-value and loan-to-income ratios and

[47] P. Honohan, *The Irish Banking Crisis – Regulatory and Financial Stability Policy 2003-2008, - A Report to the Minister for Finance by the Government of the Central Bank,* (Central Bank, 2010).
[48] Bacon & Assoc., An Economic Assessment of Recent House Price Developments (Dublin: Stationery Office, 1998), Bacon and Assocs, The Housing Market: An Economic Review and Assessment (Dublin: Stationery Office, 1999), Bacon & Assocs, *Medium Term Projections of the Supply and Demand for Apartments in Dublin City Centre* (Wexford: Peter Bacon & Assocs, 2003), P. Bacon & F. McCabe, *The Housing Market in Ireland: An Economic Evaluation of Trends and Prospects* (Dublin: Stationery Office, 2000).
[49] Between 1995 and 2007 real Irish house prices grew by more than any other country within the OECD.
[49] See Y. McCarthy & K. McQuinn, Credit conditions in a boom and bust property market (Central Bank, 2013), p.1.
[50] P. Honohan, *The Irish Banking Crisis – Regulatory and Financial Stability Policy 2003-2008, - A Report to the Minister for Finance by the Government of the Central Bank,* (Central Bank, 2010); Chapter 2.
[51] S. Gerlach, 'The Central Bank of Ireland's macro prudential policy' (Oct, 2015).
[52] See P. Kenna, Housing Law Rights and Policy (Clarus, 2011), 7.90.
[53] M. Kelly *The Irish Credit Bubble* (Dublin: University College Dublin, 2009), p. 2. Indeed, the number of mortgages of over 250,000 increased from 2.6% of total in 2000 to 41% of the total in 2007. 100% mortgages became available in 2004 and accounted for 4% of all mortgages granted in that year, while in 2008 such 100% mortgages accounted for 12% of all mortgages granted. A huge amount of financial product innovation took place among mainstream lenders during this period see M. Norris and N. Winston, ''Transforming Irish Home Ownership Through Credit Deregulation, Boom and Crunch''., *International Journal of Housing Policy*, 11(1), (2011): 1-21.
[54] Y. McCarthy & K. McQuinn, Credit conditions in a boom and bust property market (Central Bank, 2013).

subsequent mortgage defaults.[55] The assumption behind such lending was that house prices would continue to rise for the foreseeable future.

These assumptions and the risky mortgage products which resulted went unchallenged by regulatory bodies. There was a major failure in terms of bank regulation and the maintenance of financial stability failure during the development of the housing bubble.[56] This failure was apparent in three broad areas including the lack of supervision of individual institutions,[57] ineffective approach to overall financial stability policy[58] and the failure to undertake decisive and effective remedial measure to offset the crisis.[59] During this period, the regulatory approach of the Central Bank and Financial Services Authority of Ireland was characterised by a deference towards lending institutions and a failure to take sufficient decisive action on the foot of clear and pointed warnings in the face of public opinion. The systemic failure of the regulatory system also revealed major gaps in the consumer protection framework. While there were some relatively advanced consumer protection measures in Ireland, for instance the Consumer Credit Act 1995 shares similar content to the MCD, the regulatory model in respect of mortgages was largely premised on codes of conduct which were of limited legal effect[60] and lacked effective enforcement mechanisms.

[55] N. Hallissey, "Macro-prudential tools and credit risk of property lending of Irish Banks", (Central Bank, 2014); Y. McCarthy, (2014) "Disentangling the Mortgage Arrears Crisis: The Role of the Labour Market, Income Volatility and Negative Equity", The Journal of the Statistical and Social Inquiry Society of Ireland, Vol.43, pp. 71 – 90.

[56] P. Honohan, *The Irish Banking Crisis – Regulatory and Financial Stability Policy 2003-2008, - A Report to the Minister for Finance by the Government of the Central Bank,* (Central Bank, 2010), p. 16.

[57] P. Honohan, *The Irish Banking Crisis – Regulatory and Financial Stability Policy 2003-2008, - A Report to the Minister for Finance by the Government of the Central Bank,* (Central Bank, 2010); chapters 4 and 5.

[58] P. Honohan, *The Irish Banking Crisis – Regulatory and Financial Stability Policy 2003-2008, - A Report to the Minister for Finance by the Government of the Central Bank,* (Central Bank, 2010); chapter 6.

[59] P. Honohan, *The Irish Banking Crisis – Regulatory and Financial Stability Policy 2003-2008, - A Report to the Minister for Finance by the Government of the Central Bank,* (Central Bank, 2010); chapter 7.

[60] *Irish Life and Permanent plc v. Dunne and Dunne and Irish Life and Permanent v. Dunphy*, [2015] IESC 46, para. 7.2. Here the Supreme Court found that where a lender has failed to demonstrate compliance with moratorium provisions of the Code of Conduct of Mortgage Arrears the Courts will reject applications for possession. However, the Court have indicated that breach of any other provision of the code will not affect a lender's entitlement to an order for possession. Applied in the High Court in *Stepstone Mortgage Funding Ltd v Hughes* [2015] IEHC 487 and *Stepstone Mortgage Funding Ltd v Hughes & anor* [2015] IEHC 487

Part II. The Impact of Directive 2014/17

Has your country transposed Directive 2014/17? If so, please state what provisions have been enacted and whether they are prudential, civil or penal provisions. Please provide links to official versions, including English versions whenever possible.

If applicable, do you think that, in general terms, the transposition has been carried out adequately? If not, please state the main reasons why.

The Republic of Ireland has transposed Directive 2014/17 by means of a Ministerial Regulation the European Union (Consumer Mortgage Credit Agreements) Regulations 2016, SI No 142 of 2016, which came into operation on 21 March 2016.[61] Transposing the MCD by means of a Ministerial regulation, rather than an Act of the Oireachtas (Act of Parliament), limited the extent to which more stringent provisions could be adopted. However, transposition of EU directives by means of Ministerial Regulation is commonplace in Ireland[62] for reasons of expediency.[63] The transposition has largely been an exercise in copy and paste from the MCD, with a number of technical adjustments and the notable exception of 'appointed representatives' who do not appear in the Regulation. A number of discretions have also been adopted which are set out below. A creditor or mortgage credit intermediary who contravenes a provision of the transposing Regulation commits an offence punishable on summary conviction to fine and or imprisonment.[64] The Central Bank of Ireland may also administer administrative sanctions for contravention of these provisions.[65] Broadly speaking the transposition has been carried out adequately.

Even if the Directive has not been transposed, we would like to find out what changes it entails in your legal system and whether they remedy any of the problems you have pointed out to be the most relevant in Part I.

In particular, it would be good to address the following areas:

1) If the Directive has been transposed, and with regard to its scope, has your country made use of the possibility to not apply the Directive or part thereof as per art. 3.3? If so, does allow for the continuation of bad practices?

Buy to let mortgages

[61] SI No 142 of 2016. Made under the European Communities Act 1972 (as amended). The transposing regulation is available at http://www.finance.gov.ie/sites/default/files/SI1422016FIN.pdf (Last accessed 26 August 2016).

[62] Recently, the Consumer Credit Directive 2008/48/EC was transposed in the same way.

[63] Regulatory Impact Analysis in relation to the transposition of the Mortgage Credit Directive (Department of Finance, 2016), p. 2-3.

[64] SI No 142 of 2016, reg. 39.

[65] SI No 142 of 2016, reg. 39(6).

Ireland did not exercise the discretion available under art. 3(3)(b) and accordingly the Regulations apply to 'Buy to Let' mortgages. However, it is only where the borrower comes within the definition of a 'consumer' that the 'BTL' mortgage be caught by the MCD. The task of determining whether or not a borrower is a 'consumer' falls to the lender. This may prove a tall order given the characteristics of the private rented sector in Ireland where the majority of landlords tend to be non-professional individuals holding a small number of properties.[66] Nevertheless, in these conditions it is plain to see the risk for such landlords, their families and indeed their tenants. For instance, a 'consumer type' landlord may well cross securitise a BTL mortgage on his principal private residence. Thus in the event of a default, both the tenants home and the family home of the landlord will be at risk.

Loans provided on better terms i.e. local authority loans

Ireland did exercise the discretion available under art. 3(3)(c) and accordingly local authority mortgages will be exempt from the Regulations.[67] Local authority mortgages are provided to a restricted public under a separate statutory framework (i.e. the Housing Acts 1966-2014) which falls under the remit of the Department of the Environment, Community and Local Government.[68] Instead of bringing such mortgages within the scope of the Regulations, the Government have decided that such mortgages should continue to fall the current statutory regime. However, the Government have committed to ensuring that the current statutory regime will be updated to incorporate the consumer information and protection measures of the Directive and to provide that the consumers of local authority mortgage finance will receive timely information on the main features, risks and costs of such credit agreements at the pre-contractual stage, and that the advertising of such credit agreements is fair, clear and not misleading.

Given that local authority loans are governed by the Consumer Credit Act 1995 in much the same way as other 'housing loans', it is not clear on what basis the decision was made to exclude local authority loans from the remit of the Directive.[69] Local authorities are a major source of mortgage finance in Ireland.[70] At present there are about 18,000 local authority mortgage issued to over 28,000 named borrowers[71] with

[66] See Tenlaw Report on the Republic of Ireland (ZERP, 2014).
[67] SI No 142 of 2016, reg. 5(2)(g).
[68] SI No 408/2012 - Housing (Local Authority Loans) Regulations 2012
[69] Consumer Credit Act 1995, s. 3(a)-(b).
[70] In the 1970s local authority mortgages accounted for one third of all residential mortgages in Ireland and one half of all value. See C. O'Connell, The State and Housing in Ireland: Ideology, Policy and Practice (Institute of Public Administration, 2003), p. 137. See P. Kenna, Housing Law Rights and Policy (Clarus, 2011): chapter 2.
[71] Such households would invariably accommodate other dependants.

a total value of over €1 billion.[72] The majority of these mortgages (about 14,000) are charged at a variable mortgage interest rate while the remainder have interest rates that are fixed or are set in accordance with a tailored loan scheme specific to local authority housing. The main house purchase loan currently available from local authorities is the standard annuity mortgage, targeted at lower income first time buyers. Given that approximately one third of all mortgages are in arrears of over 90 days, with many considerably longer in arrears, it is clear that these loans carry significant risk for the borrower and it is clear to see the potential benefit of extending the provisions of the MCD to this group of consumers.[73]

Bridging loans

Ireland did not exercise the discretion under art. 3(2)(d) and accordingly these Regulations will apply to relevant bridging loans.

Loans provided by credit unions or friendly societies

Ireland did not exercise the discretion available under art. 3(3)(3) and accordingly the Regulations apply to credit agreements entered into by Credit Unions and Friendly Societies. This was a notable departure from pre-existing approach to regulation of this sector of the credit market. For instance, the Consumer Protection Code doesn't apply to credit unions nor such lenders fall within the scope of the Consumer Credit Act 1995 until an amendment was passed in 2010.[74] The Regulatory Impact Assessment justifies the change in practice by setting out that it will provide for a more level regulatory playing field in relation to mortgage loans.[75] As noted by FLAC during the consultation on the transposition of the MCD, while some credit unions may have departed from the traditional small social lending role, many have not and these may well be put under pressure by this general change.[76]

Equity release mortgages

Finally, equity release mortgagees are excluded from the regulations.[77] This departs from existing practice in Irish law where such mortgages are treated as 'housing loans'

[72] 'DGI overall loan arrears figures Q1 2016' (DoE, 2016).
[73] 'DGI overall loan arrears figures Q1 2016' (DoE, 2016). The Housing (Miscellaneous Provisions) Act 1992 provides that a housing authority may recover possession of the dwelling under the Landlord and Tenant Law Amendment (Ireland) Act 1860 as if the local authority was the landlord and the borrower the tenant.
[74] European CCA Regs 2010.
[75] Regulatory Impact Analysis (Department of Finance, 2016), p. 23.
[76] Submission to the Department of Finance on Mortgage Credit Directive (FLAC, 2014).
[77] SI No 142 of 2016, reg. 2(b) implementing Art. 3(3)(b).

for the purpose of the Consumer Credit Act 1995.[78] Indeed, the exclusion is difficult to justify given the characteristics of this borrowing arrangement. As discussed in part 1 of this answer, in the past such mortgages were often conditional upon the borrower making a will and disclosing whole sensitive information about beneficiaries etc. Furthermore, many borrowers in this market have tended to be elderly persons, some of whom may be in need of the finances but also may be vulnerable.

2) Prior to the implementation of the Directive, did your system have similar rules to those laid down in art. 7 regarding the remuneration of the staff working for credit institutions, intermediaries or representatives?

In particular, were there restrictions to tying remuneration to the number of credits granted? Do you think the rules on knowledge and skills required of the staff significantly alter the existing norms and/or practice?

A specific range of measures concerning the remuneration of staff working for credit institutions, intermediaries or representatives are set out in the Consumer Protection Code 2012 (CPC). Prior to the implementation of the MCD, the CPC contained rules which were similar rules to those laid down in art. 7 regarding the remuneration of the staff working for credit institutions, intermediaries or representatives.

Conflicts of interest

The CPC requires regulated entities to maintain an appropriate conflicts of interest policy.[79] This policy must identify the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage of interest to consumers and it must specify procedures and measures to manage such conflicts.[80] Where a conflict of interest cannot be reasonably avoided then the regulated entity must disclose the general nature and source of the conflicts of interest to the consumer. In a situation of conflict, business can only be undertaken with the consumer where the consumer acknowledges in writing that he is aware of the conflict and wants to proceed.[81] Throughout the regulated entity must ensure that the conflict does not result in damage to the interests of the consumer.[82]

[78] Consumer Credit Act 1995, s.2(c) 'an agreement for the provision of credit to a person on the security of a mortgage of a leasehold or freehold estate or interest in land on which a house is constructed where the house is to be used, or to continue to be used, as the principal residence of the person or the person's dependants'.
[79] CPC 2012, art. 3.28.
[80] CPC 2012, art. 3.28(a)(b).
[81] CPC 2012, art. 3.29(a).
[82] CPC 2012, art. 3.29(b).

Remuneration

Under the CPC a mortgage intermediary must disclose in writing to the consumer r the existence, nature and amount of any fee, commission or other remuneration received or to be received from a product producer in relation to that product or service. Where the amount cannot be ascertained, the method of calculating that amount must be disclosed. The disclosure must be in a manner that is comprehensive, accurate and understandable.[83]

With respect to remuneration, the CPC requires that where a product producer distributes its products to consumers through an intermediary and pays commission to an intermediary based on levels of business introduced, the product producer must be able to demonstrate that these arrangements do not impair the intermediary's duty to act in the best interests of consumers and do not give rise to a conflict of interest between the intermediary and the consumer.[84]

In addition, regulated entities must ensure that its remuneration arrangements with employees in respect of providing, arranging or recommending a product or service to a consumer, are not structured in such a way as to have the potential to impair the regulated entity's obligations to act in the best interests of consumers and to satisfy the suitability requirements set out in Chapter 5.[85] Furthermore, regulated entities are required to take reasonable steps to ensure that it or any of its officers or employees does not offer, give, solicit or accept any gifts or rewards (monetary or otherwise) likely to conflict with any duties of the recipient in relation to his or her activities in the regulated entity, or the regulated entity.[86]

Suitability

Under chapter 5, the regulated entity must recommend, arrange or provide a product or service which is appropriate to that consumer's needs and circumstances.[87] Additional requirements apply when a regulated entity is providing a mortgage to a consumer.[88] Lenders are required to carry out an assessment of affordability to ascertain the personal consumer's likely ability to repay the debt, over the duration of the agreement.[89] This must be taken into account when making a decision on whether a consumer is likely to be able to repay the debt.[90] In addition, lenders are required to

[83] CPC 2012, art. 4.57-4.58.
[84] CPC 2012, art. 3.31.
[85] CPC 2012, art. 3.32.
[86] CPC 2012, art. 3.35.
[87] CPC 2012, art. 5.1.
[88] CPC 2012, art. 5.6-5.8.
[89] CPC 2012, art. 5.9-5.12.
[90] CPC 2012, art. 5.13.

assess the suitability of a product for a consumer on the basis of the consumers personal needs and circumstances.[91]

Remuneration arrangements in practice

A 2014 themed inspection carried out by the Central Bank into 'Sales Incentives to Direct Employees of Insurance Companies, Credit Institutions and Investment Firms (the 'Sales Incentives Review') found that firms failed to recognise inherent risks in remuneration arrangements to take appropriate steps to mitigate such risks. In particular, the report found that each remuneration scheme reviewed had a substantial focus on the achievement of sales volumes or revenues in order to determine variable remuneration. [92] The inspection found that such schemes carried the potential to encourage poor sales behaviours in sales staff, as quality measures were not formally linked to unlocking incentives in any meaningful capacity.[93]

In general remuneration arrangements placed a greater emphasis on rewarding higher amounts of sales than achieving suitable consumer outcomes. This was also the case with respect to bonus payments which were largely paid on the achievement of sales volumes and targets and little regard emphasis was placed on the quality of sales to the consumer. The inspection also found significant problems of monitoring and enforcement. For instance there was limited use of penalties or deterrents against poor sales practices while regular and robust sales quality monitoring not performed consistently. [94]

As a result of the poor results of the themed inspection, the Central Bank have issued Guidelines on variable remuneration arrangements for sales staff.[95]

In the light of your system, do you think more stringent provisions should rule the use of expressions such as "advice" and "advisory services" (art. 22)? In other words, has the fact that consumers trusted the employees of their local bank branch or other credit institution had a significant role in inadequate borrowing or over-indebtedness?

In their submission on the MCD consultation FLAC drew attention to the lack of objectivity of creditor staff, intermediaries or appointed representatives when it

[91] CPC 2012, arts 5.16-5.18.
[92] Guidelines on Variable Remuneration Arrangements for Sales Staff (Central Bank, 2014), pp 4-5.
[93] Guidelines on Variable Remuneration Arrangements for Sales Staff (Central Bank, 2014), pp 4-5.
[94] Guidelines on Variable Remuneration Arrangements for Sales Staff (Central Bank, 2014), p. 5.
[95] Guidelines on Variable Remuneration Arrangements for Sales Staff (Central Bank, 2014, chapter 6.

comes to selling credit and the need to develop an independent and objective service that consumers could access for independent advice on these issues.[96]

3) Regarding pre-contractual information, what changes does the Directive entail in: a) advertising (art.11); general information (art. 13) and ESIS (art. 14 and Annex II)?

Does your country fall within the scope of art. 14.5 (where there was already in place a similar form to ESIS, containing "equivalent information requirements")?

How does ESIS work with your domestic binding offers or similar transparency documents? Has your system increased consumer protection by enlarging the reflection period or the right of withdrawal or has it set an amount of time since receiving the ESIS (or equivalent) before which the consumer cannot enter into a binding agreement? Do you think adopting the ESIS decreases consumer protection in your legal system? When and how is the draft credit agreement available to consumers?

The European Voluntary Code of Conduct for Pre Contractual information on home loans was adopted by the Irish Banking Federation/Irish Mortgage Council in the early 2000s and has been widely implemented.[97] The code provided a basic guide on the general information which should be provided to the consumer about home loans. In particular, the code set out that personalised information should be provided to the consumer at a pre-contractual stage in the form of a European Standardised Information Sheet and as such the Directive does not represent a significant change in this area.

4. Does the Directive bring about significant changes with regard to tying and bundling practices (art. 12)?

The MCD does not bring about significant changes with regard to tying and bundling practices.[98] In the first place, under the Consumer Credit Act 1995 a mortgage lender is required to arrange through an insurer/insurer intermediary a life assurance policy providing, in the event of the death of a borrower before a housing loan made by the mortgage lender has been repaid, for payment of a sum equal to the amount of the principal outstanding.[99]

Secondly, the Act also makes clear that tying arrangements are not permitted in Irish law. The offer of a mortgage cannot be made conditional on the consumer taking on any financial services, conveyancing services, auctioneering services or other services

[96] Submission to the Department of Finance on Mortgage Credit Directive (FLAC, 2014), p. 16.
[97] P. Kenna, Housing Law, Rights and Policy (Clarus, 2011), paras 7-68-7-70.
[98] SI No 142 of 2016, reg. 13.
[99] CCA 1995, s. 126(1).

relating to land which that person may require, whether or not in connection with the loan.[100] Where more than one service is made available to the consumer during a mortgage transaction each service, as well as any payment due, must be clearly distinguished.[101] FLAC have indicated that while s. 126 requires lenders to arrange a policy is provided, there is no obligation to ensure the policy is maintained. During the economic and financial crisis a number of policies lapsed due to inability to pay leading to greater risk for consumers.[102]

Under the Consumer Protection Code 2012, tying, bundling and contingent selling is generally prohibited.[103] As set out in the MCD, a feeder account is permitted provided the consumer is not obliged to use the account for purposes other than repayments, charges cannot be applied for using the account, where additional facilities are available they must be optional and all conditions must be communicated to the consumer.[104]

In Ireland, bundling is only permitted where it can be shown that there is a cost saving for the consumer.[105] However, prior to making a bundling product available a creditor must provide the consumer with information in writing including the overall cost, the separate costs, how to switch products how to exit the bundle etc.[106] Where payment protection insurance is offered in conjunction with a loan the creditor must exclude the payment protection premium from the initial repayment estimate of the loan and advise the consumer of the amount due separately and use separate application forms.[107]

5. What changes does art. 17 entail with regard to the APRC? Is your system familiar with arrangements such as those referred to in art. 17, paragraphs 5 and 6?

Art 17[108] does not entail a major change in respect of the calculation of the total cost of the mortgage i.e. the APRC or APR. Similar criteria for calculation of APR in relation to housing loans is already know in Ireland and is set out in the Consumer Credit Act 1995. In particular, the Irish system already contains similar arrangements to those set out in 17(5) and (6) and so they do not represent a major departure from existing Irish law.

[100] CCA 1995, s. 127(1).
[101] CCA 1995, s. 127(2).
[102] FLAC, 2014, p. 11.
[103] CPC 2012, art. 3.17.
[104] CPC 2012, art. 3.18.
[105] CPC 2012, art. 3.19.
[106] CPC 2012, art. 3.20.
[107] CPC 2012, art. 3.24.
[108] SI No 142 of 2016, reg. 18.

Under this framework, as in the MCD, certain charges are exempt from the calculation of the total cost of credit to the borrower.[109] These include charges other than the purchase price such as Government duties, taxes, agency and legal fees associated with the acquisition of the property.[110] Also exempt are charges payable by the borrower for non-compliance with any of his commitments, as well as insurance charges – both on the life of the borrower and insurance against damage to the property.[111]

Similar to art. 17, the CCA provides that, when calculating the APR in relation to a housing loan, a number of assumption are made. First that the creditor and borrower fulfil their obligations under the terms of the contract.[112] Second, in respect of variable rate mortgages where future variations are unquantifiable at the time of calculation, the APR is calculated on the assumption that the current rates will remain fixed and apply until the end of the term. In the case of a fixed rate mortgage, the calculation is on the basis that the fixed rate shall apply only for set periods and any other rates applicable at a later date are the current variable rates.[113] It is also assumed that the borrower is not entitled to any income tax relief or any other benefit not granted by the creditor under, or relating to, the transaction.[114] Where any charges are payable at an unspecified date after the agreement is signed it is assumed that these are payable at the beginning of the agreement.[115] Finally similar provisions to those set out in Annex 1 of the MCD, are set out in the Fourth Schedule of the CCA 1995.[116]

6. **The creditworthiness assessment needs to yield a positive result. Otherwise, the credit cannot be granted (art. 18). Has this been transposed by means of prudential norms or by civil law norms, or both? What are the consequences of infringing this rule in your legal system (i.e. what happens if the credit has been made available in spite of a negative creditworthiness assessment)? And what are the consequences for the creditor if the consumer provides false or incomplete information?**

Arts. 18.4 and 20.3 suggest that the creditor's negligence in carrying out the assessment or in demanding the relevant information leads to the credit being maintained, which would probably entail that, even if domestic law attaches nullity to the infringement of imperative rules, in this case the Directive considers that maintaining the validity of the credit in the consumer's best interests. Nullity is

[109] CCA 1995, s. 122.
[110] CCA 1995, s. 122(1)(a).
[111] CCA 1995, s. 122(1)(b)(c).
[112] CCA 1995, s. 122(2)(a).
[113] CCA 1995, s. 122(2)(b).
[114] CCA 1995, s. 122(2)(c).
[115] CCA 1995, s. 122(2)(e).
[116] CCA 1995, schedule 4.

certainly a bad solution for the consumer, but it remains to be seen if being tied to a loan he probably cannot afford is a good result. This difficult question is not solved by the Directive, which seems to only offer a solution through sanctions and public disclosure thereof (art. 38).

The creditworthiness assessment provisions of the MCD to a large extent reflect existing Irish law however they also go beyond existing Irish law.[117] Under the Consumer Protection Code 2012, the lender is required to assess whether the credit product is suitable[118] for the borrower given his needs and in particular whether the borrower is able to afford the credit product given his circumstances.

In the first place, a lender must gather and maintain relevant information about the consumers' needs and circumstances both before and after a mortgage is extended.[119] This information is used to assess the consumer's ability to repay the debt, over the term of the agreement.[120] As part of the affordability assessment the lender to required to assess the consumers' circumstances including age, health, knowledge and experience of financial products, dependents, employment status, future changes. The lender must also consider, where relevant, the consumer's financial situation i.e. the consumer's income, savings, financial products, assets and other debts/commitments, as well as the consumer's attitude to risk.[121] Lenders are required to carry out a test on the consumer's ability to repay the instalments over the duration of the agreement in light of a change in circumstances. Under this test a 2% interest rate increase, at a minimum, above the interest rate offered to the personal consumer is applied.[122]

A lender is required to take account of the result of the affordability assessment when deciding whether a personal consumer is likely to be able to repay the debt for that amount and duration in the manner required under the credit agreement.[123] However, as Kenna and Lynch-Shally point out 'a negative assessment of affordability under the CPC does not amount to a prohibition on the provision of credit'.[124]

Art. 18(5), as transposed by reg. 19(5) appears to introduce a significant change in Irish law in that a lender can only make credit available where the affordability assessment produces a positive result. In addition, art 18(3), as transposed by reg. 19(4), also introduces a significant change into Irish law by specifically requiring the affordability assessment not be predicated on property value or an assumed increase in value.

[117] SI No 142 of 2016, reg. 19.
[118] CPC 2012, art. 5.16-5.20.
[119] CPC 2012, art. 5.1 & 5.3.
[120] CPA 2012, art. 5.9.
[121] CPA 2012, art. 5.1.
[122] CPC 2012, art. 5.9.
[123] CPC 2012, art. 5.13.
[124] P. Kenna & K. Lynch-Shally (2014) 'Comparing mortgage law in England and Ireland' *Conv.* 294, p. 6.

Where a lender contravenes a provision under reg. 19, that lender commits an offence.[125] While the Central Bank can issue sanctions, there is a gap of enforcement in respect of this provision.

It is unclear what the consequences for the creditor are if the consumer provides false or incomplete information under art 18. Under Regulation 30(12) the consumer may be prosecuted for committing an offence. In such cases it could be anticipated that lenders would resort to general contract principles such as misrepresentation.

In spite of art. 18.3, art. 19 grants property valuation an important role in the context of the creditworthiness assessment. Does your legal system allow internal appraisal of property, i.e. that the creditor carries out the valuation, albeit under certain conditions?

In Ireland property appraisals are carried out by professional valuers who are usually commissioned by the creditor however the consumer may commission a valuer to assess the property. The Consumer Credit Act 1995 limits the ability of lenders to levy charges arising from valuation reports and legal costs associated with the investigation of title.[126] Under the Consumer Protection Code 2012, a creditor must ensure that it had sight of an original valuation report for the property which will act as security for the mortgage, prior to providing a mortgage.[127]

The valuation figure arrived at is used to by the creditor to decide the worthiness of the risk involved in the proposed credit transaction. In Ireland the industry is self-regulated with most valuers represented by the Institute of Professional Auctioneers and Valuers (IPAV) which has adopted the European Valuation Standards (EVS) of the Blue Book. The IPAV have been members of The European Group of Valuers Association since 2014 and have adopted similar professional qualification, standards and training policies. This brings the sector into line with Regulation 20(1) which required the use of reliable standards such as those developed by the European Group of Valuers Association.[128]

7. The number of consumers trapped by foreign currency loans varies throughout the EU. However, it is probably fair to say that most consumers did not understand the product they were acquiring, hence why transparency and financial education are essential in this area. The Directive demands that there is in place an exchange rate limitation arrangement or that the consumer has the opportunity to convert to a

[125] SI No 142 of 2016, reg. 19(10).
[126] CCA 1995, s. 125.
[127] CPC 2012, art. 5.8.
[128] SI No 142 of 2016, reg. 20(1).

more familiar currency (art. 23). Does complying with these requisites solve the problems experienced by consumers in your country?

Foreign currency loans are an important issue in Ireland and this particular aspect of the MCD has proved controversial and provoked complaint.[129] The Republic of Ireland shares an open land border with the United Kingdom. While nationals of both the Republic of Ireland and the United Kingdom are able to live in one state but work in the other, the frequency of this cross border activity is particularly associated with Northern Ireland. It is common for nationals of the Republic of Ireland to live in the Republic but work and earn income in the North and vice versa. In such cases, households working in Northern Ireland are paid in sterling but may well take out a mortgage in the Republic of Ireland, where they live, in euros.

In transposing art. 23, the Irish regulations require that the creditor must ensure that the consumer has a right, if conditions specified by the creditor are met, to convert the credit arrangement into an alternative currency.[130] Alternatively, the creditor must ensure that other arrangements are in place to limit the exchange rate risk to which the consumer is exposed under the credit agreement.[131] Under the regulations the alternative currency includes either the currency in which the consumer receives income or holds assets or the currency of the EEA Member State in which the consumer is resident.[132] These measures led to concerns that Irish nationals living and working in Northern Ireland in a cross border arrangement would be restricted from accessing 'foreign currency loans'. In particular the concern was raised that the increased administrative costs associated with offering such loans would dissuade Irish banks from extending such credits. This prompted the Central Bank to clarify that banks remain free to consider applications for a foreign currency mortgage.[133]

8. In your view, is art. 24 allowing variable interest rates dependant on indexes set by a small group of creditors (borrowing rate among them) or would this not be an "objective index"? Has this kind of index caused problems in your country? Do the provisions in art. 27 improve consumer protection in your country?

As discussed in part I, the majority of Irish mortgages are variable rate loans. Broadly speaking there are two types of variable rate loans – those that track the ECB base rate at an agreed margin (trackers) and those that do not.[134] Of these two types, tracker

[129] http://www.sinnfein.ie/contents/40367 (Last accessed 25 August 2016).
[130] SI No 142 of 2016, reg. 24(1)(a).
[131] SI No 142 of 2016, reg. 24(1)(b).
[132] SI No 142 of 2016, reg. 24(2)(a)(b).
[133] http://www.thejournal.ie/mortgages-northern-ireland-republic-2781808-May2016/ (Last accessed 25 August 2016).
[134] J. Goggin, The financial crisis and the pricing of interest rates in the Irish mortgage market: 2003-2011 (Central Bank, Research Technical Paper 1/RT/12, 2012), p. 4.

mortgages are most common however they were withdrawn from the market in 2009 following the onset of the economic recession and are no longer available to new consumers. This means that the latter type are now the default option for new consumers in Ireland. While there are various versions of non-tracker mortgages, in general lenders who offer non-tracker mortgages offer no specific link to an underlying market or wholesale rate and can choose to increase or decrease the rate at its discretion.[135]

A study commissioned by the Central Bank of Ireland found that in the years preceding the economic and financial crisis variable rates followed tracker rates very closely. This was largely because variable rate pricing was largely based off the ECB refinancing rate.[136] However, in the years following the crisis variable rates available on the Irish mortgage market have diverged substantially from tracker rates and from one another. The Central Bank study suggests a number of reasons for this divergence including the costs related to increased credit risk. For instance, the study found that Banks with higher arrears rates tended to exhibit higher variable mortgage rates. Another reason for the increased divergence has been the need for lenders to recoup the losses they are making on their tracker loans. In order to do so, some lenders are charging higher variables rates which may well result in greater pressure on mortgage arrears.[137]

Rather than breaking new ground, art. 27[138], reinforces existing consumer protection in Ireland. Under the Consumer Credit Act 1995, a mortgage lender is under a duty to supply documents and information concerning the mortgage to the borrower at regular intervals (at least yearly).[139] Where the interest rate is variable the lender is under additional disclosure and warning requirements.[140] Additional requirements for mortgage lenders are set out in the Consumer Protection Code 2012. These include general disclosure requirements such as the requirement to publish online and keep updated interest rates for mortgages which are currently available to consumers from the lender.[141] Any offer of a variable rate mortgage made to a consumer must make clear the possibility that interest rates may change and must explain the circumstances which would bring it about.[142]

[135] J. Goggin, The financial crisis and the pricing of interest rates in the Irish mortgage market: 2003-2011 (Central Bank, Research Technical Paper 1/RT/12, 2012), p. 4.
[136] Eurosystem Monetary Policy Commitee Task Force, March 2009, Housing Finance in the Euro Area, ECB Occasional Paper Series No. 101.
[137] J. Goggin, The financial crisis and the pricing of interest rates in the Irish mortgage market: 2003-2011 (Central Bank, Research Technical Paper 1/RT/12, 2012), p. 17.
[138] Transposed by regulation 28(1)-(3).
[139] CCA 1995, s. 128.
[140] CCA 1995, ss 130, 131 & 134.
[141] CPC 2012, art. 4.28 and 4.6.
[142] CPC 2012, art. 4.29.

Where a consumer holds a variable rate mortgage and creditor intends to increase the rate then specific disclosure requirements apply. In particular, the lender must notify the affected consumer in writing of any change in the interest rate on a loan and this must include

a) the date from which the new rate applies;
b) details of the old and new rate;
c) the revised repayment amount; and
d) an invitation for the personal consumer to contact the lender if he or she anticipates difficulties meeting the higher repayments.[143]

Any notification must be provided at least 30 days in advance of any change in the interest rate except in the case of a tracker mortgage where notification should be provided within 10 business days.[144]

9. Do provisions on early repayment laid down by art. 25 of the Directive improve consumer protection in your legal system?

Rather than breaking new ground in Irish law, art. 25[145] on early repayment supplements existing rules. Under the Consumer Credit Act 1995, a mortgage lender is not entitled to charge any sum/redemption fee[146] for future interest when a consumer elects to end a variable rate mortgage early.[147] However, a redemption fee may be applicable where a consumer elects to end a fixed rate mortgage early.[148] The Act does not set out how such an early redemption fee is to be calculated. It is in this respect that art. 25(3) provides some clarification. However, FLAC have expressed concern that tying 'fair and objective compensation' for early repayment to possible costs is not sufficiently precise and instead have recommended that compensation should be for actual loss, objectively demonstrated. FLAC have also recommended that compensation should be limited by time and/or level as under the credit agreements for consumer's directive at Article 16, transposed by Regulation 19 of the European Communities (Consumer Credit Agreements) Regulations (SI 281/2010).[149] Neither of these sensible recommendations have been endorsed during transposition.

[143] CPC 2012, art. 6.6.
[144] CPC 2012, art. 6.7.
[145] SI No 142 of 2016, reg. 26(1).
[146] CCA 1995, s. 121(6) defines the term "redemption fee" as meaning, in relation to a housing loan, any sum in addition to principal and any interest due on such principal (without regard to the fact of the redemption of the loan) at the time of redemption of the whole or part of the loan.
[147] CCA 1995, s. 121(1) subject to subsection (3).
[148] CCA 1995, s. 121(3).
[149] Submission to the Department of Finance on Mortgage Credit Directive (FLAC, 2014), p. 21

10. Are there any practices or rules in your country that may interfere with the right to enforce recognised to the creditor by art. 26?

In the light of your mortgage/security system, how relevant is the provision laid down by art. 26.2 (i.e. if applicable, when is the price for auction or sale set)?

Enforcing the security is the fundamental right of the creditor in Irish mortgage law. In practical terms enforcing the security involves the creditor taking possession and then bring about a sale of the property. In all cases, except where the property is abandoned[150], a creditor cannot take possession or exercise a sale without first being granted a court order or by gaining the consent in writing from the consumer seven days before taking possession/exercising a sale.[151] Once a creditor takes possession he must take reasonable time to exercise the power to sell the property, or if not appropriate, to lease the property and use the proceeds to reduce the mortgage debt.[152]

The power of sale will arise where the consumer defaults on the mortgage debt for a specified period[153] or breaches some other term of the mortgage.[154] In all cases at least 28 days' notice must have been served on the consumer by the creditor. When exercising a power of sale, the creditor is under a duty to act in good faith[155] and to ensure as far as is reasonably practicable that the property is sold at the best price reasonably obtainable i.e. a fair market price.[156]

In Ireland 'housing loan mortgages' are treated separately from other mortgages.[157] The term "housing loan" includes all credit agreements secured by a mortgage over the principal residence of the borrower or his or her dependants and, any credit granted to a consumer which is secured by a mortgage over land on which there is or will be a residence.[158] In terms of determining whether a mortgage over a dwelling is a housing loan, the Court have focused on residence and broadly take a substance over form approach.[159] In the case of a housing loan mortgage, there are different

[150] LCLRA 2009, s. 98.
[151] LCLRA 2009, s. 97(1).
[152] LCLRA 2009, s. 99.
[153] A period of three months applies or alternatively where the consumer misses two payments which represent interest and or capital.
[154] LCLRA 101.
[155] *Holohan v friends Provident and Century Life* [1966] IR 1 where the Supreme Court set out that acting in good faith means bearing in mind the interests of the consumer and should take reasonable care to get a fair market price.
[156] LCLRA 2009, s. 103(1).
[157] LCLRA 2009, s. 96(3).
[158] CCA 1995, s. 2(1).
[159] *Flynn v irish Nationawide Building Society* Unreported, High Court, 31 July 1995; *Wise Finance v Fox* Unreported, High Court, 8 October 2002.

procedures for obtaining possession and or an order of sale.[160] Lenders are also under additional standards in such cases. These comprise voluntary codes of conduct, as well as codes of conduct issued by the Central Bank which are statutory but seemingly limited legal effect.[161]

Banking & Payments Federation Ireland and the Money Advice & Budgeting Service introduced an operational protocol on how to approach debt problems.[162] However, as a self regulatory instrument the protocol is not particularly robust and a creditor may avoid the protocol where it deems it appropriate.[163] The Banking & Payments Federation Ireland introduced a Statement of Intent that provided a customer engaged with the lender at the earliest opportunity during a default or potential default a creditor would not initiate any form of legal action.

Most importantly, in 2009 the Central Bank introduced the Code of Conduct on Mortgage Arrears, since revised, which applies to all mortgage lenders.[164] This Code sets out the framework that lenders must use when dealing with borrowers in mortgage arrears or in pre-arrears. Central to the operation of the code is the concept of a co-operating consumer. Where a consumer is cooperating with the lender then a moratorium applies which prevent lenders from bringing possession proceedings until a certain period of time has elapsed.[165] Under the CCMA 2013, once the consumer is deemed to be not co-operative and has received notification by letter then legal proceedings may commence three months after the notification by letter or within eight months of the default whichever is later.[166] Where a lender has failed to demonstrate compliance with moratorium provisions of the code the Courts will reject applications for possession.[167] However, the Court have indicated that breach of any

[160] LCLRA 2009, s.101(5). Applications for sale/possession are heard in the Circuit Court rather than the High Court.

[161] *Irish Life and Permanent plc v. Dunne and Dunne and Irish Life and Permanent v. Dunphy*, [2015] IESC 46 has set out that this code has not expanded the Court's discretion in relation to mortgage arrears except in relation to determining whether lenders have abided by the moratorium period in the Code.

[162] BPFI-MABS Operational Protocol: Working Together to Help Customers/Clients in Financial Difficult (2014).

[163] BPFI-MABS Operational Protocol: Working Together to Help Customers/Clients in Financial Difficult (2014), para. 5.

[164] Code of Conduct on Mortgage Arrears (Central Bank, 2013). Issued under the Central Bank Act 1989, s.117. The Central Bank of Ireland has the power to administer sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act 1942.

[165] Code of Conduct on Mortgage Arrears (Central Bank, 2013), s. 56.

[166] Previously a 12 month moratorium set out in CCMA 2011.

[167] *Irish Life and Permanent plc v. Dunne and Dunne and Irish Life and Permanent v. Dunphy*, [2015] IESC 46. Applied in the High Court in *Stepstone Mortgage Funding Ltd v Hughes* [2015] IEHC 487 and *Stepstone Mortgage Funding Ltd v Hughes & anor* [2015] IEHC 487.

other provision of the code will not affect a lender's entitlement to an order for possession.[168]

11. What measures have been adopted to encourage creditors to exercise reasonable forbearance before foreclosure (art. 28)? Are they effective? Did your system prevent transfer of property in lieu of payment prior to the Directive? If a deficiency judgment may be sought after foreclosure, have any measures been adopted to ensure that the best efforts price of the property is obtained? If these measures had been adopted before the transposition of the Directive and regardless of it, you may wish to deal with them below in Part III.

The measures concerning reasonable forbearance before foreclosure are discussed in the previous answer.

12. Do the provisions regarding charges upon default (art. 28) lead to modifications in your system?

The provisions regarding charges upon default (art. 28) do not lead to major modifications of the Irish system. Instead, the situation appears to be broadly in line with art. 28 of the MCD which operates to reinforce existing protections. In Ireland, under certain circumstances, creditors are allowed to apply charges upon default in respect of a housing loan. Under rule 9 of the CCMA 2013 lenders are restricted from imposing charges and/or surcharge interest on arrears arising on a mortgage account in arrears to which this Code applies and in respect of which a borrower is co-operating reasonably and honestly with the lender in the Mortgage Arrears Resolution Process.[169] In all cases, information on any charges in respect of arrears on housing loans, and how those charges are to be calculated, must be disclosed from the outset of the mortgage transaction.[170]

Part III. Relevant issues that Directive 2014/17 does not solve

As clearly stated in art. 2, the Directive only introduces maximum harmonisation with regard to the ESIS and the APRC. It consciously allows higher levels of consumer protection in other areas and it does not address problems such as those surrounding foreclosure and the result thereof; art. 28 is especially vague and uncompromising. The same can be said with regard to ADR mechanisms, which appear to be designed to "channel complaints", rather than to temper the effects of bad practices arising at the time of foreclosure (art. 39).On the other hand, the

[168] *Irish Life and Permanent plc v. Dunne and Dunne and Irish Life and Permanent v. Dunphy*, [2015] IESC 46, para. 7.2.
[169] Code of Conduct on Mortgage Arrears (Central Bank, 2013), rule 9.
[170] CCA 1995, s. 134(1).

Directive implicitly allows arrangements that have proven to be dangerous for consumers in some systems, and could be fatal if they were to be exported to others (for instance, if interest only mortgages were to be generally offered to consumers in Spain). Last, but not least, it does not interfere with internal substantive and procedural domestic provisions on securities over immovables. In this block it would be excellent if you could detect whether any of the problems you highlighted in Part I arise in these areas that the Directive does not cover and, if so, whether your legislature or government has taken any measures to alleviate the effects on consumers. If any such measure has been adopted, please provide a general sketch thereof.

Locating the MCD in Irish mortgage law

Irresponsible lending practices played a major role in the development of the housing bubble.[171] The impact of the MCD on such practices appears mixed. On one hand, the MCD provides a clear framework with respect to assessing the creditworthiness of consumers before deciding to extend mortgage credit. To a large extent the MCD reflects the provisions of the Consumer Protection Code, however the MCD does go farther in several important respects. Unlike the Consumer Protection Code, the MCD expressly requires that the affordability assessment must produce a positive result in order for the mortgage to be made available. Furthermore, the MCD makes clear that this assessment cannot be premised on the assumption that property prices will rise for the foreseeable future.

On the other hand, the MCD is relatively silent on the concept of responsible lending and does not set guidelines on loan to value and loan to income ratios. This was a particular problem in Ireland during the boom when mortgages lost touch with deposits and incomes. Mortgage lending at high multiples of income was one of the main causes of increases in property prices during the early 2000s and was a significant reason for the sharp contraction in the downturn.[172] Studies commissioned by the Central Bank have shown a positive relationship between higher loan-to-value and loan-to-income ratios and subsequent mortgage defaults.[173] In spite of the MCD reticence on the issue, the Central Bank introduced a range of macro prudential measures in 2015 aimed at restricting risky lending and dampening property price speculation. In particular, limits have been set on loan to value and loan to income

[171] S. Gerlach, 'The Central Bank of Ireland's macro prudential policy' (Oct, 2015).
[172] Y. McCarthy & K. McQuinn, Credit conditions in a boom and bust property market (Central Bank, 2013).
[173] N. Hallissey, "Macro-prudential tools and credit risk of property lending of Irish Banks", (Central Bank, 2014); Y. McCarthy, (2014) "Disentangling the Mortgage Arrears Crisis: The Role of the Labour Market, Income Volatility and Negative Equity", The Journal of the Statistical and Social Inquiry Society of Ireland, Vol.43, pp. 71 – 90.

ratios.[174] With respect to specific mortgage products, the MCD is largely silent. In Ireland interest only mortgages have been a source of considerable concern. While such mortgages were largely withdrawn in 2009, it remains possible for creditors to issue mortgages in the future and the MCD does not alter that situation.

The MCD does not address the problems surrounding arrears and foreclosure and this is remarkable in an Irish context where mortgage arrears has become a major policy focus.[175] As set out above various codes of conduct on mortgage arrears have been introduced which require lenders to forestall taking legal action where a consumer is engaging with the lender. This is in spite of extensive research which has outlined a range of policy measures which could greatly assist in offsetting the social and economic fallout of the crisis.[176]

It is also important to note that transposing the MCD by regulation has indirectly reinforced the provisions of the Consumer Protection Code. This may well be important in light of the recent Supreme Court decision that demonstrates that codes issued by the Central Bank are of limited legal effect.[177] However, it remains to be seen whether this will result in a material improvement in the consumer protection framework. In particular, the MCD is silent on effective enforcement mechanisms and civil sanctions for non-compliance and the transposing regulation does not go further than outlining in broad terms that non-compliance with the regulations is an offence.[178] Criminal proceedings are very rarely brought in the Irish legal system and the system of administrative sanctions by the Central Bank lacks transparency. In summary, the essential weakness of the consumer protection framework in respect of mortgages has not been addressed by the MCD and this greatly undermines the overall potential for the MCD to result in a meaningful change.

[174] S. Gerlach, 'The Central Bank of Ireland's macro prudential policy' (Oct, 2015).

[175] The Final Report of the Mortgage Arrears and Personal Debt Group (The 'Cooney Group') 2010; The Report of the Inter-Departmental Group on (Residential) Mortgage Arrears (The 'Keane Group') 2011; and The Report of the Expert Group on Repossessions, December 2013.

[176] P. Kenna, L. Benjaminsen, V. Busch-Geertsema & S. Nasarre-Aznar (2016) *Promoting Protection of the Right to Housing – Homelessness Prevention in the Context of Evictions* (Brussels: European Commission).

[177] *Irish Life and Permanent plc v. Dunne and Dunne and Irish Life and Permanent v. Dunphy*, [2015] IESC 46, para. 7.2

[178] FLAC have proposed introducing clear civil sanctions for noncompliance in a manner similar to that set out in the National Credit Act 2005 of South Africa. Thus where there is non-compliance the court could set aside all or part of the consumer's obligations under the loan agreement or suspend or restructure the agreement. The bank have a complete defence if there is evidence of bad faith on the part of the consumer. See submission to the Department of Finance on Mortgage Credit Directive (FLAC, 2014), p. 40-41.

Part IV. Personal conclusions

During the Bourbon Restoration, following the fall of Napoleon in 1814, the Bourbon loyalists and exiles who returned to France attempted to pick up exactly where they left off, as though nothing had changed and as though the revolution had never happened. According to Talleyrand, or at least a quote often attributed to him, the returning exiles 'had learned nothing and forgotten nothing'. The collapse of the Irish mortgage market was severe by international standards and set in motion a series of profound financial, economic and social crisis, which, in spite of the recent return to economic growth, continue to impact Ireland today. After almost a decade since the onset of the systemic collapse of the mortgage market, this assessment has sought to outline, in light of the MCD, what lessons have been learned since the onset of the crisis and importantly how much of the old ways have been forgotten.

While several important lessons have been gleaned from the failures of the regulatory framework, longstanding and acute difficulties remain unaddressed. In particular, while the Central Bank have adopted a more pro-active stance in respect to regulating the mortgage market, the policy changes have been limited to controlling lending in a broad brush manner – a policy which the MCD supplements indirectly. However, the underlying weakness of the consumer protection framework in terms of civil sanction and enforcement has not been addressed and the MCD does not alter this. Thus, while there are positive features of the MCD, in reality it does not represent a major sea change in Irish mortgage law. Instead, the provisions of the MCD largely reflect and, in some cases, supplement existing measures.

The introduction of loan to value and loan to income ratios reflect the Central Bank's concern at the relatively rapid growth in property prices from trough in 2010 to 2015 – during which time property prices in Dublin increased by 50%. Clearly, the potential for rapid variations in price has survived the crisis and so it remains to be seen whether the underlying forces, which destabilised the Irish housing market during the 2000s, have actually been addressed. Indeed, the popular opposition to the Central Bank's new macro prudential policies suggest that old habits die-hard.[179] This opposition is in spite of the fact that the social and economic impacts of the crisis remain acute, particularly in relation to mortgage arrears – which the MCD does not effectively address. With the mortgage to rent scheme still in its infancy, it remains the case that historically low interest rates have assuaged the extent of the mortgage arrears crisis. However, the assumption that interest rates will remain at such historically low rates

[179] http://www.irishexaminer.com/ireland/restrictive-lending-stopping-people-from-buying-homes-417591.html (last accessed August 2016).

for the foreseeable future, may well prove to be just as unsustainable as the old assumption that property prices would continue to rise for the foreseeable future.

Finally, in the wake of the collapse of the housing bubble, Government housing policy resiled from the long-standing State support for home ownership and instead espoused the need for tenure neutrality.[180] Policy makers have long stressed the benefits of a secure and affordable private rented sector as a counterpoint to the housing market.[181] However, so far the radical change in language has not been accompanied by a similarly radical commitment to tenure neutral housing policies. Indeed, many of the State supports for homeownership, such as the local authority tenant purchase schemes, remain operational. In summary, it remains to be seen just how much of the old practices have been forgotten since the collapse of the mortgage market.

[180] Housing Policy Statement 2011 (DoE, 2011).

[181] R. De Boer & R. Bitetti (2014), "A Revival of the Private Rental Sector of the Housing Market?: Lessons from Germany, Finland, the Czech Republic and the Netherlands", OECD Economics Department Working Papers, No. 1170, OECD Publishing. http://dx.doi.org/10.1787/5jxv9f32j0zp-en. Also see S. Gerlach, 'The Central Bank of Ireland's macro prudential policy' (Oct, 2015).