

REGULATION

year 2014 / number 02

MEASUREMENT OF

ANTI-USURY THRESHOLD RATE

pursuant to Article 207 of the Criminal Code

(Consolidated text as at 01/01/2015 - Update I)

Article 1 - Definitions

1. For the purposes of this Regulation:

- "**Central Bank**": the Central Bank of the Republic of San Marino regulated by Law No. 96 of 29 June 2005 as subsequently amended and supplemented;
- "**Families**": the individuals or groups of individuals whose main function is consumption as defined by the concept of "consumer" referred to in Law No. 144 dated 28 October 2005 as subsequently amended and supplemented, and therefore specifically, manual workers, non-manual workers, employees, pensioners, income beneficiaries, beneficiaries of other income and generally whoever cannot be considered an authorised economic operators because they do not hold an Economic Operator Code or other equivalent foreign code;
- "**Lisf**": Law No. 165 of 17 November 2005 as subsequently amended and supplemented;
- "**Reporting Parties**": the combination of type A reporting parties and type B reporting parties;
- "**Type A Reporting Parties**": parties authorised to exercise the reserved activities identified under letter A) of Annex 1 under Law No. 165 dated 17 November 2005 as subsequently amended and supplemented;
- "**Type B Reporting Parties**": parties authorised to exercise the reserved activities identified under letter B) of Annex 1 under Law No. 165 dated 17 November 2005 as subsequently amended and supplemented;
- "**Credit system**": the combination of banks (type A reporting parties) and financial companies (type B reporting parties) operating in the territory of San Marino;
- "**Production Units**": private sole or collective proprietorships (companies, consortia, cooperative companies, etc.), their intermediaries, mandators, intermediaries, self-employed professionals, self-employed workers and any other natural or legal persons who, in accordance with the concept of "professional" referred to under Law no. 144 of 28 October 2005 as subsequently amended, exercise their own private entrepreneurial, commercial, hand-craft or professional business and therefore hold an Economic Operator Code or equivalent foreign code, with the exception of the activities listed in Annex 1 of Law no. 165 of 17 November 2005 as subsequently amended.

Article 2 - Premise

1. Article 207, paragraph 1 of the Criminal Code punishes the crime "of usury", which applies to anyone who takes or promises interest rates or advantages that are strongly disproportionate or intervenes to receive or promise to others the aforementioned interests or advantages, in return for a compensation.
2. Paragraph 2 of the same Article objectively identifies as "strongly disproportionate", the interest rate or advantage that exceeds the threshold rate periodically published by the Supervisory Authority, based on the average interest rate generally applied by the CREDIT SYSTEM for various types of transactions.

3. The calculation of the threshold rate for TYPE A REPORTING PARTIES was previously regulated by Circular No. 25 dated 12 January 1999 and the Uniform Letters No. 97 and 99 dated 20 April 1999 and 2 August 2001 respectively. The aforementioned provisions were subsequently revoked by Circular No. 43 dated 18 May 2005.
4. Similarly, in the case of TYPE B REPORTING PARTIES, Circular No. 28/F dated 18 May 2005 revoked Circular No. 15/F dated 12 January 1999 and the Uniform Letters No. 43/F and 45/F dated 2 August 2001 and 26 August 2002 respectively.

Article 3 - Purposes

1. The main purpose of this Regulation is to update the rules in question, with specific reference to the classification of transactions and the measurement procedures for the effective average percentage rate (EAVPR) for calculating the threshold rate for anti-usury purposes, by distinguishing, where necessary, between the categories of financed parties (FAMILIES and PRODUCTION UNITS).
2. This Regulation further consolidates as rules, the interpretation guidelines and opinions provided by the Supervisory Authority during the reference period of the previous regulation.
3. The purpose of the discipline referred to in this Regulation is of an exclusively administrative and statistical nature, aimed to determine threshold rates. It follows that the seriousness in terms of criminal relevance of the conditions in actual fact applied by financial intermediaries is referred to the exclusive jurisdiction of the Judicial Authority, also with reference to the inclusion or exclusion criteria and methods adopted by the Supervisory Authority for the purposes of determining the afore-mentioned threshold rates.

Article 4 - Recipients

1. The recipients of this Regulation are the REPORTING PARTIES that at the time of forwarding a report are registered in the Register of Authorised Parties required by Article 11 of LISF and by Implementation Regulation No. 2006-01 as subsequently amended and supplemented. REPORTING PARTIES under (compulsory or voluntary) liquidation are not therefore required to make the reports referred to under Articles 6 and 7 hereunder, as from the date they are cancelled from the aforementioned Register; the same is true for the REPORTING PARTIES that within the date of sending the report, have already formalised the transfer of all the financial relationships subject to reporting obligations. The exemption referred to therefore involves reporting where the deadline for sending the information through to the CENTRAL BANK has not yet lapsed, even if the reference quarter is already over.
2. The REPORTING PARTIES registered in the Register of Authorised Parties during the reference quarter that have not yet initiated the funding are exempt from sending the report.

3. In the case of merger transactions between parties, where at least one party has financing activities as its corporate purpose and on condition that the new party resulting from the merger retains financing activities as its corporate purpose, the report must be generated by the aforementioned new party falling within the category of TYPE A REPORTING PARTIES or TYPE B REPORTING PARTIES.

Article 5 - Object

1. In order to provide the threshold rates for anti-usury purposes pursuant to Art. 207 of the Criminal Code, this Regulation sets out the procedures for measuring the effective average percentage rates (EAVPR) implemented by the CREDIT SYSTEM in the funding transaction categories detailed below.

Article 6 - Reporting intervals and submission deadlines

1. Reporting must refer to the following quarters considered individually:
 - a) 1 January - 31 March;
 - b) 1 April - 30 June;
 - c) 1 July - 30 September;
 - d) 1 October - 31 December;
2. Reports referring to the quarter under consideration must be sent by the REPORTING PARTIES to the CENTRAL BANK no later than the last day of the second month following the end of the quarter that the report refers to.
3. If the last day stated in the previous paragraph coincides with a non-business day, the report must be sent on the first preceding business day.
4. REPORTING PARTIES must nonetheless also notify the CENTRAL BANK of the relationships excluded from EAVPR, within the same deadlines stated in the previous paragraphs and using the procedures detailed in the Article below.

Article 7 - Procedures for the transmission of reports

1. Reports must be transmitted using the relevant Reporting Forms and in compliance with the operating instructions for the entering and sending of data contained in the appropriate Operating Manual, which are both (Forms and Manual) published in the reserved area of the CENTRAL BANK'S internet site (www.bcs.sm)
2. Any updates to the Forms and Manual shall similarly be published for use by REPORTING PARTIES, in the reserved area of the CENTRAL BANK'S internet site.

Article 8 - Publication of threshold rates

1. Subsequent to the reports, the CENTRAL BANK shall calculate the threshold rates, and arrange for these to be published in the relevant section of its internet site.
2. The threshold rates that are different for banks and financial companies shall become applicable from the second quarter subsequent to the one subject to reporting and shall be the subject of the notification sent with the relevant Circular that shall also be published in the Official Bulletin, in accordance with Art. 6 of Qualified Law No. 2 dated 26 October 2010.
3. REPORTING PARTIES must however display the threshold rates published by the CENTRAL BANK at their own offices and each of the branches open to the public, in a way that is easily visible to the public: banks, those extracted from the reports originating from TYPE A REPORTING PARTIES, financial companies, those extracted from the reports originating from TYPE B REPORTING PARTIES.

Article 9 - Categories of financing subject to EAVPR reporting obligations

1. Transactions that are included in the EAVPR calculation are the:

- 1) opening of credit facilities on current bank accounts;
- 2) funding for advances on credit facilities and documents and discounts on portfolios of receivables;
- 3) personal credit;
- 4) target specific credit;
- 5) factoring;
- 6) leasing;
- 7) mortgages;
- 8) loans repaid by one fifth of salary or pension;
- 9) revolving credit and with the use of credit cards;
- 10) other funding;

as described below.

2. Opening of credit facilities on current bank accounts

2a) This category includes all the current account transactions, based on which the TYPE A REPORTING PARTY is obliged to keep an amount available to the customer on a fixed term or open-ended basis, and the customer is entitled to restore the availability thereof. Also falling into this category are accounts that become overdrawn without authorisation and when overdraft limits are exceeded beyond what is agreed on.

2b) The report must provide proof whether this refers to:

- the opening of credit facilities on current accounts that is fully or partially supported by collateral or guarantees provided by an AUTHORISED PARTY pursuant to LISF;

- the opening of credit facilities on current accounts that is authorised, but not supported by the collateral referred to above;

- the opening of credit facilities on current accounts without authorisation that have become overdrawn.

3. Funding for advances on credit facilities and documents and discounts on portfolios of receivables

3a) This category includes the financial transactions applicable to bills, other securities and documents received subject to collection, financial transactions put in place based on a contract for the transfer of credit and discounting transactions on the portfolio of receivables.

3b) This category also includes all advance and discount transactions, even if these are managed on ordinary current accounts in accounting terms.

3c) Under no circumstances is an advance or discount on a portfolio of receivables permitted, without the submission of invoices and/or contracts and/or other random securities that can prove the existence of the credit and its commercial nature.

4. Personal credit

4a) This category includes loans granted to FAMILIES that:

1. are intended to finance generic expenditure requirements in respect of personal or family consumer spending;
2. are provided in a single instalment and require payments to be made according to a depreciation plan

4b) Once the customer has obtained the funding, this may be used for the purposes communicated to the lender, or for other purposes

4c) In the case of this funding being provided in the format of credit facilities opened on a current account, they need to be reported under the category - Opening of credit facilities on current account-.

5. Target specific credit

5a) This category includes funding with instalment repayments, provided exclusively for the purchase of one or more specific assets or the payment of specific services up to a maximum of Euro 75,000.00.

5b) This category differs from the others given the close and requisite connection between the purchase of the asset or service and granting of credit, where the payment by the lending REPORTING PARTY

takes place with payment made directly to the service provider (seller of goods or provider of service).

6. Factoring

- 6a) This category includes the advances provided against commercial loans transferred, with the provision of a “with recourse” or “without recourse” clause by the holder (factored company) to a specialised intermediary (factor) that takes on the management of the commercial loan, providing possible additional ancillary services to the company, as well as first and foremost, the undertaking to arrange for its collection.

7. Leasing

- 7a) Funding pursuant to Law No. 115 dated 19 November 2001 as subsequently amended and supplemented, implemented through leasing contracts on tangible assets (movable and immovable) and intangible fixed assets (e.g. software, patents, know-how) that are purchased or built by the lessor at the discretion and on the directives of the lessee that assumes all the relevant risks, and with the latter also entitled to become the owner of the leased assets at the end of the lease, on payment of a pre-determined price (redemption).

7b) Reporting is not applicable for operational leasing transactions.

7c) Reporting requires separate proof to be provided for real estate property, leasing of intangible fixed assets, leasing of registered movable assets (motor vehicles, vessels and aircraft, etc.) and other capital equipment leasing (installations, machinery, equipment, furnishings, etc.). The latter also conventionally includes those on intangible fixed assets.

7d) The reporting also requires separate evidence between the fixed-rate and floating-rate real estate leasing contracts.

8. Mortgages

8a) This category only includes funding that:

- 1) has a term of more than 5 years;
- 2) is supported by mortgage guarantees;
- 3) requires repayment with the payment of instalments that include both capital and interest.

8b) Different proof must be provided for mortgages paid at floating rates and fixed rates, and for each category, separate proof must be given as to whether this refers to funding granted to FAMILIES or to PRODUCTION UNITS.

- 8c) A floating rate means the rate fixed to the trend of a pre-determined parameter. Loans with a “mixed rate”, namely those that provide for periods linked to fixed rates and periods linked to floating rates, must be recorded in the mortgage category for floating rates.
- 8d) As a partial derogation to the previous paragraph, in the case of funding that provides for instalments to be paid at a fixed rate for a time frame of three years or more, and the remaining period to be paid at a floating rate, the report relating to the transaction is recorded in the fixed rate category.
- 8e) Mortgages that have a contract making provision for each instalment paid by the customer to be calculated according to a fixed rate for a specific percentage of the amount and according to a floating rate for the remaining percentage (so-called weighted mortgages) are reported with the floating rate mortgages if the percentage of the amount that the floating rate is calculated on is 30% or higher. Otherwise, they are recorded with the fixed rate mortgages.
- 8f) Mortgages with a provision to exercise an option on the rate applied are reported in the category relating to the type of rate provided for the first repayment instalment.

9. Loans repaid by one fifth of salary or pension

- 9a) This category includes all loan transactions against the repayment by one fifth of the salary or pension. For this category to apply, it is necessary for:
1. there to be an unconditional and irrevocable order to one's employer or to the entity paying the pension, to pay a portion of the salary/pension directly to the creditor;
 2. the funding to have a term of between 18 months and 10 years. In the event of funding provided to a person appointed with a fixed term contract, the term of the funding cannot exceed the expiry of the employment contract;
 3. the one fifth of the emolument transferred is intended as being net of withholding taxes calculated on the months paid;
 4. without prejudice to the provisions under point 2 above, the funding is directed at employees with a fixed and continuous salary that have completed their trial period and are duly registered within their effective roles in the company;
 5. the funding is supported by insurance policies that can guarantee the recovery of the debt (for example, life insurance policies and employment insurance policies).
- 9b) Separate proof must be provided regarding the repayment of one fifth of the salary and the pension.

10. Revolving credit and with the use of credit cards

10a) This category includes revolving credit transactions and funding that is applicable on the use of credit cards.

10b) A revolving credit transaction is defined as a credit line being made available, other than the opening of credit facilities on current accounts, to be used entirely or partially, even at different time periods, to purchase goods and services from registered vendors or to purchase cash and cash equivalents. The customers' instalment based payments, where the minimum periodic amount is set by contract, restore liquidity on the credit line. The transaction may be granted with the use of a credit card.

11. Other financing

11a) This residual category includes the financing formats that do not fall into one of the previous categories (for example, pledge based credit transactions, the financial portfolio, loans granted with the delegation of payment, unsecured mortgages, mortgages that provide for the payment against the "works' progress status" as well as those with a depreciation plan that provides for the capital portion to be paid in full at the date the loan matures).

11b) Separate proof must be provided for the funding granted to FAMILIES and to PRODUCTION UNITS.

Article 10 - Prefinancing

1. Prefinancing, namely funding that takes the form of independent loan transactions (generally short term), which temporarily meet the needs of the debtor pending the granting of funding with instalment based repayments that is being prepared or that has already been authorised, are reported in the category of transactions relating to the technical format used in prefinancing without taking into consideration the category of the "principal" transaction.
2. Pool transactions, in other words, funding provided by two or more REPORTING PARTIES where they assume the risk, based on mandate contracts or relationships with equivalent effects, are reported by the leading REPORTING PARTY with reference to the entire funding amount.

Article 11 - Categories of financing exempt from reporting obligations for the EAVPR calculation

1. Taking into account the specific characteristics of individual types of funding, even though Article 207 of the Criminal Code is applicable in respect of these, the following transactions are excluded for statistical purposes:
 - a) currency transactions;
 - b) positions classified as non-performing pursuant to current supervisory regulations;
 - c) loans restructured pursuant to current supervisory regulations;
 - d) transactions at a subsidised rate;

- e) transactions at a preferential rate;
- f) revoked funding;
- g) other excluded transactions.

2. Currency transactions

2a) Currency transactions are meant as funding expressed in currencies other than the Euro, where the interest rate covers the exchange risk, in addition to the credit risk.

2b) Foreign currency transactions include those that provide for financial indexing clauses linked to the trend of the Euro's exchange rate against a specific currency or against a basket of currencies.

3. Positions classified as non-performing pursuant to current supervisory regulations. Positions already classified as non-performing at the end of the reference quarter are excluded from the reporting.

4. Loans restructured pursuant to current supervisory regulations. Positions that have been subject to restructuring at the end of the reference quarter are excluded from the reporting.

5. Transactions at a subsidised rate. All funding transactions carried out at a lower rate than the market rate due to the subsidies provided to the applicant on the basis of legislation fall into this category, where the subsidy makes provisions for a portion of the interest to be paid through state funds. This category also includes funding provided at preferential rates due to natural disasters or events of an extraordinary nature.

6. Transactions at a preferential rate. These refer to funding at a zero interest rate or that is below the market rates (Euribor, Eurirs etc.) granted for a limited time period and/or following advertising campaigns or marketing strategies, on condition that these are adequately documented and motivated, including funding granted at better conditions to market rates because of funding obtained at subsidised rates through non-profit organisations or based on the link between the reporting party and the manufacturing company, generally in the context of a supply contract (brand funding).

7. Revoked funding. This refers to all funding revoked by the end of the reference quarter.

8. Other excluded transactions:

- a) positions relating to uses only for cash balances, which did not record debit accounting balances;
- b) credit positions with no accounting use during the reference quarter;
- c) intra-group funding, in other words, funding represented by those credit transactions carried out in favour of the respective group of companies;
- d) loans renegotiated at conditions set by law.

Article 12 - Relevant counterparties

1. Transactions put in place with FAMILIES and with PRODUCTION UNITS are subject to reporting. Pursuant to letter g) of Annex A to Law No. 54 dated 21 May 2012, the Ente Poste does not fall into the category of REPORTING PARTIES.
2. Unless required otherwise, the reporting refers jointly to the two categories of operators (FAMILIES and PRODUCTION UNITS).

Article 13 - Amount classes

1. The uniform categories of credit transactions are divided into amount classes. The amount classes vary according to each category and shall be detailed in the Reporting Form pursuant to Article 7 above.
2. All individual funding ("position") must be attributed to the relevant amount class based on the amount of the credit line provided.
3. Credit line provided means the credit amount that can be utilised by the customer because it refers to a complete and effective contract.
4. The credit line provided that needs to be considered is the one at the end of the reference period, namely the latest in the event of closed positions. In the case of the operational agreement being temporarily extended, the amount class remains the amount that was originally determined.
5. In the event of funding falling into the categories referred to under Article 9 paragraphs 4), 5), 7), 8), 9) and 11), the amount class must be identified according to the capital financed (for example, in funding against the repayment of one fifth of the salary/pension, the gross amount less interest must be taken into consideration).
6. In the case of accounts becoming withdrawn without authorisation or should funding be utilized without the amount of the credit facility provided being predetermined beforehand, the amount class is attributed by taking into consideration the effective use made during the reference quarter. For example:
 - a) in the case of accounts becoming withdrawn without authorisation, the maximum negative cash balance must be taken into consideration;
 - b) in the case of *factoring* transactions on loans acquired definitively (namely, without giving rise to obligations for the transferring party) and discounting of bills, the amount provided (or the net revenue), in other words, the current value of the discounted bills must be considered;

c) in the case of bills being submitted for discounting by an occasional customer, the amount class is calculated on the basis of the amount provided for each individual submission over a series of bills transferred over the course of a business day, even if these were issued by different parties and with different maturities.

7. In respect of leasing transactions, the amount class is identified by referring to the funding amount gross of the so-called "*maxicanone*" (down payment on lease contract) and/or possible advances and net of taxes.
8. For *revolving* credit transactions and funding on the use of a credit card, where a single position provides for several credit cards to be issued (for example, "company cards"), the amount class is identified by referring to the overall amount of the credit granted.
9. Should there be use over and above the credit facility provided, the amount class is still calculated according to the amount of the credit facility provided.
10. Mortgages that are provided according to the "works progress status" are identified in the amount class that corresponds to the total funding provided.
11. In the case of "mixed credit facilities" that make provision for the customer to utilise a single credit facility according to different methods, the amount class referring to each method of use for each usage procedure, is the total credit facility provided. Should there be certain limitations for individual methods of use, the amount class is identified with reference to this limit.

Article 14 - Information to report

1. The REPORTING PARTY must communicate the following information to the CENTRAL BANK, by sending the appropriate Form and in compliance with the Manual referred to under Article 7 above:
 - a) the effective annual percentage rate, expressed on an annual basis, implemented on average by the REPORTING PARTY. This figure is calculated as the simple arithmetic average of the effective annual percentage rates (EAPR), applied to each individual position;
 - b) the number of positions that came together to determine the effective annual percentage rate implemented on average by the intermediary (EAVPR);
 - c) the default rate applied on average by the REPORTING PARTIES financing their customers, broken down according to categories and sub-categories, where applicable.
2. The information referred to under points a) and b) must be broken down according to the relevant amount classes.

3. If no transactions to report were conducted during the reference quarter, a negative report must be generated, by entering a zero - "0".

Article 15 - Calculation basis for information to report

1. The following make up the calculation basis

- a) for the categories: *opening of credit facilities on current bank accounts, funding for advances on credit facilities and documents and discounts on portfolios of receivables, factoring and revolving credit* all funding positions involved in the reference quarter must be considered, even if these closed during the quarter itself. Without prejudice to what has been stated above, for the categories - *funding for advances on credit facilities and documents and discounts on portfolios of receivables* -, with the exception of advance transactions subject to collection and - *factoring* – that do not give rise to debt positions for the transferring party, reporting must only be done on positions that have received at least one benefit over the course of the reference quarter. Only in cases where there is no pre-existing credit, the individual presentation of bills or transferring of credits is considered when calculating the number of positions;
- b) for the remaining categories of transactions, only financial positions that were initiated during the course of the reference quarter are considered, namely a funding contract that was entered into on a date during the relevant quarter.

2. Also to be reported according to their respective funding categories, are all positions where a condition in the contract relating to the term, amount provided and interest rate changed during the quarter, where these conditions were not included in the original contract (for example, the report should include the extensions to payment not provided for contractually and the personal loans that can be topped up at the time of exercising the option), without prejudice to the transactions excluded.

3. In the case of new transactions to report, the amended depreciation plan resulting from the contract amendments must be taken into consideration when establishing the amount class and EAPR.

Article 16 - Calculating the EAPR

1. The EAPR calculation must be carried out according to the methodologies that differ according to the category of funding under consideration.
2. The following formula should be used for the categories: *opening of credit facilities on current bank accounts* -, - *funding for advances on credit facilities and documents and discounts on portfolios of receivables* -, - *factoring* - and - *revolving credit and with the use of credit cards*:

$$\text{EAPR} = (\text{Interest for the quarter} \times 36,500 / \text{Number of debtors}) + (\text{Charges on an annual basis} \times 100 / \text{Amount granted}), \text{ where:}$$

- interest refers to the interest pertinent to the reference quarter, including interest resulting from the increase due to the overdraft limits being exceeded on the credit facilities granted. For transactions

falling under the categories - *funding for advances on credit facilities and documents and discounts on portfolios of receivables* - and - *factoring* - , where interest was calculated using the discount formula, interest is intended as the total interest calculated:

- the number of debtors on the other hand, are the product of the capital and days. In the case of current accounts, reference is made to the figures appearing in the quarterly statement of account (scalar account). For transactions referring to the categories - *funding for advances on credit facilities and documents and discounts on portfolios of receivables* - and - *factoring* - , the number of debtors includes the days strictly necessary for the redemption based on market practices. Should the interest calculation have been done using the discount formula, the number of debtors needs to be recalculated in relation to the current value of bills, instead of the face value.
- the charges on an annual basis are calculated by including all the expenses incurred over the twelve months prior to the end of the reporting quarter, unless these relate to occasional type events, which will not be repeated. In the case of new positions or changes to the conditions over the course of the reporting quarter (for example, change to the amount granted, payment of funding on a pre-existing deposit account, etc.), the annual charges must be estimated on the basis of the contract conditions applied.
- the definition provided in the paragraph "Amount classes" must be considered regarding the Amount granted.

3. For all the funding formats referred to in the categories - personal credit -, - target-specific credit -, - leasing -, - mortgages -, - loans repaid by one fifth of salary/pension - and - other funding -, reference needs to be made to the APR, whose formula is as follows:

$$\sum_{k=1}^{k=m} \frac{A_k}{(1+i)^{tk}} = \sum_{k'=1}^{k'=m'} \frac{A'_{k'}}{(1+i)^{tk'}}$$

where reference is as follows:

i is the interest rate used to equalise the discounted cash flows of the rates and the value of the funding, which can be given also by the sum of more "loans", whereby "loan" means every single disbursement made by the creditor by virtue of the same agreement;

k is the order number of a "loan";

k' is the order number of a "repayment instalment";

A_k is the amount for loan number *K*;

A'_{k'} is the amount for the "repayment instalment" number *k'*;

m is the order number of the last "loan";

m' is the order number of the last "repayment instalment"

tk is the date expressed in years and fractions of the year between the date of "loan" no. 1 and the dates of additional loans from number 2 to number *m*;

tk' is the date expressed in years and fractions of the year between the date of "loan" no. 1 and the dates of the "repayment instalments" from number 1 to number m'.

4. The "repayment instalment" is intended as every payment the customer is liable for, relating to the repayment of capital, interest and the relevant charges referred to in Article 17 below.
5. The "loan" is intended as each payment made by the creditor on the basis of the same contract.
6. If certain terms in the calculation formula are not available when the funding position is initiated, the rate calculation can be based on assumptions that are consistent with the amount of the loan granted to the customer and the minimum amount of the repayment instalment set out in the contract.
7. For mixed rate funding, the repayment instalments must be drawn from the loan depreciation plan, referring to the entire period and calculated according to the different rates set contractually. Floating rates must be considered at the value taken from the reference parameter at the date the loan is initiated.
8. Should there be possible options that allow for a choice to be made between two or more rates subsequent to the date the loan is initiated, the depreciation plan must be calculated on the basis of the lesser of the rates value at the date the loan is initiated or must be based on the rate set contractually in the case of the option right not being exercised (so-called safeguarding rate).

Article 17 - Processing of charges and expenses in calculating the EAPR

1. The rate calculation must take into consideration the commissions, remunerations of any kind and expenses - except only for the cases detailed below - associated with providing the credit and incurred by the customer, which the lending party is aware of; it should also take into account the relevant regulations on transparency.
2. The main commissions and expenses associated with providing the credit are provided by way of example and included for the purposes referred to above:
 - a) the expenses for the formalities and reviewing the funding (in the case of *factoring* the expenses relating to the "transferring party formalities");
 - b) the expenses to close the file (in the case of leasing, the flat-rate fees relating to the "end of the lease contract"), the expenses to close or settle the interest, if associated with the funding transaction, and debited on a periodic basis;
 - c) the fees for the redemption of repayments and collection of instalments and bills, even if these are incurred through a correspondent that arranges for the collection, expenses for the service of withholding taxes from the salary or pension;
 - d) the expenses for insurances or guarantees intended to insure the total or partial repayment of the credit or otherwise protect the creditor's rights (for example, policies to cover theft or fire in respect

of leased or mortgaged assets), if the signing of the contract referring to the insurance runs concurrently with the granting of funding or is mandatory to obtain the credit or to obtain it according to the contractual conditions offered or is mandatory pursuant to the law, irrespective of whether the policy is entered into through the lender or directly by the customer. Should the above stated conditions be applicable, this also includes the insurance expenses to cover death, disability, the debtor's unemployment, provided that the policy is binding in favour of the lender, who when the event should occur, shall directly receive the insured capital with the obligation to return any excess to the debtor or his/her heirs;

- e) the expenses for ancillary services, associated with the credit contract (for example, expenses for the pledge's custody, technical reports, postal expenses), even if these are provided by third parties;
- f) the charges to make the funds available, the penalties and charges applied in the event of accounts becoming overdrawn without authorisation or authorised overdraft limits on current accounts being exceeded in relation to the credit facilities granted;
- g) the commission on the maximum overdraft;
- h) the charges applied to customers for unauthorised overdrawn accounts, up to the amount of the expenses debited to customers to settle the authorised overdrafts on a quarterly basis;
- i) any other expense and charge set out in the contract, and associated with the funding transaction.

3. In the case of mixed credit facilities, should these not be specifically attributable to one transaction category, the charges are debited entirely to each of these. These charges are debited on a pro rata basis however when certain transaction categories set limits for individual methods of use; the pro rata breakdown also refers to the credit facility granted.

4. Charges that are not debited on a quarterly basis are calculated over the four relevant reporting quarters.

5. The rate calculation excludes the expenses peremptorily listed below:

- a) taxes and duties;
- b) public notary expenses (for example, fee, land registry searches, registrations in public registers, expenses relating to the transfer of ownership on goods subject to *leasing*);
- c) the management costs on the account where the payment transactions and withdrawals are recorded, and those relating to utilising a payment method that allows for payments and withdrawals to be made, and the other costs relating to payment transactions, unless the account is there to exclusively service the funding;
- d) default interest and similar charges set by contract in the event of not fulfilling an obligation;
- e) with regard to *factoring* and *leasing*, the fees for rendering ancillary administrative type services that are not directly associated with the funding transaction.

6. The penalties charged to the customer in the case of the early termination of a contractual relationship, where this is permitted, are to be considered purely contingent, and are therefore not added to the expenses to close the file.

Article 18 - Calculation of the amount provided

1. The methodology for calculating the amount provided varies according to the different transaction categories identified:
- a) *Opening of credit facilities on current account, factoring and revolving credit and with the use of credit cards.* In the context of each position, the amount provided is intended as the average balance in the quarter calculated by comparing the number of debtors (referred to under article 16 above) to the effective number of days in the quarter. In the case of unauthorised overdrawn accounts, only the days when the balance was negative for the customer are taken into consideration. In the case of factoring transactions that do not result in debit positions for the transferring party, the value to take into consideration is the sum of the advances provided during the quarter.
 - b) *Funding for advances on credit facilities and documents and discounts on portfolios of receivables.* With the exception of advances subject to collection, in the context of each position, the amount provided is intended as the sum of the amounts granted against the discounted bills. For advances subject to collection, the amount provided is intended as the average balance during the quarter.
 - c) *Personal credit, target specific credit, leasing, mortgages, loans repaid by one fifth of salary/pension and other funding.* The amount provided is intended as the loan facility granted or the capital financed as defined under "C amount classes".

Article 19 - Calculation of threshold rates for anti-usury purposes

1. On a quarterly basis, the CENTRAL BANK implements article 207 of the Criminal Code and publishes the threshold rates in accordance with the methods set in article 8, above which any interest promised or paid is always to be considered as usurious; no interest exceeding the threshold rates applicable from time to time can therefore be demanded, and if collected must be returned, even if these result from applying the rates originally agreed on in respect of the threshold rates applicable at the time of signing the funding contract.
2. The threshold rate referred to in the paragraph above is set separately for each category of REPORTING PARTY (TYPE A or TYPE B), at the average rate recorded pursuant to this Regulation, and in relation to the transaction categories that the credit refers to, increased by one quarter, to which an extra margin of four percentage points is added. The difference between the limit and the average rate cannot exceed eight percentage points.

3. Should the information collected from one of the categories of REPORTING PARTIES with reference to a technical form of funding received, for a specific amount class, not be extracted from an overall number of positions of at least 10 units, the threshold rate, which will be recorded in the tables referred to under article 8 above, shall be common to both categories (banks and financial companies) and shall be calculated for that technical form of funding, by also using the data collected for the other category of REPORTING PARTIES.
4. The criteria for determining the threshold rates applied for each calendar quarter shall also be detailed in the respective Circulars referred to in article 8 above, similarly to any changes compared to what was established in this article, to the extent of it being fully updated, including the possibility of:
- extending the derogation referred to in the previous paragraph, in a permanent and general sense, thus abandoning the distinction between the threshold rates applicable only to banks and the threshold rates applicable only to financial companies
 - introducing additional criteria to correct the threshold rate in the case of data bases that are not sufficiently significant on a statistical level or of intervening changes in the main Eurosystem refinancing rates during the period between the EAVPR reporting quarter and the quarter when the threshold rates calculated according to the same EAVPR are applicable;
 - introducing alternative criteria for determining the threshold rate when the reference data bases for certain technical funding forms and amount classes are not available, or are nevertheless less than 10 units, even by adding the total number of the positions pursuant to the previous paragraph 3.
5. With reference to funding in currencies other than the Euro, added or subtracted from the threshold rate as calculated above and corresponding to the technical format and amount class, is the financing's cost differential, calculated from the difference between the interbank rate relating to the currency used and the rate relating to the Euro, over the same term; the formula for calculating the threshold rate to apply to funding in foreign currencies is therefore as follows:

$$TS(X) = TRF(X) - TRF\text{€} + TS\text{€}$$

where reference is as follows:

X = is the foreign currency the funding is expressed in;

TS(X)= is the anti-usury threshold rate applicable to the funding in currency X;

TRF(X) = is the Risk Free Rate (interbank or swap) on currency X for the period corresponding to the funding's term);

TRF€ = is the Euro Risk Free Rate (interbank or swap) for the period corresponding to the funding's term;

TS€= is the anti-usury threshold rate applicable to the funding in currency, if it had been expressed in Euro.

By way of example, if the Euro threshold rate for 6 month funding was 10%, and the interbank rate again for 6 months on funding in Euro, Yen and Rand amounted to 4%, 1% and 15% respectively, the threshold rates in Yen and Rand would be 7% and 21%, calculated as follows:

- a) Threshold rate in Yen of 7% = 1% - 4% + 10%;
- b) Threshold rate in Rand of 21% = 15% - 4% + 10%.

Article 20 - Calculation of threshold rates for anti-usury purposes in the case of default interest

1. Without prejudice to article 17 paragraph 5), which stipulates that default interest and similar charges are excluded from the expenses included in calculating the effective annual percentage rate, and consequently the threshold rates, default interest is nonetheless considered usurious when higher than the threshold determined by applying the same increases referred to in article 19 paragraph 2 above to the sum, broken down by category and where applicable sub-category, between the effective average percentage rate global rate and the percentage points applied on average to default securities, with reference to the same category or sub-category.

Article 21 - Final and transitional rules

1. This Regulation shall enter into force on 31 March 2014 and repeals Circulars No. 43 and 28/F dated 18 May 2005 and the relevant Annexes, which shall remain applicable until the reporting referring to the first quarter of 2015 inclusive, so as to allow REPORTING PARTIES to make the necessary computer adjustments over the medium term.
2. The provisions in this Regulation shall therefore become applicable as from the reporting referring to the second quarter of 2015, to be sent to the CENTRAL BANK no later than 31 August 2015, for the purposes of calculating the threshold rates applicable during the second quarter of 2015.