Guaranteeing effectiveness or stimulating own responsibility

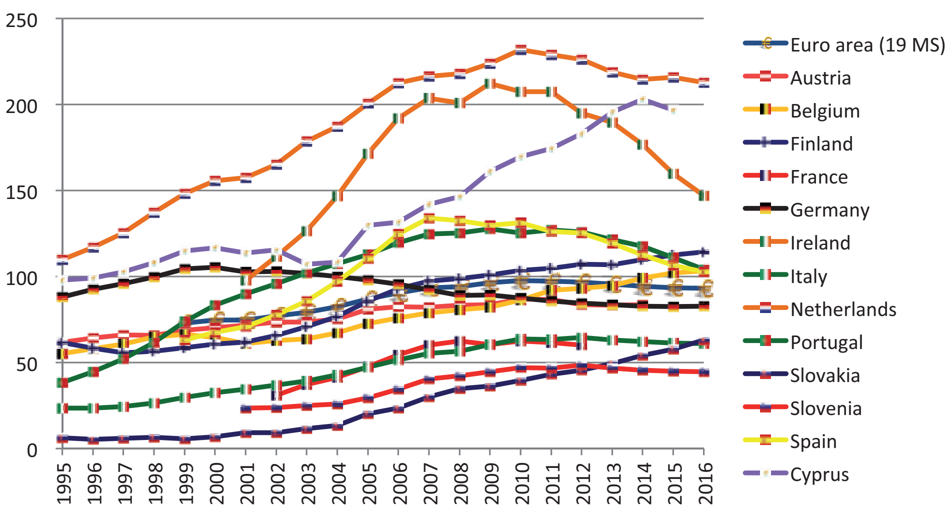
Lending restrictions for mortgage loans in Ireland and the Netherlands

Roughly 10 years ago the financial crisis started, with credit-financed housing booms and increasing leverage of households and banks at its heart. In my PhD thesis,[i] I analysed the instruments which have been created or reformed in reaction to the crisis in order to restrict lending and borrowing. A core question in my thesis is whether these instruments can be effective in restricting household debt levels, given their legal design. Debt-service-to-income (DSTI), loan-to-income (LTI) and loan-to-value (LTV) limits in the Netherlands and Ireland are among the instruments which I analysed. This article shows that there are considerable differences in the design of these limits in these countries, which matter for their effectiveness. In both countries, there are still gaps that can undermine the effectiveness of the rules. This may weaken the protection against booms and busts. The differences in design also affect how much own responsibility lenders retain.

Author: Arien van 't Hof

In the years before the crisis, household debt levels in almost all EU countries strongly increased, especially in the Netherlands and Ireland (figure 1). This was possible because – among other things – many banks lowered their lending standards under competitive pressure, and because they could pass on risks through securitisation. In various countries, households were willing to borrow more due to over-optimism about rising housing prices and underestimation of risks. Mian and Sufi (2015) explain how debt amplifies a boom by increasing the buying power of those who are over-optimistic about the value of houses. Meanwhile, high debt levels make households vulnerable for declining income or rising interest rates. Frequently, a bursting housing bubble results

FIGURE 1 ▸ GROSS DEBT TO INCOME HOUSEHOLDS (IN %)



Source: Eurostat

in surging non-performing loans (NPLs), reduced economic growth, and financial instability. After house prices started falling in the Netherlands (ultimately -20%) and Ireland (ultimately -50%), both countries indeed experienced several years with negative economic growth. Meanwhile, NPLs on mortgages in the Netherlands remained low, but in Ireland they exceeded 15% since 2012 (till at least 2017).

To avoid these problems from happening again and to protect consumers, Dutch and Irish authorities introduced rules to restrict lending to households in the past years, together with other reforms, including reduced or phased out mortgage interest deduction. These rules include DSTI, LTI and LTV limits. The first two are mainly meant for ensuring that households have sufficient repayment capacity, also if they face adverse shocks. A LTV limit reduces the risk of residual debt for households, and restricts the loss given default for lenders, if they have to sell the property after a default. The limits also reduce room to loosen lending standards during a boom, and thus help to curb credit growth.

The creation of these lending restrictions assumes that restricting own responsibilities of borrowers and lenders is necessary for protecting consumers and the stability of the financial system. Behavioural economic research has indeed confirmed that people might make irrational decisions, because they may underestimate risks, favour the short-term over the long-term, and act in herd-fashion (Ramsay, 2012). Lenders might also take too much risks due to euphoria about rising house prices, competitive pressure, or possibilities to pass on risks. Ever-increasing optimism about rising house prices may especially occur where housing supply is inelastic (Glaeser et al., 2008).

However, are the rules able to effectively influence household debt levels? Based on my PhD thesis, this article discusses some of the preconditions which rules – including borrower-based limits – have to fulfil in order to be able to be effective in attaining this goal. It shows how the different choices of Dutch and Irish authorities affect the effectiveness of DSTI, LTI and LTV limits, as well as the degree of responsibility of borrowers and lenders themselves. The different choices make the Dutch and Irish rules interesting to study. Moreover, this perspective complements discussions about the calibration of these limits, as well as quantitative empirical research into the effectiveness of macroprudential policy, which usually abstracts from the legal nuances of the instruments.

Preconditions for effectiveness

For being effective, rules must fulfil certain preconditions. Among other things, they must be determinate and complete. Determinacy means that law 'can be intelligibly identified and applied to the underlying facts.' (Orakhelashvili, 2008, p. 22). If rules are (1) vague, (2) ambiguous, or (3) too general, lenders may be unaware of what is expected from them or can purposely abuse the indeterminacy to act against the spirit of the rules. Vagueness entails that borderline cases are present, for which it is unclear whether rules apply or not (Poscher, 2012). This may be the result of imprecise language or difficulties with delineating or classifying the subject-matter of the rules. Sometimes, causes of indeterminacy coincide, such as with open-ended norms, which usually are both general – i.e. underspecified – and vague. Reading rules in accordance with their plain meaning, in light of their context and aims, should suffice to understand them. Completeness means that the rules cover the subject-matter which they regulate entirely (Orakhelashvili, 2008). This requires that (1) their scope includes all relevant types of debt, borrowers, and lenders, (2) gaps due to inconsistency or silence about relevant issues are absent, and (3) exceptions are subject to clear and protective conditions. Otherwise, gaps and loopholes can trigger circumvention and may render rules partly ineffective.

Yet, often there is a tension between creating rules which are both determinate and complete. An encompassing and straightforward rule can be both, but might be blunt and not aligned to actual risks. This problem can be tackled with a complex and detailed rule. However, this may in turn increase the risk of a gap, especially if new developments change the regulated market, and the rule are not entirely appropriate anymore. These gaps increase the risk of creative compliance. This means that lenders engage in box-ticking and formal compliance with the rules, but act against their purpose. Instead, principles can be fine-tuned to actual risks and can capture new developments, because they point towards an aim or direction. However, they lack the determinacy of rules. This leaves more responsibility for lenders, but also requires that they act in the best interest of a borrower and of the society. Indeterminacy may also be used to act against the purpose of the rules.

Assessing whether rules are determinate and complete requires doctrinal and comparative legal research, thus text analysis. Comparative legal research includes mapping differences and similarities between legal systems. Hermeneutic methods used in this research are literal, teleological and systemic interpretation. The latter two stand for interpretation based on the purpose and legal context of the rules. Through interpreting and comparing these borrower-based limits, it can be determined to what extent the various elements of determinacy and completeness are fulfilled.

Ireland: macroprudential lending restrictions

Ireland experienced a strong housing boom and bust, leading to high levels of arrears, widespread negative equity, and a sharp decline of GDP. Subsequently, various sets of rules have been adopted with a view of preventing the negative consequences of high debt levels. From a macroprudential perspective, the Central Bank of Ireland (CBI) enacted LTV and LTI limits in February 2015 by means of Statutory Instrument 47/2015.[ii] Their primary aim is to improve the resilience of banks and households to shocks. Their secondary objective is to reduce pro-cyclical dynamics between mortgage lending and housing prices through limiting possibilities for loosening lending standards during booms (Central Bank of Ireland, 2014).

The LTI limit is 3.5 and applies to housing loans supplied for primary dwellings. Income is borrower's total gross annual income, before tax and other deductions. It is not further delineated what counts as income. Compared to the Dutch detailed definition of income, this may give lenders some room to interpret this widely. The LTI limit is accompanied with so-called allowances or proportionate margins: each year, every lender may provide 20% of the monetary amount of newly supplied loans to first-time buyers with a LTI limit higher than 3.5. In other words, up to 20% of new loans for first-time buyers may be non-compliant with the LTI limit. For non-first-time buyers this percentage is 10%. Despite the allowances, on average a lender must still comply with the LTI limit. The LTI cap is not differentiated for various incomes, which makes it blunt. However, lenders also have to respect the more fine-tuned consumer protection rules (see below).

The LTV limit for owner-occupied residential property is 90% for first-time buyers and 80% for non-first-time buyers (it is 70% for buy-to-let mortgages). The LTV limit for first-time buyers is higher to meet worries that they could not buy a house. The allowances are 5% for first-time buyers and 20% for non-first-time buyers. For calculating the LTV limit, lenders may use the market value of the house. As this value is subject to boom and bust dynamics, borrowers (and lenders) are not protected against short-term, speculative elements which may enter the valuation. Due to the crisis, house prices in Ireland have fallen more than 50%, and at the end of 2017 prices were still more than 20% below the pre-crisis peak. In contrast, short-term, speculative elements must be disregarded in a valuation based on the mortgage lending value (as some member states require to use instead of the market value, when calculating LTV ratios for covered bonds or capital requirements).[iii] Both the LTI and LTV limits do not apply to switcher mortgages. For the LTV limit, there is an exception for borrowers with negative equity, i.e. where the amount of the existing housing debt exceeds the value of the house.[iv]

The CBI tried to limit the room for circumvention of the caps, and hence to ensure their completeness. Firstly, all regulated financial service providers are subject to the rules.[v] So, the scope is much broader than banks. Almost all relevant lenders are in scope, except for local authorities that provide mortgage loans to households which are unable to obtain a loan from a bank or building society. However, this concerns only 1% of total lending. Secondly, barring a few specific exemptions (which are generally subject to clear conditions), the LTI and LTV limits apply to all loans being or to be secured on a residential property in Ireland.

Despite their wide scope, the LTI and LTV limits can be evaded due to the absence of a debt-to-income limit or a requirement to take other loans into account. Therefore, consumers may resort to more expensive and riskier unsecured loans. To reduce possibilities to by-pass the limits, the Central Bank of Ireland established that 'a lender shall not engage in a practice, enter into an arrangement or transaction, execute a document or structure or restructure a loan for the purpose or having the effect (...) of avoiding the obligations under' the regulation which establishes the LTV and LTI limits, whether avoiding the rules is the sole or primary intention or effect or not.[vi] This rule can prevent that a lender offers unsecured loans besides the maximum allowed secured housing loans. Yet, it cannot avoid that another lender extends an unsecured loan, since that lender is not subject to this rule. It would have been possible for the CBI to close this loop-hole by requiring lenders to take other loans into account, as the Consumer Protection Code 2012 (see below) obliges lenders to collect this information.[vii]

Ireland: lending restrictions for protecting consumers

In 2016, the EU rules on the assessing a consumer's creditworthiness, as included in the Mortgage Credit Directive (MCD), are transposed in Irish law, almost *verbatim*.[viii] The MCD requires lenders to assess the creditworthiness of a consumer before providing a loan. This assessment must be thorough and take appropriate account of all relevant factors. The information on which the assessment is based, must include the consumer's income and expenses and other relevant financial and economic circumstances. However, an explicit requirement to take existing debt into account has not been included in the final text of the MCD, although it was part of a draft version.

A lender is allowed to provide credit if 'the creditworthiness assessment indicates that the consumer's obligations resulting from the credit agreement are likely to be met in the manner required under that agreement.'[ix] Repayment capability is considered the key factor; the creditworthiness assessment 'shall not rely predominantly' on the fact that the LTV ratio is below 100%, or the house value will rise.[x] The duty to deny credit has been introduced, because the European Commission (2011a,b) was worried that consumers will make wrong decisions, out of "short-termism". It also feared careless lending, because lenders may competitive pressure on underwriting standards and can transfer the risks to other parties. This obligation restricts the own responsibilities of borrowers and lenders. Nevertheless, phrases as 'are likely to be met' and 'shall not rely predominantly' are imprecise and inherently vague, which diminishes the determinacy of the rules and their restrictive effects.

In addition, Irish lenders have to respect the Consumer Protection Code (CPC) 2012, which includes an affordability and suitability check. The CPC 2012 is adopted by the CBI, based upon its power to draw up codes of practice.[xi] The High Court characterises codes of conducts adopted by the CBI as 'not entirely a species of "soft" law, i.e., purely precatory statements not susceptible of legal enforcement'.[xii] The CBI can indeed enforce the CPC 2012 with the same administrative sanctions for enforcing hard law. The CPC 2012 prescribes lenders to gather and record sufficient information from the consumer, before offering, recommending, arranging or providing a loan, and to take this into account in the affordability assessment.[xiii] This information should contain details about the consumer's personal circumstances – including employment status, dependents (such as children), and known future changes – and financial situation – including income, debts and financial commitments. So, the CPC 2012 is not silent about the relevant factors which lenders should consider. The CPC 2012 contains provisions to ensure that consumers could bear an interest rate increase. If loans don't have a fixed-rate period of at least five years, a lender must assess whether a consumer is able to repay the loan if the interest rate will increase with 2 percentage points.[xiv]

The CPC 2012 does not impose quantitative borrowing limits, nor a duty to deny credit in case of a negative outcome of the assessment. Nevertheless, if credit is not covered by the MCD, the lender 'must 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.'[xv] The CPC 2012 does not indicate how lenders should take this into account. So, while the LTI limit is relatively blunt, the MCD and CPC 2012 require Irish lenders to take the specific circumstances of each household into account, including debts and dependents. However, these consumer protection norms are less determinate than the LTI limit. Indeed, apparently, the CBI did not consider its own rules of the CPC 2012 sufficient for guaranteeing the resilience of households; otherwise, it would not have to introduce a macroprudential LTI limit a few years later.

Netherlands: macroprudential regulation and consumer protection

In the Netherlands, regulatory lending restrictions for mortgage credit are in force since 1 January 2013, in the form of DSTI and LTV limits. The LTV limit is 100% since 1 January 2018, while the DSTI limits vary between 10.5-43.5% in 2018, depending on the income of the borrower and the interest rate on the loan (every year, the Minister of Finance adopts the DSTI limits). These limits are part of the *Tijdelijke regeling hypothecair krediet* (Trhk, Temporary regulation of mortgage credit), which is based on art. 115 *Besluit Gedragstoezicht financiële ondernemingen Wft* (Bgfo, Decree on Conduct of Business Supervision of Financial Undertakings under the Wft). In turn, this provision is based on art. 4:34 *Wet op het financieel toezicht* (Wft, Act on Financial Supervision), which aims to protect consumers from overindebtedness.[xvi] Art. 4:34 Wft prohibits lenders to enter into a credit agreement or to in-crease the total amount of credit if this would be irresponsible in the light of overextension of credit. The regulatory LTV and DSTI caps have also been introduced for the sake of financial stability.[xvii] The Trhk comes on top of (i) own criteria which lenders have to develop for preventing an overextension of credit to consumers (art. 115(1) and (4) Bgfo), and (ii) a code of conduct for mortgage loans, a form of self-regulation by the banking sector.[xviii] Prior to 2013, this code of conduct already included DSTI and (since 2011) LTV limits.[xix] Art. 4:34 Wft and the rules based on it, function also as the Dutch implementation of the consumer protection rules on the creditworthiness assessment of the MCD. Hence, there are no separate macroprudential and consumer protection rules, like in Ireland.

The rules within the Trhk are both too a large extent determinate and complete. This is mainly a consequence of the fact that this ministerial decree contains many specific and technical rules, which minimises the room to act against the purpose of the rules by using gaps. Three notable features of these rules are:

1. The DSTI limits are calculated by taking half of the difference between the actual expenditures of Dutch households, as measured by a continuous budget survey of the Dutch statistical agency, and the required minimum livelihood expenses, as determined by Nibud.[xx] As the DSTI limits vary per income, they are less blunt than the Irish LTI limit. Vulnerable households with low income can be sufficiently protected, while households with a higher income are allowed to spend more on their mortgage. However, the rules take a two-person household as prototype. In this respect, the level of protection may be inaccurate for

other types of households. The rules require more than mechanical application.
2. There are detailed rules on calculating actual DSTI percentages. For example, for calculating the borrower capacity for households which take out a mortgage loan with a fixed-rate period of less than ten years, lenders have to use an interest rate set by the conduct of business supervisor, the AFM (Authority for the Financial Markets). This rate is currently set at 5%, which prevents that households could not cope with a sudden interest rate rise. Also, in principle, only the current fixed and durable income of a consumer may be taken into account.[xxi] The Explanatory Memorandum contains a list of types of income, which counts as such. So, income is precisely defined, adding the completeness of the rules. Yet, two future sources of income may be included as well: (1) future available income from disposable capital, if it can be reasonably expected and (2) an expected future structural increase of income within a reasonably term. This can be up to several years, according to the explanatory memorandum.[xxii] Taking account future sources of income facilitates consumption-smoothing, but may also lead to procyclical lending. The relatively vague wording of this rule leaves responsibility for borrowers and lender to act prudently.
3. Mortgage lenders are required to take other loans of consumers into account in the calculation, by either adding it to the actual financing costs or deducting them from the DSTI limit.[xxiii] This reduces the room for circumvention, as it limits the possibility to substitute consumer credit for mortgage credit. The existence of a credit registry enables lenders to check most of the relevant information. However, some debts, such student loans, are not recorded in the credit registry.

The Trhk allows using the market value of the house when calculating the LTV limit, like the Irish rules do. The Dutch rules allow borrowing up to a LTV ratio of 100%. Therefore, it may be a bigger concern than in Ireland that the use of the market value does not offer protection against short-term, speculative valuation effects. Note that also in the Netherlands house prices have fallen after the crisis, on average with more than 20%.

The Trhk contains a range of possible exceptions for the DSTI and LTV limits. Most of them are related to specific situations, subject to precise conditions which prevents the risk of loopholes. Apart from that, exceeding the LTV limit is allowed when a borrower's actual DSTI percentage is substantially lower than the DSTI limit – which is not further specified, and thus partly vague.[xxiv] The rationale is that borrowers with relatively low debt-service costs should be able to repay their debt without problems, which reduces the risks of exceeding the LTV cap. Moreover, it is allowed to exceed the DSTI limit, if a lender can motivate and substantiate by means of documents and calculations that providing credit is justified, even though the limit is exceeded.[xxv] Then, the lender must verify whether reasons underlying the deviation are durable.[xxvi] These conditions – which in fact create a comply-or-explain mechanism – are safeguards against overextending credit to consumers against the purpose of the rules. These conditions are also necessary, as the AFM observed in the past that lenders assumed, without substantiation, that the income of a borrower would rise.

The scope of the DSTI and LTV limits is encompassing. They apply to credit which is secured on residential property. Barring a few exceptions, the rules of the Wft, on which the caps are based, apply to all credit supplied to consumers in the Netherlands in the pursuit of a profession or business. However, if Dutch consumers take out unsecured loans besides a mortgage, the Trhk does not apply to the unsecured loan itself (note that existing unsecured debt has to be taken into account when calculating the DSTI ratio, as mentioned above). Then, members of the NVB and the VFN, the unions for banks and non-bank credit providers, are subject to codes of conduct.[xxvii] However, these codes of conduct apply beyond the membership of the NVB and VFN. Courts namely accepted the stance of the AFM that these codes of conduct serve as a minimal interpretation of the open norm art. 4:34 Wft and considered this sufficiently clear and determinate.[xxviii] So, the AFM checks whether own criteria of lenders who are not member of the NVB or the VFN, offer the same degree of protection as these codes of conduct.

According to these two codes of conduct, unsecured credit meant for purchasing a house may only be supplied if the norms of the code of conduct for mortgage loans are respected. Unfortunately, these norms are not fully aligned with the rules of the Trhk. For instance, they allow a LTV ratio of 106% since 2011, which is not changed afterwards. This creates a loophole to supply unsecured credit besides a mortgage. If the unsecured loan is taken out later than the mortgage, the requirement of the Trhk to take other debt into account cannot prevent borrowing above 100% of the value of the house. Moreover, for providing unsecured credit for *remodelling* an own house neither the Trhk, nor the norms of the code of conduct for mortgage credit apply.[xxix] Only the lighter norms of the NVB and VFN codes of conduct on consumer credit apply.

Conclusions

Are the rules in Ireland and the Netherland able to effectively influence household debt levels? If so and if calibrated at the right level, they may contribute to preventing an overheating housing market by limiting a loosening of lending standards and excessive credit growth. In many ways, the rules are well-designed to do this. Most aspects of the Dutch and Irish borrower-based limits are determinate. However, some vaguely worded rules – such as the Dutch exception for taking future income into account – may bend during periods of optimism about rising house prices, or under competitive pressure. This exception can even function procyclical. Also, Irish consumer protection law implementing the MCD contains some inherently vague phrases.

The lending restrictions in both countries are not entirely complete, as there are gaps remaining. The legal analysis shows that both countries have set the scope of the rules as wide as possible, which is necessary to avoid circumvention. However, in itself this is not enough to preclude circumvention, as it is essential to oblige lenders to take unsecured credit or total debt levels into account. In Ireland, this is not mandatory. In the Netherlands, unsecured borrowing besides the mortgage cannot completely be avoided, because the codes of conduct are not fully aligned with the Trhk. It is the responsibility of the organisations which drafted these codes of conduct, to ensure that they are aligned with the Trhk. Moreover, both countries allow the use of the market value of a house for calculating the LTV ratio. This is understandable from a practical viewpoint but reduces protection against the effects of booms on the valuation of the house. This would not be the case with valuations based on the mortgage lending value, as some countries oblige in other contexts. The risks of high valued houses are larger if the LTV ratio is 100%, like in the Netherlands.

The conditions attached to the use of exceptions are more protective in the Netherlands than in Ireland, adding to the completeness of the rules. In both countries tailor-made solutions to accommodate credit supply to the needs of individual borrowers, are possible. In Ireland, exceeding the limits is allowed, subject to a proportionate margin. In the Netherlands, DSTI limits are binding for individual borrowers, but they can be exceeded, if it can be justified that credit can be provided responsibly. As this requires explicit justification, borrowers are better protected. Moreover, the Dutch differentiated DSTI limits offer more protection to vulnerable, low-income households than the undifferentiated Irish LTI limit. In Ireland, this protection is offered by consumer protection rules, which are less determinant than quantitative limits.

Yet, the detailed Dutch rules may convey the erroneous impression that it suffices for lenders to adhere to the Trhk. With the broad-brushed Irish rules, it is clearer that lenders also have their own responsibility to evaluate whether lending is justified, especially because the lenders also have to meet separate rules on assessing creditworthiness.

However, also in the Netherlands it is not enough to simply stay within the rules. Lenders still have the responsibility to develop own criteria for preventing an overextension of credit (art. 115 Bgfo). So, even if extending credit would not entail a violation of the Trhk, Dutch lenders should consider whether lending is prudent considering an overextension of credit. Also, when making use of exceptions, lenders should ask themselves whether they act in the spirit of the rules. This is even more important as rules are not differentiated enough to account for all risks, for instance because only one household type is used in the calculations.

Ireland introduced the duty to deny credit in 2016, with the implementation of the MCD. So, this paradigm shift – which acknowledges findings from behavioural economics and accordingly created new responsibilities for lenders – occurred later than in the Netherlands.[xxx] In the Netherlands, this obligation already existed prior to the transposition of the MCD. Still, the legislative history of the predecessors of art. 4:34 Wft, in previous acts, shows that there was never the intention to remove the borrower's own responsibility (cf. Broekhuizen and Labeur, 2006). Also a borrower should not simply stay within the rules, if only because the rules are not entirely determinate and complete.

ABOUT THE AUTHOR

Arien van 't Hof has written his PhD thesis at the Erasmus University of Rotterdam. He is currently working as policy advisor at the Financial Stability Division of De Nederlandsche Bank. Views expressed are those of the author and do not necessarily reflect official positions of De Nederlandsche Bank.

NOTES

i This article reflects findings of my PhD thesis "The Regulation of Household Debt Levels in the EU and Three of its Members States: Evaluating the Legal Preconditions for Effectiveness", and findings of Van 't Hof (2017).

ii S.I. 47/2015, Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Housing Loan Requirements) Regulations 2015, available at http://www.irishstatutebook.ie/eli/2015/si/47/made/en/print. This S.I. has been amended by S.I. 568/2016, *Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Housing Loan Requirements) (Amendment) Regulations 2016*, available at http://www.irishstatutebook.ie/eli/2016/si/568/made/en/print, and by S.I. No. 559/2017, Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Housing Loan Requirements) (Amendment) Regulations 2017, available at http://www.irishstatutebook.ie/eli/2017/si/559/made/en/print.

iii In Germany, this is the prescribed method for calculating the LTV ratio for covered bonds: see §14 and 16 *Pfandbriefgesetz*, and the *Beleihungswertermittlungsverordnung*.

iv Regulation 6(5) in combination with regulation 2(1) of S.I. 47/2015. The exemption applies too if the loan is advanced to more than one person and only one of them has negative equity (regulation 2(3) of S.I. 47/2015).

v Regulation 2(1) of S.I. 47/2015.

vi Regulation 3(2) of S.I. 47/2015.

vii Now a credit registry has been set up, which is partly operational since March 2018, it is easier to impose and also to enforce this requirement.

viii For the creditworthiness assessment, see art. 18-20 of Directive 2014/17 of the European Parliament and of the Council of 4 February 2014, OJ 2014, L60/34. These three articles are transposed into Irish law by means of regulations 19-21 of S.I. 142/2016, European Union (Consumer Mortgage Credit Agreements) Regulations 2016, available at http://www.irishstatutebook.ie/eli/2016/si/142/made/en/print

ix Regulation 19(5) S.I. 142/2016.

x Regulation 19(3) S.I. 142/2016.

xi The CPC 2012 is available at https://www.centralbank.ie/regulation/consumer-protection/consumer-protection-codes-regulations. The CBI can draw up codes of practice based on, inter alia, section 117(1) Central Bank Act 1989, available at http://www.irishstatutebook.ie/eli/1989/act/16/enacted/en/index.html, and based on 8H(1)(f) Consumer Protection Act 1995 as inserted in the Consumer Credit Act by means of the Central Bank and Financial Services

Authority of Ireland Act 2003, available at http://www.irishstatutebook.ie/eli/2003/act/12/enacted/en/html.

xii *Irish Life and Permanent v. Financial Services Ombudsman* [2012] IEHC 367, para. 55.

xiii See in particular chapter 5 of the CPC 2012.

xiv See provisions 5.9-5.14 CPC 2012.

xv Provision 5.13 CPC 2012, and the addendum of July 2016 to the CPC 2012.

xvi The Trhk is available at http://wetten.overheid.nl/BWBR0032503, the Bgfo at http://wetten.overheid.nl/BWBR0020421, and the Wft at http://wetten.overheid.nl/BWBR0020368.

xvii See https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2012/05/25/visie-toekomstbestendigheid-hypotheekrenteaftrek-reactie-motie-kuiper-c-s/visie-toekomstbestendigheid-hypotheekrenteaftrek-reactie-motie-kuiper-c-s.pdf.

xviii The code of conduct for mortgage loans is available at https://www.nvb.nl/publicaties/gedragscodes/1936/gedragscode-hypothecaire-financieringen.html.

xix In addition, the conditions and norms of the Dutch mortgage guarantee scheme, the NHG, included DSTI limits as of 1995.

xx For an explanation of the methods used by Nibud (*Nationaal Instituut voor Budgetvoorlichting* (National Institute for Family Finance)), the institute which proposes these ratios: Nibud (2017), chapter 2.

xxi Art. 2(1) Trhk.

xxii Art. 2(3) Trhk and Explanatory Memorandum to the Trhk, available at https://zoek.officielebekendmakingen.nl/stcrt-2012-26433.html.

xxiii Art. 3(11) Trhk.

xxiv Art. 5(5)(d) Trhk.

xxv Art. 4(1)(a)-(b) Trhk.

xxvi Art. 4(1)(c)-(d) Trhk.

xxvii The VFN code of conduct, applicable since January 2014, as well as an explanation to it, can be found via http://www.vfn.nl/nl/normen-en-gedragscodes/gedragscodes. The NVB code of conduct, applicable since 2012, as well as the actual minimum standards, can be found via https://www.nvb.nl/publicaties-standpunten/publicaties/1743/gedragscode-en-normen-consumptief-krediet.html.

xxviii See e.g. CBb 28 November 2013, NL:CBB:2013:260, JOR 2014/41, para. 5.5.

xxix Art. 1 and the explanation of the VFN code of conduct.

xxx Yet, the CPC 2012 already includes a suitability assessment, meaning that a lender must assess whether the credit matches the consumer's needs, objectives and risk profile. This obligation also assumes a vulnerable instead of a rational consumer.

LITERATURE

- Broekhuizen, K.W.H. and R.E. Labeur (2006), *Verantwoorde kredietverlening aan consumenten*, Tijdschrift voor Financieel recht (10), pp. 248-254.
- European Commission (2011a), *Impact Assessment of the Proposal for a Directive of the European Parliament and of the Council on Credit Agreements Relating to Residential Property*, Brussels, 31.3.2011, SEC(2011) 356 final.
- European Commission (2011b), *Annexes 1-5 to the Impact Assessment of the Proposal for a Directive of the European Parliament and of the Council on Credit Agreements Relating to Residential Property*, Brussels, 31.3.2011, SEC(2011) 356 final
- Central Bank of Ireland (2014), *Macro-prudential policy for residential mortgage lending*, Consultation paper CP87.
- Glaeser, E.L., J. Gyourko and A. Saiz (2008), *Housing Supply and Housing Bubbles*, NBER Working Paper 14193
- Mian, A., & Sufi, A. (2015), *House of debt*, Chicago and London: The University of Chicago Press.
- Nibud (2017), Financieringslastnormen 2018 - Advies voor de financieringslastnormen 2018
- Orakhelashvili, A. (2008), *The interpretation of acts and rules in public international law*, Oxford: Oxford University Press
- Poscher, R. (2012), *Ambiguity and vagueness in legal interpretation, in: L. Solan M, & P. Tiersma M (Eds.), The Oxford handbook of language and law* (pp. 128-144), Oxford: Oxford University Press
- Ramsay, I. (2012), *Consumer Credit Regulation after the Fall: International Dimensions, Journal of European Consumer and Market Law* (1), pp. 24-34.
- Van 't Hof, A. (2017), *Designing Macroprudential Regulation and Supervision Outside the Scope of the Banking Union: Lessons from the Netherlands and Ireland*, Journal of Banking Regulation 18(3)