

**Law of 23 December 2016:**

- 1. transposing Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010; and**
- 2. amending the Consumer Code**

**(Mém. A 2016, No 302)**

**Single Article.** The Consumer Code shall be amended as follows:

- 1° The following paragraph 5 shall be added in Article L. 224-3:

“(5) Notwithstanding point (c) of paragraph 1, this chapter shall apply to unsecured credit agreements the purpose of which is the renovation of a residential immovable property involving a total amount of credit above EUR 75,000.”.

- 2° After Article L. 225-20, the following new chapter shall be added:

“Chapter 6 - Mortgage credit agreements.

Section 1 - Definitions, scope and competent authority.

Article L. 226-1.

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

- (1) “competent authority” means any authority designated as competent authority by a Member State in accordance with Article 5 of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, hereinafter referred to as “Directive 2014/17/EU”. In Luxembourg, the competent authority is the Commission de Surveillance du Secteur Financier established by the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), hereinafter referred to as the “CSSF”;
- (2) “credit agreement” means an agreement whereby a creditor grants or promises to grant, to a consumer, a credit in the form of a deferred payment, loan or other similar financial accommodation;
- (3) “mortgage credit agreement” means a credit agreement falling within the scope as defined in Article L. 226-2;
- (4) “shared equity mortgage credit agreement” means a mortgage credit agreement where the capital repayable is based on a contractually set percentage of the value of the immovable property at the time of the capital repayment or repayments;
- (5) “foreign currency mortgage credit agreement” means a mortgage credit agreement where the credit is:
  - a) denominated in a currency other than that in which the consumer receives the income or holds the assets from which the credit is to be repaid; or
  - b) denominated in a currency other than that of the Member State in which the consumer is resident;
- (6) “total cost of the credit to the consumer” means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the mortgage credit agreement and which are known to the creditor, except for notarial costs. Costs in respect of ancillary services relating to the mortgage credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed. It includes the cost of valuation of property where such valuation is necessary to obtain the credit but excluding registration fees for the transfer of ownership of the immovable property. It excludes any

- charges payable by the consumer for non-compliance with the commitments laid down in the mortgage credit agreement;
- (7) “bridging loan” means a mortgage credit agreement either of no fixed duration or which is due to be repaid within 12 months, used by the consumer as a temporary financing solution while transitioning to another financial arrangement for the immovable property;
- (8) “contingent liability or guarantee” means a mortgage credit agreement which acts as a guarantee to another separate but ancillary transaction, and where the capital secured against an immovable property is only drawn down if an event or events specified in the contract occur;
- (9) “credit institution” means a credit institution as defined in point (12) of Article 1 of the Law of 5 April 1993 on the financial sector, as amended;
- (10) “host Member State” means the Member State, other than the home Member State, in which the creditor or mortgage credit intermediary has a branch or provides services;
- (11) “home Member State” means:
- a) where the creditor or mortgage credit intermediary is a natural person, the Member State in which his head office is situated;
  - b) where the creditor or mortgage credit intermediary is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;
- (12) “creditworthiness assessment” means the evaluation of the prospect for the debt obligation resulting from the mortgage credit agreement to be met;
- (13) “group” means a group of creditors which are to be consolidated for the purposes of drawing up consolidated accounts, as defined in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings;
- (14) “mortgage credit intermediary” means a natural or legal person who is not acting as a creditor or notary and not merely introducing, either directly or indirectly, a consumer to a creditor or mortgage credit intermediary, and who, in the course of his trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration:
- a) presents or offers mortgage credit agreements to consumers;
  - b) assists consumers by undertaking preparatory work or other pre-contractual administration, other than as referred to in letter (a), in respect of mortgage credit agreements; or
  - c) concludes mortgage credit agreements with consumers on behalf of the creditor;
- (15) “tied mortgage credit intermediary” means any mortgage credit intermediary who acts on behalf of and under the full and unconditional responsibility of:
- a) only one creditor;
  - b) only one group; or
  - c) a number of creditors or groups which do not represent the majority of the market;
- (16) “total amount of credit” means the ceiling or the total sums made available under a mortgage credit agreement;
- (17) “total amount payable by the consumer” means the sum of the total amount of the credit and the total cost of the credit to the consumer;
- (18) “staff” means:
1. any natural person working for the creditor, or mortgage credit intermediary who is directly engaged in the activities covered by this chapter or who has contacts with consumers in the course of activities covered by this law;
  2. any natural person directly managing or supervising the natural persons referred to in letter (a);
- (19) “creditor” means a natural or legal person who grants or promises to grant mortgage credit in the course of his trade, business or profession;
- (20) “non-credit institution” means any creditor that is not a credit institution;
- (21) “appointed representative” means a natural or legal person who performs activities referred to in point (14) that is acting on behalf of and under the full and unconditional responsibility of only one mortgage credit intermediary;
- (22) “ancillary service” means a service offered to the consumer in conjunction with the mortgage credit agreement;

- (23) "advisory services" means the provision of personal recommendations to a consumer in respect of one or more transactions relating to mortgage credit agreements and constitutes a separate activity from granting of a credit and from the mortgage credit intermediation activities set out in point (14);
- (24) "annual percentage rate of charge" or "APRC" means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in Article L. 226-19(1) and equates, on an annual basis, to the present value of all future or existing commitments agreed by the creditor and the consumer. Commitments within the meaning of this point mean drawdowns, repayments and charges;
- (25) "borrowing rate" means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;
- (26) "tying practice" means the offering or the selling of a mortgage credit agreement in a package with other distinct financial products or services where the mortgage credit agreement is not made available to the consumer separately.

#### Article L. 226-2.

This chapter shall apply to:

- 1. credit agreements which are secured either by a mortgage or by another comparable security on residential immovable property or secured by a right related to residential immovable property; and
- 2. credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

#### Article L. 226-3.

This chapter shall not apply to:

- 1. mortgage credit agreements where the credit is granted by an employer to his employees as a secondary activity where such a mortgage credit agreement is offered free of interest or at an APRC lower than those prevailing on the market and not offered to the public generally;
- 2. mortgage credit agreements where the credit is granted free of interest and without any other charges except those that recover costs directly related to the securing of the credit;
- 3. mortgage credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;
- 4. mortgage credit agreements which are the outcome of a settlement reached in court or before another statutory authority;
- 5. mortgage credit agreements, other than those referred to in point (1) of Article L. 226-2, which relate to the deferred payment, free of charge, of an existing debt.

#### Article L. 226-4.

(1) The CSSF is the competent authority empowered to ensure the application and enforcement of this chapter and, in that capacity, it is the single competent authority which is the contact point for the purposes of Directive 2014/17/EU.

(2) All persons who work or have worked for the CSSF, as well as *réviseurs d'entreprises agréés* (approved statutory auditors) or experts instructed by the CSSF, are bound by the obligation of professional secrecy referred to in Article 16 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended. This secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form, without prejudice to cases covered by criminal law or by this chapter.

The first subparagraph shall not prevent the CSSF from exchanging with or transmitting to the competent authorities of other Member States confidential information within the limits laid down in this chapter.

(3) The CSSF is competent for the out-of-court resolution of consumer disputes with creditors and mortgage credit intermediaries in relation to mortgage credit agreements.

(4) The CSSF shall promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements. It shall encourage the dissemination of clear and general information on the credit granting process in order to guide consumers, especially those who sign a mortgage credit agreement for the first time.

(5) By 31 December 2019, the CSSF shall submit a report on the application of this chapter to the Government. The CSSF's report shall examine in particular the practices of the creditors regarding early repayment and the charges to be borne by the consumers in such cases.

## Section 2 - Information and practices preliminary to the conclusion of the mortgage credit agreement.

### Sub-section 1 - Advertising.

#### Article L. 226-5.

(1) Without prejudice to Book 1, Title 2 regarding unfair commercial practices, any advertising and marketing communications concerning mortgage credit agreements shall be fair, clear and not misleading. In particular, wording that may create false expectations for a consumer regarding the availability or the cost of a credit is prohibited.

(2) Advertising that is:

1. designed specifically to encourage the consumer to resort to the credit although he is unable to meet his debts;
  2. designed specifically to promote an easy or quick way to obtain credit;
  3. indicating with words, signs or symbols that the amount of the credit is available to the consumer in cash;
  4. suggesting that the mortgage credit agreement improves the consumer's financial situation or budget, increases his resources or is a substitute for savings;
  5. indicating that a credit or a credit transaction which consists in grouping together previous credits may be granted without any information allowing the assessment of the consumer's financial situation;
  6. quoting advantageous rates without stating the particular or restrictive conditions which the advantage of such rates is subject to; or
  7. indicating that a mortgage credit agreement may be concluded without any information allowing the assessment of the consumer's financial situation;
- is prohibited.

#### Article L. 226-6.

(1) Any advertising concerning mortgage credit agreements, irrespective of the medium, which indicates an interest rate or figures relating to the cost of the credit to the consumer shall mention in a clear, concise and prominent way the following standard information:

1. the identity of the creditor or, where applicable, the mortgage credit intermediary;
2. where applicable, that the mortgage credit agreement will be secured by a mortgage or another comparable security on residential immovable property or by a right related to residential immovable property;
3. the borrowing rate, indicating whether this is fixed or variable or a combination of both, together with particulars of any charges included in the total cost of the credit to the consumer;
4. the total amount of credit;
5. the APRC which shall be included in the advertisement at least as prominently as any interest rate;
6. where applicable, the duration of the mortgage credit agreement;
7. where applicable, the amount of instalments;
8. where applicable, the total amount payable by the consumer;
9. where applicable, the number of instalments;

10. where applicable, a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the consumer.

(2) The information listed in paragraph 1, other than that listed in points (1), (2) or (10) thereof, shall be specified by means of a representative example and shall adhere to that representative example throughout. The CSSF shall determine the criteria of such a representative example.

(3) Where the conclusion of a contract regarding an ancillary service is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed, and its cost cannot be determined in advance, the obligation to enter into that contract shall be stated in a clear, concise and prominent way, together with the APRC.

(4) The information referred to in paragraphs 1 and 3 shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising.

(5) This article shall apply without prejudice to Book 1, Title 2 on unfair commercial practices.

#### Sub-section 2 - General and pre-contractual information.

##### Article L. 226-7.

When information is provided to consumers in compliance with the requirements of this chapter, it shall be provided without charge to the consumer.

##### Article L. 226-8.

(1) The creditor or, where applicable, the mortgage credit intermediary shall provide the consumer with the personalised information needed to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a mortgage credit agreement.

This personalised information shall be provided without undue delay after the consumer has delivered the necessary information on his needs, financial situation and preferences in accordance with Article L. 226-13 and in good time before the consumer is bound by any mortgage credit agreement.

(2) The personalised information referred to in paragraph 1, on paper or on another durable medium, shall be provided by means of the European Standardised Information Sheet, hereinafter referred to as "ESIS", as set out in a grand-ducal regulation.

(3) When an offer binding on the creditor is provided to the consumer, it shall be provided on paper or on another medium and accompanied by an ESIS where:

1. no ESIS has been provided to the consumer previously; or
2. the characteristics of the offer are different from the information contained in the ESIS previously provided.

(4) The consumer shall have a reflection period of 14 calendar days during which the conditions of the offer shall remain binding on the creditor.

The reflection period shall be clearly indicated in the ESIS. It shall start on the day the consumer receives the offer.

The consumer may accept an offer at any time during the reflection period.

Where the borrowing rate or other costs applicable to the offer are determined on the basis of the selling of underlying bonds or other long-term funding instruments, the borrowing rate or other costs may vary from that stated in the offer in accordance with the value of the underlying bond or other long-term funding instrument.

(5) The creditor and, where applicable, the mortgage credit intermediary which has supplied the ESIS to the consumer shall be deemed to have fulfilled the requirements regarding information provision to the consumer prior to the conclusion of a distance contract as laid down in Article L. 222-14(1) and shall

be deemed to satisfy the requirements of Article L. 222-17(1) only where they have at least supplied the ESIS prior to the conclusion of the contract.

Any additional information to the one included in the ESIS which the creditor or, where applicable, the mortgage credit intermediary shall or may provide to the consumer shall be given in a separate document which may be annexed to the ESIS.

(6) In the case of voice telephony communications, as referred to in Article L. 222-15, the description of the main characteristics of the financial service to be provided pursuant to Article L. 222-15(2)(b) shall include at least information on the main features of the loan, the interest rate and other costs, the frequency and number of payments and the amount of each instalment, as required by the ESIS.

(7) The creditor or, where applicable, the mortgage credit intermediary shall provide the consumer with a copy of the draft mortgage credit agreement on paper or on another durable medium at the time of the provision of an offer binding on the creditor.

#### Article L. 226-9.

The creditor or, where applicable, the mortgage credit intermediary shall provide adequate explanations to the consumer on the proposed mortgage credit agreement(s) and any ancillary service(s), in order to place the consumer in a position enabling him to assess whether the mortgage credit agreement(s) and any ancillary service(s) proposed are adapted to his needs and financial situation.

The explanations shall, where applicable, include:

1. the pre-contractual information to be provided in accordance with:
  - a) Article L. 226-8 in the case of creditors;
  - b) Articles L. 226-8 and L. 226-35 in the case of mortgage credit intermediaries;
2. the essential characteristics of the products proposed;
3. the specific effects the products proposed may have on the consumer, including the consequences of default in payment by the consumer; and
4. where ancillary services are bundled with a mortgage credit agreement, whether each component of the bundle can be terminated separately and the implications for the consumer of doing so.

The creditor or, where applicable, the mortgage credit intermediary shall warn a consumer when, considering the consumer's financial situation, a mortgage credit agreement may induce a specific risk for the consumer.

#### Article L. 226-10.

Clear and comprehensible general information about mortgage credit agreements shall be made available by creditors or, where applicable, by tied mortgage credit intermediaries at all times on paper, on another durable medium or in electronic form.

The general information referred to in the first subparagraph shall include at least the following information:

1. the identity and the geographical address of the issuer of the information;
2. the purposes for which the credit may be used;
3. the forms of security, including, where applicable, the possibility for it to be located in another Member State;
4. the possible duration of the mortgage credit agreements;
5. types of available borrowing rate, indicating whether fixed or variable, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;
6. where foreign currency mortgage credit agreements are available, an indication of the foreign currency or currencies, including an explanation of the implications for the consumer where the credit is denominated in a foreign currency;

7. a representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC;
8. an indication of possible further costs, not included in the total cost of the credit to the consumer, to be paid in connection with a mortgage credit agreement;
9. the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments;
10. where applicable, a clear and concise statement that compliance with the terms and conditions of the mortgage credit agreement does not guarantee repayment of the total amount of credit under the mortgage credit agreement;
11. a description of the conditions directly relating to early repayment;
12. whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the consumer;
13. indication of ancillary services the consumer is obliged to acquire in order to obtain the credit or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor;
14. a general warning concerning possible consequences of non-compliance with the commitments linked to the mortgage credit agreement; and
15. indication of the reflection period referred to in Article L. 226-8(4).

#### Sub-section 3 - Tying practices.

##### Article L. 226-11.

(1) Tying practices are prohibited.

(2) Notwithstanding paragraph 1, creditors may request the consumer to open or maintain a payment or a savings account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default.

(3) In the case where the creditor requires the consumer to hold an insurance policy related to the mortgage credit agreement, the creditor shall accept the insurance policy from a supplier different to his preferred supplier where this policy has a level of guarantee equivalent to the one the creditor has proposed.

#### Sub-section 4 - Assessment of the consumer's creditworthiness.

##### Article L. 226-12.

(1) Before concluding a mortgage credit agreement, the creditor shall thoroughly assess the consumer's creditworthiness. That assessment shall take appropriate account of factors relevant to verifying the prospect of the consumer to meet his obligations under the mortgage credit agreement.

(2) The procedures and information on which the assessment is based shall be established, documented and maintained by the creditor.

(3) The assessment of creditworthiness shall not rely predominantly on the value of the residential immovable property exceeding the amount of the credit or the assumption that the residential immovable property will increase in value unless the purpose of the mortgage credit agreement is to construct or renovate the residential immovable property.

(4) Where a creditor concludes a mortgage credit agreement, the creditor shall not subsequently cancel or alter the mortgage credit agreement to the detriment of the consumer on the grounds that the assessment of creditworthiness was incorrectly conducted. This paragraph shall not apply where it is demonstrated that the consumer knowingly withheld or falsified the information referred to in Article L. 226-13.

(5) The creditor may make the credit available to the consumer only where the result of the creditworthiness assessment indicates that the obligations resulting from the mortgage credit agreement are likely to be met in the manner required under that agreement.

In accordance with Article 26 of the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended, the creditor shall inform the consumer in advance whether a database will be consulted in the framework of the creditworthiness assessment.

Where the credit application is rejected, the creditor shall inform the consumer without delay of the rejection and, where applicable, that the decision is based on automated processing of data.

Where the rejection of the credit application is based on the result of a database consultation, the creditor shall inform the consumer without delay and without cost of the result of such consultation and of the particulars of the database consulted in the framework of the creditworthiness assessment.

The information shall be provided unless the provision of such information is prohibited by other national legislation or is contrary to objectives of public policy or public security.

(6) The consumer's creditworthiness shall be re-assessed on the basis of updated information before any significant increase in the total amount of credit is granted after the conclusion of the mortgage credit agreement unless such additional credit was envisaged and included in the original creditworthiness assessment.

#### Article L. 226-13.

(1) The assessment of creditworthiness referred to in Article L. 226-12 shall be carried out on the basis of information on the consumer's income and expenses, including outstanding financial commitments and current income, and other financial and economic circumstances which is necessary, sufficient and proportionate. The information shall be obtained by the creditor from the relevant internal or external sources, including the consumer, and including, where applicable, information provided to the mortgage credit intermediary during the credit application process. The information shall be appropriately verified, including through reference to independently verifiable documentation when necessary.

(2) Mortgage credit intermediaries shall accurately submit the information obtained from the consumer to the relevant creditor to enable the creditworthiness assessment to be carried out.

(3) Creditors shall specify in a clear and straightforward way at the pre-contractual phase the information and independently verifiable evidence that the consumer needs to provide and the timeframe for the provision. Such request for information shall be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment. Creditors may seek clarification of the information received in response to that request where necessary to enable the assessment of creditworthiness.

A creditor cannot terminate the mortgage credit agreement on the grounds that the information provided by the consumer before the conclusion of the mortgage credit agreement was incomplete, unless it is demonstrated that the consumer knowingly withheld or falsified the information.

(4) Consumers shall provide information in response to the request referred to in the first subparagraph of paragraph 3 that is correct and as complete as necessary so that the creditor may conduct a proper creditworthiness assessment.

The creditor or, where applicable, the mortgage credit intermediary shall warn the consumer that, where the creditor is unable to carry out an assessment of creditworthiness because the consumer chooses not to provide the information or verification necessary for an assessment of creditworthiness, the credit cannot be granted. That warning may be provided to the consumer in a standardised format.

(5) This article and Article L. 226-12 shall be without prejudice to the Law of 2 August 2002 on the protection of persons with regard to the processing of personal data, as amended.

#### Article L. 226-14.

(1) The rules for assessing the market value of residential immovable property for mortgage lending purposes to be applied for the purposes of this chapter shall be defined in a grand-ducal regulation. These assessment rules aim to determine in a reliable manner the price that a buyer with no particular interest in this property would be willing to pay.

(2) Creditors shall use the assessment rules referred to in paragraph 1 when they carry out a property valuation. Where a valuation is conducted by a third party, the creditors shall take reasonable steps to ensure that the rules are applied.

(3) The internal and external appraisers conducting property valuations shall be professionally competent and sufficiently independent from the credit underwriting process so that they can provide impartial and objective valuation, which shall be documented in a durable medium and of which a record shall be kept by the creditor.

#### Sub-section 5 - Advisory services.

##### Article L. 226-15.

(1) The creditor and mortgage credit intermediary shall explicitly inform the consumer, in the context of a given transaction, whether advisory services are being or can be provided to the consumer.

(2) Before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor or mortgage credit intermediary shall provide the consumer with the following information on paper or another durable medium:

1. whether the recommendation will be based on considering only their own product range in accordance with point (2) of paragraph 3 or a wide range of products from across the market in accordance with point (3) of paragraph 3 so that the consumer can understand the basis on which the recommendation is made;
2. where applicable, the fee payable by the consumer for the advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.

The information referred to in the first subparagraph may be provided to the consumer in the form of additional pre-contractual information.

(3) Where advisory services are provided to consumers, in addition to the requirements set out in Articles L. 226-36 and L. 226-37:

1. creditors or mortgage credit intermediaries shall obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives so as to enable the recommendation of suitable mortgage credit agreements. Such an assessment shall be based on information that is up to date at that moment in time and shall take into account reasonable assumptions as to risks to the consumer's situation over the term of the proposed mortgage credit agreement;
2. creditors or tied mortgage credit intermediaries shall consider a sufficiently large number of mortgage credit agreements in their product range and recommend a suitable mortgage credit agreement or several suitable mortgage credit agreements from among their product range for the consumer's needs, financial situation and personal circumstances;
3. non-tied mortgage credit intermediaries shall consider a sufficiently large number of mortgage credit agreements available on the market and recommend a suitable mortgage credit agreement or several suitable mortgage credit agreements available on the market for the consumer's needs, financial situation and personal circumstances;
4. creditors or mortgage credit intermediaries shall act in the best interests of the consumer by:
  - a) informing themselves about the consumer's needs and circumstances; and
  - b) recommending suitable mortgage credit agreements in accordance with points (1), (2) and (3); and
5. creditors or mortgage credit intermediaries shall give the consumer a record on paper or on another durable medium of the recommendation provided.

(4) The use of the terms "independent advice" or independent advisor" by creditors or mortgage credit intermediaries providing advisory services shall be subject to the following conditions:

1. creditors or mortgage credit intermediaries shall consider a sufficiently large number of mortgage credit agreements available on the market; and

2. creditors or mortgage credit intermediaries shall not be remunerated for those advisory services by one or more creditors.

Point (2) shall apply only where the number of creditors considered is less than a majority of the market.

(5) Advisory services shall only be provided by creditors or mortgage credit intermediaries. The first subparagraph shall not apply to:

1. persons providing advisory services where those services are provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of those services;
2. insolvency practitioners providing advisory services in the context of managing existing debt where that activity is regulated by legal or regulatory provisions; and
3. persons providing public or voluntary debt advisory services which do not operate on a commercial basis.

The persons benefiting from the waiver in the second subparagraph shall not benefit from the right to provide advisory services for the entire territory of the European Union.

(6) This article shall be without prejudice to Article L. 226-9 and to the CSSF's competence to ensure that services are made available to consumers to help them understand their financial needs and which types of products are likely to meet those needs.

### Section 3 - Information and rights relating to mortgage credit agreements.

#### Sub-section 1 - Information concerning changes in the borrowing rate.

##### Article L. 226-16.

(1) The creditor shall inform the consumer of any change in the borrowing rate, on paper or another durable medium, before the change takes effect. The information shall state the amount of the payments to be made after the new borrowing rate takes effect and, in cases where the number or frequency of the payments changes, particulars thereof.

(2) The parties may agree in the mortgage credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically where the change in the borrowing rate is correlated with a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is available in the premises of the creditor and communicated personally to the consumer together with the amount of new periodic instalments.

(3) Where changes in the borrowing rate are determined by way of auction on the capital markets and it is therefore impossible for the creditor to inform the consumer of any change before the change takes effect, the creditor shall, in good time before the auction, inform the consumer on paper or on another durable medium of the upcoming procedure and provide an indication of how the borrowing rate could be affected.

#### Sub-section 2 - Variable rate credits.

##### Article L. 226-17.

Where the mortgage credit agreement is a variable rate credit whose determination of the rate is correlated with an index or reference rate:

1. any indexes or reference rates used to calculate the borrowing rate shall be clear, accessible, objective and verifiable by the parties to the mortgage credit agreement and the CSSF; and
2. historical records of indexes for calculating the borrowing rates shall be maintained either by the providers of these indexes or the creditors.

Sub-section 3 - Foreign currency mortgage credit agreements.

Article L. 226-18.

(1) A foreign currency mortgage credit agreement shall provide for:

1. the right for the consumer to convert the mortgage credit agreement into an alternative currency under conditions specified in the mortgage credit agreement; or
2. other arrangements to limit the exchange rate risk to which the consumer is exposed under the agreement.

(2) The alternative currency referred to in point (1) of paragraph 1 shall be:

1. the currency in which the consumer primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the mortgage credit agreement was made; or
2. the currency of the Member State in which the consumer either was resident at the time the mortgage credit agreement was concluded or is currently resident.

Creditors shall specify whether both of the choices referred to in points (1) and (2) of the first subparagraph are available to the consumer or only one of them.

(3) Where a consumer has a right to convert the mortgage credit agreement into an alternative currency in accordance with point (1) of paragraph 1, the exchange rate at which the conversion is carried out shall be the market exchange rate applicable on the day of application for conversion unless otherwise specified in the mortgage credit agreement.

(4) Where a consumer has signed a foreign currency mortgage credit agreement, the creditor shall warn the consumer on a regular basis on paper or on another durable medium at least where the value of the total amount payable by the consumer which remains outstanding or of the regular instalments varies by more than 20% from what it would be if the exchange rate between the currency of the mortgage credit agreement and the euro applicable at the time of the conclusion of the mortgage credit agreement were applied. The warning shall inform the consumer of a rise in the total amount payable by the consumer as well as, where applicable, of the right to convert to an alternative currency and the conditions for doing so or any other applicable mechanism for limiting the exchange rate risk to which the consumer is exposed.

(5) The arrangements applicable under this article shall be disclosed to the consumer in the ESIS. Where there is no provision in the mortgage credit agreement to limit the exchange rate risk to which the consumer is exposed to a fluctuation in the exchange rate of less than 20%, the ESIS shall include an illustrative example of the impact of a 20% fluctuation in the exchange rate.

Sub-section 4 - Calculation of the annual percentage rate of charge.

Article L. 226-19.

(1) The costs of opening and maintaining a specific account, of using a means of payment for both transactions and drawdowns on that account and of other costs relating to payment transactions shall be included in the total cost of credit to the consumer whenever the opening or maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed.

(2) The calculation of the APRC shall be based on the assumption that the mortgage credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the mortgage credit agreement.

(3) In the case of mortgage credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, in the charges contained in the APRC but unquantifiable at the time of calculation, the APRC shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the level set at the conclusion of the contract.

(4) For mortgage credit agreements for which a fixed borrowing rate is agreed in relation to the initial period of at least five years, at the end of which a negotiation on the borrowing rate takes place to agree on a new fixed rate for a further material period, the calculation of the additional, illustrative APRC disclosed in the ESIS shall cover only the initial fixed rate period and shall be based on the assumption that, at the end of the fixed borrowing rate period, the capital outstanding is repaid.

(5) Where the mortgage credit agreement allows for variations in the borrowing rate, the consumer shall be informed of the possible impacts of variations on the amounts payable and on the APRC at least by means of the ESIS. This shall be done by providing the consumer with an additional APRC which illustrates the possible risks linked to a significant increase in the borrowing rate. Where the borrowing rate is not capped, this information shall be accompanied by a warning highlighting that the total cost of the credit to the consumer, shown by the APRC, may change. This provision shall not apply to mortgage credit agreements where the borrowing rate is fixed for an initial period of at least five years, at the end of which a negotiation on the borrowing rate takes place in order to agree on a new fixed rate for a further material period, for which an additional, illustrative APRC is provided for in the ESIS.

(6) The mathematical formula to be used for the calculation of the APRC and the additional assumptions to be used, where applicable, for the calculation of the APRC are set out in a grand-ducal regulation.

#### Section 4 - Execution of mortgage credit agreements and related rights.

##### Sub-section 1 - Early repayment.

###### Article L. 226-20.

(1) The consumer shall have the right to discharge fully or partially his obligations under the mortgage credit agreement at any time before the time fixed by the agreement. In such cases, he shall be entitled to a reduction in the total cost of the credit to the consumer, such reduction consisting of the interest and the costs for the remaining duration of the contract.

(2) Where a consumer seeks to discharge his obligations under a mortgage credit agreement prior to the expiry of the agreement, he shall notify its intention to the creditor on paper or on another durable medium. The creditor shall provide the consumer without delay after receipt of the request, on paper or on durable medium, with the information necessary to consider that option. That information shall at least quantify the implications, including the exact amount of the reduction of the total cost of credit and the compensation referred to in paragraph 3, for the consumer of discharging his obligations prior to the expiry of the mortgage credit agreement and clearly set out any reasonable and justifiable assumptions used.

(3) In the event of a full or partial early repayment of the credit, the creditor is entitled to a fair and objectively justified compensation for the incurred costs directly linked to the early repayment of the credit. This compensation may not exceed the financial loss of the creditor.

Furthermore, where a mortgage credit agreement was signed in order to acquire a home used as actual and main residence by the consumer for at least two consecutive years, the compensation referred to in the first subparagraph may not exceed the value corresponding to six months of interests on the capital repaid during each early repayment, calculated at the borrowing rate applicable to the mortgage credit agreement on the day of the early repayment. This subparagraph shall not apply to the fraction of the aggregate amount of early repayments which exceed EUR 450,000.

(4) The mortgage credit agreement shall mention in a clear and concise manner, the right to early repayment, the procedure in case of early repayment, information on the right of the creditor to a compensation in the event of early repayment and the manner in which this compensation is determined, as laid down in this article.

(5) In case of a full or partial early repayment of the credit, no penalty can be imposed on the consumer by the creditor.

## Sub-section 2 - Arrears and foreclosure.

### Article L. 226-21.

(1) Creditors shall keep appropriate records concerning the types of immovable property accepted as a security as well as the related mortgage underwriting policies used.

(2) The Institut national de la statistique et des études économiques established by the Law of 10 July 2011 organising the Institut national de la statistique et des études économiques and amending the Law of 22 June 1963 laying down the salaries of civil servants, as amended, shall ensure an appropriate statistical monitoring of the residential property market, where appropriate by encouraging the development and use of specific price indexes which may be public or private or both.

### Article L. 226-22.

(1) Creditors shall exercise reasonable forbearance before foreclosure proceedings are initiated.

(2) Where the creditor defines and imposes charges on the consumer arising from the default, those charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default.

(3) The parties to a mortgage credit agreement may expressly agree that return or transfer to the creditor of the security or proceeds from the sale of the security is sufficient to repay the credit.

## Section 5 - Mortgage credit intermediaries.

### Sub-section 1 - Authorisation of mortgage credit intermediaries.

#### Article L. 226-23.

(1) No person may be established in Luxembourg as credit intermediary and carry out part or all of the mortgage credit intermediation activity referred to in point (14) of Article L. 226-1 or, without prejudice to the cases referred to in Article L. 226-15(5), provide advisory services as a primary activity or in an incidental manner without holding a written authorisation of the Minister responsible for the financial sector.

(2) Paragraph 1 shall not apply to credit institutions authorised pursuant to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, hereinafter referred to as "Directive 2013/36/EU", to professionals performing lending operations referred to in Article 28-4 of the Law of 5 April 1993 on the financial sector, as amended, or to financial institutions of another Member State referred to in Article 31 of the Law of 5 April 1993 on the financial sector, as amended.

#### Article L. 226-24.

(1) The authorisation is granted by the Minister responsible for the financial sector upon written application and after investigation by the CSSF on the conditions required under this chapter.

(2) The application for authorisation shall be accompanied by all the information necessary for its assessment.

(3) When the authorisation is granted, the mortgage credit intermediary may commence business immediately. The authorisation shall be granted for an unlimited period of time.

(4) The decision taken on an application for authorisation must be duly substantiated and notified to the applicant within six months of receipt of the application or, should the latter be incomplete, within six months of receipt of the information required for the decision. Such a decision shall in any event be adopted within 12 months of receipt of the application, failing which the absence of a decision shall be deemed to constitute notification of a decision refusing the application.

#### Article L. 226-25.

(1) In order to be authorised, a natural person established as a mortgage credit intermediary, and in case the mortgage credit intermediary is established as a legal person, the members of the board of directors or natural persons performing equivalent tasks within a mortgage credit intermediary which is a legal person but does not have a board of directors shall produce evidence of professional standing and possess the appropriate level of knowledge and competence in relation to mortgage credit agreements as referred to in Article L. 226-38.

Professional standing shall be assessed on the basis of criminal records and of any evidence tending to show that the persons referred to in the first subparagraph are of good repute and offer every guarantee of irreproachable conduct. They shall have a clean police record or any other equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with Book III, Title III of the Commercial Code or other legal provisions applicable in the countries where they have been declared bankrupt.

(2) Any change in the persons as referred to in the first subparagraph of paragraph 1 shall be communicated in advance to the CSSF. The CSSF may request all such information as may be necessary regarding the persons who may be required to fulfil the legal requirements with respect to professional standing. The CSSF shall refuse the proposed change if these persons are of insufficient professional standing or where there are objective and demonstrable grounds for believing that the proposed change would pose a threat to the sound and prudent management of the mortgage credit intermediary.

(3) Granting the authorisation implies that the members of the administrative, management and supervisory bodies or, where applicable, the natural persons, shall, on their own volition, notify in writing and in a complete, coherent and comprehensible form, to the CSSF any changes regarding the substantial information on which the CSSF based its investigation of the application for authorisation.

(4) Where authorisation is granted to a mortgage credit intermediary established as a legal person, the persons referred to in paragraph 1 shall be at least two in number. In the case of a mortgage credit intermediary which is a natural person managed by a single person, the authorisation shall be subject to the production of evidence by the applicant to the CSSF that it has taken alternative arrangements to ensure a sound and prudent management.

#### Article L. 226-26.

Authorisation shall be conditional on the mortgage credit intermediary holding professional indemnity insurance covering the territories in which it offers services, or some other comparable guarantee against liability arising from professional negligence. For a tied mortgage credit intermediary, the insurance or comparable guarantee can be provided by the creditor for which the tied mortgage credit intermediary is empowered to act.

#### Article L. 226-27.

The authorisation for an applicant which is a legal person shall be subject to the production of evidence of the existence in Luxembourg of the head office and the registered office of the applicant.

The authorisation for an applicant who is a natural person shall be subject to the production of evidence that this person actually carries on his main business in Luxembourg and has his head office in Luxembourg.

#### Article L. 226-28.

Mortgage credit intermediaries authorised in Luxembourg and branches established in Luxembourg by mortgage credit intermediaries admitted in another Member State pursuant to Article 29 of Directive 2014/17/EU shall be registered in the register of mortgage credit intermediaries drawn up by the CSSF.

The CSSF shall keep and update the register of mortgage credit intermediaries and publish it on its website.

The register of mortgage credit intermediaries shall contain at least the following information:

1. the names of the *dirigeants* (managers) who are responsible for the mortgage credit intermediation activity;
2. the Member State(s) in which the mortgage credit intermediary conducts business under the rules on the establishment of a branch or on the freedom to provide services and of which the mortgage credit intermediary has informed the CSSF in accordance with Article L. 226-30;
3. whether the mortgage credit intermediary is tied or not;
4. the creditor(s) for which the tied mortgage credit intermediary acts.

#### Article L. 226-29.

Mortgage credit intermediaries shall not be allowed to appoint appointed representatives as referred to in point (21) of Article L. 226-1 to carry out part or all of the mortgage credit intermediation activities set out in point (14) of Article L. 226-1 or to provide advisory services in Luxembourg.

#### Sub-section 2 - Establishment of branches and freedom to provide services in another Member State by mortgage credit intermediaries governed by Luxembourg law.

#### Article L. 226-30.

(1) A mortgage credit intermediary whose home Member State is Luxembourg and which intends to carry out the activity of mortgage credit intermediary or to provide advisory services for the first time on the territory of one or several other Member States by way of establishment of a branch or the free provision of services shall first inform the CSSF of his intention.

Mortgage credit intermediaries shall not be allowed to provide their services in relation to mortgage credit agreements offered by non-credit institutions in a Member State where such non-credit institutions are not allowed to operate.

(2) Within a period of one month after being informed, the CSSF shall notify the competent authorities of the host Member State(s) concerned of the intention of the mortgage credit intermediary and shall at the same time inform the mortgage credit intermediary concerned of that notification. The CSSF shall notify the competent authorities of the host Member State(s) concerned of the creditors to which the mortgage credit intermediary is tied and whether the creditors take full and unconditional responsibility for the mortgage credit intermediary's activities.

(3) The mortgage credit intermediary may start business in the host Member State concerned one month after the date on which it was informed by the CSSF of the notification referred to in paragraph 2.

#### Sub-section 3 - Establishment of branches and freedom to provide services in Luxembourg by mortgage credit intermediaries governed by foreign law.

#### Article L. 226-31.

(1) By way of derogation from Article L. 226-23, mortgage credit intermediaries whose home Member State is a Member State other than Luxembourg may carry out in Luxembourg the activity of mortgage credit intermediary referred to in Article 4(5) of Directive 2014/17/EU or provide advisory services as referred to in Article 4(21) of the above-mentioned directive by way of establishment of a branch or the free provision of services, provided that the activities are covered by their admission in the home Member State.

(2) Before the branch of a mortgage credit intermediary whose home Member State is a Member State other than Luxembourg commences its activities in Luxembourg or within two months of receiving the notification referred to in the second subparagraph of Article 32(3) of Directive 2014/17/EU, the CSSF as the competent authority of the host Member State shall prepare for the supervision of the branch of

the mortgage credit intermediary in accordance with Article L. 226-32 and, if necessary, indicate to the mortgage credit intermediary the conditions under which, in areas not harmonised in EU law, those activities are to be carried out in Luxembourg.

(3) The CSSF, as the competent authority of the host Member State shall use the information referred to in Article 32(3) of Directive 2014/17/EU received from the home Member State to enter the necessary information into the register of mortgage credit intermediaries referred to in Article L. 226-28.

#### Sub-section 4 - Supervision of mortgage credit intermediaries.

##### Article L. 226-32.

(1) The CSSF shall be competent to supervise the activities of mortgage credit intermediaries authorised in Luxembourg and ensure that they comply with the requirements defined in Articles L. 226-25 and L. 226-26 on a continuing basis.

(2) The CSSF shall ensure that the services provided in Luxembourg by mortgage credit intermediaries for whom the home Member State is a Member State other than Luxembourg via their branch in Luxembourg comply with the obligations laid down in Articles L. 226-4(3), L. 226-5, L. 226-6, L. 226-7, L. 226-8, L. 226-9, L. 226-10, L. 226-13, L. 226-15, L. 226-19, L. 226-35, L. 226-36(1) and L. 226-37.

Where the CSSF as the competent authority of the host Member State ascertains that a mortgage credit intermediary which has a branch in Luxembourg is in breach of the measures laid down in Articles L. 226-4(3), L. 226-5, L. 226-6, L. 226-7, L. 226-8, L. 226-9, L. 226-10, L. 226-13, L. 226-15, L. 226-19, L. 226-35, L. 226-36(1) and L. 226-37, it shall require the mortgage credit intermediary concerned to put an end to its irregular situation.

If the mortgage credit intermediary concerned fails to take the necessary steps, the CSSF as the competent authority of the host Member State shall take all appropriate action to ensure that the mortgage credit intermediary concerned puts an end to this irregular situation. The nature of that action shall be communicated by the CSSF to the competent authorities of the mortgage credit intermediary's home Member State.

If, despite the action taken by the CSSF as the competent authority of the host Member State, the mortgage credit intermediary persists in breaching the measures referred to in the first subparagraph in force in Luxembourg, the CSSF may, after informing the competent authorities of the home Member State, take appropriate action to prevent or to penalise further irregularities and, in so far as necessary, to prevent the mortgage credit intermediary from initiating any further transactions in Luxembourg. The CSSF shall inform the European Commission of any such action without undue delay.

(3) The CSSF as the competent authority of the host Member State in which the branch is located shall have the right to examine branch arrangements and to request changes thereof. Such changes are requested by the CSSF where they are strictly needed so that the CSSF fulfils its responsibilities under paragraph 2 and to enable the competent authorities of the home Member State to enforce the obligations under Article 7(2), (3) and (4) of Directive 2014/17/EU with respect to the services provided by the branch.

(4) Where the CSSF as the competent authority of the host Member State has clear and demonstrable grounds for concluding that a mortgage credit intermediary acting in Luxembourg under the freedom to provide services is in breach of the obligations arising from the measures under this chapter or that a mortgage credit intermediary which has a branch in Luxembourg is in breach of the obligations arising from the measures of this chapter, other than those specified in paragraph 2, it shall refer those findings to the competent authority of the home Member State which shall take the appropriate action.

Where the competent authority of the home Member State fails to take any action within one month from obtaining those findings or where, despite the action taken by the competent authority of the home Member State, a mortgage credit intermediary persists in acting in a manner that is clearly prejudicial to the interests of Luxembourg consumers or orderly functioning of the markets, the CSSF as the competent authority of the host Member State:

1. shall, after having informed the competent authority of the home Member State, take all appropriate action needed to protect consumers and ensure the proper functioning of the markets, including by preventing the offending mortgage credit intermediary from initiating any further transactions in Luxembourg. The European Commission and the European Banking Authority created by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority, amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, hereinafter referred to as "Regulation (EU) No 1093/2010", shall be informed of such action without undue delay;
2. may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(5) Where a mortgage credit intermediary admitted in another Member State pursuant to Article 29 of Directive 2014/17/EU has established a branch in Luxembourg, the competent authorities of the home Member State, in the exercise of their responsibilities and after having informed the CSSF as the competent authority of the host Member State, may carry out on-site inspections in that branch in order to monitor compliance with the provisions of the above-mentioned directive.

Where a mortgage credit intermediary authorised in Luxembourg has established a branch within the territory of another Member State, the CSSF as the competent authority of the home Member State, in the exercise of its responsibilities and after having informed the competent authorities of the host Member State, shall carry out on-site inspections in that branch in accordance with Article 34(5) of Directive 2014/17/EU.

(6) Where the CSSF as the competent authority of the home Member State disagrees with such action taken by the host Member State pursuant to Article 34(2) of Directive 2014/17/EU, it may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(7) Tied mortgage credit intermediaries shall be subject to the supervision referred to in this article directly or as part of the supervision of the creditor on behalf of which they act if the creditor is a credit institution authorised in accordance with Directive 2013/36/EU, a professional performing lending operations referred to in Article 28-4 of the Law of 5 April 1993 on the financial sector, as amended, or a financial institution from another Member State referred to in Article 31 of the Law of 5 April 1993 on the financial sector, as amended. Where the tied mortgage credit intermediary provides services in a Member State other than Luxembourg, then the tied mortgage credit intermediary shall be subject to supervision directly.

(8) Without prejudice to this article, creditors shall monitor the activities of tied mortgage credit intermediaries referred to in Article L. 226-1, point (15), letter (a) in order to ensure that they comply with this chapter.

#### Article L. 226-33.

For the purposes of applying this chapter, the CSSF shall have all the powers of supervision, intervention, inspection and investigation which are necessary to exercise its functions in respect of creditors and mortgage credit intermediaries.

The powers of the CSSF include the right to:

1. have access to any document in any form whatsoever, and to receive a copy of it;
2. request any information useful to fulfil its functions from the creditors and mortgage credit intermediaries registered in the register of mortgage credit intermediaries;
3. carry on on-site inspections or investigations at creditors and mortgage credit intermediaries registered in the register of mortgage credit intermediaries;
4. require the cessation of any practice that is contrary to the provisions of this chapter and its implementing measures;
5. adopt any type of measure necessary to ensure that the creditors and mortgage credit intermediaries registered in the register of mortgage credit intermediaries continue to comply with the requirements of this chapter and its implementing measures;

6. refer information to the State Prosecutor for criminal prosecution.

In particular, the CSSF has the right to require from any creditor and mortgage credit intermediary registered in the register of mortgage credit intermediaries any information relevant for the performance of its tasks in accordance with this chapter. It may inspect books, accounts, registers or other deeds and documents of those persons.

Sub-section 5 - Withdrawal of authorisation of mortgage credit intermediaries.

Article L. 226-34.

(1) The authorisation granted to a mortgage credit intermediary in accordance with Articles L. 226-23 to L. 226-29 shall be withdrawn where such a mortgage credit intermediary:

1. expressly renounces the authorisation or has carried out neither mortgage credit intermediation activities referred to in point (14) of Article 226-1 nor provided advisory services for the preceding six months;
2. has obtained the authorisation through false or misleading statements or any other irregular means;
3. no longer fulfils the requirements under which authorisation was granted;
4. has seriously or systematically infringed the provisions of this chapter.

(2) Reasons shall be given for any withdrawal of an authorisation and the mortgage credit intermediary concerned shall be informed accordingly.

(3) Where the authorisation of a mortgage credit intermediary is withdrawn, the CSSF shall notify the competent authorities of the host Member States of such withdrawal as soon as possible and at the latest within 14 days, by any appropriate means.

(4) Mortgage credit intermediaries whose authorisation has been withdrawn shall be deleted by the CSSF from the register of mortgage credit intermediaries without undue delay.

Sub-section 6 - Information requirements concerning mortgage credit intermediaries.

Article L. 226-35.

(1) Before the carrying out of any of the mortgage credit intermediation activities referred to in point (14) of Article L. 226-1, the mortgage credit intermediary shall provide the consumer with at least the following information on paper or on another durable medium:

1. the identity and the geographical address of the mortgage credit intermediary;
2. the register in which it has been included, the registration number, where applicable, and the means for verifying the registration in the register;
3. whether the mortgage credit intermediary is tied to or works exclusively for one or more creditors. Where the mortgage credit intermediary is tied to or works exclusively for one or more creditors, it shall provide the names of the creditors for which it is acting. The mortgage credit intermediary may disclose that it is independent where it meets the conditions laid down in Article L. 226-15(4);
4. whether the mortgage credit intermediary offers advisory services;
5. the fee, where applicable, payable by the consumer to the mortgage credit intermediary for its services or where this is not possible, the method for calculating the fee;
6. the procedures allowing consumers or other interested parties to register complaints internally about mortgage credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;
7. where applicable, the existence and where known the amount of commissions or other inducements, payable by the creditor or third parties to the mortgage credit intermediary for its services in relation to the mortgage credit agreement. Where the amount is not known at the time of disclosure the mortgage credit intermediary shall inform the consumer that the actual amount will be disclosed at a later stage in the ESIS.

(2) Mortgage credit intermediaries receiving commission from one or more creditors shall, at the consumer's request, provide information on the variation in levels of commission payable by the different creditors providing the mortgage credit agreements being offered to the consumer. The consumer shall be informed that he has the right to request such information.

(3) Where the mortgage credit intermediary charges a fee to the consumer and additionally receives commission from the creditor or a third party, the mortgage credit intermediary shall explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.

(4) The mortgage credit intermediary shall communicate any possible fees payable to it by the consumer for its services provided to the creditor, for the purpose of calculating the APRC.

#### Section 6 - Conditions applicable to creditors and mortgage credit intermediaries.

##### Sub-section 1 - General conduct of business obligations.

###### Article L. 226-36.

(1) Creditors and mortgage credit intermediaries shall, when manufacturing and granting mortgage credit agreements, intermediating or providing advisory services on credit and, where appropriate, ancillary services to consumers or when executing a mortgage credit agreement, act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers. In relation to the granting, intermediating or provision of advisory services on credit and, where appropriate, of ancillary services the activities shall be based on information about the consumer's circumstances and any specific requirement made known by a consumer and on reasonable assumptions about risks to the consumer's situation over the term of the mortgage credit agreement. In relation to such provision of advisory services, the activity shall in addition be based on the information required under point (1) of Article L. 226-15(3).

(2) The manner in which creditors remunerate their staff and mortgage credit intermediaries and the manner in which mortgage credit intermediaries remunerate their staff shall not impede compliance with the obligation set out in paragraph 1.

(3) Creditors shall, when establishing and applying remuneration policies for staff responsible for the assessment of creditworthiness, comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

1. the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the creditor;
2. the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the creditor, and incorporates measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of applications accepted.

(4) Where creditors or mortgage credit intermediaries provide advisory services the remuneration structure of the staff involved shall not prejudice their ability to act in the consumer's best interest and in particular shall not be contingent on sales targets.

##### Sub-section 2 - Knowledge and competence requirements.

###### Article L. 226-37.

Creditors and mortgage credit intermediaries shall ensure that their staff possesses and keeps up-to-date an appropriate level of knowledge and competence in relation to the manufacturing, the offering or granting of mortgage credit agreements, the carrying out of mortgage credit intermediation activities referred to in point (14) of Article L. 226-1 or the provision of advisory services. Where the conclusion of a mortgage credit agreement includes an ancillary service, appropriate knowledge and competence in relation to that ancillary service shall be ensured.

Without prejudice to Article L. 226-32, every creditor shall check whether its tied mortgage credit intermediaries referred to in Article L. 226-1, point (15), letter (a), and their staff comply with the knowledge and competence requirements.

(2) The creditors' and mortgage credit intermediaries' staff shall comply with the knowledge and competence requirements referred to in Article L. 226-38.

Where a creditor or a mortgage credit intermediary provides its services within the territory of another Member State by way of a branch, it shall ensure that the staff of this branch complies with the knowledge and competence requirements established by the host Member State of this branch in accordance with Directive 2014/17/EU.

Where a creditor or a mortgage credit intermediary provides its services within the territory of one or more other Member States under the freedom to provide services, it shall ensure that its staff complies with the knowledge and competence requirements referred to in Article L. 226-38 and the requirements set by the host Member States with respect to Annex III, paragraph 1, letters (b), (c), (e) and (f) of Directive 2014/17/EU in the Member States using the option referred to in point (ii) of Article 9(3) of this directive.

The staff of a Luxembourg branch of a creditor or a mortgage credit intermediary for which the home Member State is a Member State other than Luxembourg shall comply with the knowledge and competence requirements referred to in Article L. 226-38.

(3) The CSSF shall supervise compliance with the requirements of paragraph 1 and have powers to require creditors and mortgage credit intermediaries to provide such evidence as the CSSF deems necessary to enable such supervision.

For the effective supervision of creditors and mortgage credit intermediaries providing their services within the territory of one or more other Member States under the freedom to provide services, the CSSF as the competent authority of the home Member State shall closely cooperate with the competent authorities of the host Member States to ensure the effective supervision and enforcement of the knowledge and competence requirements to be complied with in the host Member State.

Where the CSSF acts as the competent authority of the host Member State, it shall closely cooperate with the competent authority of the home Member State and the competent authorities of the other host Member States in accordance with Article 9(5) of Directive 2014/17/EU.

The CSSF and the competent authorities may delegate tasks and responsibilities to each other in accordance with Article 9(5) of Directive 2014/17/EU.

#### Article L. 226-38.

(1) The minimum knowledge and competence requirements in the area of mortgage credit agreements applicable to the creditors' and mortgage credit intermediaries' staff as well as the persons referred to in Article L. 226-25(1) shall be based on:

1. appropriate knowledge of mortgage credit agreement products and the ancillary services typically offered with them;
2. appropriate knowledge of the Consumer Code and, in particular, the provisions relating to mortgage credit agreements;
3. appropriate knowledge and understanding of the immovable property purchasing process;
4. appropriate knowledge of security valuation;
5. appropriate knowledge of organisation and functioning of land registers;
6. appropriate knowledge of the mortgage credit market in Luxembourg;
7. appropriate knowledge of business ethics standards;
8. appropriate knowledge of the consumer's creditworthiness assessment process or where applicable, competence in assessing consumers' creditworthiness;
9. appropriate level of financial and economic competency.

The minimum knowledge and competence requirements may vary according to the role and responsibilities of the staff and *dirigeants* concerned.

(2) The appropriate level of knowledge and competence shall be determined on the basis of:

1. professional qualifications; or
2. professional experience, which shall not be less than three years working in areas related to the origination, distribution or intermediation of credit products.

(3) Until 21 March 2019, the minimum knowledge and competence requirements shall be deemed fulfilled where the persons concerned show evidence of professional experience of at least three years in the areas related to the origination, distribution and intermediation of credit products.

#### Section 7 - Implementing provisions.

##### Sub-section 1 – Mandatory rules.

#### Article L. 226-39.

The provisions of this chapter cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating mortgage credit agreements into credit agreements the character or purpose of which would make it possible to avoid its application.

Any formulations contrary to the first subparagraph shall be deemed null and not written.

##### Sub-section 2 - Sanctions.

#### Article L. 226-40.

Any clause or combination of clauses of a mortgage credit agreement concluded in violation of this chapter and its implementing regulations shall be deemed null and not written. However, this nullity can only be invoked by the consumer.

#### Article L. 226-41.

(1) The natural or legal persons subject to the provisions of this chapter may be punished by the CSSF in case of:

1. failure to comply with:
  - a) the provisions of Articles L. 226-5, L. 226-6, L. 226-7, L. 226-8, L. 226-9, L. 226-10, L. 226-11, L. 226-12, L. 226-13, L. 226-14 and L. 226-15 on information and practices preceding the conclusion of the mortgage credit agreement, by creditors and mortgage credit intermediaries;
  - b) the provisions of Articles L. 226-16, L. 226-17, L. 226-18 and L. 226-19 on information and rights concerning mortgage credit agreements, by creditors;
  - c) the provisions of Articles L. 226-20, L. 226-21 and L. 226-22 on the execution of mortgage credit agreements and the exercise of the rights related thereto, by creditors;
  - d) the provisions of Articles L. 226-23, L. 226-24, L. 226-25, L. 226-26, L. 226-27, L. 226-28, L. 226-29, L. 226-30, L. 226-31 and L. 226-35 on mortgage credit intermediaries, by mortgage credit intermediaries;
  - e) the provisions of Articles L. 226-36, L. 226-37 and L. 226-38 on the requirements applicable to creditors and mortgage credit intermediaries, by creditors and mortgage credit intermediaries;
2. refusal to provide documents or other requested information required by the CSSF for the purposes of applying this chapter;
3. provision of documentation or other information that proves to be incomplete, incorrect or false;
4. preclusion of the performance of the powers of supervision, inspection and investigation of the CSSF;
5. failure to act in response to the orders of the CSSF issued in accordance with point (4) of the second subparagraph of Article L. 226-33.

(2) In order of seriousness, the CSSF may impose the following sanctions:

1. a warning;
2. a reprimand;
3. an administrative fine amounting to not less than EUR 251 and not more than EUR 250,000 or, if the offence procured direct or indirect pecuniary benefit to the persons referred to in this article, a fine of an amount that cannot be less than the profit made or exceed five times that amount;
4. one or more of the following measures:
  - a) a temporary or definitive prohibition to carry out one or several mortgage credit intermediation operations or activities or to provide advisory services;
  - b) a temporary or definitive prohibition on participation in the profession by the *de jure* or *de facto* directors, managers or *dirigeants* personnel of mortgage credit intermediaries.

When imposing a sanction, the CSSF shall take into account the nature, the duration and the seriousness of the offence, the conduct and background of the natural or legal person to be punished, the damage to third parties and the advantages or profits which could have been or which were made through the offence.

(3) The CSSF may disclose on its website any sanctions imposed under this article, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Any information published pursuant to the first subparagraph shall remain on the website of the CSSF for five years as from the date of publication.

#### Article L. 226-42.

Any decision taken by the CSSF pursuant to this chapter may be referred to the *Tribunal administratif* (Administrative Tribunal), which deals with the merits of the case. The case may be filed within one month as from the notification of the decision, or else shall be time-barred.

#### Article L. 226-43.

Shall be punished by imprisonment of eight days to three years and a fine of between EUR 251 and EUR 25,000 or only one of these sanctions, the creditor or mortgage credit intermediary which concluded or attempted to conclude via doorstep selling mortgage credit agreements without taking into account the refusal of the consumer to be canvassed or solicited or by ignoring his request that the creditor or mortgage credit intermediary leave the premises or not come back.

### Sub-section 3 - Cooperation between competent authorities of different Member States

#### Article L. 226-44.

(1) The CSSF shall cooperate with the competent authorities of the other Member States whenever necessary for the purposes of carrying out its duties under this chapter and the duties of the competent authorities of the other Member States under Directive 2014/17/EU, making use of its powers set out in this chapter or in this directive.

The CSSF shall render assistance to competent authorities of the other Member States by exchanging information with these authorities for the purposes of Directive 2014/17/EU and cooperating in any investigation or supervisory activities for the purposes of this directive.

(2) The CSSF shall without undue delay supply the competent authorities of the other Member States which are contact points pursuant to Article 36(1) of Directive 2014/17/EU with the information required for the purposes of carrying out their duties under this directive.

Where the CSSF exchanges information with the competent authorities of the other Member States, it may indicate at the time of communication that the communicated information may not be disclosed

without its express agreement, in which case such information may be exchanged solely for the purposes for which the CSSF gave its agreement.

The CSSF may transmit the information received to the other competent authorities, however it shall not transmit the information to other bodies or natural or legal persons without the express agreement of the competent authorities which disclosed it and solely for the purposes for which those competent authorities gave their agreement, except if the disclosure of the information is required by or pursuant to a law in which case it shall immediately inform the contact point that supplied the information.

(3) If the CSSF is requested to cooperate in carrying out an investigation or supervisory activity or to exchange information as provided for in paragraph 2, it may refuse to act on it only where:

1. the investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of the Luxembourg State;
2. judicial proceedings have already been initiated in respect of the same actions and the same persons before the Luxembourg courts; or
3. final judgement has already been delivered in Luxembourg in respect of the same persons and the same actions.

In the event of such a refusal, the CSSF shall notify the requesting competent authority accordingly, providing as detailed information as possible.

(4) The CSSF may refer the situation to the European Banking Authority where its request for cooperation, in particular the exchange of information, in accordance with Article 36 of Directive 2014/17/EU, has been rejected or has not been acted upon within a reasonable time, and request the European Banking Authority's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(5) The CSSF shall cooperate with the authorities responsible for the out-of-court settlement of consumer disputes from the other Member States in order to facilitate the out-of-court resolution of cross-border disputes concerning mortgage credit agreements.

#### Sub-section 4 - Final provisions.

##### Article L. 226-45.

(1) This chapter shall not apply to mortgage credit agreements existing before 21 March 2016.

(2) The mortgage credit intermediaries which have carried out mortgage credit intermediation activities set out in point (14) of Article L. 226-1 before 21 March 2016 and which are not yet authorised in accordance with this chapter may continue to carry out those activities until 21 March 2017. Where a mortgage credit intermediary relies on this derogation it may perform the activities only in Luxembourg unless it satisfies the necessary legal requirements of the host Member State.

(3) The creditors and mortgage credit intermediaries which have performed activities regulated by this chapter before 20 March 2014 shall comply with Article L. 226-37 before 21 March 2017."

3° In the first subparagraph of Article L. 320-5, the words "and Articles L. 226-1 to L. 226-45" shall be added after the words "and L. 224-27".