

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 22 February 2017

To all professionals subject to the  
prudential supervision of the CSSF

**CIRCULAR CSSF 17/651**

**Re: 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 (hereinafter “Law of 23 December 2016”)**

Ladies and Gentlemen,

We are pleased to inform you that the Law of 23 December 2016 which introduces a new Chapter into Title 2 of Book 2 of the Consumer Code titled “*Chapter 6 - Mortgage credit agreements*” (hereinafter “Chapter 6 of the Consumer Code”) came into force on 1 January 2017 following its publication in Mémorial A No 302 of 28 December 2016. Chapter 6 of the Consumer Code includes Articles L. 226-1 to L. 226-45.

The purpose of this circular is twofold: presenting an outline of Chapter 6 of the Consumer Code and drawing attention to the entry into force of certain Guidelines of the European Banking Authority that apply in this context. This circular also informs on the characteristics of the “representative” example referred to in Article L. 226-6(2) as regards advertising in relation to mortgage credit agreements.

**1. Scope of application of Chapter 6 of the Consumer Code**

Chapter 6 of the Consumer Code applies to:

- credit agreements either secured by a mortgage or by another comparable security on residential immovable property or secured by a right related to residential immovable property; and

- credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

## **2. Competent authority**

The legislator designated the CSSF as the competent authority empowered to ensure the application and enforcement of Chapter 6 of the Consumer Code. The CSSF is also responsible for the out-of-court settlement of disputes of consumers with creditors and mortgage credit intermediaries in relation to mortgage credit agreements and for the promotion of measures fostering consumer education with respect to responsible borrowing and debt management.

## **3. Information and practices preliminary to the conclusion of a mortgage credit agreement**

Article L. 226-6 provides that any advertising relating to mortgage credit agreements, which specifies an interest rate or figures relating to the cost of credit shall specify in a clear, concise and prominent way some information called “standard information”. Article L. 226-6(2) provides that certain information shall be indicated by means of a representative example, the characteristics of which shall be determined by the CSSF.

In this regard, the CSSF requires that the representative example have the following characteristics:

- the total amount of the credit and the repayment duration chosen by the creditor for its example shall correspond as much as possible to the characteristics of the credit agreement that the creditor advertises;
- the total amount of the credit granted in the representative example shall be at least EUR 50,000 or a multiple thereof and shall not exceed EUR 800,000;
- the repayment duration shall be equal to five years or a multiple thereof without exceeding thirty years;
- the advertisement shall specify that the representative example serves as an example;
- the example is presented in a font size at least as big as that used for other information stated in the advertisement;
- the example shall be featured in the body of the advertisement text and shall not, e.g., be featured in a footnote of the advertisement.

Article L. 226-8 lays down that the creditor, or, where applicable, the mortgage credit intermediary, provides 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, by means of the European Standardised Information Sheet (ESIS).

Article L. 226-8(2) provides that the ESIS shall be included in a grand-ducal regulation. The CSSF specifies in this respect that the Grand-ducal Regulation of 23 December 2016 amending the regulatory part of the Consumer Code which was published on 28 December 2016 in Mémorial A introduces the ESIS and provides explanations in this regard. The Grand-ducal Regulation of 23 December 2016 is available on the Legilux website:

<http://legilux.public.lu/eli/etat/leg/loi/2016/12/23/n24/jo>

Moreover, Articles L. 226-9 and L. 226-10 lay down that the creditor, or, where applicable, the mortgage credit intermediary, shall provide explanations and information on the mortgage credit agreements to the consumer.

Articles L. 226-12 and L. 226-13 lay down provisions relating to the assessment of the consumer's creditworthiness. In this respect, the CSSF wishes to draw the attention of the creditors on Article L. 226-12 under the terms of which the creditor may only make the credit available to the consumer where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement.

It should be noted in this context that, on 19 August 2015, the European Banking Authority (EBA) published the "Guidelines on creditworthiness assessment" (Ref.: EBA/2015/11) (hereinafter the "2015/11 Guidelines"). The purpose of the 2015/11 Guidelines is to further clarify the creditors' requirements to assess the consumer's creditworthiness. More specifically, the 2015/11 Guidelines provide, in particular, details regarding the requirements set out in Articles 18 and 20(1) of Directive 2014/17/EU to assess the consumer's creditworthiness in respect of credit agreements which fall under the scope of Article 3 of Directive 2014/17/EU.

The 2015/11 Guidelines specify the following requirements:

- verification of the consumer's income;
- documentation and retention of information;
- identification and prevention of misrepresented information;
- assessment of the consumer's ability to meet his/her obligations under the credit agreement;
- allowance for the consumer's committed and other non-discretionary expenditures;
- allowance for potential future negative scenarios.

The 2015/11 Guidelines are available on the EBA website at:

<https://www.eba.europa.eu/documents/10180/1092161/EBA-GL-2015-11+Guidelines+on+creditworthiness+assessment.pdf>

#### **4. Information on the rates of the mortgage credit agreements**

It should be noted that Articles L. 226-16 and L. 226-17 lay down specific provisions regarding the information of consumers on changes to the borrowing rate and regarding variable rate credits.

Moreover, Article L. 226-19 sets out that the mathematical formula for the calculation of the APRC, as well as the additional assumptions to be used, where applicable, for the calculation of the APRC, shall be laid down in a grand-ducal regulation. The CSSF wishes to specify in this respect that the Grand-ducal Regulation of 23 December 2016 amending the regulatory part of the Consumer Code and published on 28 December 2016 in Mémorial A, provides for the mathematical formula to be used for the calculation of the APRC and the additional assumptions that may be necessary for the calculation of the APRC. The aforementioned Grand-ducal Regulation is available on the Legilux website at:

<http://legilux.public.lu/eli/etat/leg/loi/2016/12/23/n24/jo>

## **5. Execution of mortgage credit agreements and related rights**

Article L. 226-20 expressly grants an early repayment right to the consumer and provides for provisions regulating this right.

Furthermore, it should be noted that, on 19 August 2015, the EBA published the “Guidelines on arrears and foreclosure” (Ref.: EBA/GL/2015/12) (hereinafter “2015/12 Guidelines”). The purpose of the 2015/12 Guidelines is to enhance the protection of consumers in payment difficulties. More precisely, the 2015/12 Guidelines aim at providing details on the requirements laid down in Article 28 of Directive 2014/17/EU for credit agreements that fall under the scope of Article 3 of Directive 2014/17/EU.

The 2015/12 Guidelines specify the following requirements:

- establishment of policies and procedures;
- engagement with the consumer;
- provision of information and assistance to the consumer;
- resolution process for payment difficulties;
- documentation of dealings with the consumer and retention of records.

The 2015/12 Guidelines are available on the EBA website at:

<https://www.eba.europa.eu/documents/10180/1092172/EBA-GL-2015-12+Guidelines+on+arrears+and+foreclosure.pdf>

## **6. Mortgage credit intermediaries**

Section 5 of Chapter 6 of the Consumer Code introduces the mortgage credit intermediary into Luxembourg law and determines the conditions to be met in order to be granted authorisation as a mortgage credit intermediary. It should be noted that the CSSF is responsible for examining the application files. The authorisations are granted by the Minister responsible for the financial centre.

The supervision of the activities of mortgage credit intermediaries authorised in Luxembourg falls under the competence of the CSSF.

Moreover, Articles L. 226-30 and L.226-31 deal with the establishment of branches and the freedom to provide services by mortgage credit intermediaries.

It should be noted in this respect that, on 19 October 2015, the EBA published the “Guidelines on passport notifications for credit intermediaries under the Mortgage Credit Directive” (Ref.: EBA/GL/2015/19) (hereinafter the “2015/19 Guidelines”). The purpose of the 2015/19 Guidelines is to provide details on the requirements for passport notifications laid down in Article 32 of Directive 2014/17/EU.

The 2015/19 Guidelines specify the following requirements:

- exercise of the freedom to provide services;
- exercise of the freedom of establishment;
- transmission of the notification;
- registration;
- notification of changes to the information in the initial notification.

The 2015/19 Guidelines are available on the EBA website at:  
<http://www.eba.europa.eu/documents/10180/1158221/EBA-GL-2015-19+GL+on+passport+notifications+under+MCD.pdf>

**7. Rules of conduct and requirements concerning the knowledge and competence requirements to be met by creditors and mortgage credit intermediaries**

Article L. 226-36 notably refers to the general rules of conduct that creditors and mortgage credit intermediaries must comply with.

In this context, it should be noted that, on 22 March 2016, the EBA published the “Guidelines on product oversight and governance arrangements for retail banking products (POG)” (Ref.: EBA/GL/2015/18) (hereinafter the “2015/18 Guidelines”) which relate, inter alia, to Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property. The purpose of the 2015/18 Guidelines is to specify the requirements with respect to governance arrangements and supervision of retail banking products. More particularly, the 2015/18 Guidelines specify the requirements with respect to governance arrangements and supervision of retail banking products in relation to Article 7(1) of Directive 2014/17/EU.

The 2015/18 Guidelines specify the governance and supervisory arrangements for manufacturers of credit products in relation to:

- establishment, proportionality, review and documentation;
- manufacturers’ internal control functions;
- target market;
- product testing;
- product monitoring;
- remedial action;
- distribution channels;
- information for distributors.

Moreover, the 2015/18 Guidelines specify the governance and supervisory arrangements for distributors of credit products concerning:

- establishment, proportionality, review and documentation;
- distributors’ governance;
- knowledge of the target market;
- information and support for the manufacturer’s arrangements.

The 2015/18 Guidelines are available on the EBA website at:  
<https://www.eba.europa.eu/documents/10180/1141044/EBA-GL-2015-18+Guidelines+on+product+oversight+and+governance.pdf>

Furthermore, Article L. 226-36 lays down requirements concerning remuneration policies for staff of creditors and mortgage credit intermediaries.

On 13 December 2016, the EBA published, in this respect, the “Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services” ((Ref.: EBA/GL/2016/06) (hereinafter the “2016/06 Guidelines”). The purpose of the 2016/06 Guidelines is to specify the requirements with respect to remuneration policies and practices related to retail banking products and services. More particularly, the 2016/06 Guidelines

specify the requirements with respect to remuneration policies and practices referred to in Article 7(2) of Directive 2014/17/EU.

The 2016/06 Guidelines specify the remuneration policies and practices relating to:

- design;
- documentation, notification and accessibility;
- approval;
- monitoring.

The 2016/06 Guidelines are available on the EBA website at:

[https://www.eba.europa.eu/documents/10180/1693444/Guidelines+on+sales+staff+remuneration+%28EBA-GL-2016-06%29\\_EN.pdf/000c55c6-cbe4-4904-b43d-2ca9294b6cd6](https://www.eba.europa.eu/documents/10180/1693444/Guidelines+on+sales+staff+remuneration+%28EBA-GL-2016-06%29_EN.pdf/000c55c6-cbe4-4904-b43d-2ca9294b6cd6)

Article L. 226-38 lays down minimum knowledge and competence requirements that the staff of creditors and mortgage credit intermediaries must meet as regards mortgage credit agreements.

Article L. 226-38(3) provides that until 21 March 2019, the minimum knowledge and competence requirements are deemed fulfilled where the persons concerned provide evidence of at least three years of professional experience in the fields related to the granting, distribution and intermediation of credit products.

## **8. Enforcement provisions**

The CSSF is invested with the authority to impose sanctions with respect to compliance with certain provisions of Chapter 6 of the Consumer Code.

It should be noted that the provisions of Chapter 6 of the Consumer Code are mandatory and that the consumer may request the nullity of any clause or combination of clauses of a mortgage credit agreement, concluded in violation of Chapter 6 of the Consumer Code.

As regards the application of Chapter 6 of the Consumer Code, the provisions concerning certain deadlines should be noted:

- Chapter 6 of the Consumer Code does not apply to the mortgage credit agreements existing on 21 March 2016;
- Mortgage credit intermediaries that exercised mortgage credit intermediary activities and that are not authorised yet, may continue to exercise these activities until 21 March 2017;
- creditors and mortgage credit intermediaries that exercised activities governed by Chapter 6 of the Consumer Code before 20 March 2014 shall comply with Article L. 226-37 of Chapter 6 (knowledge and competence requirements) before 21 March 2017.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Jean-Pierre FABER

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