

## Regulatory News Alert

### Luxembourg implementation of EU Mortgage Credit Directive in progress

19 September 2016

On 29 July 2016, the draft Law 7025 implementing [Directive 2014/17/EU](#) on credit agreements for consumers relating to residential immovable property (the Directive) has been published. The new Law will amend Luxembourg Consumer Law and will enter into force 3 days after its final publication in the Official Journal.

#### Which banks will be impacted?

The impact is very wide, and any bank offering credit products to natural persons (and especially to Luxembourg residents) could be impacted by the new draft Law.

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**According to the draft text a transitional period for compliance is currently not envisaged, which implies that banks need to familiarize themselves with the requirements as soon as possible in order to be well prepared.**

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#### Which specific credit products will be in scope?

The scope of the new Law will cover any credit agreement secured either by a mortgage or by another comparable security, but also any credit agreement whose purpose is to acquire or retain property rights in land or in an existing or projected building, regardless of its collateral.

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**The new Law is not limited to credit agreements secured by a mortgage, and could therefore also impact other types of credits, such as Lombard loans and other credits without a specific predefined purpose, as long as the customer plans to use the funds received to finance residential real estate (acquisition and renovation).**

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Importantly, the new provisions will be applicable to credit agreements signed after 21 March 2016, meaning the Law as currently drafted has a retroactive effect.

Furthermore, the Luxembourg legislator did not use the option available in the Directive to exempt some credit contracts from the new provisions, for example, bridging loans or credit agreements that provide that the immovable property cannot at any time be occupied as a house, apartment or another place of residence by the consumer or a family member of the consumer and is to be occupied as a house, apartment or another place of residence on the basis of a rental agreement. Contrary to the Directive, the current draft Law does not exclude equity release credit agreements from the scope of the new rules.

## What if the bank offers products in scope of the Mortgage Credit Directive to a non-Luxembourg resident?

What if the bank offers products in scope of the Mortgage Credit Directive to a non-Luxembourg resident?

The Mortgage Credit Directive has not caused a complete harmonization of the rules and leaves several options to the Member States, and therefore country specific provisions need to be considered.

Depending on the specific set-up of the bank, the residence of the borrower may need to be considered as the consumer protection law of the country of the customer's residence may apply instead of or in conjunction with the Luxembourg law.

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**Banks need to be aware that several European countries (e.g. UK, Germany and France) already implemented the Mortgage Credit Directive requirements. Therefore, if residents of those countries are served from Luxembourg, banks may need to address and review those specific rules depending on their organizational set-up.**

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## What are the impacted functions and the key attention points?

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The new requirements will impact a wide range of functions within the banks, including front office, marketing, credit risk management, legal, and information technology. An overall summary is provided below.

Key provisions	
<b>Advertising</b>	Wording that may create false expectations for a consumer regarding the availability or the cost of a credit shall be prohibited.
<b>Pre-contractual information disclosure and adequate explanations</b>	<p>The <b>European Standardized Information Sheet (ESIS)</b> needs to be provided to the customer before the consumer is bound by any credit agreement, describing in details the loan and its characteristics, and including the computation of a standardized <b>Annual Percentage Rate of Charge (APRC)</b> and the simulation of variation in credit cost for foreign currency loans (<a href="#">EBA Final Report on benchmark rate</a>). The bank should provide “adequate explanations” to the consumer on the proposed credit agreements and any ancillary services (i.e. the specific effects the products proposed may have on the consumer).</p> <p>The ESIS specifications will be published through a forthcoming grand-ducal regulation.</p>
<b>Creditworthiness assessment procedures</b>	<b>Mandatory preliminary creditworthiness assessment</b> based on the proposed borrower’s income and expenses as well as his/her financial and economic circumstances ( <a href="#">EBA Guidelines on creditworthiness assessment</a> ). The consumer’s creditworthiness is 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 credit agreement, unless such additional credit was envisaged and included in the original creditworthiness assessment.
<b>Withdrawal right, binding offer and reflection period</b>	Reflection period of at least <b>14 days</b> (use by Luxembourg of a Member State option, may differ in another Member State)
<b>Tying and bundling practices</b>	<b>Prohibition of tying</b> practices (with exceptions) and <b>permission of bundling</b> practices
<b>Staff knowledge &amp; competencies</b>	Minimum knowledge and competency standards for the sales teams, but also for people involved in the manufacturing, the offering or the granting of credit agreements

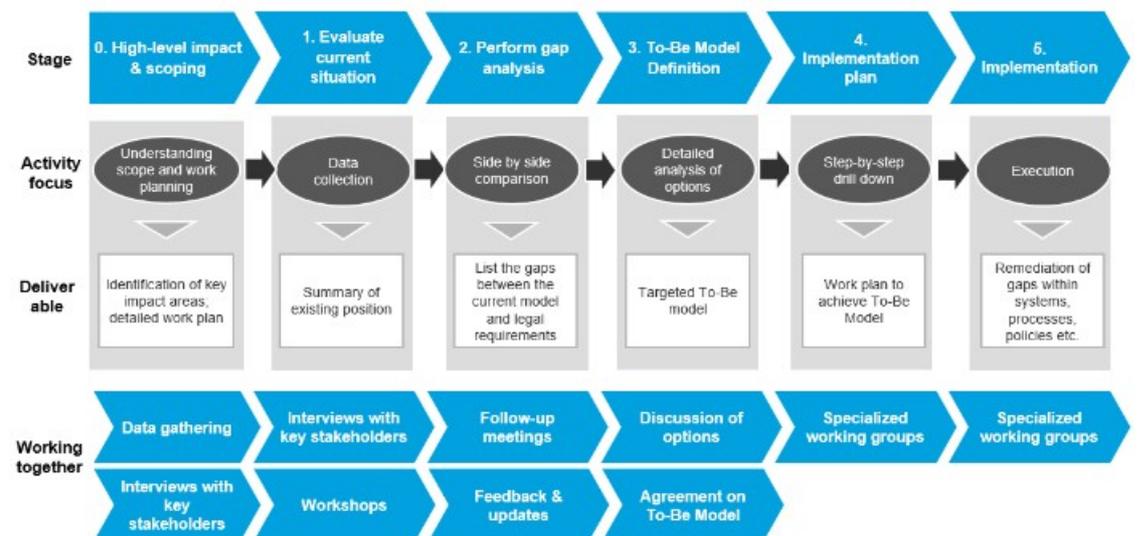
<p><b>Foreign currency loans</b></p>	<p>Creditor obligation to implement measures to <b>protect customers from foreign exchange rate risks</b>.</p> <p>The consumer might be given the right to convert the loan to his/her own currency under specified conditions. A <b>warning</b> shall be provided to the customer where the value of the total amount payable which remains outstanding or the value of the regular instalments <b>varies by more than 20 percent</b>.</p> <p>The definition of what constitutes a “foreign loan” is quite broad under the Directive, as it is any credit:</p> <ul style="list-style-type: none"> <li>• 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; <u>or</u></li> <li>• Denominated in a currency other than that of the Member State in which the consumer is resident.</li> </ul>
<p><b>Variable rate credits</b></p>	<p>When the credit agreement is a variable rate credit:</p> <ul style="list-style-type: none"> <li>• Any indexes or reference rates used to calculate the borrowing rate shall be clear, accessible, objective and verifiable by the parties to the credit agreement and the competent authorities</li> <li>• Historical records of indexes for calculating the borrowing rates are maintained either by the providers of these indexes or the creditors.</li> </ul>
<p><b>Early repayment</b></p>	<p>Right of early repayment of the credit, with possibility to request a <b>“fair and objective compensation”</b> by the creditor, but this should in any case be <b>limited to the costs directly linked to the early repayment</b>.</p> <p>When the credit agreement has been signed to acquire an accommodation that <b>served as effective and principal residence of the consumer for an uninterrupted period of at least two years</b>, there is a <b>cap on early repayment indemnity</b>, which should be equal to 6 months of interests on the early repaid capital, calculated according to the interest rate applicable as at early repayment date (use by Luxembourg of a Member State option). This is <b>not applicable on the portion of the cumulated amount of the early repayment above €450.000</b>.</p> <p>The credit agreement shall specify in a clear and concise manner, the right to early repayment, the procedure, the right to compensation and how the compensation is to be determined.</p>

<p><b>Post-contractual obligations</b></p>	<p>Additional information disclosure requirements for the creditor after the conclusion of the contract, such as <b>prior notification in case of change in the interest rate</b> are introduced.</p> <p>Specific requirements in terms of <b>arrears and foreclosure</b> are also required by the EBA (<a href="#">EBA Guidelines on arrears and foreclosure</a>), for example with the establishment of procedures to detect, as early as possible, consumers going into payment difficulties.</p>
<p><b>Credit intermediaries and EU passport</b></p>	<p>Authorization and registration by the CSSF of credit intermediaries, which <b>provide information and assistance</b> to consumers looking for a mortgage credit and <b>can conclude mortgage agreements on behalf of the lender</b>, and the establishment of a passport regime for those intermediaries.</p>

## How can we help?

Deloitte has extensive experience in supporting banks with Mortgage Credit Directive compliance, with our services covering, among others, the following:

- High-level impact assessment
- Detailed gap analysis
- Definition of target compliance model
- Implementation and project management
- Support for cross-border lending situations and MCD implementations across various EU countries



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