

Regulatory News Alert

Implementing Law of EU Mortgage Credit Directive

11 January 2017

On 28 December 2016, the draft Law 7025 implementing [Directive 2014/17/EU](#) on credit agreements for consumers relating to residential immovable property has been published in Mémorial A. The law amends the Luxembourg Consumer Code and is in force since 1 January 2017.

Which banks will be impacted?

The impact is wide, and any bank offering credit products to natural persons (and especially to Luxembourg residents) could be affected by the law.

Which specific credit products will be in scope?

The scope of the law covers any credit agreement secured either by a mortgage or by another comparable security, as well as any credit agreement where the purpose is to acquire or retain property rights in land or in an existing or projected building, regardless of its collateral.

The law is not limited to credit agreements secured by a mortgage, and therefore affects other types of credits (e.g., Lombard loans), as long as the consumer plans to use the funds received to finance residential real estate.

Importantly, the new provisions are applicable to credit agreements signed after 21 March 2016, meaning the law has a retroactive effect.

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

Depending on the specific setup 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.

Note that the Mortgage Credit Directive is not at maximum harmonization as it leaves several options to the member states, and therefore country-specific provisions need to be taken into account.

What are the affected functions and the key attention points?

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

Key provisions	
Advertising Art. L226-5 of the consumer code	Wording that may create false expectations for a consumer regarding the availability or the cost of a credit shall be prohibited.
Pre-contractual information disclosure and adequate explanations Art. L226-7 to Art. L226-10 of the consumer code	The European Standardized Information Sheet (ESIS) needs to be provided to the customer before the consumer is bound by any credit agreement, describing the loan and its characteristics in detail, and including the computation of a standardized Annual Percentage Rate of Charge (APRC) and the simulation of variation in credit cost for foreign currency loans and variable rate loans. 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). The ESIS specifications have been published together with the law in the Grand-Ducal Regulation of 23 December 2016.
Creditworthiness assessment procedures Art. L226-12 to Art. L226-14 of the consumer code	A mandatory creditworthiness assessment based on the borrower's financial circumstances shall be performed by the creditor (also see the EBA Guidelines on creditworthiness assessment). The consumer's creditworthiness shall be re-assessed based on 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.

<p>Reflection period</p> <p>Art. L226-8 (3) of the consumer code</p>	<p>Consumers shall benefit from a reflection period of 14 days to allow them to consider the implications of entering into the credit agreement (used by Luxembourg; may differ in another member state).</p>
<p>Tying practices</p> <p>Art. L226-11 of the consumer code</p>	<p>Tying practices shall be prohibited, with some exceptions. Tying practices are defined as the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.</p>
<p>Staff knowledge & competencies</p> <p>Art. L226-37 of the consumer code</p>	<p>Minimum knowledge and competency standards for staff involved in the manufacturing, the offering, or the granting of credit agreements shall be observed</p>
<p>Foreign currency loans</p> <p>Art. L226-18 of the consumer code</p>	<p>Creditors are required to implement measures to protect customers from foreign exchange rate risks, e.g., through giving the borrower the right to convert the loan into a different currency or through other arrangements such as caps.</p> <p>A warning shall be provided to the customer where the value of the outstanding amount payable or the value of the regular installments varies by more than 20 percent from what it would be if the exchange rate between the currency of the credit agreement and the currency of the member state applicable at the time of the conclusion of the agreement were applied.</p> <p>The definition of what constitutes a “foreign currency loan” is quite broad under the law, as it is any credit:</p> <ul style="list-style-type: none"> • 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 • Denominated in a currency other than that of the member state in which the consumer is resident.
<p>Variable rate credits</p> <p>Art. L226-17 of the consumer code</p>	<p>When the credit agreement is a variable rate credit:</p> <ul style="list-style-type: none"> • 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 • Historical records of indexes for calculating the borrowing rates are maintained either by the providers of these indexes or the creditors

<p>Early repayment</p> <p>Art. L226-20 of the consumer code</p>	<p>The consumer shall have the right of early repayment of the credit, with the creditor having the possibility to request a “fair and objective compensation,” but this should in any case be limited to the costs directly linked to the early repayment.</p> <p>When the credit agreement has been signed to acquire an accommodation that served as effective and principal residence of the consumer for an uninterrupted period of at least two years, there is a cap on early repayment indemnity, which should be equal to six months of interests on the early repaid capital, calculated according to the interest rate applicable as an early repayment date. This is not applicable on the portion of the accumulated amount of the early repayment above €450.000.</p> <p>The credit agreement shall specify the right to early repayment, the procedure, the right to compensation, and how the compensation is to be determined, in a clear and concise manner.</p>
<p>Post-contractual obligations</p> <p>Art. L226-16, Art. L226-21 and Art. L226-22 of the consumer code</p>	<p>Additional information disclosure requirements for the creditor after the conclusion of the contract, such as prior notification in case of a change in the interest rate are introduced.</p> <p>Specific requirements in terms of arrears and foreclosure are also required by the EBA (EBA Guidelines on arrears and foreclosure), for example with the establishment of procedures to detect consumers going into payment difficulties as early as possible.</p>
<p>Credit intermediaries and EU passport</p> <p>Art. L226-23 to Art. L226-38 of the consumer code</p>	<p>A new regime for the authorization and supervision of credit intermediaries is introduced. Credit intermediaries are defined as natural or legal persons who are not acting as a creditor nor notary, not merely introducing a consumer to a creditor or credit intermediaries, and who in the course of their trade for remuneration:</p> <ul style="list-style-type: none"> a) Present or offer credit agreements to consumers b) Assist consumers by undertaking preparatory work or other pre-contractual administration c) Conclude credit agreements with consumers on behalf of the creditor <p>The law also establishes a passport regime for credit intermediaries.</p>

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