

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 (Text with EEA relevance)

CHAPTER 8

ADVISORY SERVICES

Article 22

Standards for advisory services

1 Member States shall ensure that the creditor, credit intermediary or appointed representative explicitly informs the consumer, in the context of a given transaction, whether advisory services are being or can be provided to the consumer.

2 Member States shall ensure that before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor, credit intermediary or appointed representative provides the consumer with the following information on paper or another durable medium:

- a whether the recommendation will be based on considering only their own product range in accordance with point (b) of paragraph 3 or a wide range of products from across the market in accordance with point (c) of paragraph 3 so that the consumer can understand the basis on which the recommendation is made;
- b 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 points (a) and (b) of 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, Member States shall ensure, in addition to the requirements set out in Articles 7 and 9, that:

- a creditors, credit intermediaries or appointed representatives obtain the necessary information regarding the consumer's personal and financial situation, his preferences and objectives so as to enable the recommendation of suitable 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 credit agreement;
- b creditors, tied credit intermediaries or appointed representatives of tied credit intermediaries consider a sufficiently large number of credit agreements in their product range and recommend a suitable credit agreement or several suitable credit agreements from among their product range for the consumer's needs, financial situation and personal circumstances;
- c non-tied credit intermediaries or appointed representatives of non-tied credit intermediaries consider a sufficiently large number of credit agreements available on the market and recommend a suitable credit agreement or several suitable credit agreements available on the market for the consumer's needs, financial situation and personal circumstances;

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- d creditors, credit intermediaries or appointed representatives act in the best interests of the consumer by:
 - (i) informing themselves about the consumer's needs and circumstances; and
 - (ii) recommending suitable credit agreements in accordance with points (a), (b) and (c); and
- e creditors, credit intermediaries or appointed representatives give the consumer a record on paper or on another durable medium of the recommendation provided.

4 Member States may prohibit the use of the term 'advice' and 'advisor' or similar terms when the advisory services are being provided to consumers by creditors, tied credit intermediaries or appointed representatives of tied credit intermediaries.

Where Member States do not prohibit the use of the term 'advice' and 'advisor', they shall impose the following conditions on the use of the term 'independent advice' or 'independent advisor' by creditors, credit intermediaries or appointed representatives providing advisory services:

- a creditors, credit intermediaries or appointed representatives shall consider a sufficiently large number of credit agreements available on the market; and
- b creditors, credit intermediaries or appointed representatives shall not be remunerated for those advisory services by one or more creditors.

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

Member States may impose more stringent requirements in relation to the use of the terms 'independent advice' or 'independent advisor' by creditors, credit intermediaries or appointed representatives, including a ban on receiving remuneration from a creditor.

5 Member States may provide for an obligation for creditors, credit intermediaries and appointed representatives to warn a consumer when, considering the consumer's financial situation, a credit agreement may induce a specific risk for the consumer.

6 Member States shall ensure that advisory services are only provided by creditors, credit intermediaries or appointed representatives.

Member States may decide not to apply the first subparagraph to persons:

- a carrying out the credit intermediation activities set out in point 5 of Article 4 or providing advisory services where those activities are carried out or 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 carrying out of those activities or the provision of those services;
- b providing advisory services in the context of managing existing debt which are insolvency practitioners where that activity is regulated by legal or regulatory provisions or public or voluntary debt advisory services which do not operate on a commercial basis; or
- c providing advisory services who are not creditors, credit intermediaries or appointed representatives where such persons are admitted and supervised by competent authorities in accordance with the requirements for credit intermediaries under this Directive.

Persons benefiting from the waiver in the second subparagraph shall not benefit from the right referred to in Article 32(1) to provide services for the entire territory of the Union.

7 This Article shall be without prejudice to Article 16 and to Member States' 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.