

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 4

INFORMATION AND PRACTICES PRELIMINARY TO THE CONCLUSION OF THE CREDIT AGREEMENT

Article 10

General provisions applicable to advertising and marketing

Without prejudice to Directive 2005/29/EC, Member States shall require that any advertising and marketing communications concerning credit agreements are 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 shall be prohibited.

Article 11

Standard information to be included in advertising

1 Member States shall ensure that any advertising concerning credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer includes the standard information in accordance with this Article.

Member States may provide that the first subparagraph shall not apply where national law requires the indication of the APRC in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph.

- 2 The standard information shall specify in a clear, concise and prominent way:
- a the identity of the creditor or, where applicable, the credit intermediary or appointed representative;
 - b where applicable, that the credit agreement will be secured by a mortgage or another comparable security commonly used in a Member State on residential immovable property or by a right related to residential immovable property;
 - c 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;
 - d the total amount of credit;
 - e the APRC which shall be included in the advertisement at least as prominently as any interest rate;
 - f where applicable, the duration of the credit agreement;
 - g where applicable, the amount of the instalments;
 - h where applicable, the total amount payable by the consumer;
 - i where applicable, the number of instalments;

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

3 The information listed in paragraph 2, other than that listed in points (a), (b) or (j) thereof, shall be specified by means of a representative example and shall adhere to that representative example throughout. Member States shall adopt criteria for determining a representative example.

4 Where the conclusion of a contract regarding an ancillary service, in particular insurance, is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed, and the cost of that service 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.

5 The information referred to in paragraphs 2 and 4 shall be easily legible or clearly audible as appropriate, depending on the medium used for advertising.

6 Member States may require the inclusion of a concise and proportionate warning concerning specific risks associated with credit agreements. They shall notify those requirements to the Commission without delay.

7 This Article shall be without prejudice to Directive 2005/29/EC.

Article 12

Tying and bundling practices

1 Member States shall allow bundling practices but shall prohibit tying practices.

2 Notwithstanding paragraph 1, Member States may provide that creditors can request the consumer or a family member or close relation of the consumer to:

- a 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;
- b purchase or keep an investment product or a private pension product, where such product which primarily offers the investor an income in retirement serves also to provide additional security for the creditor in the event of default or to accumulate capital to repay the credit, to service the credit or to pool resources to obtain the credit;
- c conclude a separate credit agreement in conjunction with a shared-equity credit agreement to obtain the credit.

3 Notwithstanding paragraph 1, Member States may allow tying practices when the creditor can demonstrate to its competent authority that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the consumers taking due account of the availability and the prices of the relevant products offered on the market. This paragraph shall only apply to products which are marketed after 20 March 2014.

4 Member States may allow creditors to require the consumer to hold a relevant insurance policy related to the credit agreement. In such cases Member States shall ensure that the creditor accepts the insurance policy from a supplier different to his preferred supplier where such policy has a level of guarantee equivalent to the one the creditor has proposed.

Article 13

General information

1 Member States shall ensure that clear and comprehensible general information about credit agreements is made available by creditors or, where applicable, by tied credit intermediaries or their appointed representatives at all times on paper or on another durable medium or in electronic form. In addition, Member States may provide that general information is made available by non-tied credit intermediaries.

Such general information shall include at least the following:

- a the identity and the geographical address of the issuer of the information;
- b the purposes for which the credit may be used;
- c the forms of security, including, where applicable, the possibility for it to be located in a different Member State;
- d the possible duration of the credit agreements;
- e types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;
- f where foreign currency loans 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;
- g 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;
- h 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 credit agreement;
- i the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments;
- j where applicable, a clear and concise statement that compliance with the terms and conditions of the credit agreement does not guarantee repayment of the total amount of credit under the credit agreement;
- k a description of the conditions directly relating to early repayment;
- l 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;
- m 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; and
- n a general warning concerning possible consequences of non-compliance with the commitments linked to the credit agreement.

2 Member States may oblige the creditors to include other types of warnings which are relevant in a Member State. They shall notify those requirements to the Commission without delay.

Article 14

Pre-contractual information

1 Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, 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 credit agreement:

- a without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 20; and
- b in good time before the consumer is bound by any credit agreement or offer.

2 The personalised information referred to in paragraph 1, on paper or on another durable medium, shall be provided by means of the ESIS, as set out in Annex II.

3 Member States shall ensure that when an offer binding on the creditor is provided to the consumer, it shall be provided on paper or on another durable medium and accompanied by an ESIS where:

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

4 Member States may provide for the obligatory provision of the ESIS before the provision of an offer binding on the creditor. Where a Member State so provides, it shall require that the ESIS shall only be required to be provided again where point (b) of paragraph 3 is met.

5 Member States which before 20 March 2014 have implemented an information sheet that meets equivalent information requirements to those set out in Annex II may continue to use it for the purposes of this Article until 21 March 2019.

6 Member States shall specify a time period of at least seven days during which the consumer will have sufficient time to compare offers, assess their implications and make an informed decision.

Member States shall specify that the time period referred to in the first subparagraph shall be either a reflection period before the conclusion of the credit agreement or a period for exercising a right of withdrawal after the conclusion of the credit agreement or a combination of the two.

Where a Member State specifies a reflection period before the conclusion of a credit agreement:

- a the offer shall be binding on the creditor for the duration of the reflection period; and
- b the consumer may accept the offer at any time during the reflection period.

Member States may provide that consumers cannot accept the offer for a period not exceeding the first 10 days of 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, Member States may provide that 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.

Where the consumer has a right of withdrawal in accordance with the second subparagraph of this paragraph, Article 6 of Directive 2002/65/EC shall not apply.

7 The creditor and, where applicable, the credit intermediary or appointed representative who 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 3(1) of Directive 2002/65/EC and shall be deemed to satisfy the requirements of Article 5(1) of that Directive only where they have at least supplied the ESIS prior to the conclusion of the contract.

8 Member States shall not modify the ESIS model other than as provided for in Annex II. Any additional information which the creditor or, where applicable, the credit intermediary or appointed representative, may provide to the consumer or is required to provide to the consumer by national law shall be given in a separate document which may be annexed to the ESIS.

9 The Commission shall be empowered to adopt delegated acts in accordance with Article 40 to amend the standard wording in Part A of Annex II or the instructions in Part B thereof to address the need for information or warnings concerning new products that were not marketed before 20 March 2014. Such delegated acts shall however not change the structure or format of the ESIS.

10 In the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of point (b) of Article 3(3) of that Directive shall include at least the items referred to in sections 3 to 6 of Part A of Annex II to this Directive.

11 Member States shall ensure that at least where no right of withdrawal exists the creditor or, where applicable, the credit intermediary or appointed representative provides the consumer with a copy of the draft credit agreement, at the time of the provision of an offer binding on the creditor. Where a right of withdrawal exists, Member States shall ensure that the creditor or, where applicable, the credit intermediary or appointed representative offers to provide the consumer with a copy of the draft credit agreement at the time of the provision of an offer binding on the creditor.

Article 15

Information requirements concerning credit intermediaries and appointed representatives

1 Member States shall ensure that in good time before the carrying out of any of the credit intermediation activities set out in point 5 of Article 4, the credit intermediary or appointed representative shall provide the consumer with at least the following information on paper or on another durable medium:

- a the identity and the geographical address of the credit intermediary;
- b the register in which he has been included, the registration number, where applicable, and the means for verifying such registration;
- c whether the credit intermediary is tied to or works exclusively for one or more creditors. Where the 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 credit intermediary may disclose that it is independent where it meets the conditions laid down in accordance with Article 22(4);
- d whether the credit intermediary offers advisory services;

- e the fee, where applicable, payable by the consumer to the credit intermediary for its services or where this is not possible, the method for calculating the fee;
 - f the procedures allowing consumers or other interested parties to register complaints internally about credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;
 - g where applicable, the existence and where known the amount of commissions or other inducements, payable by the creditor or third parties to the credit intermediary for their services in relation to the credit agreement. Where the amount is not known at the time of disclosure the credit intermediary shall inform the consumer that the actual amount will be disclosed at a later stage in the ESIS.
- 2 Credit intermediaries who are not tied but who receive 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 credit agreements being offered to the consumer. The consumer shall be informed that he has the right to request such information.
- 3 Where the credit intermediary charges a fee to the consumer and additionally receives commission from the creditor or a third party, the 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 Member States shall ensure that the fee, if any, payable by the consumer to the credit intermediary for its services is communicated to the creditor by the credit intermediary, for the purpose of calculating of the APRC.
- 5 Member States shall require credit intermediaries to ensure that in addition to the disclosures required by this Article, their appointed representative discloses to the consumer the capacity in which he is acting and the credit intermediary he is representing when contacting or before dealing with any consumer.

Article 16

Adequate explanations

1 Member States shall ensure that creditors and, where applicable, credit intermediaries or appointed representatives provide adequate explanations to the consumer on the proposed credit agreements and any ancillary services, in order to place the consumer in a position enabling him to assess whether the proposed credit agreements and ancillary services are adapted to his needs and financial situation.

The explanations shall, where applicable, include in particular:

- a the pre-contractual information to be provided in accordance with:
 - (i) Article 14 in the case of creditors;
 - (ii) Articles 14 and 15 in the case of credit intermediaries or appointed representatives;
- b the essential characteristics of the products proposed;
- c the specific effects the products proposed may have on the consumer, including the consequences of default in payment by the consumer; and
- d where ancillary services are bundled with a credit agreement, whether each component of the bundle can be terminated separately and the implications for the consumer of doing so.

2 Member States may adapt the manner by which and the extent to which the explanations referred to in paragraph 1 is given, as well as by whom it is given, to the circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the nature of the credit offered.