



Finantsinspektion

Advisory guidelines of Finantsinspektion

Tallinn

RESPONSIBLE LENDING REQUIREMENTS

These guidelines were established by Resolution No. 1.1-7/62 of the Management Board of Finantsinspektion of 1 December 2010. The guidelines have been supplemented with Resolution No. 1.1-7/21 of 27 February 2013, Resolution No. 1.1-7/23 of 14 February 2014, Resolution No. 1.1-7/168 of 11 December 2015, and Resolution No. 1.1-7/68 of 13 June 2016 of the Management Board of Finantsinspektion.

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1. Competence

- 1.1. Pursuant to subsection 3 (1) of the Financial Supervision Authority Act, Finantsinspeksioon conducts state financial supervision in order to enhance the stability, reliability, transparency and efficiency of the financial sector, to reduce systemic risks and to promote prevention of the abuse of the financial sector for criminal purposes, with a view to protecting the interests of clients and investors by safeguarding their financial resources, and thereby supporting the stability of the Estonian monetary system.
- 1.2. Pursuant to subsection 2 (1) of the Financial Supervision Authority Act, Finantsinspeksioon conducts supervision over the subjects of state financial supervision and the activities provided for in the Credit Institutions Act and the Creditors and Credit Intermediaries Act, as well as in the legislation established on the basis thereof.
- 1.3. Pursuant to subsection 57 (1) of the Financial Supervision Authority Act, Finantsinspeksioon has the right to issue advisory guidelines to explain the legislation regulating to the activities of the financial sector and to provide guidance to subjects of financial supervision and publish these guidelines on their webpage www.fi.ee in accordance with subsection 53 (3) of the Financial Supervision Authority Act.

2. Scope of regulation and objective

- 2.1. In Estonia, the activities and liabilities of creditors and credit intermediaries when granting credit to consumers are regulated by the Creditors and Credit Intermediaries Act.
- 2.2. Pursuant to § 3 of the Creditors and Credit Intermediaries Act, granting of credit means the granting of credit, the postponement of a due date for a fee, leasing, or any other similar financial accommodation specified in subsections 401 (1) and (2) of the Law of Obligations Act, including entry into credit agreements and performance of acts needed for this purpose in the person's own name and on the person's own account (hereinafter: credit).
- 2.3. Pursuant to subsection 47 (1) of the Creditors and Credit Intermediaries Act, a creditor or a credit intermediary shall, upon the granting of credit or the intermediation of credit to a consumer, among other things, comply with the requirements provided for in the Law of Obligations Act for the provision of sufficient explanations and information to a consumer, the assessment of the consumer's creditworthiness, and other responsible lending requirements.
- 2.4. Pursuant to subsection 49 (6) of the Creditors and Credit Intermediaries Act, a creditor or a credit intermediary is required to inform a consumer of possible risks upon taking credit.
- 2.5. Pursuant to the first sentence of subsection 53 (2) of the Creditors and Credit Intermediaries Act, an appraiser of immovable property standing as security for a consumer credit agreement secured by mortgage shall have sufficient knowledge, experience and skills and be sufficiently independent from the process of deciding on the granting of credit so as to provide an objective and impartial assessment of the value of the immovable property.

- 2.6. These guidelines explain the requirements set out in subsection 47 (1), subsection 49 (6), and subsection 53 (2) of the Creditors and Credit Intermediaries Act, creating thereby preconditions for improved transparency, reliability and quality of the credit service and enhanced understanding of the nature of the service, the relevant professional standard and good practice, that in turn help put in place better conditions for the prevention of possible disputes within the framework of a legal relationship when exercising rights and meeting obligations in good faith.
- 2.7. Pursuant to subsection 83 (3¹) of the Credit Institutions Act, upon granting of a loan or provision of advisory services to a consumer specified in § 7 and § 51 of the Creditors and Credit Intermediaries Act, a credit institution shall comply with the provisions of sections 47–53¹ of the Creditors and Credit Intermediaries Act.
- 2.8. These guidelines explain the due diligence that creditors and credit intermediaries shall have in acts preliminary to granting credit to a consumer, such as collection and verification of information required for the assessment of creditworthiness, the assessment of creditworthiness, the provision of pre-contractual information and warnings, the appraisal of immovable property standing as security for credit secured by mortgage, etc.
- 2.9. The “European Banking Authority’s guidelines on creditworthiness assessment” (EBA/GL/2015/11) and the “European Banking Authority’s guidelines on arrears and foreclosure” (EBA/GL/2015/12) published by the European Banking Authority on 19 August 2015 shall be transposed by these guidelines.

3. Scope of application

- 3.1. These guidelines shall apply to the following persons that hold the right to operate in Estonia:
- 3.1.1. a credit institution within the meaning of the Credit Institutions Act, a branch of a foreign credit institution and a provider of cross-border services when entering into consumer credit agreements (within the meaning of § 402 of Law of Obligations Act) in Estonia;
 - 3.1.2. a creditor and a credit intermediary within the meaning of the Creditors and Credit Intermediaries Act, including a mortgage creditor and a mortgage credit intermediary, a foreign branch and a provider of cross-border services when entering into consumer credit agreements (within the meaning of § 402 of Law of Obligations Act) in Estonia;
- 3.2. A credit institution and a creditor or a credit intermediary referred to in clauses 3.1.1 and 3.1.2 shall be hereinafter jointly referred to as a creditor or a credit intermediary in these guidelines.
- 3.3. The scope of these guidelines is limited to the scope of the regulation and objective specified in clause 2 of these guidelines and these shall not apply to other relationships formed on the basis of the law of obligations and shall not impose any other restrictions on the application of the principles of freedom of contract.
- 3.4. In case issues related to application or interpretation arise when applying these guidelines, the principle of reasonableness shall be applied, keeping in mind the objective of these guidelines and acting in good faith with the due diligence expected from a financial supervision subject.

4. Definition and scope

- 4.1. For a creditor and a credit intermediary, responsible lending in accordance with the procedure laid down in the Law of Obligations Act and the Creditors and Credit Intermediaries Act shall mean the assessment of creditworthiness of a consumer and provision of pre-contractual information, including warnings, thereby assisting in creating conditions that enable the consumer to assess whether the proposed credit corresponds to the personal borrowing interest and financial situation, as well as to assess risks upon taking credit.
- 4.2. A creditor and a credit intermediary are obliged, when assessing the creditworthiness of a consumer, to have due diligence (subsection 403² (1¹) of the Law of Obligations Act). When fulfilling the obligation to provide explanations to a consumer in relation to credit, a creditor or a credit intermediary shall not act as a mandatary of the consumer or some other similar person that, due to their professional activity, holds a special position of trust to choose and decide on the best credit relationship for the consumer, except for if such exceptions arise from the legislation (e.g. exceptions arising from § 7 and § 51 of the Creditors and Credit Intermediaries Act when providing advisory services).
- 4.3. To fulfil the requirement of responsible lending, a creditor or a credit intermediary shall take guidance from the legislation and these guidelines. A creditor or a credit intermediary shall:
 - 4.3.1. collect and preserve data on the regular income, regular financial obligations, and the performance of the payment obligations of a consumer and use the data to assess the consumer's creditworthiness in order to come to a conclusion about whether the consumer is able to pay back credit under the conditions agreed upon in the credit agreement (subsection 47 (3) of the Creditors and Credit Intermediaries Act, § 403² of the Law of Obligations Act);
 - 4.3.2. supply a consumer with pre-contractual information on the significant conditions of the credit agreement, and, if necessary, give additional explanations with the aim of placing the consumer in a position where they can, based on sufficient information, assess whether the proposed credit agreement corresponds to their needs and financial situation (§ 403¹ and § 403² of the Law of Obligations Act).
 - 4.3.3. inform a consumer of possible risks upon taking credit (subsection 49 (6) of the Creditors and Credit Intermediaries Act, subsection 403² (4) of the Law of Obligations Act).

5. Degree of care

- 5.1. To fulfil the requirement of responsible lending with due care, a creditor or a credit intermediary shall apply these guidelines, taking into account the provisions of the legislation.
- 5.2. In the case of disputes, a creditor or a credit intermediary shall demonstrate adherence to due diligence required for compliance with the principle of responsible lending (subsection 403² (7) of the Law of Obligations Act). A creditor or a credit intermediary shall, when demonstrating adherence to due diligence, show:

- 5.2.1. that the creditor or the credit intermediary had in place relevant internal rules to fulfil the requirements of responsible lending upon granting credit;
- 5.2.2. the calculation of the assessment of creditworthiness and data, based on which the creditor or the credit intermediary carried out the relevant assessment, or the method of collection of data and the analyses thereof, and how the conclusion was made on the ability of the consumer to pay back credit under the agreed conditions;
- 5.2.3. that the creditor or the credit intermediary have obtained from the consumer an assurance that they have, before entry into the agreement, explained to the consumer the significant conditions of the agreement, as well as risks upon the entry into a credit agreement. The formal requirements of the relevant assurance shall be decided by the creditor or the credit intermediary, taking into account the content and extent of the burden of proof pursuant to the legislation;
- 5.2.4. that they have preserved all relevant documents and data related to the granting of credit to the consumer and servicing of credit, taking into account the requirements laid down for credit files in the legislation (§ 48 of the Creditors and Credit Intermediaries Act) and terms during which a claim can be brought against a creditor or a credit intermediary in relation to a violation of the principle of responsible lending.
- 5.3. Fulfilment of the requirement of responsible lending with due care cannot be taken as a guarantee of a positive result with regard to the subsequent solvency of the consumer. Risks related to the granting and taking of credit are intrinsic and unavoidable to some extent; therefore, even the best care might not lead to a positive result for a consumer, nor does any subsequent solvency of the consumer qualify by default as negligence by a creditor or a credit intermediary.
- 5.4. When fulfilling the requirement of responsible lending, the activities of a creditor or a credit intermediary cannot be qualified as a violation of the responsible lending principle in a specific credit relationship, if it concerns circumstances which are beyond the direct control of the creditor or the credit intermediary and the related risks of which are intrinsic to the granting and taking of credit, or which the creditor or the credit intermediary could not and should not have foreseen (e.g. subsequent insolvency of the consumer is caused by the general aggravation of the economic environment; loss of / decrease in the consumer's salary; decrease in other income of the consumer; decrease in the market value of the security; additional financial obligations later assumed by the consumer; the concealment of the actual borrowing interest, existing financial obligations, and other important information that may be necessary to assess the creditworthiness of the consumer, etc.).
- 5.5. When applying the principle of responsible lending, a creditor or a credit intermediary has the right to assume that the consumer knows its borrowing objective and financial condition (which includes information about the regular income of the consumer, regular financial obligations, and other regular total expenses of the household), and that the consumer submits to the creditor or the credit intermediary accurate information on its interest, need, and financial condition.
- 5.6. Applying these guidelines when restructuring the credit of a consumer having solvency problems is based on the principle of "fulfil or explain", where a creditor or a credit intermediary applies the provisions of the guidelines where the specifics of the credit restructuring enable it and are reasonably applicable taking

into account the specifics of a particular case. The admissibility or non-admissibility of restructuring the credit of a consumer having solvency problems cannot be set down as default with the provisions of the guidelines.

6. Consumer liability

- 6.1. A consumer decides on taking credit and assesses the appropriateness of the credit product and conditions based on the information and warnings supplied by a creditor or a credit intermediary for their personal borrowing interest, need, and financial condition, and the consumer shall be liable for any consequences resulting from the conclusion of a credit agreement.

7. Scope of information to be collected and the verification thereof

- 7.1. The content and extent of information to be submitted by a consumer to fulfil the requirements of responsible lending may depend on the credit agreement, the amount of credit and its payback term, specifics of the credit product, and the consumer. A creditor or a credit intermediary shall be guided by the Personal Data Protection Act when processing data.
- 7.2. A creditor or a credit intermediary shall make reasonable efforts to fulfil the requirements of responsible lending when collecting information from a consumer for the assessment of their creditworthiness and when making credit decisions which are required to perform the assessment of creditworthiness and which may influence making the credit decision.
- 7.3. A creditor or a credit intermediary shall collect information for the purpose of the assessment of creditworthiness, which is the basis for a future credit decision. This information is obtained from the consumer that is obliged to submit to the creditor or the credit intermediary all relevant information for making credit decisions, as well as from internal sources, public databases and if possible from other sources. The creditor or the credit intermediary shall inform the consumer about which information the consumer must present to the creditor or the credit intermediary to allow the assessment of creditworthiness.
- 7.4. A creditor or a credit intermediary uses internal sources, i.e. data that they have in their possession (e.g. an overview of the consumer's former credits, information about their payment behaviour, etc.) and other relevant information that may influence the assessment of creditworthiness of the consumer.
- 7.5. Public databases are public registers and publications, e.g. land register, the official publication Ametlikud Teadaanded, etc. Other sources are other appropriate information sources, e.g. information disclosed by bailiffs, credit registers, information received from an independent appraiser of immoveable property, etc.
- 7.6. A creditor or a credit intermediary obtains information from internal sources, public databases and other sources for every assessment decision with regard to circumstances referred to in clause 7.1 of these guidelines.
- 7.7. In order to comply with clause 7.1 and assess the proprietary situation of a consumer, a creditor or a credit intermediary shall collect the following information on:

- 7.7.1. the consumer's income and proprietary obligations, including regular payment, financial, and other obligations, relying, among other things, on the statement of a credit institution submitted by the consumer and being guided by clause 9.8 of these guidelines. To collect information on the household expenses of the consumer, the provisions of clause 9.11 of these guidelines shall be followed.
 - 7.7.2. the performance of existing financial obligations;
 - 7.7.3. other information about the consumer which may be important to the assessment of the consumer's creditworthiness and which may influence the appropriate fulfilment of the obligations taken by the consumer.
- 7.8. In order to comply with the obligation of the assessment of creditworthiness referred to in clause 7.3, a creditor or a credit intermediary shall analyse the data and documents submitted by a consumer in order to come to a conclusion about the consumer's proprietary situation. When assessing the proprietary situation of the consumer, it shall not be considered sufficient for the creditor or the credit intermediary to rely solely on:
- 7.8.1. the data and documents submitted by the consumer;
 - 7.8.2. the oral testimony of the consumer;
 - 7.8.3. incomplete data and documents (e.g. insufficient data and documents presented);
 - 7.8.4. the consumer's own assessment of their financial situation or some other circumstance important for the assessment of creditworthiness.
- 7.9. A mortgage creditor or a mortgage credit intermediary shall make sure, when requesting a valuation report of immovable property offered as security, that the document showing the valuation of the immovable property (security) presented by the consumer is in compliance with the applicable appraisal standards.
- 7.10. A mortgage creditor or a mortgage credit intermediary shall give the consumer information in advance about more than one service provider that prepares documents referred to in clause 7.9. Such service provider shall be considered a mandatary of the mortgage creditor or the mortgage credit intermediary when performing the above-described task only if the mortgage creditor or the mortgage credit intermediary, the consumer and the specific provider of the service have so clearly agreed. The above shall not deprive the mortgage creditor or the mortgage credit intermediary of the right to assess the security itself, provided that, for the purpose of these guidelines, sufficient independency of the appraiser has been ensured in the process of making a credit decision.
- 7.11. A creditor or a credit intermediary shall request a consumer to assure the accuracy and relevance of the information submitted to the creditor in relation to the consumer's credit application. The formal requirements for the appropriate assurance document shall be decided by the creditor or the credit intermediary, taking into account the content and extent of the burden of proof arising from the legislation.

- 7.12. A creditor or a credit intermediary shall make all reasonable efforts to verify the accuracy of all relevant documents and other proof which are the basis and important for the assessment of the regular obligations and the amount of income of a consumer, taking into account the restrictions pursuant to the Personal Data Protection Act.
- 7.13. A creditor or a credit intermediary shall verify information submitted by a consumer about their income and obligations, relying, if possible, on the statement of a credit institution submitted by the consumer, if other collected information is insufficient to assess the creditworthiness of the consumer.
- 7.14. A creditor or a credit intermediary may adjust the recommendations of these guidelines in accordance with the nature of the credit relationship, if it is not contrary to the provisions of the legislation, and it is expedient, substantiated, and reasonable, taking into account the amount of credit, the specifics of the credit product, or any other circumstances that characterise the conclusion of a specific credit relationship.
- 7.15. Using the options specified in clause 7 of these guidelines may not lead to a situation where, as a result thereof, a creditor or a credit intermediary fails to fulfil a requirement laid down in the legislation or collect information that is necessary to assess creditworthiness or take into account significant circumstances or a consumer is deprived of information or warnings that might, due to objective reasons, significantly influence the consumer's decision on the conclusion of a credit agreement.

8. General requirements

- 8.1. To fulfil the requirement of responsible lending, it is necessary for the creditor or credit intermediary's organisational structure, internal rules, transparency of the area of liability, as well as the knowledge and skills of managers and employees and the activities based thereon to comply with the provisions of the legislation.
- 8.2. A creditor or a credit intermediary shall ensure that the employees of a creditor or a credit intermediary that participate in the process of granting, intermediating and/or servicing credit have the competence required to fulfil the requirement of responsible lending at all times.
- 8.3. A creditor or a credit intermediary shall establish in their internal rules that the employees directly related to the granting or intermediating and/or servicing of credit shall act in an environment where they are aware of the legislation regulating responsible lending and the requirements of these guidelines.
- 8.4. A creditor or a credit intermediary shall manage and prevent conflicts of interest by establishing requirements in their internal rules in a way that the bases for the remuneration of managers and employees responsible for the assessment of creditworthiness and the decision-making process of granting credit would not encourage them to give up adherence to the principles of responsible lending or make any concessions in that respect.
- 8.5. The function of appraising the value of immovable property standing as security for credit secured by mortgage and making a decision with regard to granting credit must be separated by a creditor or a credit

intermediary to prevent conflicts of interest and ensure sufficient independence, and such an organisational solution must be established in the internal rules.

- 8.6. For the purpose of these guidelines, sufficient independence in the decision-making process of granting credit means a situation where immovable property has been given an objective and independent appraisal that meets the needs of a creditor or a credit intermediary and a consumer.
- 8.7. A creditor or a credit intermediary shall demonstrate due care by establishing, in their internal rules, the extent and method of submission, collection and assessment of information, considering in every case the extent of information to be submitted.
- 8.8. A creditor or a credit intermediary shall regularly assess the fulfilment of the relevant internal rules.
- 8.9. When granting to a consumer credit in foreign currency, a credit institution shall offer a consumer an option to be granted the same credit product in euros. The credit institution shall offer the consumer instruments to manage foreign currency risk (guided by the requirements for the assessment of the suitability and appropriateness of the relevant investment service specified in § 87¹ of the Securities Market Act). A mortgage creditor that grants to a consumer credit in foreign currency shall adhere to the provisions laid down in the Law of Obligations Act.

9. Assessment of creditworthiness

- 9.1. A creditor or a credit intermediary shall fulfil the obligation to assess creditworthiness regardless of the amount of credit.
- 9.2. In order to better manage their own risk, a creditor or a credit intermediary shall assess the creditworthiness of a consumer every time before the conclusion of a credit agreement or an increase in the amount of credit with due diligence in accordance with subsection 403² (1) of the Law of Obligations Act. The consumer assesses the suitability of the credit product to their interests and financial situation.
- 9.3. A creditor or a credit intermediary shall establish, in their internal rules, an assessment method for creditworthiness in which the data submitted by a consumer and collected in accordance with clause 7.3 of these guidelines are taken into account and the indicators referred to in subsection 49 (1) of the Creditors and Credit Intermediaries Act are used when developing the relevant method.
- 9.4. In the case of credit secured by mortgage, a creditor or a credit intermediary shall, in addition to clause 9.3, take into account the following circumstances when developing the above-mentioned method:
 - 9.4.1. the value of immovable property standing as security and the number of securities;
 - 9.4.2. the guarantee limit of credit secured by mortgage;
 - 9.4.3. the limit of credit payments;
 - 9.4.4. the payback term of credit secured by mortgage.

- 9.5. When establishing the limits referred to in clause 9.4 of these guidelines, the method for the calculation thereof, and the maximum payback term of credit, a credit institution shall be guided by the requirements laid down in the regulation of Eesti Pank pursuant to subsection 83 (2¹) of the Credit Institutions Act. The creditor or the credit intermediary shall adhere to the minimum requirements laid down in the regulation of the minister responsible for the relevant area pursuant to subsection 49 (8) of the Creditors and Credit Intermediaries Act.
- 9.6. A creditor or a credit intermediary shall assess the consumer's creditworthiness, taking into account, among other things, the specifics of different credit products (e.g. credit secured by mortgage, variable interest loan, credit granted in foreign currency, bullet loan, small loan, credit card, etc.).
- 9.7. A creditor or a credit intermediary shall make reasonable efforts to verify the accuracy of all relevant documents/proof which are the basis and important when calculating the regular income amount of the consumer.
- 9.8. A creditor or a credit intermediary shall verify the information submitted by a consumer about their income, relying, if possible, on the statement of a credit institution submitted by the consumer, if other collected information is insufficient to assess the creditworthiness of the consumer. The creditor or the credit intermediary shall request the consumer to submit the statement of the credit institution where the consumer actively (mostly) makes daily transactions and to where their main income is transferred.
- 9.9. A creditor or a credit intermediary shall make reasonable efforts to identify possible reasonably foreseeable changes in the consumer's income (e.g. reaching retirement age in the near future etc.), taking into account also the circumstances listed in clause 5.4 of these guidelines.
- 9.10. When considering the regular obligations of a consumer, a creditor or a credit intermediary shall take into account at least the following circumstances:
- 9.10.1. the total amount of the consumer's existing and applied for credit agreement obligations (including loan principal, interests, etc.);
 - 9.10.2. the existing and other known proprietary obligations (e.g. support, etc.) of the consumer;
 - 9.10.3. the earlier behaviour of the consumer when fulfilling financial obligations and other proprietary obligations.
- 9.11. When assessing creditworthiness, a creditor or a credit intermediary shall take into account the number of dependants and other regular household expenses that can be reasonably assessed as a whole (e.g. cost of food, utilities, communications services, insurance payments, etc.). The creditor or the credit intermediary shall decide on the relevant formal requirements and assessment method. When assessing regular household expenses, the generally applicable rates may be used and specifics of the particular credit product and/or consumer group and other specifics may be taken into account.
- 9.12. When assessing creditworthiness, a mortgage creditor or a mortgage credit intermediary shall reasonably consider possible negative future scenarios (e.g. smaller income during retirement, increase in interest rate, increase of credit sum by interest payments, the amount of credit payable on the final day of the

credit payback term, the amount of payments under a credit agreement influenced by changes in exchange rate in the case of credit granted in foreign currency), taking into account the circumstances outlined in clause 5.4.

- 9.13. When assessing creditworthiness, a creditor or a credit intermediary shall take into account other known facts about the consumer that may be important for the assessment of the consumer's creditworthiness and/or may influence the sustainable servicing of credit by the consumer.
- 9.14. If a credit intermediary has mediated for a consumer a credit agreement offered by a creditor, the creditor may enter into the credit agreement based on the assessment of creditworthiness carried out by the credit intermediary if the credit intermediary presents to the creditor a compliant assessment of the creditworthiness of the consumer. This means that the creditor is obliged to independently verify the quality of information about the consumer's creditworthiness assessment presented by the credit intermediary and examine its quality.
- 9.15. When assessing the consumer's creditworthiness, a mortgage creditor or a mortgage credit intermediary may not rely solely on the circumstance that the value of the immoveable property standing as security for credit secured by mortgage exceeds the amount of credit, or on the assumption that the value of the immoveable property will increase, unless the objective of the credit agreement is the construction or renovation of the immoveable property. The possibility that the value of the immoveable property may exceed the credit sum or that the value of the immoveable property might increase in the future is not sufficient grounds for declaring the consumer creditworthy based solely on the above information.
- 9.16. In the course of the creditworthiness assessment, a creditor or a credit intermediary shall analyse, based on previously collected and verified information, whether:
- 9.16.1. the consumer is able to pay back the credit from their regular income (taking into account the amount of income and obligations of the consumer)¹;
 - 9.16.2. during the period of making the credit decision, the creditor or the credit intermediary may be convinced, based on known data, that the consumer's creditworthiness is sustainable in the foreseeable future;
 - 9.16.3. the consumer is able to service credit regardless of their existing credits and other proprietary obligations;
 - 9.16.4. the creditor may grant credit to the consumer if they are convinced, as a result of analysing the body of data that is the basis for the assessment of creditworthiness, that the obligations arising from the credit agreement will be fulfilled under the agreed conditions. This means that the decision of the

¹ These guidelines do not forbid the creditor and the consumer from entering into credit agreements secured by mortgage where the realisation of the security may already be an agreed conditions of the credit agreements, e.g. when such a credit agreement is concluded under conditions where the consumer knowingly wishes to conclude such an agreement and completely understands the consequences related thereto and the realisation of this security will not put the consumer into a difficult economic situation (e.g. a situation where the consumer wishes to take out credit to acquire an immoveable property and a precondition of this is the sale of one agreed immoveable property and a reduction of the obligation of the consumer on account thereof before the creditor during the agreed period).

creditor on whether to grant credit or not must be in accordance with the results of the assessment of creditworthiness.

9.17. For the purpose of these guidelines, the following shall mean the ability of the consumer to fulfil assumed obligations on the agreed conditions:

- 9.17.1. the consumer is able to pay back credit without the need to sell the security or other property belonging to the consumer, except in cases where the future realisation of the security is an intrinsic component of the credit product or the concluded agreement;
- 9.17.2. the consumer is able to fulfil their other previously assumed financial obligations in a timely manner;
- 9.17.3. the consumer does not have to assume additional financial obligations (credit) to service the existing credit;
- 9.17.4. the consumer can fulfil obligations that are assumed in relation to agreements listed in clause 10.2 of these guidelines in potentially higher interest conditions.

9.18. The following acts or failures to act by a creditor or a credit intermediary shall not be considered, among other things, to demonstrate adherence to the requirement of responsible lending:

- 9.18.1. the creditor or the credit intermediary fails to take sufficient measures to ensure the existence of sufficient and verified information about the assessment of the consumer's creditworthiness before making credit decisions (e.g. does not prepare documents of a creditor or a credit intermediary in a way that would enable detecting false information submitted by a consumer or a creditor or a credit intermediary and preventing it from being submitted);
- 9.18.2. in the case of credit secured by mortgage, the creditor or the credit intermediary, when making a credit decision, takes into account primarily or only the value of the property established as security, except in cases where the future realisation of the security is an intrinsic component of the credit product;
- 9.18.3. in the case of credit secured by mortgage, the basis of a positive credit decision is the presumed usual future increase in the market value of the immovable property established as security (except for in a situation where the increase of the value of the immovable property is expected when granting credit or parts of credit due to the nature of such credit, e.g. increase in the value of property serving as security by way of improvement or construction, etc.);
- 9.18.4. the creditor or the credit intermediary makes a positive credit decision even though the results of the assessment of the consumer's creditworthiness show or should have shown that the consumer is unable to fulfil the contractual obligations under the agreed conditions;
- 9.18.5. the creditor or the credit intermediary wishes to increase or reorganise the existing financial obligations to a level where the consumer is unable to fulfil obligations under the agreed conditions or the creditor or the credit intermediary fails to assess the creditworthiness of the consumer before making an additional credit decision;

- 9.18.6. the creditor or the credit intermediary accepts the consumer's credit application while being aware of the fact that the consumer has submitted false information in their credit application or has concealed data;
- 9.18.7. the creditor or the credit intermediary distorts, at their own initiative, the data in the credit application that are the basis for the assessment of the consumer's creditworthiness (incl. does not assess the received information as an aggregate or disregards some of the information);
- 9.18.8. the creditor or the credit intermediary influences the consumer to submit false information in their credit application or guides the consumer to submit only selected data, thereby distorting the actual situation in order to knowingly use only such information that in reality guarantees the creditworthiness of a consumer that is actually not creditworthy;
- 9.18.9. the creditor or the credit intermediary does not ask or re-verify information in a situation where the information submitted by the consumer about their income and obligations is either insufficient (the consumer has not answered) or the submitted information is clearly in conflict.

10. Information submitted to consumers and notification of risks

- 10.1. A creditor or a credit intermediary shall provide a consumer with pre-contractual information and any information about ancillary service(s) without an unreasonable delay and in time before the credit agreement or the offer becomes binding for the consumer, taking into account the needs, financial situation, and preferences of the consumer and other important circumstances known to the creditor or the credit intermediary. The consumer must be given reasonable time to review the information before they enter into the agreement.
- 10.2. A creditor or a credit intermediary shall provide a consumer with necessary explanations (while avoiding excessive burdening with information) that help the consumer assess the obligations and risks of concluding a credit agreement to make an informed credit decision.
- 10.3. In addition to the provisions of the Standard European Consumer Credit Information², for compliance with the requirement of responsible lending and the obligation of submission of warnings provided for in the Law of Obligations Act, a creditor or a credit intermediary shall make emphasised references to the following risks related to the taking of credit:
 - 10.3.1. creation of expenses related to the amount of credit repayments and the contractual credit (mainly the principal amount and interest to be paid). The creditor or the credit intermediary shall pay special attention to credit agreements with a variable interest rate and warn the consumer against any potential risks related to a change in the interest rate (by using examples together with appropriate calculations and explaining the influence of a change in interest on the repayment of credit, etc.);

² Regulation No. 47 of 13 December 2010 of the Minister of Justice establishing information sheet formats for standard information on European consumer credit.

- 10.3.2. if the creditor or the credit intermediary gives credit for a certain purpose, the creditor or the credit intermediary shall notify the consumer about which purpose the consumer may use the credit for and which consequences will occur if credit is used for other than the agreed purpose;
 - 10.3.3. possible additional expenses arising from the credit agreement, which are not part of the total credit expense for the consumer and which the consumer is required to pay in relation to the credit agreement, including additional expenses and default interest rates if payment obligations are violated;
 - 10.3.4. if the consumer secures the fulfilment of obligation by mortgage or some other security, the creditor or the credit intermediary shall pay special attention to notifying the consumer about risks that arise from the realisation of mortgage or other security in the case of a violation of payment obligations and the conditions of realisation thereof;
 - 10.3.5. the conditions of the agreement and other known important facts, which may influence the compliant fulfilment of the obligations of the consumer and which may lead to negative consequences for the consumer which the consumer is not likely able to foresee (including a possibility of demanding an additional security in the case of a decline in the immoveable property prices, any additional expenses in the case of a claim for default interest, etc.);
 - 10.3.6. the risk of a decrease in the consumer's solvency in the future which may result from a decrease in the consumer's income (e.g. job loss, a decrease in salary, illness, etc.) or an increase in expenses.
 - 10.3.7. information about risks related to the credit taken in foreign currency, whereas the creditor or the credit intermediary must describe at least the influence that an adverse change in the exchange rate of the foreign currency may have on the contractual payments;
 - 10.3.8. information about the conditions of preliminary credit repayment that are directly related to credit (e.g. the right of the creditor or the credit intermediary to request compensation for damages);
 - 10.3.9. the main consequences, which arise from the violation of the obligations assumed under the credit agreement, including potential commencement of recovery, enforcement, or bankruptcy proceedings, possibility and procedure for the forwarding of information to a credit register, and the sale of the security established as credit security;
 - 10.3.10. the consequences of exercising the contractual right to cancel the agreement and the circumstances which serve as a basis for the cancellation of the agreement by the creditor or the credit intermediary;
 - 10.3.11. information about the procedure of submission of a complaint and claim for damages, including information about available options for a competent judicial and extrajudicial dispute resolution.
- 10.4. A creditor or a credit intermediary shall provide to a consumer the above-listed explanations in a way that ensures sufficient information about the credit conditions for the consumer, so that the consumer would know the obligations arising from the credit agreement, including costs and risks in relation to taking credit, and that allows making informed decisions based on the received information.

- 10.5. A creditor or a credit intermediary is required to provide a consumer with the possibility to ask questions on the conditions of the agreement. A creditor or a credit intermediary shall explain to the consumer as to how the consumer may receive additional information and explanations should the consumer have any further problems in understanding significant circumstances related to the credit agreement.
- 10.6. The fact that the consumer does not want to receive the information and explanations specified in clause 10.2 of these guidelines shall not release a creditor or a credit intermediary from the obligation to offer such information and explanations. The creditor or the credit intermediary may not influence the consumer to waive their right to thorough explanations.
- 10.7. The following failures to act and inappropriate acts by the creditor or the credit intermediary shall not be deemed to be in compliance with the requirement of responsible lending:
- 10.7.1. a creditor or a credit intermediary fails to submit to the consumer the information specified in clauses 10.2 and 10.3 of these guidelines;
 - 10.7.2. a creditor or a credit intermediary fails to establish internal rules for forwarding to the consumer pre-contractual information and information concerning the risks related to the taking of credit;
 - 10.7.3. a creditor or a credit intermediary fails to establish internal rules for the establishment of mortgage, the conditions for immoveable property suitable as security for credit secured by mortgage, or for other conditions for security and appraisal procedure;
 - 10.7.4. in the explanations, a creditor or a credit intermediary fails to refer to the contractual conditions that may lead to negative consequences for the consumer;
 - 10.7.5. a representative of the creditor or the credit intermediary makes promises to the consumer (e.g. possibility to amend the agreement in the future, etc.) before the conclusion of a credit agreement, although there is no certainty concerning their fulfilment, or promises which the creditor or the credit intermediary does not enable to the consumer in the future;
 - 10.7.6. a creditor or a credit intermediary fails to warn the consumer against any potential consequences related to the violation of contractual obligations by the consumer and delay in the performance of payment obligations;
 - 10.7.7. a creditor or a credit intermediary fails to advise the consumer to carefully consider the information and explanations submitted to the consumer and ask any additional questions if necessary;
 - 10.7.8. a creditor or a credit intermediary influences the consumer to conclude a credit agreement within an unreasonably short time period without the consumer being able to assess the information received during the pre-contract negotiations;
 - 10.7.9. a creditor or a credit intermediary submits incorrect information and explanations to the consumer or a creditor or a credit intermediary fails to give feedback meant for the consumer upon individual communication with the consumer.

11. Assessment of creditworthiness in the case of a consumer having solvency problems

- 11.1. A creditor or a credit intermediary shall establish relevant internal rules with the aim of identifying solvency problems of the consumer as early as possible and a procedure to efficiently handle and communicate with a consumer that has solvency problems.
- 11.2. A creditor or a credit intermediary shall ensure to employees, who work with a consumer having solvency problems, training that enables them to fulfil the requirements laid down in the legislation and these guidelines.
- 11.3. If the consumer has solvency problems, the creditor or the credit intermediary and the consumer shall cooperate to identify the reason for the solvency problems and to find and take necessary measures to overcome the solvency problems.
- 11.4. the creditor or the credit intermediary and representatives acting in their name shall maintain contact and communication with the consumer having solvency problems to the extent that is proportional to the requests for information, thereat honouring the privacy of the consumer.
- 11.5. A creditor or a credit intermediary, when communicating with the consumer, shall express themselves simply and clearly, giving the consumer at least the following information:
 - 11.5.1. the number of unpaid or partially paid payments;
 - 11.5.2. the total sum of unpaid payments;
 - 11.5.3. the expenses arisen due to unpaid payments (e.g. default interest, etc.);
 - 11.5.4. the importance of cooperation between the consumer and the creditor in resolving this situation.
- 11.6. If the consumer fails to overcome their solvency problems, the creditor or the credit intermediary shall provide the consumer with information on the consequences of failure to make payments (e.g. costs, default interest, possibility of losing property, etc.) and on possible state programmes or support (e.g. state debt advisors, etc.).
- 11.7. If the creditor or the credit intermediary makes a decision in favour of restructuring a credit agreement due to applicable measures or solvency problems, they shall take into account the consumer's individual situation, interests, and rights and their ability to pay back the outstanding amount. The restructuring measures due to solvency problems may include one or both of the following measures for the consumer:
 - 11.7.1. full or partial refinancing of the credit agreement;
 - 11.7.2. amendment of the conditions agreed upon in the former credit agreement, which among other things, may include the following:
 - 11.7.2.1. extending of the credit agreement;

11.7.2.2. amending the payment schedule of the credit amount and interests;

11.7.2.3. postponing the full or partial payment of instalment for a certain time;

11.7.2.4. changing the interest rate;

11.7.2.5. offering a grace period.

11.8. A creditor or a credit intermediary shall document the reasons why the option/options offered to the consumer is/are suitable for their individual situation and keep sufficient and relevant records during the time laid down in subsection 47 (5) of the Creditors and Credit Intermediaries Act about communication with the consumer having solvency problems.

12. Final provisions

12.1. This version of the guidelines shall enter into force as of 13 June 2016.

12.2. The provisions of these guidelines shall not change the application of the governing law and a creditor or a credit intermediary shall adhere to the principle of responsible lending laid down in the Law of Obligations Act.