Unofficial translation

DIRECTOR OF THE SUPERVISION SERVICE OF THE BANK OF LITHUANIA

DECISION ON THE AMENDMENT OF DECISION NO 241-181 OF THE DIRECTOR OF THE SUPERVISION SERVICE OF THE BANK OF LITHUANIA OF 3 SEPTEMBER 2013 ON THE APPROVAL OF THE GUIDELINES FOR THE MANAGEMENT OF ARREARS ACCRUED AS A RESULT OF CUSTOMERS' BREACH OF FINANCIAL OBLIGATIONS UNDER CREDIT AGREEMENTS

17 September 2018 No 241-207
Vilnius

Pursuant to Article 42(4)(1) and Article 42(12) of the Republic of Lithuania Law on the Bank of Lithuania and subparagraph 5.8 of the Regulations of the Supervision Service of the Bank of Lithuania approved by Order No V2012/(1.7-0202)-02-100 of the Chairman of the Board of the Bank of Lithuania of 28 March 2012, I hereby d e c i d e:

To amend and recast the Guidelines for the Management of Arrears Accrued as a Result of Customers' Breach of Financial Obligations under Credit Agreements approved by Decision No 241-181 of the Director of the Supervision Service of the Bank of Lithuania of 3 September 2013 on the approval of the guidelines for the management of arrears accrued as a result of customers' breach of financial obligations under credit agreements (attached).

Director Vytautas Valvonis

APPROVED
by Decision No 241-181 of the Director
of the Supervision Service of the Bank of Lithuania
of 3 September 2013
(As amended by Decision No 241-207
of the Director of the Supervision Service
of the Bank of Lithuania of 17 September 2018)

GUIDELINES FOR THE MANAGEMENT OF ARREARS ACCRUED AS A RESULT OF CUSTOMERS' BREACH OF FINANCIAL OBLIGATIONS UNDER CREDIT AGREEMENTS

In view of the shortcomings arising in communication and cooperation between the parties to credit agreements secured by a mortgage where the borrower is in financial difficulties as well as the aim of the European Banking Authority to establish a consistent and effective arrears management practice in the mortgage credit market and the case-law of the Supreme Court of Lithuania, the Bank of Lithuania drew up the Guidelines for the Management of Arrears Accrued as a Result of Customers' Breach of Financial Obligations under Credit Agreements (hereinafter – the Guidelines).

The existing legislation and the case-law of the Supreme Court of Lithuania interpreting this legislation oblige both parties to an agreement (obligation) to properly and fairly implement the agreement, engage and cooperate with each other, look for solutions acceptable to both parties, implement the obligation in the most cost-efficient way, exchange essential information, assist each other in exercising contractual rights and obligations, and make every effort to achieve the objective of the agreement.

The main objective of the Guidelines is to discuss all legislation assigned to the competence of the Bank of Lithuania, regulating the requirements of credit agreements secured by a mortgage, where borrowers cannot fulfil their financial obligations arising out of such agreements in a timely and appropriate manner, and to interpret them in one document, promote operational practice based on good faith, fairness, engagement and cooperation of lenders and peer-to-peer lending platform operators in dealing with borrowers in financial difficulties and aiming, if possible, to avoid termination of any credit agreement.

The Guidelines are expected to improve the general understanding by lenders and peer-to-peer lending platform operators on how the requirements of legislation related to the management of failure to implement or inadequate implementation of obligations assumed under a credit agreement and termination thereof should be implemented. The Guidelines shall also promote the uniform and consistent fulfilment of the aforementioned requirements.

The Guidelines were adopted in accordance with Article 42(4)(1) of the Republic of Lithuania Law on the Bank of Lithuania. The Guidelines shall not be regarded as an official interpretation of legislation. Since the Bank of Lithuania adopts decisions based on the entirety of specific factual circumstances, the Guidelines shall not be considered as a decision of the Bank of Lithuania in each particular case.

CHAPTER I
LEGAL BASIS

1. European Union legislation and other documents:

1.1. 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 (OL 2014 L 60, p. 34) (hereinafter – the Directive).

1.2. Guidelines on Arrears and Foreclosure of the European Banking Institution of 19 August 2015 (EBA/GL/2015/12)[1] (hereinafter – the EBA Guidelines).

1.3. Opinion of the European Banking Authority on good practice for mortgage creditworthiness assessments and arrears and foreclosure, including expected mortgage payment difficulties of the European Banking Institution of 1 September 2015 *(*EBA/Op/2015/09)[2] (hereinafter – the EBA Opinion).

1.4. Judgement of the Court of Justice of the European Union of 5 July 2012 in the case *Content Services Ltd* v. *Bundesarbeitskammer,* C-49/11 (hereinafter – the CJEU Judgement in case No C-49/11).

1.5. Judgement of the Court of Justice of the European Union of 9 November 2016 in the case *Home Credit Slovakia a.s.* v. *Klara Biroova*, C-42/15 (hereinafter – the CJEU Judgement incase No C-42/15).

1.6. Judgement of the Court of Justice of the European Union of 25 January 2017 in the case *BAWAG PSK Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG* v. *Verein für Konsumenteninformation*, C-375/15 (hereinafter – the CJEU Judgement in case No C-375/15).

2. Legislation of the Republic of Lithuania:

2.1. Republic of Lithuania Law on Real Estate Related Credit (hereinafter – the Law).

2.2. Civil Code of the Republic of Lithuania (hereinafter – the CC).

2.3. Rules for Completing a Standard Credit Information Form (hereinafter – the Rules) approved by Resolution No 03-180 of the Board of the Bank of Lithuania of 13 December 2016 on the approval of rules for completing a standard credit information form.

3. Case-law:

3.1. Ruling of the Supreme Court of Lithuania (hereinafter – the SCL) of 20 February 2012 in civil case No 3K-3-58/2012.

3.2. Ruling of the SCL of 26 June 2012 in civil case No 3K-7-297/2012.

3.3. Ruling of the SCL of 16 November 2012 in civil case No 3K-3-497/2012.

3.4. Ruling of the SCL of 14 May 2013 in civil case No 3K-3-288/2013.

3.5. Ruling of the SCL of 28 June 2013 in civil case No 3K-3-349/2013.

3.6. Ruling of the SCL of 23 December 2013 in civil case No 3K-7-508/2013.

3.7. Ruling of the SCL of 15 July 2015 in the civil No e3K-3-420-969/2015.

3.8. Ruling of the SCL of 12 May 2016 in the civil No 3K-3-267-611/2016.

3.9. Ruling of the SCL of 12 October 2016 in the civil No e3K-3-438-415/2016.

3.10. Ruling of the SCL of 16 May 2017 in the civil No 3K-3-245-611/2017.

3.11. Ruling of the SCL of 14 July 2017 in the civil No e3K-3-318-611/2017.

3.12. Ruling of the SCL of 18 October 2017 in civil case No e3K-3-358-916/2017.

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[1] https://eba.europa.eu/documents/10180/1163130/EBA-GL-2015-12_EN_GL+on+arrears+and+foreclosure

[2] https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-09+Opinion+on+good+practices+for+mortgages.pdf

CHAPTER II
SCOPE OF APPLICATION AND ENTITIES

4. The Guidelines shall apply to lenders, peer-to-peer lending platform operators, credit intermediaries and grantors of loans acting under the Law.

CHAPTER III
TERMS AND DEFINITIONS

5. Lender shall mean a lender, a peer-to-peer lending platform operator described in the Law and, where applicable, a grantor of a loan described in the Law. The concept of a creditor used in the Guidelines shall be consistent with the concept of a lender.

6. Other terms used in the Guidelines shall have the meaning provided for in the Law and other legislation regulating credit activities.

CHAPTER IV
GUIDELINES

SECTION I
INFORMATION PROVIDED TO A BORROWER PRIOR TO THE CONCLUSION OF A CREDIT AGREEMENT

7. Article 6 of the Law stipulates that the lender shall provide the borrower with **general information**. The lender and the credit intermediary, if the conclusion of the credit agreement is offered by the credit intermediary, shall make sure that general information on the offered credit agreements is at all times provided to the borrower in a clear and understandable manner. General information must be available to the borrower in a digital format as well as in writing on paper or another durable medium upon the borrower's request. Besides other general information on the credit agreement, a general **warning** regarding the consequences for failure to implement the obligations assumed under the credit agreement shall be provided.

8. Pursuant to Article 7(1) of the Law, before signing the credit agreement, the lender and the credit intermediary, if any, shall provide the borrower with **standard information on the credit**, specifically customised for them and enabling to compare different credit offers made by lenders, evaluate their consequences, and to make an informed decision regarding conclusion of a credit agreement (hereinafter – standard information on the credit). The standard information on the credit shall be provided by using Standard Credit Information Form (hereinafter – the Form) in writing on paper or another durable medium as established by the supervisory authority (Article 7(3) of the Law).

9. The consequences for failure to implement credit obligations are specified in Section 13 of the Form. If failure to comply with any credit obligations assumed by the borrower may cause financial or legal consequences to the borrower, the lender shall describe in the Form the main cases (e.g. overdue payment and/or failure to implement obligations) and inform on where further information may be obtained (paragraph 62 of the Rules). The lender shall clearly and in easily understandable language specify in the Form the consequences which may appear due to failure to implement or inadequate implementation of the obligations assumed by the borrower under the credit agreement. Information on serious consequences must be bolded (paragraph 63 of the Rules). In addition, the Form shall contain a warning that in case the borrower fails to fulfil credit obligations, mortgaged housing or other real estate may become a subject to forced sale.

10. Article 10 of the Law provides that prior to conclusion of the credit agreement, the lender and the credit intermediary (in cases where conclusion of the credit agreement is offered by the credit intermediary) are required to provide **adequate explanations** of the conditions of the offered credit agreement and additional services associated with granting a credit to the borrower

orally, in writing on paper or another durable medium, so that they could assess whether the offered credit agreement and the additional services meet their needs and financial situation. Such explanations, *inter alia*, shall include explanations of the exact impact on the borrower that financial products may have, including consequences for the failure to implement the obligations assumed under the credit agreement.

11. Additional requirements to peer-to-peer lending platform operators regarding the provision of information are provided for in the Law:

11.1. pursuant to Article 37(8)(3) of the Law, the peer-to-peer lending platform operator shall publish, *inter alia*, on its website a detailed recovery implementation procedure, in case the borrower fails to implement the obligations assumed under the credit agreement or implements them inadequately;

11.2. Article 40(1)(3) of the Law stipulates that prior to conclusion of the credit agreement, the peer-to-peer lending platform operator shall provide the grantor of a loan with a detailed loan recovery procedure, if the borrower fails to implement the obligations assumed under the credit agreement or implements them inadequately.

SECTION II
INFORMATION PROVIDED TO A BORROWER WHEN CONCLUDING A CREDIT AGREEMENT

12. A credit agreement shall in a clear and concise manner specify the consequences for the failure to implement the obligations assumed under the credit agreement.

Commentary

Article 16(2) of the Law provides for a mandatory list of terms and conditions of a credit agreement. According to Article 16(2) of the Law, a credit agreement shall specify penalties to be paid in case of delayed payment of credit premiums and the procedure for calculation thereof (Article 16(2)(10) of the Law) as well as consequences for failure to implement the obligations assumed under the credit agreement (Article 16(2)(12) of the Law). Considering the fact that penalties to be paid in case of delayed payment of credit premiums and the procedure for calculation thereof are required to be specified according to Article 16(2)(10) of the Law, the Bank of Lithuania holds the opinion that consequences for failure to implement the obligations assumed under the credit agreement should include consequences other than penalties applied to the borrower. *For example, the lender may set out* that *inadequate implementation of financial obligations or failure to implement them may have a negative impact on the borrower's credit history, increase the cost of borrowing, as well as cause risk of losing the right of ownership of the mortgaged real estate.*

SECTION III
RIGHTS AND OBLIGATIONS OF THE PARTIES TO A CREDIT AGREEMENT WHERE A BORROWER IS IN FINANCIAL DIFFICULTIES

13. The lender shall approve the management procedures and measures in case of failure to implement or inadequate implementation of the credit agreement.

Commentary

13.1. According to Article 21(4) of the Law, the lender shall approve the management procedures and measures to be applicable in case of failure to implement the obligations assumed under the credit agreement or inadequate implementation thereof.

13.2. Paragraph 27 of the preamble of the Directive, provisions of which have been incorporated into the Law, provides that "given the significant consequences for creditors, consumers and potentially financial stability of foreclosure, it is appropriate to encourage creditors to deal proactively with emerging credit risk at an early stage and that the necessary measures are

in place to ensure that creditors exercise reasonable forbearance and make reasonable attempts to resolve the situation through other means before foreclosure proceedings are initiated. Where possible, solutions should be found which take account of the practical circumstances and reasonable need for living expenses of the consumer". A relevant obligation is provided for in subparagraph 1.1 of the EBA Guidelines: the creditor should establish, and keep up to date, policies and procedures for the effective handling of and engagement with consumers in payment difficulties. The consumer engagement policy should include a statement that the creditor shall provide adequate information, for example, through websites and written materials, and support for consumers in payment difficulties.

13.3. Subparagraph 1.2 of the EBA Guidelines additionally provides that the creditor should establish, and keep up to date, procedures to detect, as early as possible, consumers going into payment difficulties. Paragraph 24 of the EBA Opinion also draws attention to the fact that even before the borrower is in payment difficulties there are usually warning signs for problem loans. Therefore, the lender is recommended to identify and monitor indicators related to the implementation of the credit agreement, *such as a borrower's request to reduce and/or delay a payment, which could be a cost effective approach to prevent the borrower from going into over-indebtedness.* Taking action to engage with the borrower, by providing support and information before the payment difficulties occur may prevent an arrears situation from developing, and where arrears do subsequently develop, early engagement may quicken the restructuring of the arrears and/or the credit (hereinafter – debt restructuring).

14. The borrower who fails to implement or inadequately implements obligations assumed under the credit agreement shall cooperate with the lender.

Commentary

14.1. Article 21(2-3) of the Law provides the **obligation of cooperation** of both parties to the credit agreement. This obligation is also set out in Article 6.38(3) and Article 6.200(2) of the CC as well as in the EBA Guidelines. The principle of cooperation or engagement is a manifestation of the principle of good faith. This principle requires the parties to ensure appropriate terms and conditions for the implementation of the obligation, to exchange, where necessary, information essential for the implementation of the obligation (for example, to notify of the changes in their residence or place of business), give a timely notice of obstacles in the implementation of the obligation.[3]

14.2. The SCL has also confirmed the interpretation of the CC provisions provided in the Commentary of the CC on the fact that failure to notify of changes in residence is an inappropriate example of the principle of cooperation: "in performing a contract, each party shall be bound to cooperate with the other party (Article 6.200(2) of the CC) and to act in accordance with good faith (Article 6.158(1), Article 6.200(1) of the CC). Due to that, such behaviour as avoidance to accept a notice sent in accordance with the agreed procedure, changing residence without prior notice, leaving for a longer period without prior notice to the other party shall not be justified."[4]

14.3. Although the obligation of cooperation between the contractual parties arises from the requirements established in legislation, in consideration of the aforementioned, cases where, *for example, the credit agreement additionally provides for the borrower's obligation to notify the lender of financial difficulties, anticipated delayed payments or other significant events, which have or may have a negative impact on the adequate implementation of the obligations assumed by the borrower under the credit agreement, as well as of changes in contact information of the parties*, shall be considered as good practice.

[3] Commentary of the Civil Code of the Republic of Lithuania. Book six. Law on Obligations. Volume I. Commentary of Article 6.38(3).

[4] Ruling of the Civil Division of the Supreme Court of Lithuania of 14 May 2013 in civil case No 3K-3-288/2013.

14.4. Paragraph 26 of the EBA Opinion emphasises that it is also important that borrowers are encouraged to engage with the creditor about any expected financial difficulties which may prevent them from meeting the scheduled repayment under the credit agreement.

14.5. The EBA Guidelines emphasise that any interaction by the creditor with the consumer in relation to their payment difficulties should respect the consumer's privacy.

14.6. The SCL has interpreted that additional protection given to consumers is intended to avoid conditions imposed by a stronger party, aiming to balance rights and obligations of the parties. However, such additional protection provides no exceptions from one of the most important principles of private law – *pacta sunt servanda* (agreements must be kept) (Article 6.38 and 6.59 of the CC), thus it does not mean that consumers may, to a certain extent, fail to implement obligations secured by a mortgage or use consumer protection measures granted to them by law in order to unfairly avoid the implementation of voluntarily assumed obligations.

15. Upon determination that the borrower fails to implement the obligations assumed under the credit agreement or implements them inadequately, the lender shall give the borrower the following information in writing on paper or another durable medium:

1) which obligations are not being implemented or are implemented inadequately by specifying the amounts of overdue credit premiums (part thereof) and due penalties as well as the exact amount of the credit yet to be repaid;

2) reasonable term for the implementation of the obligations not being implemented or being implemented inadequately.

Commentary

15.1. Article 21(1) of the Law sets out the requirement for the lender to notify the borrower where they fail to implement the obligations assumed under the credit agreement or implements them inadequately.

15.2. Article 21(1)(1) of the Law provides that the lender shall give the borrower the following information:

15.2.1. which obligations are not being implemented or are implemented inadequately;

15.2.2. the amount of overdue credit premiums (part thereof);

15.2.3. the amount of due penalties;

15.2.4. the exact amount of the credit yet to be repaid;

15.2.5. subparagraph 3.2 of the EBA Guidelines additionally recommends to indicate the number of payments either missed or only paid in part, and the importance of the cooperation between the consumer and the creditor to resolve the situation.

15.3. Paragraph 28 of the EBA Opinion also provides that it is good practice to ensure that the creditor provides to the borrower the following information in a timely manner: information regarding the consequences of missing payments (e.g. legal procedures, costs, default interest rate, possible loss of property); and information about the timelines of debt restructuring, sale of real estate or other actual processes. It is also good practice to ensure that where the payment difficulties persist, the creditor provides an updated version of this information to the borrower every quarter.

15.4. Article 21(1)(2) of the Law provides that the lender shall give the borrower a **reasonable term** for the implementation of the obligations not being implemented or being implemented inadequately. The Law does not establish the exact or minimum term which should be given to the borrower for the implementation of the obligations. A similar provision is laid down in Article 6.209 of the CC – in case of non-performance, the aggrieved party may establish in writing an additional reasonable period of time for the performance of the agreement and notify the other party thereof. The purpose of such provision is to allow the parties to keep the agreement, although the term for its implementation is missed. An additional period for the implementation of an agreement also reveals the principle of cost-effectiveness and allows the parties to avoid higher losses caused by termination of the agreement. Contrary to the CC, the Law establishes the

lender's obligation rather than right to provide an additional reasonable period for the implementation of obligations. The Commentary of the CC states that a reasonable period shall be a question of fact. This requirement means that the aggrieved party should act in good faith, without abusing their rights. Thus, the established period should be realistic, i.e. allow the other party to implement the agreement considering its nature, subject and place of implementation. *For example,* the aggrieved party is aware that the other party, aiming to repay the debt, sells their real estate, but conclusion of the transaction shall last two weeks. In this case, an additional period of three weeks for implementation of the agreement should be reasonable because the other party should be given the required amount within this period.[5] Thus, summarising the above, it can be concluded that additional reasonable term for the implementation of obligations by the borrower should be realistic and determined taking into account individual circumstances.

15.5 The Law sets out the minimum requirements. Although it is not specified in the Law, the lender, considering the information provided by the borrower on the ability to repay the debt within the reasonable period of time and/or on at least partial implementation of the breached obligations and/or other similar reasons, may (a few times) extend the additional term provided for the implementation of obligations or provide a new additional term for the implementation of the breached obligation. Such behaviour of the lender shall not in itself imply the lender's rights to terminate the credit agreement or to request the full repayment of the credit prior to expiry of the period of validity of the credit agreement without termination of the withdrawal from the credit agreement.

15.6. Provisions of Article 21(1) of the Law regarding notifying the borrower of their failure to implement or inadequate implementation of the obligations assumed under the credit agreement is a general norm applied where the lender is not going to terminate the credit agreement. In case the borrower fails to implement or inadequately implements the obligations assumed under the credit agreement for more than 90 days and this is the reason the lender is going to terminate the credit agreement with the borrower, the lender shall fulfil requirements laid down in Article 23(3) of the Law that are interpreted in subparagraph 21.3 of the Guidelines, and shall provide additional period of at least 30 days for the implementation of the obligations.

15.7. The Law sets out that the borrower shall be notified in writing on paper or another durable medium. If the parties discussed the exact way of transmission of notifications, any notifications should be transmitted in the way agreed by the parties. The credit agreement may also establish the general procedure for notifying the borrower and possible different ways of transmission of notifications. *For example, the credit agreement may establish that any notifications and other correspondence shall be submitted to the party during the implementation of the agreement against acknowledgement of receipt or sent by post, online banking or provided in accordance with other procedures specified in the customer service and service provision terms and conditions*. Considering the fact that notifications addressed to the borrower on their failure to implement and/or inadequate implementation of the obligations and termination of the agreement are significant for the appropriate cooperation of the lender and the borrower, each credit agreement is recommended to specify specific ways of sending such notifications. The cases where the lender is recognised as appropriately noticed using online banking system are also provided in subparagraph 15.14 of the Guidelines.

15.8. Certain provisions of the Law (e.g. Article 21(1) and Article 22(2-3)) set out the lender's obligation to provide the borrower with certain information in a durable medium.

15.9. Article 3(24) of the Law provides that a **durable medium** shall mean a medium (computer disk, write-once compact disk (CD), multi-purpose (optical) disk (DVD), the borrower's computer hard drive containing records of e-mail, except for websites, if they do not meet the characteristics of a durable medium specified in this paragraph), which enables the borrower to use unchanged information stored therein in the future and to keep the information

[5] Commentary of the Civil Code of the Republic of Lithuania. Book six. Law on Obligations. Volume I. Commentary of Article 6.209(1).

intended for them for as long as needed taking into account the purpose of the information so that it could be used in the future enabling to reproduce the information unchanged.

15.10. The Court of Justice of the European Union (hereinafter – the CJEU) has provided an interpretation of the concept of a durable medium in the judgements adopted in cases No C-49/11 and No C-42/15. The CJEU has stated that if a medium allows the consumer to store the information addressed to them personally, ensures that its content is not altered and that the information is accessible for an adequate period, and gives consumers the possibility to reproduce it unchanged, such medium must be regarded as 'durable' within the meaning of that provision.

15.11. Taking into account the aforementioned interpretations of the CJEU, the Bank of Lithuania holds the opinion that information shall not be acknowledged as provided in a durable medium if, *for example, the lender provides the borrower with the information required by the Law in online banking system where it is not possible to store the information provided to the borrower in a way ensuring the possibility to use the unchanged information stored therein in the future and to store the information for as long as necessary in accordance with its purpose, and in a way allowing to use it in the future as well as reproduce it without altering its content.*

15.12. The CJEU has stated that "a durable medium <...> must ensure that the consumer, in a similar way to paper form, is in possession of the information referred to in that provision to enable him to exercise his rights where necessary. What is relevant for the consumer is that he should be able to store the information which has been addressed to him personally, to rest assured that its content shall not be altered, that the information shall be accessible for an adequate period and that it shall be possible to reproduce it unchanged".[6]

15.13. Paragraph 37 of the CJEU Judgement in case No C-49/11 provides that "where information found on the seller's website is made accessible only via a link sent to the consumer, that information is neither 'given' to that consumer, nor 'received' by them, thus a website cannot be recognised as a 'durable medium'". Thus, in the opinion of the Bank of Lithuania, where the lender provides information specified by the Law to the borrower in a durable medium, an active obligation arising of the lender's actions to provide the borrower with information required by the Law shall exist. In this context, it is important to pay attention to the fact that, where necessary, the lender shall prove that the obligations specified in the Law regarding the provision of the required information and the credit agreement to the borrower were implemented appropriately.

15.14. Therefore, the information provided to the borrower's mailbox on the website of the online banking system may be acknowledged as provided in a durable medium if the following requirements are fulfilled:

15.14.1. this website allows the borrower to store information addressed to them personally in the way ensuring the possibility to access it and reproduce it unchanged within the required time, preventing unilateral alteration of its content by the lender or another person;

15.14.2. if the lender, in order to obtain access to appropriate information, has to check such website and, while transmitting this information, takes active steps for notifying the borrower that the aforementioned information has been provided on the website and is available (the lender sends a letter or email to the borrower's address regularly used to communicate with other persons and which the parties agreed to use in the credit agreement). If, in order to obtain access to necessary information, the borrower has to check such website, the borrower shall be only given the possibility to access such website, thus it cannot be acknowledged that the lender has taken active steps.

15.15. Thus, as established in subparagraph 15.14.2 of the Guidelines and in paragraphs 50, 51 and 53 of the CJEU Judgement in case No C-375/15, placing information on an online banking website may be considered as appropriate provision of information, if such transmission is accompanied by active actions of the lender, i.e. sending a letter or email to the borrower (to the

[6] Paragraphs 42-44 of the CJEU Judgment in case No C-49/11, paragraph 35 of the CJEU Judgment in case No C-42/15 and paragraphs 42 and 44 of the CJEU Judgment in case No C-375/15.

borrower's address regularly used to communicate with other persons and which the parties agreed to use in the credit agreement) aimed at drawing the attention to the existence and availability of that information on the website (provided that the online banking website fulfils the requirements set out for a durable medium).

15.16. Where the lender provides the borrower with the information **in writing**, the provisions of Article 6.166 of the CC shall apply, provided that they do not contradict the Law. Article 6.166 of the CC sets out that the notification shall be presumed to become known to the addressee at the moment when it reaches the place of residence or business (head office) of that person, unless the latter proves that it was impossible to receive the notice through no fault of the addressee or their employees. Where it can be proven that the notification has reached the place of residence of the addressee, for example, having submitted a registered letter to the addressee, it shall be assumed that it was received by the addressee and the addressee is aware thereof. However, such presumption may be objected, thus the addressee shall be entitled to prove that they were not actually aware of the notification.[7]

16. Where the borrower is not able to implement the obligations assumed under the credit agreement, they shall act in good faith, fairly and professionally, as well as cooperate with the lender. Having assessed the data obtained on the borrower, upon the borrower's request, the lender shall suggest possible ways and/or measures for further implementation of the borrower's obligations under the credit agreement.

Commentary

16.1. The SCL has commented on the importance of the lender's cooperation: "it shall be acknowledged that the creditor has breached the obligation, unless the debtor may implement the obligation due to insufficient creditor's cooperation with the debtor or through another creditor's fault. According to this legal regulation, insufficient creditor's cooperation shall provide the basis to state the creditor's fault given that there is a causal link between insufficient cooperation of the creditor and the debtor's disability to implement the obligation, i.e. insufficient cooperation of the creditor determines the debtor's disability to implement the obligation."[8]

16.2. Article 21(2) of the Law stipulates that **upon the borrower's request**, the lender shall suggest the borrower available ways for further implementation of the borrower's obligations under the credit agreement. Nevertheless, given the specific situation and circumstances, it is recommended that the lender should also, on their initiative, notify the borrower in financial difficulties of their right to apply for the lender's offer of possible ways of debt restructuring and provide the borrowers in financial difficulties with sufficient information on possible ways of debt restructuring. Determination of the borrower's right to apply to the lender for an offer of possible ways of debt restructuring in the credit agreement shall be considered as good practice. *For example, the borrower shall be entitled to appeal in writing to the lender for restructuring the debt outstanding due to their temporary financial difficulties.* In addition, the credit agreement may provide a certain obligation to the lender, *for example, that the lender shall undertake to offer the borrower in financial difficulties to appeal in writing to the lender for possible ways of debt restructuring.*

16.3. Subparagraph 2.1 of the Guidelines provides that the lender shall make every effort in order to determine the reasons of failure to implement or inadequate implementation of obligations by the borrower and to offer the borrower ways and/or measures for further implementation of the obligations assumed under the credit agreement.

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[7] Commentary of the Civil Code of the Republic of Lithuania. Book six. Law on Obligations. Volume I. Commentary of Article 6.166.

[8] Ruling of the Civil Division of the Supreme Court of Lithuania of 23 December 2013 in civil case No 3K-7-508/2013.

16.4. The lender offering the specific way(s) of debt restructuring should provide sufficient information allowing the borrower to assess the legal and economic consequences of the offered way of debt restructuring, the content and scope of contractual obligations offered to assume, as well as to answer the borrower's questions regarding the way of debt restructuring offered to them.

16.5. When deciding on the offered ways of debt restructuring, the lender, to the extent possible, should consider the borrower's individual situation, actual financial capacities to implement the credit agreement and the ability to repay the debt. In order to offer the borrower possible ways of debt restructuring given the specific situation, the lender shall assess information obtained on the borrower; furthermore, the lender may apply for additional information where it is necessary for drawing up the offer on debt restructuring. The Law does not specify the exact data to be assessed by the lender before submitting an offer of debt restructuring to the consumer, thus each lender, given the specific circumstances, may decide on which information is necessary.

16.6. Although the Law does not regulate **the form of the offer** to be submitted to the borrower regarding possible ways and/or measures for further implementation of the obligations under the credit agreement, it is recommended to submit such offer in writing on paper or another durable medium. In addition, the Law does not regulate **the term of submitting** such offer, thus, in the opinion of the Bank of Lithuania, the assessment of the borrower's ability to fulfil the financial obligations should be performed and the offer of possible ways of restructuring the borrower's debt should be submitted within an individually set reasonable term.

16.7. Subparagraph 4.1 of the EBA Guidelines provides the indicative list of possible ways and/or measures for debt restructuring or other actions which could be taken by the lender:

16.7.1. a total or partial refinancing of a credit agreement;

16.7.2. a modification of the previous terms and conditions of a credit agreement which, *inter alia*, may include the following:

16.7.2.1. extending the term of the mortgage;

16.7.2.2. changing the type of the mortgage (changing the type of mortgage from a capital and interest mortgage to an interest only mortgage);

16.7.2.3. deferring payment of all or part of the instalment repayment for a specific time;

16.7.2.4. changing the interest rate;

16.7.2.5. offering a payment holiday.

16.8. Article 21(1) of the Law does not set out the **frequency of notifying** the borrower, thus it is recommended to determine the frequency in the procedures and measures for the management of failure to implement or inadequate implementation of the credit agreement which shall be confirmed by the borrower. Whereas subparagraph 19.2 of the Guidelines provides that termination of the credit agreement shall be deemed as the last remedy, the Bank of Lithuania holds the opinion that according to Article 21(1) of the Law, the borrower should be notified of the failure to implement the obligations assumed under the credit agreement or inadequate implementation thereof earlier than after 90 days from inadequate implementation or failure to implement the obligations.

17. During the period of validity of the credit agreement, upon the borrower's application filed in writing on paper or another durable medium, the lender shall defer payment of the credit premiums, except for interests, for the period specified by the borrower in the application, but no longer than 3 months, when the borrower no longer meets the responsible lending or creditworthiness requirements related to the deb-to-income ratio, and if one of the following circumstances exists:

1) the borrower's marriage is dissolved;

2) in the event of death of the borrower's spouse;

3) the borrower or the borrower's spouse becomes unemployed;

4) the borrower is declared unfit or partially fit for work under the procedure established in the Republic of Lithuania Law on the Social Integration of the Disabled.

Commentary

17.1. Article 22 of the Law sets out the possibility for the borrower to use a 'payment holiday', i.e. defer payment of credit premiums, except for interests, for the period specified by the borrower in the application, but no longer than 3 months. Unless otherwise agreed by the parties to the credit agreement, the Law sets out the maximum term for deferral of the implementation of the obligations assumed under the credit agreement. However, the parties to the credit agreement **shall be entitled to agree on, or the lender may apply a period exceeding 3 months for deferral of payment of the credit premiums** (Article 22(4) of the Law). The parties to the credit agreement may agree on a longer 'period of a payment holiday' and payment of deferred credit premiums in a separate agreement, thus these terms may not be included in the initial credit agreement.

17.2. The Law sets out certain conditions and circumstances entitling the borrower to use the right to defer the implementation of the obligations assumed under the credit agreement. In principle, at least **two conditions shall be fulfilled** so that the borrower could use a 'payment holiday'. Firstly, the borrower's financial situation shall be deteriorated to such an extent that the borrower would not meet the debt-to-income ratio established by legislation. Secondly, at least one of the following circumstances shall exist: the borrower's marriage is dissolved, the borrower's spouse dies, the borrower or the borrower's spouse becomes unemployed, the borrower is declared unfit or partially fit for work. It should be noted that the lender shall also be entitled to apply deferral of the implementation of the obligations assumed under the credit agreement under other circumstances more favourable to the borrower, *for example, in case the borrower's financial situation deteriorates*.

17.3. The Law provides for neither a limitation of a period nor the number of times the borrower may be entitled to use a 'payment holiday'. Limiting the borrower's possibility to use a 'payment holiday' with certain terms is considered to be a bad practice, *for example, if the credit agreement provides that, upon the borrower's application, the lender shall defer payment of the credit for the period specified by the borrower in the application that cannot exceed 3 months per 3 years.* In the opinion of the Bank of Lithuania, the borrower could use a 'payment holiday' provided that one of the circumstances specified in Article 22(1-4) of the Law appears each time of the deterioration of the financial situation of the borrower. The case where, *for example, the borrower became unemployed in the second year of repayment of the credit and applied to defer credit premiums for 3 months, whereas their marriage was dissolved after two years and, they applied to defer credit premiums for 3 months,* is considered to be a good practice.

SECTION IV
TERMINATION OF THE CREDIT AGREEMENT OR FULL CREDIT REPAYMENT UPON REQUEST OF THE LENDER

18. The lender shall be entitled to terminate the credit agreement unilaterally or to require full repayment of the credit prior to expiry of the period of validity of the credit agreement only in the event of a material breach of the credit agreement.

Commentary

18.1. Where the credit agreement is inadequately implemented, the other party to the credit agreement shall be entitled to use the remedies specified in legislation and in the credit agreement. One of the remedies provided for in the Law is unilateral termination of the agreement. Terms and procedures for unilateral termination of the credit agreement are established in Article 23 of the Law.

18.2. The credit agreement may be terminated in the event of its material breach. The Law does not provide a list of material breaches of the credit agreement. Article 23(3) of the Law specifies only one of the possible events of a material breach of the credit agreement: failure to implement the obligations assumed under the credit agreement or inadequate implementation thereof for a period exceeding 90 days may be deemed as a material breach of the credit agreement

entitling the lender to terminate the credit agreement unilaterally or to require full repayment of the credit prior to expiry of the period of validity of the credit agreement. The lender and the borrower may agree on a period exceeding 90 days which shall be deemed as a material breach of the credit agreement in the event of failure to implement or inadequate implementation of the obligations under the credit agreement.

18.3. Article 6.217(1) of the CC establishes the relevant provision as well. According to the CC, a material breach of an agreement shall also be the condition for termination of the agreement. Article 6.217(2) of the CC provides the list of circumstances which should be taken into account in determining whether **a violation** of an agreement **is material**:

18.3.1. whether the aggrieved party is substantially deprived of what they were entitled to expect under the agreement, except in cases where the other party did not foresee or could not have reasonably foreseen such result;

18.3.2. whether, taking into account the nature of the agreement, strict compliance with the conditions of the obligation is of essential importance;

18.3.3. whether the obligation is not fulfilled intentionally or due to gross negligence;

18.3.4. whether the non-performance gives the aggrieved party the grounds to suppose that they cannot expect the future performance of the agreement;

18.3.5. whether the non-performing party that was going to implement or was implementing the agreement, would suffer significant damage in case the agreement is terminated.

18.4. The case-law of the Court of Cassation provides that while analysing the content of the criteria of a material violation of an agreement established in Article 6.217(2) of the CC, first of all, the implementation of two obligations (promised and actually performed) should be assessed. The larger the gap between these implementations, the greater the probability of a material breach. The gap shall be maximum in case of absolute non-performance. Second, while deciding on whether a strict following of obligation conditions has essential meaning in view of the substance of the agreement, it should be assessed whether non-performance of the exact contractual obligation shall determine the loss of the creditor's interest to implement the obligation. Third, while deciding on whether the obligation was not fulfilled intentionally or due to gross negligence, it is required to analyse the form of fault of the aggrieved party under the general provisions of the civil liability, and decide whether the fault of the aggrieved party is substantial, and if so, whether it was due to gross negligence. The greater the fault, the less legitimate interest of the aggrieved party to maintain contractual relations. Fourth, while deciding on whether non-performance gives the aggrieved party the grounds not to expect the implementation of the agreement in the future, it is required to determine whether the violator of the agreement acts passively regarding the implementation of the obligations assumed, as well as whether the violator of the agreement is able, even with best intentions, to implement the agreement at all. Finally, it should be assessed whether the violator of the agreement, who was going to implement or was implementing the agreement, should incur substantial losses in the result of termination of the agreement. In this case, very large, disproportionate losses should be considered (Ruling of the Extended Panel of Judges of the Civil Division of the Supreme Court of Lithuania of 26 June 2012 adopted in the civil case *R. B.* v. *Nordea Bank Finland Plc*, No 3K-7-297/2012). Furthermore, the conclusion that constant and long-term delayed payments are a material breach of the credit agreement in the event of dispute, giving the defendant the basis for unilateral termination of the agreement, shall be deemed as reasoned in the case-law.[9]

18.5. An agreement may be materially violated both when it is not performed at all and when it is (was) performed inadequately. The parties' right to unilaterally terminate the agreement when the other party materially breaches it is interpreted by the principle of balance of interests of contractual parties, *pacta sunt servanda*, as well as other principles, and reveals the aim of the legislator to maintain contractual relations. Thus, the legislator determines that the right to

[9] Ruling of the Civil Division of the Supreme Court of Lithuania of 15 July 2015 in civil case No e3K-3-420-969/2015.

unilaterally terminate the agreement appears only in case of a material breach of the agreement.[10] The public interest to ensure stability of civil relations and protection of legitimate expectations restricts unilateral initiative of the contractual party to terminate the agreement; therefore, interests of the violator of the agreement should also be taken into account in case of termination of the agreement, thus ensuring the balance of legitimate interests of the parties.[11]

18.6. Following Article 16(2)(26) of the Law, a credit agreement shall also include a clear and concise explanation of the lender's right to terminate the credit agreement, as well as **the grounds and procedure** for the implementation thereof. In the opinion of the Bank of Lithuania, the parties to the credit agreement should agree on and specify the exact violations in the credit agreement which shall be deemed to be material. But in the case of a dispute, the party objecting validity of termination of the credit agreement should prove that the violation was not material and the aggrieved party was not entitled to terminate the agreement for this reason.

18.7. The Court of Cassation has noted that, in general, termination of an agreement due to failure to implement a minor part of obligations may be deemed to be a disproportionate legal consequence to a breach of the agreement, yet while determining the nature of the breach, not only the overdue amount but also **the entirety of** other **significant circumstances** allowing to decide on the presence of the basis for unilateral termination of the agreement shall be assessed (Ruling of the Panel of Judges of the Civil Division of the Supreme Court of Lithuania of 20 February 2012 adopted in the civil case under the claim filed by the bank AB DnB NORD, case No 3K-3-58/2012; Ruling of 17 June 2013 adopted in the civil case *A. K.* v. *Klausučių kredito unija*, No 3K-3-345/2013).[12]

18.8. Considering that the Law is a specific legal act, the provisions of the CC should be applied insofar as they do not conflict with the requirements of the Law. Contrary to Article 6.217(5) of the CC, the Law shall not entitle the parties to agree on unilateral termination of the credit agreement unless a violation of the credit agreement is material. Thus, **the credit agreement cannot be terminated unilaterally, i.e. out-of-court, unless a violation is material.**

18.9. In addition, it should be noted that the Law sets out the cases where **termination of the credit agreement is impossible**:

18.9.1. Article 12(5) of the Law provides that upon conclusion of a credit agreement with the borrower, the lender and/or the grantor of a loan shall not be entitled to terminate the credit agreement or change the provisions thereof, which would result in placing the borrower in a disadvantageous position, on the grounds of inadequately performed assessment of the borrower's credit rating, except for cases where the lender and/or the grantor of a loan prove that the borrower deliberately concealed or falsified the information specified in Article 13 of the Law.

18.9.2. Article 13(5) of the Law sets out that the lender is prohibited from termination of the credit agreement on the grounds that the information provided by the borrower prior to conclusion of the credit agreement was incomplete, except for cases where the lender proves that the borrower deliberately concealed or falsified the information.

19. The lender and the grantor of a loan shall exhaust all available options and measures in order to implement the obligations assumed under the credit agreement before termination of the credit agreement or requirement for full repayment of the credit prior to expiry of the period of validity of the credit agreement without termination of the credit agreement.

Commentary

[10] Commentary of the Civil Code of the Republic of Lithuania. Book six. Law on Obligations. Volume I. Commentary of Article 6.217.

[11] Ruling of the Civil Division of the Supreme Court of Lithuania of 28 June 2013 in civil case No 3K-3-349/2013.

[12] Ruling of the Civil Division of the Supreme Court of Lithuania of 12 May 2016 in civil case No 3K-3-267-611/2016.

19.1. The Law sets out the lender's obligation to make every available effort in order to prevent termination of the credit agreement, where it is objectively possible (Article 23(1) of the Law). Before termination of the credit agreement or requirement for full repayment of the credit without termination of the credit agreement, the lender shall exhaust all objectively available options and appropriate measures in order to keep the credit agreement, and shall use the right to unilaterally terminate the credit agreement or the right to require full repayment of the credit prior to expiry of the period of validity of the credit agreement without termination of the credit agreement only as an extreme measure.

19.2. The rule that termination of the credit agreement should be an extreme measure is also acknowledged in the case-law. The SCL has stated that when the creditor chooses a remedy, *inter alia*, the principle of *favor contractus*, which means that the parties should aim to keep the agreement where it is possible, shall be applied and **termination of the agreement shall be used only as *ultima ratio* (the last resort)**. The Court of Cassation has stated that termination of the agreement is an exceptional remedy under the principle of *favor contractus* acknowledged in the international law and national legal regulation; therefore, its application must have a sufficiently substantiated and factual basis (Ruling of the Supreme Court of Lithuania of 28 December 2010 in civil case No 3K-3-569/2010). Nevertheless, although the importance of the principle of *favor contractus* is acknowledged in contractual relations, this principle shall not be absolutised by objecting the presence of other remedies and possibilities of the creditor to use them because the principle of freedom of contract ensures the contractual parties' right to choose and use a remedy best meeting their interests (Ruling of the Supreme Court of Lithuania of 26 June 2012 in civil case No 3K-7-306/2012; Ruling of 28 June 2013 in civil case No 3K-3-349/2013). The case-law of the Court of Cassation emphasises that the aim to keep the agreement is not absolute and its termination may be reasoned when certain circumstances – the nature, scope of violation or other significant circumstances allowing to decide on the presence of the basis for unilateral termination of the agreement – are determined (Ruling of the Supreme Court of Lithuania of 16 September 2016 in civil case No 3K-3-388-684/2016, paragraph 30).[13] "While establishing interpretation and practice in applying provisions of contract law, the Court of Cassation has repeatedly pointed out that the competition of alteration and termination of the agreement should be solved to the benefit of alteration of the agreement in order to keep the agreement and allow to verify it, as the exception of the principle *pacta sunt servanda*, unless the implementation of the agreement is too difficult to the contractual party even upon alteration of the agreement, whereas the creditor shall not be interested in the implementation of the agreement and achievement of its objective."[14]

20. Failure to implement the obligations assumed under the credit agreement or inadequate implementation thereof for a period exceeding 90 days may be deemed a material breach of the credit agreement, unless the parties to the credit agreement agree on a longer period.

Commentary

20.1. Article 23(3) of the Law sets out that failure to implement the obligations assumed under the credit agreement or inadequate implementation thereof for a period exceeding 90 days **may be** deemed a material breach of the credit agreement but does not provide that inadequate implementation or failure to implement the obligations for a period exceeding 90 days shall in all cases be unambiguous criteria or condition for termination of the credit agreement, thus it is recommended to consider the case-law when applying this provision of the Law (see paragraph 18 of the Guidelines).

[13] As well as the Ruling of the Civil Division of the Supreme Court of Lithuania of 18 October 2017 in civil case No e3K-3-358-916/2017.

[14] Ruling of the Civil Division of the Supreme Court of Lithuania of 28 June 2013 in civil case No 3K-3-349/2013.

20.2. The SCL has interpreted in its case-law that the terms and conditions regulating termination of the credit agreement to the extent whereby they entitle the creditor to terminate the credit agreement and require the full repayment of the credit, interests, penalties and make any other payments provided for in the agreement prior to expiry of the period of validity of the credit agreement, when the borrower **fails to repay the bank at least one credit premium**, are acknowledged as **contrary to the general requirements for good faith** and significantly unbalancing the parties' rights and duties to the detriment of the consumer's (borrower's) rights and interests (Article 6.188(1-2) of the CC); therefore, they shall have no effect *ab initio* (from the beginning) (Article 6.188(7) of the CC) (Ruling of the Supreme Court of Lithuania of 15 June 2011 in civil case No 3K-7-272/2011; Ruling of 24 May 2012 in civil case No 3K-3-247/2012).

20.3. In general, termination of an agreement **due to failure to implement a minor part of obligations may be deemed to be a disproportionate legal consequence to a breach of the agreement**, but while determining the nature of the breach, not only the amount delayed but also **the entirety of** other significant circumstances allowing to decide on the presence of the basis for unilateral termination of the agreement shall be assessed (Ruling of the Supreme Court of Lithuania of 20 February 2012 in civil case No 3K-3-58/2012; Ruling of 17 June 2013 in civil case No 3K-3-345/2013; Ruling of 12 May 2016 in civil case No 3K-3-267-611/2016, paragraph 18).[15]

20.4. In cases where termination of the agreement, *inter alia*, is related to a certain overdue amount, it is recommended to consider the case-law in termination of the agreement under the principles of reasonableness and good faith.

21. The lender and the grantor of a loan may terminate the credit agreement unilaterally only if all of the following conditions exist:

1) the borrower was informed about the failure to implement the obligations assumed under the credit agreement or inadequate implementation thereof in writing on paper or another durable medium at least twice under the procedure established in paragraph 2 of this Article;

2) the borrower failed to implement the obligations assumed under the credit agreement or is implementing them inadequately for a period exceeding 90 days or a longer period agreed by the parties to the credit agreement;

3) the borrower failed to implement the obligations assumed under the credit agreement or implemented them inadequately during an additional term established in this paragraph;

4) all objectively available options have been exhausted in order to implement the obligations assumed under the credit agreement.

Commentary

21.1. When terminating the credit agreement unilaterally, it is important to follow the procedure for termination of the credit agreement; otherwise, such (unlawful) termination shall not produce the desired legal effect. Therefore, the credit agreement may be deemed terminated only subject to a lawful procedure. The lender may terminate the credit agreement unilaterally and out-of-court only if all conditions specified in Article 23(3) exist.

21.2. The commentary of Book VI of the CC points out that the principle of cooperation of the parties requires that the aggrieved party, upon deciding on the use of the right to unilaterally

[15] Ruling of the Civil Division of the Supreme Court of Lithuania of 16 May 2017 in civil case No 3K-3-245-611/2017; Ruling of the Civil Division of the Supreme Court of Lithuania of 12 October 2016 in civil case No e3K-3-438-415/2016

withdraw the agreement, shall in advance notify the other party thereof. The Law sets out that the borrower shall be informed about the failure to implement the obligations (which obligations are not implemented or are implemented inadequately) at least twice before the termination of the agreement or requirement for full repayment of the credit specifying the amount of overdue credit premiums (part thereof) and the amount of due penalties, as well as the exact amount of the credit yet to be repaid. The same notification may contain the term for the implementation of obligations of at least 30 days. This means that the lender **shall be entitled to establish a longer term** for fulfilment of obligations taking into account individual circumstances. In light of the above, in case an additional term for fulfilling the obligations is specified in the credit agreement, it is not recommended to indicate a specific (strict) 30-day time limit. The cases of individualisation of the term for the implementation of obligations, where necessary, are considered good practice, *for example, if the credit agreement provides that "the lender shall inform the borrower about the violation of the agreement and shall establish the term for rectification of the breach of the agreement of **at least** 30 days."*

21.3. Article 23(2) and Article23(3)(1) of the Law lay down the general obligation of the lender to at least twice inform the borrower about the failure to implement the obligations assumed under the credit agreement or inadequate implementation thereof. Article 23(3) of the Law sets out that upon determination that the borrower failed to implement the obligations assumed under the credit agreement or is implementing them inadequately for a period exceeding 90 days, the lender and/or the grantor of a loan shall inform the borrower about this in writing on paper or another durable medium and establish an additional term for the implementation of obligations of at least 30 days. Thus, taking into account the provisions of Article 23 of the Law, it shall be concluded that the borrower shall be informed about the failure to implement the obligations assumed under the credit agreement or inadequate implementation thereof at least in the event of failure to implement or inadequate implementation of the obligations for a period exceeding 90 days, in other words, the borrower shall be informed about the delay of 90 days. In case the borrower, according to Article 21(1) of the Law, was informed about inadequate implementation of the obligations for a period shorter than 90 days at least once or a few times, without taking into account whether supplementary term for fulfilment of the obligations was established (and for how long), the lender, fulfilling the requirements of Article 23 of the Law, **should additionally, at least once, inform the borrower about the failure to implement the obligations under the credit agreement or inadequate implementation thereof for a period exceeding 90 days** and establish an additional term for the implementation of obligations of at least 30 days. *For example, if the borrower delays to implement the obligations assumed under the credit agreement for 90 days and they were informed about the delay twice, i.e. about the delay of 30 and 60 days, establishing additional term for the implementation of obligations in both cases, the borrower shall be informed once again about the delay to implement the obligations for a period exceeding 90 days, establishing an additional term for the implementation of obligations of at least 30 days.* In light of the above, it shall be concluded that the borrower should receive at least one notification when they delay to implement the obligations for 90 days, whereas the credit agreement may be actually terminated only when the borrower delays to implement the obligations assumed under the credit agreement for a period exceeding 120 days (i.e. upon expiration of the additional term for the implementation of obligations of 30 days).

21.4. The commentary of Book VI of the CC points out that the requirement of prior notification of termination of the agreement shall be deemed fulfilled when the other party receives such notification, i.e. a notice is required to be made in such form and using such measures that would ensure the receipt of the notification by the other party.[16] According to the provisions of the Law, the borrower shall be informed in writing on paper by registered post or by other means specified in the agreement. In addition, both the lender and the borrower shall be obliged to prove that such information was provided to the borrower (Article 23(2) of the Law). In

[16] Commentary of the Civil Code of the Republic of Lithuania. Book six. Law on Obligations. Volume I. Commentary of Article 6.218(1).

light of the above, the lender is recommended to choose the form and measures for notification ensuring adequate notification of the borrower.

22. In cases of delayed payment of credit premiums, the penalties imposed on the borrower shall not exceed 0.05 percent of the overdue sum for each day of delay. No other penalties and payments shall be imposed on the borrower for failure to implement the obligations assumed under the credit agreement.

Commentary

22.1. **Upon termination of the credit agreement**, the third person who took over the rights and obligations under the credit agreement shall not acquire more rights than were given to the lender under the credit agreement and the Law, i.e. the person who took over the rights and obligations under the credit agreement shall not be entitled to require penalties exceeding 0.05 percent.

22.2. The limitation of penalties to 0.05 percent set out in Article 16(6) of the Law shall also be applied upon termination of the credit agreement. Article 6.221(2) of the CC provides that termination of the agreement shall not preclude the right of claim for damages for non-performance of the agreement, as well as the right of claim for penalty. Therefore, this provision of the CC sets out the general rule that termination of an agreement shall not have any impact on the civil liability. Where the agreement is breached before its termination, the creditor may recover losses or penalties from the debtor upon termination of the agreement as well.[17] Whereas Article 6.221(3) of the CC establishes that termination of the agreement shall not affect, *inter alia*, the validity of any other conditions which, taking into account their nature, are to be in force even after the termination. Taking into account the aforementioned provisions of the CC and the fact that the amount of penalties is limited under Article 16(6) of the Law, i.e. the lender and the borrower may agree in the credit agreement on the penalties not exceeding 0.05 percent, it shall be concluded that even upon termination of the credit agreement this clause of the credit agreement shall remain in force and the amount of the penalties specified in the agreement, which cannot exceed 0.05 percent of the overdue sum for each day of delay, shall be applied.

22.3. According to the general rule, the interests specified in the credit agreement shall be calculated for the use of the credit until expiry of the credit agreement. However, in case the lender terminates the credit agreement upon the borrower's violation of the obligation to repay the credit and to pay the agreed interests on time, and where these clauses are clearly and unambiguously provided for in the credit agreement, the lender shall be entitled to charge the interests even upon termination of the credit agreement, i.e. until the day of repayment of the credit. Such view of the Bank of Lithuania has also been supported by the SCL.[18]

SECTION V
OTHER REQUIREMENTS

23. Information that, under the Law, is provided by lenders, credit intermediaries and peer-to-peer lending platform operators to the borrowers shall be provided free of charge.

Commentary

[17] Commentary of the Civil Code of the Republic of Lithuania. Book six. Law on Obligations. Volume I. Commentary of Article 6.221(2).

[18] For example, the Ruling of the Civil Division of the Supreme Court of Lithuania of 13 May 2015 in civil case No 3K-3-275-248/2015.

Article 57 of the Law sets out that all information provided to the borrowers under the Law shall be free of charge. Considering the foregoing and interpretation of the provisions of the Law laid down in paragraph 22 of the Guidelines, it shall be concluded that all notifications, reminders, letters and other information specified in the Law and the Guidelines shall be provided free of charge.

24. The employees of the lender and the credit intermediary shall have knowledge and skills ensuring proper implementation of the obligations specified in the Law.

Commentary

The lender should ensure adequate qualification of their employees dealing with the borrowers in payment difficulties (Article 32(1) of the Law). Adequate qualification of employees has also been emphasised in subparagraph 1.3 of the EBA Guidelines: the creditor should provide adequate training for staff dealing with consumers in payment difficulties.

25. The lender shall be entitled to transfer the rights and obligations under effective credit agreements concluded with borrowers only to an entity included in the public list of lenders.

Commentary

25.1. Article 33(1) of the Law provides the general rule whereby the lender shall be entitled to transfer the rights and obligations under effective credit agreements concluded with borrowers only to an entity included in the public list of lenders.

25.2. The limitation established in the aforementioned provision of the Law shall be applied for **effective** credit agreements, without taking into account whether the term for the implementation of the financial obligations (payments) assumed under the credit agreement is expired. It should be noted that the agreement concluded between the contractual parties shall be effective for indefinite or certain time which may be specified in the agreement or legislation. Whereas obligations arise of the agreement, the expiration of the agreement is related to completion of the obligation. Article 6.189(3) of the CC lays down that agreements or laws may establish that the obligations of the parties under the agreement shall be extinguished by the expiration of the validity of the agreement. Accordingly, the general rule is that the agreement expires only upon expiration of obligations arising thereof, even if the agreement is concluded for a definite time.[19]

25.3. The Law regulates the relations between the lender and the borrower, therefore, the lender should follow the requirements on the rights and obligations of the borrower and protection of their interests established therein in the conclusion and performance of the credit agreement until the full implementation of obligations assumed by the lender and the borrower under the credit agreement or expiration of the credit agreement on other legal grounds.

25.4. Accordingly, during the period of validity of the credit agreement, the rights, obligations and responsibilities assumed under the credit agreement may be transferred only to such entity, or the party of the credit agreement (lender) may be replaced by the lender only with an entity included in the public list of lenders. The rights and obligations assumed under the credit agreement may be transferred to a person not included in the public list of lenders only subject to expiration of the credit agreement, as provided for in legislation (for example, termination thereof).

25.5. Upon termination of the credit agreement, the third person who took over the rights and obligations under the credit agreement shall not acquire more rights than were given to the lender under the credit agreement and the Law, i.e. the person who took over the rights and obligations

[19] For example, the Ruling of the Civil Division of the Supreme Court of Lithuania of 16 November 2012 in civil case No 3K-3-497/2012, as well as the Commentary of Book six of the CC.

under the credit agreement shall not be entitled to require penalties exceeding the amount specified in Article 16(6) of the Law.

25.6. Nevertheless, the Bank of Lithuania holds the opinion that Article 33 of the Law does not preclude the transfer of certain functions or part thereof to the third person not included in the public list of lenders during the period of validity of the credit agreement (e.g. to entrust the recovery of overdue payments to a debt collection agency). However, in such case:

25.6.1. the lender shall remain responsible for actions of the third person, appropriate fulfilment of the requirements set by legislation regulating lending activities and proper performance of the credit agreement by the third person. It means that the lender and the borrower remain the parties to the credit agreement (i.e. the third person who is not the lender cannot replace the lender indicated in the initial agreement);

25.6.2. all provisions of the Law and its implementing legislation, including limitations of penalties applied in the event of overdue premiums, shall be further applied to the credit agreement and its parties in case of transfer of certain rights or part thereof to the third person (hereinafter – the assignee);

25.6.3. the responsibility for violation of the Law (if any) shall be assumed by the lender rather than the assignee.

25.6.4. the lender shall in any case ensure the following:

25.6.4.1. the borrower shall continue the implementation of all obligations arising of the credit agreement only to the lender rather than the assignee;

25.6.4.2. the assignee shall not be given the right of the direct claim against the borrower, including the right of claim for payment of premiums, penalties and/or other costs to the assignee;

25.6.4.3. all requirements set in the legislation regulating lending activities and provisions of the credit agreement shall be followed.

25.7. Paragraph 27 of the EBA Opinion draws attention to good practice whereby creditors inform the borrowers in payment difficulties where they intend to involve a third-party debt collection agency in dealing with the borrowers so that they have a clear understanding of the role and activities of the third party.

SECTION VI
FINAL PROVISIONS

26. Lenders should supplement the relevant internal documents as well as other documents, taking into account these Guidelines and the EBA Guidelines.

27. It shall also be recommended to follow the interpretations provided for in these Guidelines if credit agreements had been concluded before these Guidelines entered into force.

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