

The term “staff” in terms of the requirements for expertise and good repute under Act 257/2016 Coll., on Consumer Credit

- Regulation
- Act No. 257/2016 Coll., on Consumer Credit (the Consumer Credit Act, **CCA**)
 - Act No. 455/1991 Coll., on Trade and Entrepreneurial Activities, as amended (**the Trades Licensing Act**)
 - Decree No. 381/2016 Coll., on applications, notifications and the submitting of statements pursuant to the Consumer Credit Act (**CNB Decree on applications**)

Question 1 **Which employees and other persons working for consumer credit providers or intermediaries satisfy the definition of staff?**

- Provisions
- **Articles 2, 3, 5, 8, 16, 23, 34, 44, 60, 72, 73, 75, 94 and 117 of the CCA**

Answer Pursuant to Article 3(1)(h) of the CCA, “staff” means *“a person who is in an employment relationship with a provider or intermediary of consumer credit, or is a member of the statutory body or management board of a provider or intermediary of consumer credit, or is a proctor, if they are directly engaged in the provision or intermediation of consumer credit or are responsible for the provision or intermediation of consumer credit”*.

According to the definition, what matters, therefore, is the person’s position (a person in an employment relationship, or a member of the statutory body or management board of a provider or intermediary of consumer credit, or a proctor) and responsibilities, i.e. the range of activities falling within that person’s responsibility. This is discussed in detail in the following sub-questions.

- **Who is responsible for assessing whether a person satisfies the definition of staff and must therefore be of good repute and possess professional competence**

Pursuant to Article 8(2) of the CCA, persons authorised to provide consumer credit are obliged to ensure that they provide consumer credit only through such staff, tied agents and their staff, and intermediaries of linked consumer credit and their staff who meet the requirements for professional competence pursuant to Article 60 of the CCA and for good repute pursuant to Articles 72 or 73 of the CCA. Consumer credit providers are obliged to ensure that these persons maintain expertise and skills.

Pursuant to Article 23(2) of the CCA, independent intermediaries are obliged to intermediate consumer credit only through such staff and tied agents and their staff who continuously satisfy the requirements for professional competence pursuant to Article 60 and for good repute pursuant to Article 72 of the CCA.

Pursuant to Articles 8 and 23 of the CCA, providers or independent intermediaries of consumer credit are responsible for defining the group of persons who satisfy the definition of staff and for ensuring that those persons satisfy the requirements for professional competence pursuant to Article 60 and for good repute pursuant to Article 72 of the CCA.¹ There is nothing to stop them deciding that their own employees or persons working for tied agents or intermediaries of linked consumer credit who do not necessarily satisfy the definition of staff must also satisfy the requirements for professional competence pursuant to Article 60 and for good repute pursuant to Article 72 of the CCA.

¹ This is without prejudice to the CNB’s right pursuant to Article 146(1)(a) of the CCA to withdraw the licence of a tied agent or an intermediary of linked consumer credit if they cease to satisfy the requirements laid down in the CCA for carrying on activities.

- **The term “employment relationship”**

The CCA does not define “employment relationship”. The CNB thus understands this term to have the same meaning as the “basic employment relationship” pursuant to Article 3 of Act No. 262/2006 Coll., the Labour Code, as amended, namely an employment relationship and legal relationships based on agreements to work outside the scope of employment. According to the Labour Code, agreements to complete a job and agreements for work are legal relationships based on agreements to work outside the scope of employment. The CNB expects consumer credit providers and independent intermediaries to consider all relevant circumstances, including the staff’s type of employment relationship, when deciding on how to fulfil their duties (such as the duty to inspect staff and to identify and manage conflicts of interest).

- **Persons working for providers or intermediaries on the basis of a trade licence**

Persons working for providers or intermediaries on the basis of a trade licence do not satisfy the definition of staff. With reference to Articles 8(1), 23(1), 34 and 44 of the CCA, these persons may not represent providers and intermediaries of consumer credit in the activities listed in Article 3(1)(a) items 1–4 and (1)(b) items 1–4 of the CCA respectively.

In line with this, only persons with the relevant authorisation as stipulated in Article 16 of the CCA may carry on consumer credit intermediation as defined in Article 3(1)(b) of the CCA as entrepreneurs, and chains of intermediaries are strongly limited in the CCA (Articles 8(1), 23(1), 34 and 44 of the CCA).

The CCA does not limit the ability of consumer credit providers to authorise persons possessing only a trade licence to perform activities which do not qualify as the provision or intermediation of consumer credit, or which are associated with the provision or intermediation of consumer credit but are not of a representative nature (i.e. activities that do not involve acting on behalf of and on the account of the represented provider or intermediary vis-à-vis consumers, such as evaluating documents for the assessment of creditworthiness without any contact with the credit applicant, or simply delivering contractual documentation). In the latter case, however, staff of the provider or intermediary of consumer credit should be responsible for setting relevant processes and checking compliance with the requirements of the CCA and internal policies by these persons and, where relevant, for making the final decision on the provision of a specific loan. The regulations should not be circumvented by delegating activity to a third person. As regards banks and credit unions, the provisions of CNB Decree No. 163/2014 Coll.² concerning outsourcing also apply.

- **Assessing whether certain tasks constitute engagement in the provision or intermediation of consumer credit or are associated with responsibility for such activity**

When assessing whether persons working for a provider or intermediary of consumer credit are staff and must therefore satisfy the requirements for professional competence pursuant to Article 60 of the CCA and for good repute pursuant to Article 72 of the CCA, what matters – in addition to the person’s position (the person must be an employee, a member of the statutory body or management board, or a proctor) – is whether the person is directly engaged in any of the activities that qualify as the provision or intermediation of consumer credit or whether that person is responsible for such activities. In addition to the definition of “staff” in Article 3(1)(h) of the CCA, this must be based on the definition of the provision and intermediation of consumer credit in Article 3(1)(a) and (b), respectively, of the CCA.

² CNB Decree No. 163/2014 Coll., on the performance of the activities of banks, credit unions and investment firms, as amended.

Each case must be assessed individually by comparing the job descriptions with these definitions. What matters is the actual situation, not the job title, for example.

In accordance with recital 32 of the MCD³ and the explanatory memorandum to Article 8 of the CCA,⁴ employees who are not in direct contact with customers but are responsible for the provision or intermediation of consumer credit, i.e. employees who directly manage and control these activities or play another important role in the consumer credit intermediation process, also satisfy the definition of staff. All persons responsible for the provision or intermediation of consumer credit, regardless of their rank in the company, are staff. This includes persons responsible within the company for granting exemptions from credit standards and persons in managerial positions responsible for the sale of products (e.g. branch managers, regional managers and call centre managers if they are responsible for tasks qualifying as the provision or intermediation of consumer credit). The requirement for professional competence of members of the statutory body or management board is discussed in the answer to question 3.

The definition of staff is therefore in no way limited to the persons who sign the loan contracts or who are present when a contract is concluded. Nevertheless, the term “staff” includes all persons who offer customers the possibility of arranging consumer credit and provide them with specific information about credit. Whether they communicate with customers in person in branches or remotely by means of electronic communication is irrelevant.

Staff does not include persons fulfilling support functions, such as marketing, accounting and IT employees. It also does not include persons who only generally take soundings of a person’s interest in concluding a contract.⁵

- **Persons engaged in exercising rights and fulfilling obligations arising from consumer credit contracts or contracts on consumer credit intermediation**

The limitation of the set of persons who may represent consumer credit providers pursuant to Article 8(1) of the CCA applies only to the activities referred to in Article 3(1)(a) items 1–4 of the CCA, not to the exercise of rights and fulfilment of obligations arising from consumer credit contracts pursuant to item 5 thereof. The legislation relating to the representation of consumer credit intermediaries (Articles 3(1)(b), 23(1), 34 and 44 of the CCA) is similar in this respect.

At the same time, however, Articles 8(2) and 23(2) of the CCA do not imply that the requirement for professional competence and good repute does not apply to persons engaged solely in exercising rights and fulfilling obligations arising from consumer credit contracts or contracts on consumer credit intermediation.

³ Recital 32 of the MCD reads: “(...) For the purpose of this Directive, staff directly engaged in activities under this Directive should include both front- and back-office staff, including management, who fulfil an important role in the credit agreement process. Persons fulfilling support functions which are unrelated to the credit agreement process (for instance human resources and information and communications technology personnel) should not be considered as staff under this Directive.”

⁴ The explanatory memorandum to Article 8 of the CCA reads: “(...) The term ‘person who is directly engaged in the provision of consumer credit’ is used in conformity with other regulations governing financial market undertakings and must be interpreted in accordance with recital 32 of the MCD. It includes both front- and back-office staff who fulfil an important role in the credit agreement process or are responsible for it. The term does not cover persons fulfilling support functions, who may include persons preparing contractual documentation, such as in-house lawyers, whose role is to support sales staff, unless they are part of the approval process.”

⁵ The dividing line between intermediation, silent intermediation and marketing activities is dealt with in the answer to question 25 of the FAQs “Regarding some provisions of Act No. 257/2016 Coll., on Consumer Credit”, available on the CNB website under

<https://www.cnb.cz/en/supervision-financial-market/legislation/consumer-protection-and-consumer-credit/methodological-and-interpretative-documents/>

This is because these provisions relate to, respectively, the provision and intermediation of consumer credit, i.e. to all the activities defined in Article 3(1)(a) and (b) respectively of the CCA, and likewise the term “staff” is defined using the terms “the provision or intermediation of consumer credit”.

We nevertheless maintain that as regards persons engaged solely in enforcing rights and fulfilling obligations arising from contracts on the provision or intermediation of consumer credit, what matters for assessing the application of the requirement for professional competence and good repute is the specific tasks these persons perform.

For example, activities consisting in contacting customers in arrears and sending them reminders are not regulated activities pursuant to the CCA. Persons (staff) engaged solely in these activities play virtually no role in the process of providing or intermediating consumer credit, so the CNB does not require them to satisfy the requirements for professional competence and good repute.

Further, staff of the provider who only fulfil the information duty vis-à-vis consumers associated with early repayment (Article 117(6) of the CCA⁶) need not satisfy the requirements for professional competence and good repute.

The above is without prejudice to the duty of the provider to carry on all activities with professional care.

Where a new consumer credit contract is concluded in connection with debt enforcement (Article 2(1) of the CCA), what matters is whether these contracts are subject to the full applicability of the CCA or only to partial applicability where the requirement for competence and good repute under the CCA is not assumed (deferred payment, free of charge, of an existing debt pursuant to Article 5(1)(c) of the CCA, or “Creditor Agreements” pursuant to Article 5(4) of the CCA).⁷

- **Couriers**

Activities consisting solely in putting credit documentation into envelopes as instructed by a provider or intermediary, delivering contractual documentation relating to consumer credit to customers, checking the identity of customers and returning documentation to a credit provider or intermediary after signature by customers are not regulated activities under the CCA. These activities fall under none of the items of the definition of the provision or intermediation of consumer credit (Article 3(1)(a) or (b) of the CCA).⁸ This means that the CCA imposes no requirements on persons who carry out solely these tasks or on their employees. The hiring by a provider or intermediary of a third person to carry out solely these activities does not constitute a breach of the rules in the CCA for representation.

However, this model might raise doubts as to whether the provider or intermediary is complying with the duty of professional care laid down in Article 75 of the CCA. Customers may ask the person delivering contractual documentation to provide them with additional or explanatory information. Pursuant to Article 94 of the CCA, each provider or intermediary of consumer credit is obliged to provide an explanation of pre-contractual information.

However, the disclosure of any information about a consumer credit contract would be a regulated activity, as it would be an activity clearly helping a consumer credit contract to be concluded.

⁶ Under this provision, providers must provide consumers who notify them of their intention to repay consumer credit early with specified information so that they can weigh the consequences of early repayment.

⁷ For details, we refer to the document “Regarding the assignment of claims, the assignment of contracts and the conclusion of instalment agreements under Act No. 257/2016 Coll. on Consumer Credit”, available on the CNB website <https://www.cnb.cz/en/supervision-financial-market/legislation/consumer-protection-and-consumer-credit/methodological-and-interpretative-documents/>

⁸ The explanatory memorandum to Article 3(1)(a) of the CCA (the definition of “the provision of consumer credit”) reads: “The carrying out of preparatory work towards the conclusion of consumer credit must have an effect on the consumer credit approval process. Mere administrative actions, such as copying documents, do not qualify as the provision (or intermediation) of consumer credit.”

The provisions of the CCA limiting the representation of credit providers and intermediaries and setting out the requirements for professional competence and good repute of persons engaged in the provision or intermediation of consumer credit or of persons responsible for these activities (i.e. staff) would then apply.

Question 2

Is compliance with the requirements for professional competence and good repute by authorised staff sufficient for proving the professional competence and good repute of a consumer credit intermediary who is a natural person?

Provisions

- Articles 3, 8, 18, 23, 28, 30, 34, 38, 40, 44, 60 and 72 of the CCA
- Articles 3 and 11 of the Trades Licensing Act
- Articles 4, 5 and 8 of the CNB Decree on applications

Answer

Compliance with the requirements for professional competence pursuant to Article 60 and for good repute pursuant to Article 72 of the CCA by staff pursuant to Article 3(1)(h) of the CCA entrusted with responsibility for consumer credit intermediation is not sufficient for satisfying the requirements for professional competence and good repute by a consumer credit intermediary who is a natural person. A consumer credit intermediary who is a natural person must themselves satisfy the requirements for professional competence and good repute. They cannot be released from this duty by authorising a member of staff who satisfies the requirements of professional competence and good repute. The CCA does not contain any equivalent to the responsible representative under Article 11 of the Trades Licensing Act. Article 11 of the Trade Licensing Act does not apply to the provision and intermediation of consumer credit, as this activity is not a trade pursuant to Article 3(3) of the Act. The possibility of being represented by a member of staff (Article 23(1) and Articles 34 or 44 of the CCA) should not be confused with the possibility of proving the professional competence and good repute of an independent intermediary, a tied agent or an intermediary of linked consumer credit who are natural persons through a professionally competent authorised member of staff of good repute.

- **Independent intermediaries**

Pursuant to Article 18(1)(b) and (c) of the CCA, the CNB grants independent intermediary licences only where the applicant is of good repute and professionally competent. An applicant who is a natural person submits documents proving their professional competence as part of the application for an independent intermediary licence, as follows from Article 4(1) of the CNB Decree on applications and as also emphasised in the Methodology for the submitting of applications for an independent intermediary licence.⁹ Pursuant to Article 23(2) of the CCA, independent intermediaries who are natural persons are obliged to ensure that they themselves, their staff, their tied agent and the tied agent's staff continuously satisfy the requirements for professional competence pursuant to Article 60 and for good repute pursuant to Article 72 of the CCA.

Independent intermediaries who fail to pass a professional examination before 1 December 2018 will cease to satisfy the requirement for professional competence after this date. The CNB may therefore withdraw their licence pursuant to Article 146(1)(a) of the CCA.

- **Tied agents and intermediaries of linked consumer credit**

As regards tied agents or intermediaries of linked consumer credit, pursuant to Article 8(2) of the CCA those who are authorised to provide consumer credit may do so

⁹ The methodology is available on the CNB website <https://www.cnb.cz/en/supervision-financial-market/conduct-of-supervision/licensing-and-approval-proceedings/licensing-and-approval-proceedings-under-the-consumer-credit-act/>

only through tied agents and their staff and intermediaries of linked consumer credit and their staff who satisfy the requirement for professional competence pursuant to Article 60 of the CCA and for good repute pursuant to Articles 72 or 73 of the CCA. Likewise, pursuant to Article 23(2) of the CCA, independent intermediaries may intermediate consumer credit only through tied agents and their staff who continuously satisfy the requirements for professional competence pursuant to Article 60 and for good repute pursuant to Article 72 of the CCA. In the case of tied agents or intermediaries of linked consumer credit who are natural persons, the represented person (Article 3(1)(f) of the CCA) thus fulfils the duty laid down in Article 8(2) of the CCA or Article 23(2) of the CCA only if the tied agent or the intermediary of linked consumer credit and also their staff, where applicable, satisfy the requirements for professional competence pursuant to Article 60 of the CCA and for good repute pursuant to Article 72 of the CCA. Consistent with this is that the represented person declared in the notification of a tied agent or an intermediary of linked consumer credit for the purpose of entering them in the register that the tied agent or the intermediary of linked consumer credit and (also) their staff satisfy the requirements for professional competence and for good repute pursuant to Article 5(1)(c) and (2)(b) of the CNB Decree on applications and pursuant to Articles 30(3) and (4) and 40(3) and (4) of the CCA.

A represented person is obliged to immediately terminate the obligation arising from a contract with tied agents or intermediaries of linked consumer credit upon finding that they failed to pass the professional examination before 1 December 2018 (pursuant to Article 176 of the CCA) and thereby ceased to satisfy the conditions laid down in the CCA for their activities. This obligation ceases to exist upon service of a legal act aimed at terminating the obligation to the tied agent or the intermediary of linked consumer credit. Likewise, tied agents and intermediaries of linked consumer credit are obliged to immediately terminate the obligation arising from a contract with a represented person if they cease to satisfy the conditions laid down in the CCA for the activities of tied agents or intermediaries of linked consumer credit. The represented person is obliged to notify the CNB without undue delay that the obligation arising from the contract with the tied agent or intermediary of tied consumer credit has ceased to exist (Articles 28 and 38 of the CCA and Article 8 of the CNB Decree on applications).

Question 3

Under what circumstances is it acceptable for none of the members of the statutory body or management board of a provider or intermediary of consumer credit to be professionally competent?

Provisions

- **Articles 8, 10, 15, 18, 23 and 60 of the CCA**

Answer

As stated in the answer to question 1, in addition to persons who directly perform activities qualifying as the provision or intermediation of consumer credit, “staff” includes persons who manage and control these activities at all levels of management.

The situation where not one member of a statutory body or management board is among the persons responsible for or directly engaged in the provision or intermediation of consumer credit (i.e. among the staff) in a company engaged in the provision or intermediation of consumer credit is very rare. The CNB understands that directors, the board of directors and statutory directors are responsible for business management of the company by law (Articles 195(1), 435(2) and 463(4) of Act No. 90/2012 Coll., on business corporations). The statutory body of a company which is engaged in the provision or intermediation of consumer credit, or a designated member thereof, thus always manages these activities by its very nature. However, the CNB deems it possible to disregard this in very exceptional cases after an assessment of the situation.

The circumstances in which the CNB deems this possible are expressed in the justification of the CNB Decree on applications¹⁰ and in the Methodology for the

submitting of applications for the licence of a non-bank consumer credit provider and the Methodology for the submitting of applications for the licence of an independent intermediary.¹¹ The situation where the members of the statutory body or management board are not persons who are directly engaged in or responsible for the provision or intermediation of consumer credit may arise in the case of a company “with a multi-level organisational structure and a broad range of activities where the provision or intermediation of consumer credit is not the main or even exclusive activity and another person(s) in the management hierarchy who is not a member of the statutory body or management board (for example the director of a business unit) is therefore authorised to manage this activity”.

In the case of non-bank providers and independent intermediaries, the CNB assesses the professional competence of members of the applicant’s statutory body or management board, proctor or other director as part of the licensing proceedings (pursuant to Article 10(1)(d) and Article 18(1)(c) of the CCA). Non-bank providers and independent intermediaries notify the CNB of any subsequent changes pursuant to Article 59(1)(a) of the CCA and simultaneously submit documents proving the professional competence and good repute of the incoming director.

In the case of tied agents and intermediaries of linked consumer credit, the represented person is primarily responsible for assessing the existence of the requirement for professional competence of members of the statutory body or management board. This is without prejudice to the above obligations of tied agents pursuant to Article 28(2) of the CCA and intermediaries of linked consumer credit pursuant to Article 38(2) of the CCA or the CNB’s right to withdraw a licence of a tied agent or an intermediary of linked consumer credit if they cease to satisfy the requirements laid down in the CCA for their activities (Article 146(1)(a) of the CCA). Given the statutory role of the statutory body, the CNB expects supervised persons to apply a similar approach to the professional competence of members of the statutory body of a tied agent or an intermediary of linked consumer credit as does the CNB as described above. As part of the supervision of compliance with the obligations set out in Articles 8(2) and 15(2)(l) and 23(2) and (3) of the CCA, the CNB may require represented persons to prove whether and how they assessed and subsequently checked which specific persons are actually directly engaged in, or are responsible for, the intermediation of consumer credit in the tied agent and the intermediary of linked consumer credit, and whether they satisfy the requirements for professional competence and good repute.

Importance of the answer for those to whom it is addressed	This answer expresses the opinion of Czech National Bank staff members. The courts and the Bank Board of the Czech National Bank may be of a different opinion.
Date	18 October 2018

¹⁰ The justification of the CNB Decree on applications is available on the CNB website <https://www.cnb.cz/en/supervision-financial-market/conduct-of-supervision/licensing-and-approval-proceedings/licensing-and-approval-proceedings-under-the-consumer-credit-act/>

¹¹ Both methodologies are available on the CNB website <https://www.cnb.cz/en/supervision-financial-market/conduct-of-supervision/licensing-and-approval-proceedings/licensing-and-approval-proceedings-under-the-consumer-credit-act/>